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MAY 11 3 2004

K.R.W.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at _____ o'clock & _____ min
MAY 11 3 2004

BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (29)

In re:)
)
GEORGETOWN STEEL COMPANY, LLC)
)
Debtor.)

Case No. 03-13156
Chapter 11

ORDER GRANTING THE MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER (A) APPROVING BIDDING PROCEDURES; (B) APPROVING PAYMENT OF BREAK-UP FEE AND EXPENSE REIMBURSEMENT FEE AND OVERBID PROTECTIONS TO A BUYER; (C) APPROVING PROCEDURE FOR ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND ESTABLISHING CURE AMOUNTS; (D) APPROVING PROPOSED SALE AND HEARING NOTICE; AND (E) ESTABLISHING HEARING DATES ALL IN CONNECTION WITH THE PROPOSED SALE OF SUBSTANTIALLY ALL THE ASSETS OF THE DEBTOR

Upon consideration of the above-captioned motion (the "Motion")¹ for an order pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (a) approving bidding procedures; (b) approving payment of break-up fee and expense reimbursement fee and overbid protections to Buyer; (c) approving procedure for assumption and assignment of executory contracts and unexpired leases and establishing cure amounts; (d) approving proposed sale and hearing notice; and (e) establishing hearing dates all in connection with the proposed sale of substantially all the assets of the Debtor; and due notice of the Motion having been provided; and a hearing having been held on May 11, 2004 to consider the relief requested in the Motion (the "Hearing") and upon the record of the Hearing; and the following parties having filed objections to the Motion and appeared at the Hearing: the Committee, the

United States Trustee²; and it appearing that all issues in the objections have been resolved or are overruled; and it appearing that (a) the Debtor has articulated good reasons for approving the Notice of Auction and Sale Hearing and the Bidding Procedures in connection with the sale of the Acquired Assets; (b) the Bidding Procedures are designed to maximize the recovery on the Acquired Assets; (c) the Contract Objection Procedures are designed to provide notice of the assumption and establishment of Cure Costs for the Assumed Contracts; (d) the Notice of Auction and Sale Hearing provides timely notice of the sale of the Acquired Assets in accordance with applicable provisions of the Bankruptcy Code and the Bankruptcy Rules; (e) the Debtor asserts that the Break-Up Fee and the Expense Reimbursement Fee will enable it to obtain the highest and best price that the current market will bear for the Acquired Assets; and (f) the Debtor asserts that the Overbid Protections will enable it to obtain the highest and best price and facilitate competitive bidding in the Auction; and after hearing and consideration, THE COURT HEREBY FINDS AND DETERMINES THAT:

A. It appears in the best interests of the estate and creditors that this Court grant the relief requested in the Motion regarding the sales process, including the Court's approval of the Bidding Procedures, the Contract Objection Procedures, and the Break-Up Fee and the Expense Reimbursement Fee and approval of and authorization to serve the Notice of Auction and Notice of Sale Hearing.

B. The Break-Up Fee and the Expense Reimbursement Fee to be paid to Buyer appear to be (1) an actual and necessary cost and expense of preserving the Debtor's estate, within the meaning of section 503(b) of the Bankruptcy Code, (2) commensurate to the benefit

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

conferred upon the Debtor's estate by Buyer, (3) reasonable, in light of the size and nature of the proposed Sale and comparable transactions, the commitments that have been made, and the actual time spent, expenses incurred, and other tangible and intangible costs and efforts that have been and will be expended by Buyer, and (4) reasonable and necessary costs of sale in an Alternative Transaction.

C. The Break-Up Fee and the Expense Reimbursement Fee appear to be necessary inducements and conditions relating to Buyer's entry into, and continuing obligations under, the APA. Unless it is assured that the Break-Up Fee and the Expense Reimbursement Fee will be made, Buyer is unwilling to remain obligated to purchase the Acquired Assets or be otherwise bound under the APA (including the obligation to maintain its committed offer while such offer is subjected to higher or otherwise better offers as contemplated by the Bidding Procedures). The Break-Up Fee and the Expense Reimbursement Fee induced Buyer to submit a bid that will serve as a minimum or floor bid on which the Debtor, its creditors, and other bidders can rely. Buyer has provided a material benefit to the Debtor and its creditors by increasing the likelihood that the best possible purchase price for the Acquired Assets will be received. Accordingly, the Bidding Procedures and the Break-Up Fee and the Expense Reimbursement Fee appear necessary to maximize the value for the benefit of the Debtor's estate in this particular case.³

² The following parties filed objections to the Motion, which objections were either withdrawn, or determined to relate to matters other than the Motion and will be heard at another time: the South Carolina State Ports Authority; South Carolina Public Service Authority, SAP America, Inc., and Heraeus Electro-Nite Company.

