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Proposed Attorneys for the Official Committee of General Unsecured Creditors

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN MARIANA ISLANDS

BANKRUPTCY DIVISION

In re: **IMPERIAL PACIFIC INTERNATIONAL (CNMI) LLC,** Debtor and Debtor in Possession.	Case No. 1:24-bk-00002 Chapter 11 **COMMITTEE'S SUPPLEMENTAL OPPOSITION TO THE FINAL APPROVAL OF DIP FINANCING MOTION** Hearing Date, Time and Location (ChST): Date: June 21, 2024 Time: 8:30 a.m. Location: 3rd Floor Courtroom 1671 Gualo Rai Rd., Gualo Rai Saipan, MP 96950 **Judge:** Hon. Ramona V. Manglona

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The Official Committee of General Unsecured Creditors, by and through its proposed counsel, hereby respectfully submits this supplemental opposition (the "Supplemental Opposition") to the final approval of the *Motion for Order Authorizing Debtor to Obtain Postpetition Secured Indebtedness* [Dkt. No. 12] (the "Motion") and the *Declaration of Loi Lam Sit in Support of Debtor's Motion for Post-Petition Financing* [Dkt. No. 111] (the "Declaration") filed by the debtor and debtor in possession Imperial Pacific International (CNMI) LLC ("Debtor"). In support of the Supplemental Opposition, the Committee respectfully represents as follows:

I.

INTRODUCTION

At the hearing on May 30, 2024, the Court granted the Motion on an interim basis, authorizing the Debtor to obtain an initial advance of $400,000 from Mr. Loi Lam Sit (as applicable, the "Interim DIP Facility" and the "Lender"). In doing so, the Court emphasized the need for the Debtor to supplement its Motion to address a number of concerns which were and continue to be shared by the Committee, the Commonwealth of the Northern Mariana Islands (the "Commonwealth"), and other parties before final approval of the loan can be properly evaluated. Chief amongst those concerns is the lack of evidence justifying the need for the remaining $6.6 million for the Debtor's reorganization and the concealed nature of the Lender's identity and connection to this case.

It must be reiterated the Debtor has the burden of proof, by a preponderance of the evidence, to demonstrate that an additional $6.6 million in financing from this obscure source is "actual" and "necessary" to the bankruptcy estate.[1] Yet, with creditors eagerly waiting, the Debtor only submitted a one-and-a-half page, woefully deficient declaration from the Lender that neglects to address crucial concerns regarding the Lender's background, his relationship with the Debtor and its insiders, and his motives for providing the DIP loan. Instead of clarifying these issues, it raises

[1] Under Rule 9014(d) of the Federal Rules of Bankruptcy Procedure and LBR 9014-2, when there is a genuine issue of material fact in a contested matter, the Court has the discretion to require testimony from witnesses and/or the presentation of additional evidence. In this case, there is a genuine issue concerning the proposed Lender's background and whether the DIP financing is "actual" and "necessary" for the bankruptcy estate. If the Court intends to approve the Motion on a final basis, the Committee contends that live testimony from Mr. Sit is required.

further questions. The Declaration provides only limited and vague information about the Lender, mentioning his status as a businessman in Hong Kong and his lack of familial ties to Mr. Ji Xiaobo ("Mr. Ji") and Ms. Cui Lijie ("Ms. Cui"). However, it fails to include his contact information, disclose any prior relationship with Mr. Ji or Ms. Cui, or explain why Mr. Ji approached him specifically for the loan. This scant detail does not provide the Court and interested parties with sufficient basis to determine that the Lender is acting in good faith. Further, a revised loan agreement addressing the Court's concerns is nowhere to be found.

It has become evident that the Debtor has not been forthcoming with the Court, consistently providing only minimal information regarding the proposed Lender's background and the source of the DIP funds. The Lender's refusal or inability to explain his motive for extending $7 million makes him unsuitable as a DIP lender in this proceeding. Therefore, the Debtor must seek alternative funding sources, as mandated by Section 364 of the Bankruptcy Code.

