



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 14, 2017

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

<p>In re:</p> <p>HBT JV, LLC,</p> <p>Debtor.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Chapter 11</p> <p>Case No.: 17-40659-mxm11</p>
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**ORDER (A) APPROVING PROPOSED DISCLOSURE STATEMENT
AND (B) CONFIRMING PLAN OF LIQUIDATION**

On July 28, 2017, the Court conditionally approved the *Disclosure Statement in Support of Plan of Liquidation* [Docket No. 318] (the “Disclosure Statement”) pursuant to 11 U.S.C. § 105(d)(2)(vi), Federal Rule of Bankruptcy Procedure 9006(c), and Local Rule of Bankruptcy Procedure 3017. On that date, the Court also approved the Plan Summary attached to the *Motion for Entry of an Order (A) Conditionally Approving Proposed Disclosure Statement in Support of the Plan of Liquidation, (B) Approving the Plan and Disclosure Statement Summary; (C) Scheduling a Hearing to Consider Final Approval of Disclosure Statement and Confirmation of*

the Plan of Liquidation, and (D) Granting Related Relief [Docket No. 323] as Exhibit A pursuant to Federal Rule of Bankruptcy Procedure 3017(d) for submission to unimpaired classes of claimants and equity security holders under the Plan.

On September 7, 2017, came on for hearing (a) consideration of the adequacy of the Disclosure Statement on a final basis and (b) confirmation of the *Plan of Liquidation* [Docket No. 317], including the Plan exhibits attached as Exhibits “A”, “B” and “C” to HBT’s *Notice of Filing Plan Exhibits* [Docket No. 375] (the “Plan Exhibits”) (together with the Plan Exhibits, and as modified, amended or supplemented, the “Plan”)¹ filed by the Debtor, HBT JV, LLC (“HBT” or the “Debtor”) (such hearing being the “Confirmation Hearing”). Pursuant to the *Order (A) Conditionally Approving Proposed Disclosure Statement in Support of the Plan of Liquidation, (B) Approving the Plan and Disclosure Statement Summary; (C) Scheduling a Hearing to Consider Final Approval of Disclosure Statement and Confirmation of the Plan of Liquidation, and (D) Granting Related Relief* [Docket No. 334] (the “Disclosure Statement Order”) and the *Certificates of Service* filed at Docket Nos. 345, 347, and 370, HBT provided the Plan Summary and notice of both the Plan and the Confirmation Hearing to all creditors and interest holders pursuant to Federal Rule of Bankruptcy Procedure 2002(b) and the Disclosure Statement Order.

At the Confirmation Hearing, the Debtor and American Honda Finance Corporation (“AHFC”) announced that they had mutually agreed to the allowed amount of AHFC’s General Unsecured Claim, which is stipulated to be \$60,000 and includes all Rejection Claims and all other claims assertable by AHFC against the Debtor.

Considering the Disclosure Statement, the Plan, the testimony proffered by HBT, the exhibits, the record of the case, the statements of counsel and applicable law and for reasons set

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

forth at the hearing and as contained herein, the Court rules as follows.

IT IS HEREBY FOUND AND ORDERED THAT²:

1. Approval of the Disclosure Statement. The Disclosure Statement is APPROVED on a final basis as containing “adequate information” within the meaning of 11 U.S.C. § 1125. Any objections to the approval of the Disclosure Statement, to the extent not withdrawn, settled, or otherwise resolved, are overruled for the reasons stated by the Court on the record.

2. Confirmation of the Plan. The Plan is CONFIRMED. Each of the provisions of the Plan are hereby approved and incorporated into this Order. The failure specifically to include or reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the efficacy of such provision, it being the intent of this Court that the Plan be confirmed in its entirety. For the avoidance of doubt, the provisions of the Plan and this Order, including the findings of fact and conclusions of law set forth herein, are non-severable and mutually dependent.

3. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2) and 1334(a)). This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and whether it should be confirmed.

4. Burden of Proof. HBT has met its burden of proving the elements of 11 U.S.C. § 1129(a) by a preponderance of evidence.

