

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re: § Chapter 11  
SPEEDCAST INTERNATIONAL §  
LIMITED, *et al.*, § Case No. 20-32243 (MI)  
Debtors.<sup>1</sup> § (Jointly Administered)  
§

**STATEMENT OF THE PREPETITION AGENTS IN  
RESPONSE TO THE OBJECTION OF CRÉDIT AGRICOLE  
CORPORATE AND INVESTMENT BANK TO DEBTORS' EMERGENCY MOTION  
FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO  
(A) OBTAIN POSTPETITION FINANCING AND (B) USE CASH COLLATERAL,  
(II) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY  
ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE  
PROTECTION TO THE PREPETITION SECURED PARTIES, (IV) MODIFYING  
THE AUTOMATIC STAY, AND (V) GRANTING RELATED RELIEF**

[Relates to Docket Nos. 27 and 167]

Credit Suisse AG, Cayman Islands Branch ("Credit Suisse"), in its capacity as the administrative agent, collateral agent, and security trustee (in such capacity, the "Prepetition Agents") under that certain Syndicated Facility Agreement, dated as of May 15, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "SFA") by and among Speedcast International Limited ("Speedcast") and certain of its subsidiaries, as borrowers, and the lenders and issuing banks party thereto, hereby submits this statement (the "Statement"), through its attorneys, Skadden, Arps, Slate, Meagher & Flom LLP, in response to the *Objection of Crédit Agricole Corporate and Investment Bank to Emergency Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral,*

<sup>1</sup> A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <http://www.kccllc.net/speedcast>. The Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.



(II) *Granting Liens and Providing Claims With Superpriority Administrative Expense Status*, (III) *Granting Adequate Protection to the Prepetition Secured Parties*, (IV) *Modifying the Automatic Stay*, (V) *Scheduling a Final Hearing and* (VI) *Granting Related Relief* [Docket No. 167] (the "Objection"), filed by Crédit Agricole Corporate and Investment Bank ("Crédit Agricole") in its capacity as a Secured Hedging Bank under the SFA.<sup>2</sup>

### **STATEMENT**

1. Contrary to certain of the assertions in the Objection, the Prepetition Agents have acted and continue to act in good faith, in strict accordance with the terms of the SFA, and at the direction of the requisite Lenders thereunder – which, in the case of the Third Amendment, was a majority of Lenders (i.e., the "Required Lenders" as defined in the SFA).

#### **A. The Directions Provided to the Prepetition Agents**

2. In the weeks leading up to the Debtors' bankruptcy filing, an ad hoc group of term loan lenders under the SFA organized with Davis Polk & Wardwell LLP, as counsel (the "Ad Hoc Group"). Throughout those weeks before the Petition Date, the Ad Hoc Group, the Prepetition Agents and the Revolving Lenders (as defined in the SFA), including Crédit Agricole, generally remained coordinated with respect to the dialogue and negotiations with the Debtors. For example, Crédit Agricole participated in the negotiations over the Forbearance Agreement dated April 1, 2020, and required that language be included in the Forbearance Agreement to address the CACIB Secured Hedging Claim, which Crédit Agricole cites in the Objection. See Obj., at Fn. 4.

3. While the negotiations with respect to the economic terms of the DIP Facility, including the Roll-Up, occurred between the Debtors and the Ad Hoc Group, information and

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<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Objection.

documentation generally was also shared with the Revolving Lenders, including Crédit Agricole, subject to the confidentiality provisions of the SFA. Because Crédit Agricole was privy to many of those negotiations, it received drafts of many of the relevant documents, including the Third Amendment, in the days leading up to the Debtors' chapter 11 filing and the execution of the various DIP Documents.<sup>3</sup>

4. Notwithstanding Crédit Agricole's involvement throughout the process, the only formal direction the Prepetition Agents received with respect to the DIP Financing prior to May 7, 2020 was the Third Amendment, which was executed by Lenders under the SFA holding 60% of all loans outstanding at the time, including Crédit Agricole in its capacity as a Lender.<sup>4</sup>

5. The Prepetition Agents first learned of Crédit Agricole's potential opposition to the Third Amendment and the DIP Financing in its capacity as a Secured Hedging Bank when Crédit Agricole's counsel appeared at the first day hearing in the Debtors' chapter 11 cases on April 23, 2020. Following that appearance, Crédit Agricole sent no formal objection to the Prepetition Agents of any kind until a letter (the "Crédit Agricole Letter") was sent to the Prepetition Agents in accordance with the notice provisions of the SFA on May 7, 2020 – two weeks after the Bankruptcy Court's interim approval of the DIP Financing. In other words, as of the Petition Date and for a period of two weeks thereafter, the Third Amendment was the only formal instruction delivered to the Prepetition Agents regarding the DIP Financing.

