

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

In re:)	
)	
ATLANTIC FABRICATION & DESIGN)	Case No. 17-14891
LLC,)	Chapter 11
)	
Debtor.)	
<hr/>)	

DEBTOR’S PLAN OF REORGANIZATION

ARTICLE I

Definitions

Unless the context of their use requires otherwise, the following words and phrases have the following meanings when used in initially-capitalized form in this Plan of Reorganization.

The meanings apply equally to the singular and plural form of the words and phrases.

1.01. "Administrative Expense" shall mean any cost or expense of administration of the chapter 11 case allowed under Section 503(b) of the Code, including, without limitation, any actual and necessary expenses of preserving the estate of the Debtor, any actual and necessary expenses of operating the business of the Debtor, any indebtedness or obligations incurred or assumed by the Debtor in connection with conduct of the business of the Debtor or for the acquisition or lease of property or for the obtaining of services to the Debtor, all allowances of compensation or reimbursement of expenses to the extent allowed by the Court under the Code, and any fees or charges assessed against the estate of the Debtor under Title 28 of the United States Code, ch. 123.

1.02. "Allowed Claim" or "Allowed Interest" shall mean a claim, as to all classes hereinafter specified, *proof of which was filed with the Bankruptcy Court on or before the time*

for filing proofs of claim or interest heretofore set by order of the Court, or as enumerated herein, and as to which no objection to the allowance thereof has been interposed within the applicable period of limitations fixed by the Plan, the Code, the Bankruptcy Rules, or the Court, or as to which any objection has been determined by an order or judgment by the Bankruptcy Court that is no longer subject to appeal. Unless otherwise specified in the Plan, Allowed Claim shall not, for purposes of computation of distributions under the Plan, include interest, late charges, attorney fees or other collection expenses on the amount of such Claim from and after the Petition Date.

1.03. "Allowed Unsecured Claim" shall mean any Allowed Claim against the Debtor's Estate for which the holder has no security for the repayment thereof or the portion of an Allowed Secured Claim for which the security held by the holder of that claim is insufficient to fully satisfy the Claim.

1.04. "Bankruptcy Code" or "Code" shall mean the Bankruptcy Reform Act of 1978, as codified at Title 11 of the United States Code and amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

1.05. "Bankruptcy Court" or "Court" shall mean the Bankruptcy Court of the United States District Court for the Western District of Oklahoma, or such other Court having jurisdiction over this Chapter 11 Case.

1.06. "Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure, as prescribed under Section 2075 of Title 28, United States Code (1978), as applicable to Debtor.

1.07. "Chapter 11 Case" shall mean the above captioned case.

1.08. "Claim" shall mean any right to payment from the Debtor as of the Confirmation Date, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed,

contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, or can be asserted by way of set-off; or any right to an equitable remedy for breach of performance or for rescission, if such breach gives rise to a right of payment from the Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

1.09. "Confirmation Date" shall mean the day the order confirming the Plan is entered and docketed by the Clerk of the Court.

1.10. "Confirmation Order" shall mean an order of the Bankruptcy Court confirming the Plan in accordance with the provisions of chapter 11 of the Bankruptcy Code.

1.11. "Creditors" shall mean all creditors of the Debtor holding Claims for debts, liabilities, demands, or Claims of any character whatsoever, as defined in Section 101(10) of the Bankruptcy Code.

1.12. "Creditors' Committee" or "Committee" shall mean any statutory Creditors' Committee of unsecured creditors created by the Court in the Estate as such Committee may be altered from time to time by the U.S. Trustee or subsequent orders of this Court.

1.13. "Debtor" shall mean Atlantic Fabrication & Design LLC, unless otherwise stated, the entity seeking relief pursuant to Title 11 of the United States Code.

1.14. "Disputed Claims" shall mean claims filed by Creditors, secured, unsecured or otherwise, to which the Debtor may file an objection, either before or after the Plan may be confirmed. An objection may be filed to a Disputed Claim because the Debtor may believe that such Claim is improperly filed, because such Claim is subject to avoidance for some reason under the Bankruptcy Code, or for such other reason as the Debtor may deem appropriate under the facts and law.

1.15. "Effective Date" shall mean the date which shall be thirty (30) days following the Final Order with respect to the Confirmation Order on which the order confirming this Plan has become a Final Order.

1.16. "Estate" or "Debtor's Estate" shall mean the estate of Atlantic Fabrication & Design, LLC created by Section 541 of the Bankruptcy Code.

1.17. "Filed" shall mean filed with the Court or, as it pertains to a proof of claim, deemed filed pursuant to Section 1111(a) of the Code.