In granting interim relief for the initial advance of $400,000, the Court recognized that certain basic stabilizing expenses had to be paid, including utilities, insurance, and rent. However, the Debtor has not provided justification for how the additional $6.6 million loan will fund a plan of reorganization. According to the Budget, $6.15 million of the remaining $6.6 million is to pay the Commonwealth Casino Commission (the "CCC") and the CNMI Treasury. This figure is based entirely on the false assumption that the CCC and the CNMI Treasury have or will agree to such a settlement amount. However, the CCC has unequivocally stated that no settlement is being negotiated, let alone agreed upon. Consequently, approving the DIP loan on a final basis is premature, unwarranted, and counter to the interest of the estate and creditors.

Finally, this bankruptcy has now been pending for two months, and the Debtor has provided no indication that it is able to reorganize. According to the CCC, the Debtor is unable to reinstate its casino license and resume operations, and thus, the Debtor's purported purpose for the DIP facility is nonexistent. As a result, approval of this Motion on a final basis would only result in an added layer of administrative expenses in the form of a $7 million claim to a potential insider, to the great detriment to the estate's general unsecured creditors. As discussed in detail herein, the Committee objects to the approval of the DIP loan on a final basis, as it is unnecessary and

inappropriate at this time. Practically speaking, it would be more prudent to first review the Debtor's plan and then consider a new DIP loan if it is needed. The Committee is prepared to take all necessary steps to preserve the value of the assets and to ensure the proper reorganization and administration of the estate if required.

II.

BACKGROUND

Per the Motion, the Debtor seeks authorization to obtain a $7 million facility from a Hong Kong-based lender, Loi Lam Sit, with the first interim draw up to $400,000. *See* DIP Motion, ¶ 8. On May 10, 2024, the Debtor filed the *[Amended] Loan Term Sheet For $7,000,000 DIP Credit Facility* [Dkt. No. 47-1] (the "Term Sheet"). Among other minor changes, the Term Sheet reflects that the Lender has agreed to extend the DIP Facility on an unsecured, administrative priority basis. Attached as Exhibit B to Dkt. No. 47 is the *[Amended] Loan Term Sheet For $7,000,000.00 DIP Credit Facility* (the "Loan Agreement").

At the hearing held on May 30, 2024, the Court granted the Motion on an interim basis, permitting the Debtor to receive an initial $400,000 advance as an unsecured, administrative priority [Dkt. No. 112]. In addition, the Court stressed that the Debtor's need to address various issues raised by the Committee and other stakeholders concerning the DIP loan. These issues include providing information on who the Lender is and his contact information, the Lender's connections with the Debtor and its insiders and explaining why the remaining $6.6 million is needed for the Debtor's reorganization. In response to these concerns, the Debtor filed the Declaration of Mr. Loi Lam Sit on June 11, 2024, which as discussed in detail below, is deficient and raises even more questions.

III.

ARGUMENT

A. The Declaration Fails to Demonstrate that Mr. Sit Is Not an Insider.

"[B]ankruptcy courts do not allow terms in financing arrangements that convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender." *In re Defender Drug Stores*, 145 B.R. 312, 317 (B.A.P. 9th Cir.

1992). A DIP loan from an insider source is not an ordinary financing arrangement entitled to usual deference of the Debtor's business judgment. *See Pepper v. Litton*, 308 U.S. 295, 306 (1939) (a controlling shareholder is a fiduciary whose "dealings with the corporation are subjected to rigorous scrutiny and where any of their contracts or engagements with the corporation is challenged, the burden is on the . . . shareholder not only to prove good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein.").