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<sup>3</sup> See, e.g. Obj. fn. 6 (referencing Crédit Agricole receiving a word-version draft of the Third Amendment, dated April 23, 2020 (i.e., the day the Debtors' commenced their Chapter 11 Cases); see also Email correspondence from A. Bhatnagar dated April 23, 2020, Witness and Exhibit List of Crédit Agricole Corporate and Investment Bank for the Hearing on May 20, 2020 at 1:30 p.m. (Central Time) [Docket No. 207], Exhibit 16.

<sup>4</sup> While Credit Suisse also holds approximately \$20 million face amount of revolving loans under the SFA, Credit Suisse, in its capacity as a Lender, abstained from participating in DIP Financing and did not execute or consent to the Third Amendment.

6. The Prepetition Agents also confirm that other than the Third Amendment, on the one hand, and the Objection and the Crédit Agricole Letter, on the other hand, no other formal or informal objections or instructions have been received by the Prepetition Agents with respect to the execution of the Third Amendment, the approval of the DIP Financing, or any other actions taken or not taken by the Prepetition Agents in connection therewith, from any of the Lenders, Secured Hedging Banks, or other interested parties under the SFA.

**B. The Prepetition Agents Have Acted Properly and Strictly in Accordance With the Terms of the SFA**

7. Section 8.01 of the SFA, which sets forth the rights and duties of the Prepetition Agents, provides that the role of the Prepetition Agents "shall be administrative in nature." SFA § 8.01 (third paragraph). The same Section provides that

none of the [Prepetition] Agents shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that such Agent is *required to exercise in writing by the Required Lenders* (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.08).

SFA at § 8.01 (third paragraph). In other words, the Prepetition Agents have no duty to take any discretionary actions except at the direction of the requisite number of Lenders under the SFA.

8. Contrary to Crédit Agricole's assertions, the Third Amendment on its face does not purport to amend or modify Section 7.02 of the SFA. Any amendment or modification of Section 7.02 requires the consent of *all* Lenders, as well as any Secured Hedging Banks like Crédit Agricole. Therefore, an amendment signed by only a majority of Lenders, like the Third Amendment, simply could not have affected any amendment or modification to Section 7.02 of the SFA. Further, the Lenders that executed the Third Amendment represented to the Prepetition Agents that they constituted the percentage of Lenders necessary to effectuate the Third

Amendment. Under the terms of the SFA, the Prepetition Agents are entitled to rely upon such representation. See SFA § 8.01 (fifth paragraph).<sup>5</sup>

9. The Third Amendment gave two very discrete directions to the Prepetition Agents. First, the Prepetition Agents were instructed by the Required Lenders "to raise no objection to and to refrain from otherwise contesting (or supporting any person in objecting to or otherwise contesting) the DIP Order, the DIP Credit Agreement or the other "Loan Documents" as defined in the DIP Credit Agreement." Third Amendment at § 2. This instruction is consistent with the terms of Section 8.01 of the SFA, and does not on its face purport to amend or modify Section 7.02 of the SFA.

10. Second, under the Third Amendment, the Prepetition Agents were "authorize[d] and direct[ed] ... to execute and deliver the DIP Intercreditor Agreement." Third Amendment at § 4. The DIP Intercreditor Agreement recognizes the senior priority of the *liens* securing the obligations under the DIP Facility. Again, on its face, directing the Prepetition Agents to enter into the DIP Intercreditor Agreement to recognize the senior *liens* securing the DIP Financing does not amend or modify Section 7.02 of the SFA.

11. Under the SFA, Crédit Agricole, in its capacity as a Secured Hedging Bank, does not have a consent right over the subordination of the Prepetition Agents' Liens on the Collateral

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<sup>5</sup> The relevant paragraph in Section 8.01 provides:

Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed or sent by the proper person. Each Agent may also rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper person, and shall not incur any liability for relying thereon.