1.18. "Final Order" shall mean any order of the Court which has not been reversed, stayed, modified, or, with respect to which the time to appeal or seek revision or relief shall have expired, or which may be enforced in accordance with the Code or the Bankruptcy Rules in the event no motion for stay pending appeal is granted or supersedeas bond is approved and filed where a notice of appeal has been filed; provided, however, that the Debtor in its sole discretion may waive any of these conditions and deem the Confirmation Order a Final Order.

1.19. "Party-in-Interest" shall mean any entity which has an interest in the Debtor or in the Debtor's Estate, including, without limitation, the Debtor, any Creditors' Committee, or any Creditor.

1.20. "Person" shall have the same meaning as provided at 11 U.S.C. Section 101(41).

1.21. "Petition Date" shall mean December 4, 2017, the date Debtor obtained an Order for relief under chapter 11 of the Bankruptcy Code.

1.22. "Plan" shall mean the Debtor's Plan of Reorganization filed herein by the Debtor in its present form or as it may be amended or supplemented.

1.23. "Debtor-in-Possession" shall mean Atlantic Fabrication & Design, LLC, the Debtor in this case, who shall administer the Debtor's affairs subsequent to confirmation of the

Plan.

1.24. “Priority Tax Claim” shall mean any Claim to the extent entitled to priority in payment under Section 507(a)(8) of the Bankruptcy Code.

1.25. “Pro Rata” shall mean, with respect to any Allowed Claim, the proportion that the amount of such Allowed Claim bears to the aggregate amount of all Allowed Claims in the respective classes.

1.26. “Unimpaired Claim” shall mean any Claim or any class of Claims that are not impaired under the Plan.

1.27. “Insider” shall mean one who has a sufficiently close relationship with the Debtor so that its conduct is made subject to closer scrutiny than those dealing at an arm’s length, as more specifically defined by Sections 101(31)(B) and (F).

ARTICLE II

Classification of Claims

The Allowed Claims against and Allowed Interests in the Debtor shall fall within one or more of the classes set forth below. In the opinion of the Debtor, the Plan does not impair the Claims of parties in Classes 1.a, 1.b, 2, 3.a, 3.b, and 3.c.

2.01. Class 1.a Claims. The Class 1.a Claims shall consist of all Allowed Claims under Section 503(b) of the Code. The fees of the United States Trustee shall constitute a Class 1 Claim and the Debtor shall pay those fees in cash in full on the Effective Date of this Plan and thereafter as they become due. The reorganized debtor shall be responsible for the timely payment of disbursement fees incurred pursuant to 28 U.S.C. § 1930(a)(6).

2.02. Class 1.b Claims. The Class 1.b Claims shall consist of all post-petition accounts payable and accrued expenses as of the Confirmation Date except those disputed or objected to

by the Debtor.

2.03. Class 2 Claims. The Class 2 Claims shall consist of all Allowed Claims or rights to payment entitled to priority under Sections 507(a)(1) - (5) & (8) of the Code, and all fees and charges assessed against the Debtor's property under Chapter 123 of Title 28 of the United States Code, including post-petition interest as determined under Title 28 U.S.C. 1961.

2.04. Class 3.a Claims. The Class 3.a Claims shall consist of the Allowed Secured Claims of creditor Bank of Kremlin. Bank of Kremlin timely filed Claims No. 12, 13, and 14 and will be paid based upon the amount provided therein.

2.05. Class 3.b Claims. The Class 3.b Claims shall consist of the Allowed Secured Claims of creditor Ally Financial. Ally Financial did not timely file a Claim and will be paid based upon the amount provided in Debtor's schedules.

2.06. Class 3.c Claims. The Class 3.c Claims shall consist of the Allowed Secured Claims of creditor the Internal Revenue Service. The Internal Revenue Service timely filed a Claim No. 6 and will be paid based upon the amount provided therein.

2.07. Class 4 Claims. The Class 4 Claims shall consist of the Allowed Unsecured Claims. Claim No. 16 is specifically considered a Disputed Claim and disallowed pursuant to Doc. No. 71.

2.08. Class 5 Claims. The Class 5 Claims shall consist of pre-petition equity claims.

ARTICLE III

Treatment of Claims

3.01. Class 1.a Claims. Payments to all Allowed Class 1.a claimants will be made in cash, in full, on the Effective Date or when allowed by the Court or upon such other terms as may be agreed between the Claim holder and the Debtor in accordance with the procedures

established by the Code and Bankruptcy Rules. The Court will review and determine all requests for compensation and reimbursement of expenses for professional persons.

3.02. Class 1.b Claims. Payments to all Allowed Class 1.b claimants will be made in the ordinary course or upon such other terms as may be agreed between the Claim holder and the Debtor.

3.03. Class 2 Claims. Payment to all Allowed Class 2 claimants will be made in cash, in full, together with interest from the Petition Date through the Effective Date in the appropriate amount as set under Title 28 U.S.C. 1961 on the Effective Date. Said interest is 5% as of the filing of this Plan.