³ While the total Break-Up Fee and Expense Reimbursement Fee requested are higher than those customarily approved, particular factors present in this case warrant an exception. These factors include, but are not limited to, the need to expeditiously move toward a sale of assets during a time when the market for such assets has rebounded; the fact that the Debtor is essentially in a non-operating mode as well as the prospect of re-employment for hundreds of employees and resulting revitalization of the Georgetown community; the time, efforts, and funds expended, and expertise needed, in order to bring about a buyer for a non-operating entity in the steel industry market; and finally the consents of the Committee and the United States Trustee.

D. At the Hearing, Mr. Gary Heasley ("Heasley"), of KeyBanc Capital Markets ("KCM") testified regarding the marketing efforts of KCM. Mr. Heasley testified that extensive marketing efforts had been conducted with strategic buyers and financial buyers, significant due diligence in the form of financial information had been provided to the potential buyers, and a significant number of potential buyers had visited the Steel Mill. In addition, initial letters of intent were submitted to KCM in late March of 2004. KCM reviewed those bids, continued the negotiations with the bidders, and eventually recommended the Buyer as the "stalking horse" having the best and highest offer to purchase the Acquired Assets.

E. Heasley also testified that the Buyer began its discussions with KCM in late December or early January, and those discussions increased in March of 2004, and have continued since then. Heasley indicated the Buyer's representatives had made several on site inspections of the Steel Mill.

F. Heasley also testified that the negotiations were conducted as an "arms length transaction" and that the Buyer had no direct relationship with the Debtor.

G. In connection with the Break-Up Fee, Heasley testified that the Break-Up Fee was designed to compensate the Buyer for the lost opportunity costs and actual time spent and costs incurred in its efforts to acquire the Acquired Assets, including the Buyer's employees' time to review financials, create business plans, review and negotiate transaction documents, and other costs incurred in the diligence required to purchase the assets. Such time and expenses are part of the general operations of a buyer and are not easily quantifiable or recorded. Heasley also testified that the purchase of a non-operating entity, such as the Steel Mill, would generally require more of the Buyer's employees' time in connection with business plan modeling, raw material suppliers, and personnel issues, than an operating facility.

H. In connection with the Expense Reimbursement, Heasley testified that it was intended to reimburse the Buyer for its actual and reasonable out of pocket expenses incurred in the potential acquisition.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED.
2. The Bidding Procedures, which are attached hereto as Exhibit A and incorporated herein by reference, are hereby approved and shall govern all bids and bid proceedings relating to the Acquired Assets. The Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures and shall accept bids and hold the Auction in accordance with the Bidding Procedures. Any person seeking to participate as a bidder at the Auction shall comply with the Bidding Procedures. The United States Trustee may attend, observe and comment to the Court on the conduct of the Auction.
3. The deadline for submitting a Qualified Bid for the Acquired Assets shall be **Saturday, June 12, 2004 at 2:00 p.m. (Eastern Time)** (the "Bid Deadline"). Component Bidders that submit a timely and complete bid may amend their bid by facsimile or electronic mail no later than **Monday, June 14, 2004 at 12:00 noon (Eastern Time)**.
4. As further described in the Bidding Procedures, if a Qualified Bid is timely received before the Bid Deadline, other than the Qualified Bid of Buyer, the Debtor shall conduct the Auction on **Tuesday, June 15, 2004, at 10:00 a.m. (Eastern Time)**, at the offices of McNair Law Firm, P.A., Bank of America Tower, 1301 Gervais Street, Columbia, South Carolina 29211.

5. The Initial Overbid shall be equal to at least \$17,000,000 and the minimum increment for subsequent bids shall be equal to at least \$250,000.

6. As further described in the Bidding Procedures, no bid or bids shall be a Qualified Bid, or otherwise considered for any purposes, unless the aggregate consideration to be paid to the Debtor under such bid or bids is at least \$17,000,000. The Buyer's incremental bids, if any, shall include a credit of \$680,000 for the Termination Payments (as defined below) (which will not be paid in the event the Buyer is the Successful Bidder). The recommendation by the Debtor, in consultation with the Committee, of the Successful Bidder shall be based on all facts and circumstances, including whether the Expense Reimbursement and Break-Up Fee must be paid. Moreover, the Debtor may only consider a partial bid to the extent such bid is included in a Marked Contract that contains a provision stating that any combination of Marked Contracts, if together selected as the Successful Bidders, must close simultaneously, and a sufficient number of the Marked Contracts must close simultaneously such that the gross consideration from these simultaneously closed Marked Contracts equals or exceeds \$17,000,000. If the Debtor is unable to accomplish the foregoing, it shall not close on these Marked Contracts and shall proceed to close on the Back-Up Bid within 30 days.

