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Blockbuster Defaults on DIP Loan and Changes Course, Seeks Approval of Procedures to Sell All its Assets

Blockbuster, which filed for chapter 11 protection in September of last year with a pre-negotiated plan to reduce its outstanding debt and reorganize as a stand-alone company, dramatically changed course today with the filing of a motion seeking approval of procedures to sell substantially all of its assets to the highest bidder. The motion, which Blockbuster is seeking to have heard by the bankruptcy court on an expedited schedule, now acknowledges that its pre-negotiated plan of reorganization is "no longer feasible."

Blockbuster blames the failure of the plan on, among other factors, "poor holiday sales, deteriorating business operations, the inability to reach a consensus with the DIP Lenders with respect to a long-term business plan and the failure to meet certain other milestones required by the [Plan Support Agreement]." Perhaps more importantly, today's motion acknowledges that Blockbuster has defaulted on its debtor-in-possession financing facility, which has resulted in the occurrence of both a "Termination Event" and a "Roll-Up Event" under those agreements and the court's order approving the DIP facility. As a result, Blockbuster's DIP lenders have terminated Blockbuster's DIP financing, but the motion reports that they have agreed to allow Blockbuster to use their cash collateral during the sale process.

Blockbuster has selected Cobalt Video Holdco LLC as its stalking horse bidder and entered into an Asset Purchase and Sale Agreement with Cobalt today. Cobalt Video Holdco is a new entity which was formed by Monarch Alternative Capital LP, Owl Creek Asset Management LP, Stonehill Capital Management, LLC and Varde Partners, Inc. for purposes of acquiring Blockbuster's assets. Those four entities collectively hold more than half of Blockbuster's outstanding 11.75% Senior Secured Notes due 2014 and are all members of the Steering Committee of holders of those notes.

The proposed agreement provides for a purchase price of \$265 million or \$290 million, depending upon whether an event, referred to as the "Studio Condition," occurs (the lower price applies if the Studio Condition does occur). The Studio Condition requires that at all times from today until the closing of the sale, all of the following conditions are met:

- At least five of six specific major studios (20th Century Fox, Sony, Warner, Paramount, Universal Studios, and Disney) continue to:
 - support Blockbuster's "digital business on terms materially consistent with or better than those in effect on February 14, 2011" and
 - provide Blockbuster's stores and its international operations "with physical copies of movies in amounts requested by [Blockbuster], on a 'cash in advance' or better payment basis and at prices materially consistent with or better than those in effect on February 14, 2011" and
- All studios "whose payments are secured, in whole or in part, shall not have taken any court or formal administrative action or exercised self-help or other similar remedies to foreclose on the assets securing such payments under the Collateral Trust Agreement prior to the closing" of the sale.

The agreement also includes purchase price adjustments for the amounts of Blockbuster's cash and inventory at the closing of the sale, as well as a proposed decrease of up to \$5 million for



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reimbursement of the purchaser's expenses. The agreement does not, however, provide for the payment of any break-up fee or expense reimbursement in the event that Cobalt Video Holdco is not the winning bidder.

There are several other unique aspects of the agreement which bear specific mention:

- Blockbuster is only authorized under the proposed agreement to continue accepting outstanding gift cards for 45 days from today (unless applicable state law or local regulations require a longer period). Thereafter, Blockbuster is not authorized to "honor or redeem any gift cards that are outstanding on, or issued subsequent to, the date of the purchase agreement" unless Cobalt agrees in writing.
- The proposed purchase agreement provides that, in certain circumstances, Cobalt Video would have the "right to compel a conversion of [Blockbuster's] cases to cases under chapter 7 of the Bankruptcy Code upon or, at Purchaser's option, following the closing of the" sale.
- The agreement also provides Cobalt with an option to "direct the estates' liquidation of their inventory under an agency agreement."
- Cobalt does not make any commitment under the agreement "to continue the operations of any portion of [Blockbuster's] business after consummation of the Sale Transaction and there is no requirement that [Cobalt] do so."
- The agreement requires Blockbuster to seek an extension of at least 90 days from the landlords of all its leased store locations (other than those that are already being closed) of the April 21, 2011 deadline for Blockbuster to assume or reject the lease. If a landlord does not agree to at least a 60 day extension by next Monday (February 28th), Blockbuster must promptly "commence and diligently pursue liquidation of each store that is the subject of such" lease (other than certain excluded stores).
- A schedule to the purchase agreement provides a list of 609 store locations at which Blockbuster must begin liquidation sales by next Monday. The liquidations must be completed by the closing of the sale.

Taken together, these provisions appear to open the door to the possibility that most, if not all, of Blockbuster's "brick and mortar" store locations could all be closed if this sale is completed. A line in Blockbuster's [press release](#) announcing the sale process could also be telling in its reference only to the time period before the sale closes: "Blockbuster expects that its U.S. operations, including a majority of its stores, DVD vending kiosks, by-mail and digital businesses, will continue to serve customers in the ordinary course during the sale process."

This post is merely a summary of some of the most interesting terms of an exceedingly complex proposed agreement and transaction. To learn more and read the agreement for yourself, you can download the court filings here:

- [Debtors' Motion, Pursuant to 11 U.S.C. Sections 105, 363, 364, and Fed. R. Bankr. P. 2002, 4001, 6004, 6006, 9008, and 9014, For Entry of: \(I\) An Order Approving \(A\) Bid Procedures, \(B\) Stalking Horse Expense Reimbursement, \(C\) Notice of Sale, Auction, and Sale Hearing, \(D\) Assumption Procedures and Related Notices, \(E\) Incurrence of Sale-Related Administrative Priority Claims, and \(F\) Imposition of an Administrative Stay; and \(II\) An Order Approving the Sale of Substantially All of the Debtors' Assets](#)



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- [Debtors' Motion Pursuant to Fed. R. Bankr. P. 2002\(a\)\(2\) and 9006\(c\) and Local Rule 9006-1 to Shorten the Notice Period and Approving Form and Manner of Notice With Respect to Hearing on the Sale and Bid Procedures and Administrative Relief Set Forth in the Debtors' Motion, Pursuant to 11 U.S.C. Sections 105, 363, 364, and Fed. R. Bankr. P. 2002, 4001, 6004, 6006, 9008, and 9014, For Entry of: \(I\) An Order Approving \(A\) Bid Procedures, \(B\) Stalking Horse Expense Reimbursement, \(C\) Notice Of Sale, Auction and Sale Hearing, \(D\) Assumption Procedures and Related Notices, \(E\) Incurrence of Sale-Related Administrative Priority Claims, and \(F\) Imposition of an Administrative Stay; and \(II\) An Order Approving the Sale of Substantially All of the Debtors' Assets](#)

For access to all major pleadings filed in this case, please visit
http://www.chapter11cases.com/Blockbuster-Inc_c_287.html#axzz1EZrjydg