5. Notice. All due, adequate, and sufficient notices of the Plan Summary, Disclosure

² Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate.

Statement, and the Plan and of the Confirmation Hearing and of all deadlines for filing objections to the Plan have been given to all known holders of Claims and Interests in accordance with the Disclosure Statement Order. The Plan Summary and the Confirmation Hearing notice were transmitted and served in compliance with the Disclosure Statement Order and the Bankruptcy Rules, and such transmittal and service were adequate and sufficient. Adequate and sufficient notice of the Confirmation Hearing and the other deadlines described in the Disclosure Statement Order was given in compliance with the Bankruptcy Rules and Disclosure Statement Order, and no other or further notice is or shall be required.

6. Solicitation. Because all classes of claims in the Plan are unimpaired and thus deemed to accept the Plan according to § 1126(f) of the Bankruptcy Code, votes for acceptance or rejection of the Plan were not solicited pursuant to the Disclosure Statement Order, as authorized by the Court, 11 U.S.C. § 1126, and Bankruptcy Rule 3017. In complying with the Disclosure Statement Order and with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules, HBT acted in good faith and is entitled to the protections afforded in 11 U.S.C. § 1125(e) and the exculpation provisions set forth in the Plan.

7. Distribution. All procedures used to distribute the Plan Summary were fair and were conducted in accordance with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Bankruptcy Court, and all applicable other rules, laws, and regulations.

8. Modifications. Any modifications to the Plan announced at the Confirmation Hearing (the “Nonmaterial Modifications”) do not adversely change the treatment of any holder of a Claim or Interest. Pursuant to Bankruptcy Rule 3019, the Nonmaterial Modifications shall be deemed accepted by all holders of Claims and Interests.

9. Releases, Exculpations, and Injunctions. The Plan provides for various releases, exculpations, and/or injunctions. The releases, exculpations, and injunctions provided for in the Plan (i) are within the jurisdiction of the Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate and its creditors, and are important to the overall objectives of the Plan; and (iv) are consistent with sections 105, 524, 1123, 1129, and 1141 and other applicable provisions of the Bankruptcy Code.

10. Executory Contracts and Unexpired Leases. HBT has previously exercised reasonable business judgment in determining whether to reject, assume, or assume and assign each of its Executory Contracts prior to the confirmation of the Plan. The Plan constitutes a motion to assume or reject Executory Contracts as provided therein and in this Confirmation Order. All Executory Contracts, including without limitation those Executory Contracts identified on Plan Exhibit “B” (List of Rejected Executory Contracts), shall be deemed as rejected by the Debtor upon the Effective Date, unless an Executory Contract (a) is identified on Plan Exhibit “C” (List of Assumed Executory Contracts), (b) has been previously assumed or rejected pursuant to an order of the Bankruptcy Court, (c) is identified in the Plan or the Confirmation Order to be assumed, or (d) is the subject of a motion to assume filed on or before the Confirmation Date. All Executory Contracts identified on Plan Exhibit “C” (List of Assumed Executory Contracts) shall be deemed as assumed by the Debtor upon the Effective Date. Each pre- or post-confirmation rejection, assumption, or assumption and assignment of an Executory Contract pursuant to the Plan will be legal, valid, and binding upon the Debtor and all non-Debtor parties to such Executory Contract all to the same extent as if such rejection, assumption, or assumption and assignment had been effectuated pursuant to an appropriate order of the court entered before the Confirmation

Date under section 365 of the Bankruptcy Code. Each Executory Contract to be rejected pursuant to the Plan is burdensome and the rejection thereof is in the best interests of the Debtor and its Estate.

11. Binding Effect. In accordance with the provisions of section 1141 of the Bankruptcy Code and immediately upon entry of this Order, the Plan and all of its provisions shall be, and hereby are, binding on the Debtor, any person acquiring or receiving property or a distribution under the Plan, any lessor or lessee of property to or from the Debtor, any past, present, or future creditor of the Debtor and any holder of a claim against or interest in the Debtor, whether or not such claim or interest of such holder is impaired under the Plan, whether known or unknown, and whether or not such holder has accepted or rejected the Plan or will or will not receive a distribution under the Plan.

12. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). The Plan complies with applicable provisions of the Bankruptcy Code, thereby satisfying 11 U.S.C. §1129(a)(1).

A. Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). In addition to Administrative Claims and Priority Tax Claims, which need not be designated, the Plan designates four Classes of Claims and Interests. The Claims and Interests placed in each of the Classes 1, 2, 3, and 4 are substantially similar to other Claims and Interests in each such Class, thereby satisfying the requirements of 11 U.S.C. §§ 1122 and 1123(a)(1). Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, and such Classes and the Plan treatment thereof do not unfairly discriminate between holders of Claims or Interests. The Plan satisfies 11 U.S.C. §§ 1122 and 1123(a)(1).

B. Specify Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Articles 4 and 5 of the Plan specify that Classes 1, 2, 3, and 4 are unimpaired, thereby satisfying 11 U.S.C. § 1123(a)(2).

C. Specify Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Articles 4 and 5 of the Plan specify that no class is impaired, thereby satisfying 11 U.S.C. § 1123(a)(3).

D. No Discrimination (11 U.S.C. § 1123 (a)(4)). The Plan provides for the same treatment for each Claim or Interest in each respective Class, thereby satisfying 11 U.S.C. § 1123(a)(4).

E. Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan provides adequate and proper means for its implementation, thereby satisfying 11 U.S.C. § 1123(a)(5).

F. Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)). Article 6 of the Plan provides that the Liquidating Debtor shall liquidate all property of the Debtor, including causes of action, and make Distributions to the Debtor's Creditors and Equity Owners, thereby prohibiting the issuance of nonvoting equity securities. Thus, the requirements of 11 U.S.C. § 1123(a)(6) are satisfied.

G. Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)). Article 6 of the Plan discloses the individual, Kenneth L. Schnitzer, who will initially serve as the Liquidating Debtor's non-member manager and be responsible for supervising the liquidation of the Debtor's assets and the consummation of the Plan. Accordingly, this disclosure satisfies the requirements of 11 U.S.C. § 1123(a)(7).

H. Future Income of Individual Debtor (11 U.S.C. § 1123(a)(8)). The Debtor is not an individual, and therefore, the requirements of 11 U.S.C. § 1123(a)(8) do not apply.

I. Additional Plan Provisions (11 U.S.C. § 1123(b)). The Plan's provisions are appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code, including provisions for (a) the disposition of executory contracts and unexpired leases; (b) the retention of, and right to enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights or causes of action, suits, and proceedings, whether in law or in equity, whether known or unknown, that the Debtor or the Estate may hold against any person or entity; and (c) the treatment of rights of holders of Claims and Interests.

13. Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). HBT has complied with the applicable provisions of the Bankruptcy Code, thereby satisfying 11 U.S.C. § 1129(a)(2), specifically:

A. HBT is the proper proponent of the Plan under 11 U.S.C. § 1121(a) and has standing to file the Plan.

B. HBT has complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order in transmitting the Plan Summary, and notice of the Confirmation Hearing, including applicable deadlines for objecting to the Plan.

14. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). All objections to the Plan have been overruled or otherwise resolved, and the Court finds that HBT proposed the Plan in good faith and not by any means forbidden by law. As such, the Plan satisfies 11 U.S.C. § 1129(a)(3).

15. Payments for Service or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payment made or to be made for services or for costs and expenses in or in connection with this case, or in connection with the Plan and incident to this case, has been approved by, or is subject to the approval of, this Court as reasonable, thereby satisfying 11 U.S.C. § 1129(a)(4).

16. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)). HBT has complied with 11 U.S.C. § 1129(a)(5). The identity, affiliations, and method for establishing the compensation of the Liquidating Debtor's non-member manager has been fully disclosed, and the appointment of the Liquidating Debtor's non-member manager is consistent with the interests of holders of Claims against and Interests in the Debtor and with public policy.