3.04. Class 3.a Claims. The Debtor will continue adequate protection payments to all Allowed Class 3.a Claims until the Effective Date [Doc. No. 47]. Payment to the Allowed Class 3.a claims will be in even payments over twenty-eight (28) quarterly payments, to the extent cash permits. Creditor payments shall be paid within fourteen (14) days of filing Quarterly Operating Reports with the United States Trustee and will begin with the first due Quarterly Operating Report after the Effective Date. Payments will continue until the class is paid in full. If a quarterly period's available cash does not permit full payment to all Class 3.a Claims, the quarterly payments shall be made in the immediately following period. Class 3.a Allowed Claims will receive 5.25% interest calculated in the manner prescribed in Title 28 U.S.C. 1961(b). Class 3.a Claims shall be paid pursuant to the Plan and irrespective of any contractual agreement.

3.05. Class 3.b Claims. Payment to the Allowed Class 3.b claim will be made in cash, in full, on the Effective Date or when allowed by the Court. Payment shall be equal to the amount scheduled less any post-petition payments. Upon receipt by Ally Financial, the Claim

shall be considered paid in full satisfaction and Ally Financial shall timely provide Debtor with all necessary documents or information to release the lien.

3.06. Class 3.c Claims. Payment to the Allowed Class 3.c claim will be in even payments over twelve (12) quarterly payments, to the extent cash permits. Creditor payments shall be paid within fourteen (14) days of filing Quarterly Operating Reports with the United States Trustee and will begin with the first due Quarterly Operating Report after the Effective Date. Payments will continue until the class is paid in full. If a quarterly period's available cash does not permit full payment to all Class 3.c Claims, the quarterly payments shall be made in the immediately following period. Class 3.c Allowed Claims will receive interest pursuant to Title 28 U.S.C. 1961.

3.07. Class 4 Claims. Allowed Unsecured Claims are guaranteed no fixed minimum percentage or dividend pursuant to this Plan. Debtor shall pay to Class 4 Claims all Operating Cash in excess of \$200,000.00, after all other expenses and Plan payments are made, not to exceed \$150,000.00 per year, as reflected in Debtor's Quarterly Operating Reports. Creditor payments shall be paid within fourteen (14) days of filing Quarterly Operating Reports with the United States Trustee and shall be in the proportion to which their claims bear to the total amount of Allowed Unsecured Claims. Payments to Class 4 Claims will begin with the first due Quarterly Operating Report of calendar year 2019 and continue for eleven (11) subsequent quarters, for a total of twelve (12) quarterly payments. To the extent any Creditor with an Allowed Unsecured Claim received an unauthorized post-petition payment, that payment will be considered as part of that Creditor's Pro Rata share. If the unauthorized post-petition payment equals or exceeds the Creditor's distribution, the Creditor will not receive any further distribution.

3.08. Class 5 Claims. Class 5 claims are projected to receive zero distribution.

However, the discharge granted under this Plan by Bankruptcy Code § 1141(d) is explicitly modified, pursuant to § 1141(d)(1), to remove § 1141(d)(1)(B). Upon successful completion of all Plan Payments by the Debtor, the Members shall retain all ownership interest of the Debtor.

ARTICLE IV

Means for Execution of the Plan of Reorganization

4.01. On the Effective Date or on such other date as may be ordered by the Court, out of the money in the Debtor's possession, the Debtor:

- i shall fund the Plan by income generated through ongoing operations;
- ii shall pay in cash, in full, Classes 1.a, 1.b, and 2;
- iii shall make quarterly payments to Classes 3.a, 3.b, and 3.c as defined herein;
- iv and to the extent Operating Cash is available, make quarterly payments to Class 4.

4.02. The Debtor shall retain all funds in its possession as of the Confirmation Date after paying Class 1.a, 1.b, and 2 claims as well as all causes of action and rights of the Debtor granted pursuant to the provisions of Section 506(c) and Sections 543 through 554, inclusive, of the Code and any accounts receivable, setoff rights, or causes of action against any parties whosoever arising out of the transactions that have occurred or shall occur prior to the Final Order confirming the Plan.

4.03. Subsequent to the Effective Date of the Plan, the Bankruptcy Court shall retain jurisdiction to, *inter alia*, consider objections to claims and such litigation as the Debtor may deem appropriate. Upon the performance of all post-confirmation activities by the Debtor this case shall be deemed closed.

ARTICLE V

Executory Contracts

5.01. In accordance with the provisions of Sections 1123(b)(2) and 365 of the Code, the Debtor has no known executory contracts and/or unexpired leases to which the Debtor is a party and which were in existence on the Petition Date. To the extent any unknown executory contracts and/or unexpired leases exist, they are rejected.