The Declaration does not prove Mr. Sit is not an insider of the Debtor and raises more questions. The Declaration offers minimal background information about Mr. Sit, merely stating that he is a businessman in Hong Kong. It does not include any of his contact information. Additionally, it lacks details about his prior relationship with Mr. Ji and Ms. Cui, only vaguely asserting that he is not related to them. When a debtor is a corporation, any director, officer or person in control of the debtor, and any relative of any of these individuals, is an insider of the debtor. 11 U.S.C. § 101(31)(B). However, the definition of an insider is nonexclusive and is not merely relatives, courts also recognize non-statutory insiders. *See U.S. Bank Nat'l Ass'n v. Village at Lakeridge, LLC*, 583 U.S. 387 (2018). A non-statutory insider is a third party who "exercises such control or influence over the debtor as to render their transaction not arms-length." *In re Schuman*, 81 B.R. 583, 586 (B.A.P. 9th Cir. 1987). Thus, an "insider status may be based on a professional or business relationship with the debtor … where such relationship compels the conclusion that the individual or entity has a relationship with the debtor, close enough to gain an advantage attributable simply to affinity rather than to the course of dealings between the parties." *Friedman v. Sheila Plotsky Brokers, Inc.* (*In re Friedman*), 126 B.R. 63, 70 (B.A.P. 9th Cir. 1991). Moreover, although the Declaration states that Mr. Sit has no prior relationship with the Debtor, Best Sunshine Holdings, or Imperial Pacific International Holdings, LLC, it remains unclear whether he has any connections with the Debtor's other affiliates (*e.g.,* Imperial Pacific Properties, LLC, Magas Property Management (CNMI), LLC). This list is far from exhaustive, leaving significant gaps in the disclosure of potential relationships.

More importantly, the Declaration does not address why Mr. Sit is willing to loan funds to the Debtor. It remains unclear why Mr. Ji would seek out Mr. Sit specifically for this loan, raising

further questions about the nature of their relationship and the motivations behind this financial arrangement. In addition, Mr. Sit fails to specify that he is not receiving any other consideration in side agreements for making this loan other than repayment with interest at the stated rate. He also does not confirm his understanding that repayment can only be made in cash, not in kind or through the ability to bid on the Debtor's property. To ensure transparency and prevent any undisclosed side agreements between the Debtor and Mr. Sit, it is essential that Mr. Sit confirm under penalty of perjury that he is not receiving, nor has he been promised, any consideration other than the stated interest rate in exchange for providing the DIP financing.

Even after the Court expressly required such disclosures, the Debtor has consistently provided only minimal information regarding the proposed Lender's background and the source of the DIP funds. This lack of cooperation and transparency prevents the Court and interested parties from properly assessing the legitimacy and reliability of the proposed financing. The Lender's failure or unwillingness to make such disclosure makes Mr. Sit unsuitable as a DIP lender and warrants the denial of the final approval of the Motion.

Furthermore, under 11 U.S.C. § 364(d)(1), a debtor is required to demonstrate that it has made reasonable efforts to obtain postpetition financing from other potential lenders on alternative terms. 11 U.S.C. § 364(d)(1); *see In re YL West 87th Hldgs. I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010). In this case, the Debtor has not shown that it made reasonable efforts to seek financing from any other lenders aside from Mr. Sit. This failure to explore alternative financing options further justifies the need to deny the final approval of the DIP financing motion.

In addition, Paragraph 5 of the Declaration states "[a]t first the loan was to be secured by a mortgage on the Debtor's real property." This implies that the Debtor owns real property, yet the Debtor's schedules do not list any such assets. This discrepancy requires further clarification to ensure that all assets have been properly disclosed in this case.

As such, even with the supplemental Declaration, the Debtor has failed to address the concerns raised by the Court at the last hearing and has not met its burden to demonstrate that the Lender is not an insider or that the transaction is conducted in good faith and in the best interest of the estate.

B. The Debtor Has Not Demonstrated the Necessity of Additional DIP Financing.

In the Motion, the Debtor seeks approval of the DIP Facility under Section 364(b) of the Bankruptcy Code, allowing it to be treated as an administrative expense claim. The Declaration further requests that Mr. Sit be paid "ahead of creditors who are already owed money as of the bankruptcy filing" for additional funds loaned to the Debtor. This implies that the Lender is at least seeking administrative priority. However, it remains unclear whether Mr. Sit is requesting a priority status that would supersede that of the secured creditors[2]. In either scenario, the Committee strongly objects to the approval of any additional funds, as the Debtor has not demonstrated the necessity of such funding.

