

Crunchies Wins Sale Nod

The Deal Pipeline

10.23.2014

Snack food maker Crunchies Food Co. LLC can proceed with a \$3.63 million sale of its assets to an affiliate of a former supplier.

Chief Judge Peter Carroll of the U.S. Bankruptcy Court for the Central District of California in Santa Barbara on Wednesday, Oct. 22, signed an order approving the sale to Chaucer Foods (USA) LLC.

Under the terms of the deal, the buyer will pay \$350,000 in cash, credit-bid \$2.95 million and pay any outstanding obligations under two debtor-in-possession loans. (One is an \$80,000 debtor-in-possession loan from prepetition lender Donald Delaski Revocable Trust ; the second is a \$250,000 DIP from former Crunchies supplier Chaucer Foods Ltd.)

The buyer is a joint venture of Chaucer Foods and secured creditor Seung Chung, as trustee for the Chung Family Trust.

Court papers show bidding procedures naming Chaucer Foods (USA) stalking horse were approved on Oct. 3. Debtor counsel David L. Neale of Levene, Neale, Bender, Yoo & Brill LLP said the procedures subsequently were modified.

In an Oct. 10 motion, Crunchies said the purchaser had stepped in about a week before, after the Delaski Trust backed out of an earlier deal with the debtor.

At that time, Chaucer Foods (USA) also agreed to fund the company with an additional \$250,000 in postpetition financing – on top of the existing Delaski DIP – as part of the deal.

Interested parties had until Friday to offer at least \$3.85 million, but Neale said no parties submitted rival bids.

Bids would have had to increased in \$10,000 increments at an Tuesday auction. Chaucer Foods (USA) would have received a \$100,000 breakup fee had it lost at auction.

Neale anticipated the deal would close in the coming days.

Lake Pacific Partners LLC affiliate NC Foods LLC on Sept. 9 had agreed to provide Crunchies with a \$600,000 DIP so it could buy raw materials that it would then use to complete orders for its biggest customers.

NC on Sept. 15 refused to fund the loan, however, and at the same time Delaski also opted not to provide financing.

Delaski ultimately on Sept. 18 agreed to give Crunchies \$75,000 of what was to be a \$250,000 loan, but it forced the debtor to agree to sell its assets by Oct. 14. (The deal did not close by the deadline because of "material disagreements" among the parties involved that were ultimately resolved.)

The sale represents the resolution of what had been a schism between Chaucer Foods and Crunchies.

In court papers filed Aug. 18, Crunchies co-founder James Lacey said the company filed for bankruptcy three days earlier after a hostile takeover attempt by Chaucer, a Hull, England, company that once provided the debtor with freeze-dried strawberries.

Crunchies said its relationship with Chaucer soured last year. Chaucer sued Crunchies in the Superior Court of California for Ventura County on Oct. 18, 2013, asserting the debtor owed it \$1.54 million for unpaid invoices.

The companies reached a settlement on Dec. 20, which required the debtor to make installment payments to pay off the debt in full by July 31.

"Over a three-month period, the debtor paid approximately one-third of the debt to Chaucer, totaling approximately \$500,000," the company said in court documents. "However, the debtor was unable to make all of the payments under the extremely aggressive payment schedule in the agreement."

Starting in March, Chaucer offered to convert its debt into equity and said it would invest \$1 million in Crunchies, which it never provided. Lacey asserted in court documents that Chaucer used the financial obligations "as the basis for aggressive actions designed to acquire control of the debtor."

He alleged Chaucer flew in a team from the U.K. to perform due diligence on the debtor on June 2, after which Chaucer promised to invest an additional \$400,000 in equity. That never happened, and, Lacey said, Chaucer later revealed its more nefarious motives — to take over the debtor through an out-of-court assignment for the benefit of creditors, through which Chaucer would take 23.33% of the recapitalized company, as well as giving the debtor's two largest secured creditors, Chung and Delaski, a major equity stake.

Late last year, the company realized it required more funding than was available from investors and internal operations to support its growth. As a result the company turned to third-party financing.

The company received a \$1.5 million loan from Chung, secured by all the debtor's assets. Additionally, the company received three loans between 2010 and 2011 totaling \$5 million from the Delaski Trust, also secured by all the debtor's assets. Finally, Wells Fargo Bank NA is owed \$12,000, secured by a forklift owned by the company. It was unclear from court papers how much Crunchies owes its secured creditors.

The Westlake Village, Calif., company makes healthy freeze-dried packaged snack foods. The company distributes products such as its freeze-dried apples, grapes, edamame and barbecue roasted vegetables through 26,000 stores nationwide. In 2013, the debtor's business was valued at about \$15 million.

In its petition, the snack maker reported between \$1 million and \$10 million in assets and liabilities.

John-Patrick M. Fritz of LNBYB is also debtor counsel.

Counsel to Chaucer, Evan D. Smiley, Philip E. Strok and Robert S. Marticello at Smiley Wang-Ekvall LLP , were not available for comment.

Bennett L. Spiegel of Jones Day represents Lake Pacific, a Chicago private equity firm focused on the food and consumer products space. Its portfolio companies include Mercer Foods Inc. , a freeze-dried fruit and vegetable company, and Cal Pacific Specialty Foods, one of North America's largest industrial strawberry processors.

Ori Katz of **Sheppard, Mullin, Richter & Hampton LLP** is counsel to the official committee of unsecured creditors.

Attorneys

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