5.02. Any Allowed Claim resulting from the rejection of an unexpired lease or executory contract with the Debtor shall be treated as a Class 4 Claim.

ARTICLE VI

Post-Confirmation Administrative Expenses

6.01. Attorney Fees for Representing the Debtor. The Debtor does not anticipate that, it will require the representation of attorneys to prosecute any adversary proceedings to which it may be a party. Should this representation be necessary to assure that all funds to which the estate may be entitled are recovered for the estate; such services shall be compensated for from the monies held by the Debtor. The attorneys representing the Debtor shall submit a detailed invoice for their time spent to the Court in accordance with the normal procedure for requesting compensation. After notice and hearing on such fee requests, the Debtor shall be authorized to pay the fees allowed. Jurisdiction for any controversies relating to compensation of attorneys for the Debtor shall be in the Bankruptcy Court for the Western District of Oklahoma.

ARTICLE VII

Retention of Bankruptcy Court Jurisdiction

7.01. Until the Court closes this chapter 11 case, the Court shall retain all jurisdiction legally permissible over the Debtor, including (without limitation) that necessary to (a) ensure

that the Debtor and the other Parties-in-Interest carry out the purposes, terms, and intent of the Plan; (b) hear and determine all Claims which a person could have brought before the Effective Date of the Plan; (c) classify a Claim of any creditor and re-examine Claims which the Court has allowed for the purposes of voting; (d) determine any objections filed to the Creditor's Claim; (e) determine all questions and disputes regarding title to the assets of the Debtor; (f) determine all causes of action, controversies, disputes, or conflicts, whether or not subject to any pending actions as of the Effective Date between the Debtor and any other party, including (without limitation) any right of the Debtor to recover assets pursuant to the provisions of the Code; (g) modify the Plan pursuant to the Code; (h) enforce and interpret the terms and conditions of the Plan; (i) enter any orders, including injunctions, necessary to enforce the terms of the Plan and the rights and powers of the Debtor; (j) impose any limitations, restrictions, terms, and conditions on the Debtor's rights and powers which the Court may deem necessary; (k) enter an order concluding and terminating the chapter 11 case; (l) correct any defect, cure any omission, or reconcile any inconsistency in the Plan necessary to carry out the purposes and intent of the Plan.

ARTICLE VIII

General Provisions

8.01. Effective Date of Plan. The Plan will become effective thirty (30) days following the date on which an order of the Court confirming the Plan becomes a Final Order.

8.02. Discharge. Except as provided otherwise in the Plan or according to the Confirmation Order, a Discharge will be entered by the Court only after successful completion of all Plan Payments by the Debtor.

8.03. Modification of the Plan. The Debtor reserves the right, in accordance with the

Code, to amend or modify the Plan prior to the Confirmation Date or as soon as practical thereafter. After the Confirmation Date, the Debtor may, upon order of the Court, in accordance with Section 1127(b) of the Code, remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

8.04. Headings. The headings used in the Plan are inserted for convenience only and neither constitutes a portion of the Plan nor in any manner affects the provisions of the Plan.

8.05. Severability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan.

8.06. Governing Law. Except to the extent that the Code is applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Oklahoma.

8.07. Automatic Stay. The automatic stay, provided by 11 U.S.C. Section 362(c), shall remain in effect until the Plan has been fully consummated.

8.08. Execution of Documents. The Debtor is hereby authorized, directed, and empowered to execute any and all instruments and do all things necessary and appropriate to implement and consummate the terms and provisions of the Plan.

8.09. Provisions for Payment of Tax Claims. Unless a taxing authority asserted a Claim against the Debtor prior to Confirmation of this Plan, the authority shall not have any Claim against the Debtor for taxes, penalties, or interest arising out of tax years of the Debtor which have ended and for which returns have been filed prior to the Petition Date.

8.10. Payment of U.S. Trustee Fees. The fees of the United States Trustee shall constitute a Class 1.a Claim and the Debtor shall pay those fees in cash in full on the Effective

Date of this Plan. The reorganized debtor shall be responsible for the timely payment of disbursement fees incurred pursuant to 28 U.S.C. § 1930(a)(6). After confirmation, the reorganized debtor shall file with the court and serve on the United States Trustee a quarterly financial report for each quarter (or portion thereof) the case remains open in a format prescribed by the United States Trustee.

8.11. Notice of Debtor's Discretion to Request Closure of Case. Debtor gives notice of right and intention that it may request the Court to close its case upon the Confirmation Order becoming a Final Order as defined herein. Debtor acknowledges that its case must be reopened at the completion of all payments under its confirmed plan for the Court's entry of an order granting its discharge and issuance of a final decree.

Respectfully Submitted,

ATLANTIC FABRICATION & DESIGN LLC

By: 

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