17. No Rate Changes (11 U.S.C. § 1129(a)(6)). No regulatory commission has any jurisdiction over rates charged by the Debtor. Further, the Plan does not provide for rate changes by the Debtor. Thus, 11 U.S.C. § 1129(a)(6) is inapplicable.

18. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). The Plan satisfies 11 U.S.C. § 1129(a)(7). There are no impaired classes of claims or interests under the Plan. Moreover, the liquidation analysis in the Disclosure Statement and/or Plan Summary and the evidence at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence, and (iii) establish that each holder of a Claim or Interest will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on such date.

19. Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)). Classes 1, 2, 3, and 4 are unimpaired under the Plan and are conclusively presumed to have accepted the Plan in accordance with 11 U.S.C. § 1126(f).

20. Treatment of Administrative and Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Claims and Priority Tax Claims pursuant to Article 3 of the Plan satisfies the requirements of 11 U.S.C. § 1129(a)(9).

21. Acceptance By Impaired Class (11 U.S.C. § 1129(a)(10)). Articles 4 and 5 of the Plan specify that no class is impaired, thus 11 U.S.C. § 1129(a)(10) is inapplicable.

22. Feasibility (11 U.S.C. § 1129(a)(11)). HBT has presented uncontroverted evidence and testimony regarding feasibility of the Plan, thus satisfying the requirements of 11 U.S.C. § 1129(a)(11).

23. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable under 28 U.S.C. § 1930, as determined by this Court, have been paid or will be paid when due pursuant to Article 3.02(c) of the Plan, thus satisfying the requirements of 11 U.S.C. § 1129(a)(12).

24. Continuation of Retirement Benefits (11 U.S.C. § 1129(a)(13)). The Debtor is not obligated to pay any “retiree benefits,” as defined in 11 U.S.C. § 1114(a), and 11 U.S.C. § 1129(a)(13) is therefore inapplicable.

25. Payment of Domestic Support Obligations (11 U.S.C. § 1129(a)(14)). The Debtor is not obligated to pay “domestic support obligations,” as defined by 11 U.S.C. § 101(14A), thus 11 U.S.C. § 1129(a)(14) is inapplicable.

26. Payments of Individual Debts (11 U.S.C. § 1129(a)(15)). HBT is not an individual, thus 11 U.S.C. § 1129(a)(15) is inapplicable.

27. Transfers of Property (11 U.S.C. § 1129(a)(16)). All transfers of property of the Plan shall be made in accordance with applicable nonbankruptcy law, thus satisfying the requirements of 11 U.S.C. § 1129(a)(16).

28. Fair and Equitable; No Unfair Discrimination (11 U.S.C. § 1129(b)). All holders of Claims and Equity Interests are unimpaired and are conclusively deemed to have accepted the Plan. Consequently, section 1129(b) of the Bankruptcy Code is not applicable.

29. Principal Purpose of the Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933.

30. Discharge (11 U.S.C. § 1141). Because (i) the Plan provides for the liquidation of all or substantially all of the property of the Estate and (ii) the Debtor will not engage in business following consummation of the Plan, the Plan does not provide for a discharge. The Plan therefore satisfies 11 U.S.C. § 1141.

31. Satisfaction of Confirmation Requirements. The Plan satisfies the requirements for confirmation set forth in 11 U.S.C. § 1129.

32. Satisfaction of Conditions to Confirmation. The conditions to confirmation set forth in Article 10.01 of the Plan have been satisfied or will be satisfied by entry of this Confirmation Order or have been waived.

33. Retention of Jurisdiction. This Court may properly retain jurisdiction over the matters set forth in Article 12 of the Plan and 11 U.S.C. § 1142.

34. The stay under Rule 3020(e) of the Federal Rules of Bankruptcy Procedure is hereby abrogated and shall not apply to this Order. This Order shall be effective immediately upon entry on the docket of this bankruptcy case.

END OF ORDER

Submitted by:

/s/ Jeff P. Prostok

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