Incurrence of administrative debt is allowed only if the debtor can demonstrate "it is an actual, necessary cost or expense of preserving the estate." *In re Villalobos*, 2011 WL4485793, at *7 (B.A.P. 9th Cir. 2011) (citing *Club Dev. & Mgmt. Corp.*, 27 B.R. 610, 611-12 (B.A.P. 9th Cir. 1982). "An order granted pursuant to § 364(b) must be supported by such a finding.") *Id.* Here, while the interim DIP Facility was approved to pay basic operational and administrative expenses, the Debtor has failed to provide adequate justification for the requested additional $6.6 million. Initially, this request was based on the Debtor's settlement proposal to the CCC concerning outstanding license fees. However, the CCC has unequivocally stated that no settlement has been reached. Furthermore, Mr. Sit acknowledges in his Declaration that the Debtor's negotiations with the CCC are currently stalled.

Given these circumstances, final approval of the DIP loan at this stage is premature and unwarranted. Such an approval would not serve the best interests of the estate or its creditors and could potentially exacerbate the financial instability of the Debtor. Therefore, the Committee opposes the final authorization of any additional funds under the DIP Facility.

C. The DIP Facility Should Not be Approved When the Future Prospect of the Case Is Unclear.

Currently, the Debtor is unable to reinstate its casino license and resume operations, casting

[2] If this is the case, the Debtor would need to obtain consent from all secured creditors involved in this matter.

doubt on the future prospects of this case and the likelihood of a successful reorganization. *See also NLRB v. Blidisco and Blidisco, 465 U.S. 513 (1984); See also Toibb v. Radloff*, 501 U.S. 157, 163 (1991) (the twin purposes of a debtor-in-possession at a helm are: (1) promoting successful reorganization of debtors, and (2) to maximize the value to the estate).

The Debtor should be required to demonstrate the purpose and necessity of additional DIP financing, specifically how this DIP Facility would serve the best interests of the creditors. This explanation should include a detailed assessment of how the funds will be utilized to enhance the reorganization efforts and benefit all stakeholders. Without such justification, creditors are unable to assess how this additional financing would contribute meaningfully to the overall reorganization effort.

Consequently, the Committee objects to the final approval of any additional funding under the DIP Facility, as it is unnecessary at this time. Approving the additional DIP financing without a clear and substantiated plan would be premature and potentially detrimental to the estate and its creditors. It would be more prudent to first review the Debtor's reorganization plan and, if necessary, consider a new DIP loan as exit funding based on a more transparent and evidence-backed proposal.

D. Modification of Event of Default Provisions in the Proposed Loan Agreement

Lastly, the Committee reiterates its request to remove sub-sections (a), (d), (e), and (f) of Section 7.1 from the proposed Loan Agreement's default provisions in their entirety. In his Declaration, Mr. Sit has expressed agreement that the "Event of Default" under Section 7.1 of the proposed Loan Agreement can exclude these specified subsections.

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IV.

CONCLUSION

Based on the foregoing, the Committee respectfully requests that the Court approve the initial $400,000 advance as a general unsecured loan and deny the request for the remaining funds under the DIP Facility on a final basis.

Dated: June 16, 2024

Respectfully submitted,

ARENTFOX SCHIFF LLP

By: */s/ Aram Ordubegian*
Aram Ordubegian
Christopher K.S. Wong
Proposed Attorneys for the Official Committee of General Unsecured Creditors

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2024, I caused the forgoing document to be filed with the Clerk of Court for the United States District Court for the Northern Mariana Islands, Bankruptcy Division, using the CM/ECF System. A true and correct copy of the said pleading has been served on all counsel of record via the Court's CM/ECF System.

Executed this 16th day of June, 2024.

/s/ Aram Ordubegian
ARAM ORDUBEGIAN