SFA, § 8.01.

securing the Obligations, whether related to the DIP Financing or otherwise. The lien subordination, and any other matters related to the Collateral, are actions that the Prepetition Agents may take solely at the direction of the requisite Lenders under the SFA. Crédit Agricole, in its capacity as a Secured Hedging Bank, has no rights whatsoever with respect to such matters. See, e.g., SFA, § 9.08(c).<sup>6</sup> Further, lien subordination can be achieved without amending Section 7.02 of the SFA.

**C. No Amounts Have Been Received by the Prepetition Agents That Could be Applied Pursuant to Section 7.02 of the SFA**

12. Section 7.02 of the SFA only applies in certain limited circumstances in which the Prepetition Agents receive (i) proceeds of Collateral or (ii) amounts in respect of the Obligations under the SFA. Section 7.02 provides as follows:

The Agents shall apply (a) the proceeds of any collection, sale, foreclosure or other realization upon any Collateral, including any Collateral consisting of cash, and (b) any amounts received in respect of the Obligations following the termination of the Commitments and any of the Loans becoming due and payable pursuant to Section 7.01, in each case as follows: ...

Regardless of how the Roll-Up is "deemed to occur" under the terms of the Interim DIP Order or any other DIP Loan Documents, there are no proceeds of collateral to be distributed, and no amounts have been received by the Prepetition Agents that could be applied pursuant to the express language of Section 7.02 of the SFA.

13. Finally, the Objection insinuates, and the Crédit Agricole Letter alleges, that counsel for the Prepetition Agents made misstatements to the Court at the First Day Hearing

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<sup>6</sup> The last sentence of Section 9.08(c) of the SFA provides: "Notwithstanding the foregoing, for the avoidance of doubt, no Secured Hedging Bank shall have any right to notice of any action or, subject to the immediately preceding sentence of this Section 9.08(c), to consent to, direct or object to any action hereunder or under any other Loan Document **or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender.**"

regarding the requisite level of consents required for the DIP Financing. See Objection, at Fn. 7. Such allegations are taken with the utmost seriousness. The relevant exchange between the Court and counsel for the Prepetition Agents is set forth below:

**THE COURT:** . . . Is there someone here that represents—is this an agent for the lenders?

**[MR. HOWARD]:** Yes, Your Honor. [George Howard] (indiscernible) from Skadden Arps is on the phone and [we] represent Credit Suisse as the agent.

**THE COURT:** Does Credit Suisse consent to this in its capacity as agent to the lenders?

**[MR. HOWARD]:** Credit Suisse is supportive of what the Debtors are trying to do and what the Ad Hoc Group is trying to do. We are only acting in an administrative capacity here. And so we will do what we are directed to do by the majority lenders and what the Court approves today.

**THE COURT:** And have you been directed by the majority lenders to not oppose the priming portion?

**[MR. HOWARD]:** That is correct.

**THE COURT:** All right

Tr. of Record at 62:19-63:12, *In re Speedcast Int'l Ltd.*, No. 20-32243 (MI) (Bankr. S.D. Tex., April 23, 2020). These statements are factually correct and consistent with the express language in the Third Amendment and the SFA as detailed above.

14. This Statement is intended to provide additional clarity for the Court with respect to the Prepetition Agents' position on the issues raised by the Objection. Should the Court have further questions, the Prepetition Agents, through their counsel, stand ready to respond to the best of their ability.

Dated: May 19, 2020

Respectfully Submitted

/s/ George Howard  
**George R. Howard (admitted *pro hac vice*)**

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
One Manhattan West  
New York, New York, 10001  
Tel: (212) 735-3000  
Fax: (917) 777-2367  
Email: george.howard@skadden.com

-and-

**Noelle M. Reed**

Texas Bar No. 24044211  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
1000 Louisiana Street, Suite 6800  
Houston, Texas 77002  
Tel: (713) 655-5100  
Fax: (713) 483-9140  
Email: noelle.reed@skadden.com

***Counsel to Credit Suisse AG,  
Cayman Islands Branch***



**CERTIFICATE OF SERVICE**

I, George Howard, hereby certify that on May 19, 2020, caused the foregoing *Statement of the Prepetition Agents in Response to the Objection of Crédit Agricole Corporate and Investment Bank to Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing And (B) Use Cash Collateral, (II) Granting Liens And Providing Claims With Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* to be served by electronic transmission via the Court's ECF system to all parties registered to receive electronic notice in this case.

*/s/ George Howard*  
George Howard