7. If the Auction results in the selection of a Successful Bidder other than Buyer, or the APA terminates under other conditions as specifically provided in the APA, then the Debtor is hereby authorized to cause the following termination Payments to be paid to Buyer, but only in accordance with the terms and conditions of the APA:

- (a) Break-Up Fee. The Debtor shall pay to Buyer the break-up fee in an amount equal to \$480,000 at any closing of an Alternative Transaction from the proceeds thereof if the APA is terminated pursuant to Section 8.1(g) of the APA.

- (b) Expense Reimbursement. If the APA is terminated pursuant to Sections 8.1(c), 8.1(e) or 8.1(g) of the APA, or the Debtor enters into an agreement to consummate an Alternative Transaction and the APA terminates, then, in accordance with Section 8.2(b) of the APA, the Debtor shall reimburse Buyer for its actual and reasonable documented expenses (including professional fees and expenses associated with obtaining financing) incurred in connection with the transactions contemplated by the APA, not to exceed \$200,000 in cash ("Expense Reimbursement" and together with the Break Up Fee, the "Termination Payments"). The Expense Reimbursement is subject to review of the United States Trustee and the Debtor and shall be paid after entry of an order of the Bankruptcy Court.

8. Buyer's claim against the Debtor for the Termination Payments and any other amounts owed by the Debtor to Buyer under or in connection with the APA shall constitute allowed administrative expense claims against the Debtor under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code, and the Break-Up Fee shall be paid at closing as reasonable and necessary costs of sale from proceeds.

9. The Notice of Auction and Sale Hearing in substantially the form attached to the Motion at Exhibit B is hereby approved for use in this case.⁴ The Debtor shall serve the Notice of Auction and Sale Hearing upon the persons and in the manner specified in the Motion by no later than two (2) business days after entry of this Order.

10. The Court shall conduct an evidentiary hearing on all of the relief requested in the Sale Motion (the "Sale Hearing") and/or to confirm the results of the Auction on **Thursday, June 17, 2004 at 9:30 a.m. (Eastern Time)**.

11. All Sale Objections must be filed with the Court and served on the Objection Notice Parties in each instance so as to be received on or before **June 2, 2004** ("Sale Objection Deadline"), and must clearly set forth the basis for such Sale Objection; provided, however, that

⁴ Matters contained within the Notice are effective upon issuance of appropriate orders by the Court.

any party in interest may file and serve a Sale Objection or supplement previously filed Sale Objections through 4:00 p.m. on **June 16, 2004** to the extent that such Sale Objection or supplement is based solely on events that occur after the Sale Objection deadline. The Bankruptcy Court will hear all timely and properly filed and served Sale Objections at the Sale Hearing.

12. The Debtor may adjourn or cancel the Auction at any time prior to or after the commencement of the Auction by so notifying affected parties, and the Sale Hearing may be adjourned by announcement in open Court without further notice other than announcement at the Sale Hearing.

13. The Contract Objection Procedures, which are incorporated herein by reference, are hereby approved and shall govern the establishment of all Cure Amounts, Cure Costs and the assumption of Assumed Leases.

14. The deadline for any Contract Objection to the Initial Assumption Notice shall be **May 28, 2004** and the court shall hold the Initial Contract Assumption and Cure Cost and Cure Amount Hearing on **June 8, 2004**. With respect to all additional Assumption Notices which Contract Objections are filed, there shall be a hearing date not less than ten (10) days after the applicable Additional Contract Objection Deadline.

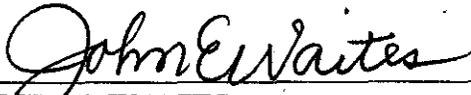
15. If no timely Contract Objection is filed and served with respect to an Assumed Contract in accordance with the Contract Objection Procedures, the proposed Cure Costs for any such Assumed Contracts shall be deemed approved, final and effective as of the Initial Contract Objection Deadline or any subsequent Contract Objection Deadline as appropriate and the assumption and assignment of such Assumed Contract shall be deemed final and approved,

conditioned on the occurrence of, (a) the Closing, and (b) the Contract remaining an Assumed Contract and not becoming a Removed Contract, in the sole discretion of the Buyer, and such assignment and assumption shall also be pursuant to section 365 of the Bankruptcy Code and subject to all of the terms of the Sale Order (including those applicable to Assumed Contracts), without any further order of the Court. In accordance with the provisions of 11 U.S.C. § 365(k), the Debtor shall have no further liability under any Assumed Contract finally assumed and assigned under the provisions hereof.

16. This Order shall become effective immediately upon its entry.

17. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

AND IT IS SO ORDERED.



JOHN E. WAITES
United States Bankruptcy Judge

Columbia, South Carolina
May 13, 2004