Docket #0006 Date Filed: 7/6/2020

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

In re:	§	**Chapter 11**
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Bankruptcy Case No. 20-32243**
Debtors.[1]	§	**(Jointly Administered)**
CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,	§	
Appellant,	§	**Civil Action No. 4:20-CV-01970**
v.	§	
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	
Appellees.	§	

MOTION OF APPELLANT CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK TO EXPEDITE APPEAL

Appellant Credit Agricole Corporate and Investment Bank respectfully moves under Rule 8013(a)(2)(B) of the Federal Rules of Bankruptcy Procedure, for expedited consideration of this appeal and an oral argument date as soon as practicable after briefing has completed in the ordinary course. The reasons that Credit Agricole requires expedited consideration are explained below.

[1] 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.

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PRELIMINARY STATEMENT

While a full statement of the facts underlying this case is contained in Credit Agricole's opening brief (Docket Entry No. 4), below is a short recitation of the facts necessary to understand the need for expedited consideration of this appeal.

SpeedCast International Ltd., along with some of its affiliates, declared bankruptcy. The Debtors needed financing to remain a going concern. Some of SpeedCast's pre-bankruptcy creditors offered this financing, with a catch. In exchange for loaning SpeedCast $90 million in new money, the creditors wanted to receive payment on $90 million of their pre-bankruptcy debt before anyone else.

This arrangement between SpeedCast and the creditors, known as a "roll-up," effectively deprived other pre-bankruptcy creditors of an equal chance for payment on their claims against SpeedCast. The bankruptcy estate only has limited value. Credit Agricole Corporate and Investment Bank, one of SpeedCast's other creditors, objected on this basis. The Bankruptcy Court overruled Credit Agricole's objection and approved the post-bankruptcy financing with the roll-up included. In doing so, the Bankruptcy Court violated not only the Bankruptcy Code and clear circuit precedent forbidding such agreements, but also a privately negotiated agreement between the various creditors. The Bankruptcy Court also refused to ensure that Credit Agricole had "adequate protection" against the roll-up, as the Bankruptcy Code requires.

Credit Agricole filed this appeal. Among other things, the appeal asks the Court to clarify the validity of nonconsensual roll-ups and similar cross-collateral provisions under the Bankruptcy Code—controversial forms of postpetition financing that have been forbidden by the only circuit to determine their validity.

RELIEF REQUESTED

Credit Agricole seeks expedited consideration of this appeal pursuant to Federal Rule of Bankruptcy Procedure Rule 8013(a)(2)(B), which allows the Court to expedite a bankruptcy appeal if a party can "explain what justifies considering the appeal ahead of other matters."

Any day, the bankruptcy proceedings below could become accelerated. The contested roll-up arrangement that stands at the center of the postpetition financing would only become more cemented as the bankruptcy reaches a conclusion through reorganization or sale and the assets of the estate are disbursed to creditors. All parties have an interest in resolving any uncertainty surrounding the roll-up before this happens. These circumstances warrant expedited consideration, and Credit Agricole asks that the Court schedule oral argument as soon as practicable following the completion of briefing.

The postpetition financing approved by the Bankruptcy Court sets target milestones for future proceedings in the Bankruptcy Court. (D.E.27-1 at 159, ROA.592-594 [DIP Credit Agreement § 5.16]). These milestones are triggered when certain lenders make an election to propose a plan of reorganization or proceed with a sale of SpeedCast's assets. (*Id.*) Credit Agricole is not a party to the financing agreement and does not know when the lenders plan to make that election.

Once an election is made, which Credit Agricole has no way to predict, it will trigger certain filings in the Bankruptcy Court within 14 days of the election. (*Id.* § 5.16(c)). If the lenders elect to proceed with a sale of SpeedCast's assets, debtors will file a motion to approve bid procedures for the sale. (*Id.* § 5.16(c)(i)). If the lenders elect a plan of reorganization, the debtors will file a proposed plan and disclosure statement. (*Id.* § 5.16(c)(ii)). The debtors have not made either of these filings.

Once the lenders make an election, however, the bankruptcy proceedings become accelerated. Either approval of a sale or confirmation of a plan of reorganization will occur within about two to three months, unless the lenders agree to an extension. (*Id*. § 5.16(c)). Given that the bankruptcy proceedings could, at any time, be set on a fast track by events outside the scope of Credit Agricole's knowledge or control, Credit Agricole asks that this appeal proceed expeditiously so that its rights can be settled before funds are dispersed to creditors from the bankruptcy estate. The briefing schedule need not be shortened, but a prompt hearing by oral argument would serve all the parties' interests.

To expedite matters, Credit Agricole has already voluntarily filed its opening brief, along with an appendix containing key record items. Credit Agricole will file Status Reports, preferably Joint Status Reports (if this Court so orders), every 30 days and upon any elections of which the parties have knowledge, or filings in the Bankruptcy Court that put the bankruptcy proceedings on an accelerated track to conclusion. Credit Agricole asks this Court to set this matter for oral argument as soon as practicable after the conclusion of briefing so that the validity of the rollup can be determined before the parties proceed further down the current road, with a facially invalid term at the center of the postpetition financing agreement.

CONCLUSION

Credit Agricole respectfully requests that the Court: (i) expedite the appeal by setting this matter for oral argument no later than one week after Credit Agricole files its reply brief; and (ii) grant any additional relief that the Court deems just and necessary.

Dated: July 6, 2020

Respectfully submitted,

HAYNES AND BOONE, LLP

By: */s/ Charles A. Beckham, Jr.*

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CERTIFICATE OF CONFERENCE

In accordance with Local Rule 7.1, I certify that I conferred with John Sparacino, counsel for Debtors, Henry Flores, counsel for the Ad Hoc Group of Secured Lenders, and Shana Elberg, counsel for Credit Suisse AG, Cayman Islands Branch. Mr. Sparacino stated that Debtors are opposed to the relief requested in this motion. Mr. Flores stated that the Ad Hoc Group of Secured Lenders has not yet taken a position regarding the relief requested in this motion. Ms. Elberg has not yet responded with Credit Suisse's position.

/s/ Polly Fohn
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CERTIFICATE OF SERVICE

In accordance with the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of this motion was served on the following counsel of record on July 6, 2020:

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In re:	§	**Chapter 11**
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Appellees.	§	

ORDER GRANTING MOTION TO EXPEDITE APPEAL

After considering Appellant Credit Agricole Corporate and Investment Bank's Motion to Expedite Appeal and the Appellees' response, and any reply, the Court finds that the bankruptcy court proceedings may at any time accelerate toward the approval of a plan of reorganization or a sale, threatening to further implement the "rollup" agreement that Credit Agricole challenges in this appeal. Credit Agricole's motion for expedited consideration of the appeal is granted. (Docket Entry No. ____). Beginning from the date of this Order, the parties must file Joint Status Reports timely informing this Court of proceedings in the Bankruptcy Court that impact

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the need for a decision in this appeal, at least every 30 days and on the happening of any election by bankruptcy lenders, within the parties' knowledge, or filings in the Bankruptcy Court that put the bankruptcy proceedings on an accelerated track to conclusion. Oral argument is this case is set for Monday, August 17th at _____ p.m.

SIGNED this _____ day of _____, 2020.

_____
LEE H. ROSENTHAL
CHIEF UNITED STATES DISTRICT JUDGE