


SO ORDERED: June 11, 2020.




Robyn L. Moberly
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:

USA GYMNASTICS,¹

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**FINAL ORDER AUTHORIZING DEBTOR TO OBTAIN POST-PETITION
UNSECURED, FORGIVABLE FINANCING PURSUANT
TO THE PAYCHECK PROTECTION PROGRAM**

This matter came before the Court on the *Debtor's Motion For Authority To Obtain Post-Petition Unsecured, Forgivable Financing Pursuant To The Paycheck Protection Program* (the "**Motion**"), filed by USA Gymnastics as debtor and debtor in possession (the "**Debtor**"), for the

¹ The last four digits of the Debtor's federal tax identification number are 7871. The location of the Debtor's principal office is 130 E. Washington Street, Suite 700, Indianapolis, Indiana 46204.

entry of a final order (the “**Final Order**”) pursuant to sections 364(b), 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Rules of the United States Bankruptcy Court of the Southern District of Indiana (the “**Local Rules**”), authorizing the Debtor to obtain post-petition unsecured, forgivable financing pursuant to the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (the “**CARES Act**”) from PNC Bank, and granting administrative expense status pursuant to 11 U.S.C. § 364(b) to claims for repayment to the extent that the funding is not forgiven pursuant to the applicable provisions of the CARES Act; and this Court having reviewed the Motion and held a final hearing with respect to the Motion on June 11, 2020 (the “**Hearing**”); and notice of the Hearing on the Motion having been given in accordance with Bankruptcy Rules 4001(c) and Local Rule 4001-2; and upon consideration of the record at the Hearing; and after due deliberation, and good and sufficient cause appearing therefore, the Court hereby determines the Motion should be GRANTED.

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. **Petition.** On December 5, 2018, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

B. **Debtor-In-Possession Status.** The Debtor remains in possession of its property and continues to operate and maintain its organization as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in this chapter 11 case.

C. **Committee.** On December 19, 2018, the United States Trustee appointed the Additional Tort Claimants Committee Of Sexual Abuse Survivors.

D. **Jurisdiction.** The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

E. **Core Matter.** This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (D), and the Court may enter a final order consistent with Article III of the United States Constitution.

F. **Venue.** Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

G. **Notice.** Sufficient and adequate notice of this Final Order has been provided under the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the *Order Granting Debtor's Motion For Order Establishing Certain Notice, Case Management, And Administrative Procedures* [Dkt. 213].

H. **Need For Post-Petition Financing.** The relief sought in the Motion is necessary to provide the Debtor with immediate and ongoing access to financing under section 364 of the Bankruptcy Code for the purposes approved under the CARES Act to fund the Debtor's monthly payroll costs, as defined in the CARES Act.

I. **Willingness Of PNC Bank To Extend Credit.** To the extent the Debtor qualifies for PPP funding as provided in the CARES Act, PNC Bank is willing to provide the Debtor with post-petition funding in the form of a Paycheck Protection Program Grant (the "**PPP Grant**") to be used for purposes expressly authorized by the CARES Act, specifically to pay: salaries; wages; vacation, parental, family, medical, and sick leave; allowances for dismissal or separation; payments for group health care benefits, including insurance premiums; retirement benefits; rent; utilities; mortgage interest, and interest on other existing debt.

J. **Good Faith.** The Debtor and PNC Bank each have acted in good faith with respect to the proposed financing. Any funding extended to the Debtor pursuant to this Final Order will be deemed to have been extended and made in good faith, as that term is used in section 364(e) of the Bankruptcy Code.

K. **Relief Appropriate And In The Best Interests Of The Estate.** The Court finds that the terms and conditions of this Final Order are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, were entered into by the parties in good faith, are the best reasonably available to the Debtor under the present market conditions and financial circumstances of the Debtor, and are in the best interests of the Debtor and its estate.

IT IS THEREFORE ORDERED:

1. **Motion Granted.** The Motion is granted on the terms provided in this Final Order.

2. **Objection Overruled.** All objections to the Motion, to the extent not withdrawn or resolved, are hereby overruled for the reasons stated on the record.

3. **Approval Of The PPP Grant.** The Debtor is authorized to obtain PPP funding from PNC Bank in the aggregate amount of \$804,565, pursuant to section 364(b) of the Bankruptcy Code, subject to the terms of the CARES Act, and the terms of the PPP Grant are hereby approved. Upon execution and delivery, definitive documentation for the PPP Grant shall represent a valid and binding obligation of the Debtor, enforceable against the Debtor and its estate in accordance with its terms, the terms of the CARES Act, and the terms of this Final Order.

4. **Use Of Funds.** The Debtor shall use proceeds of the PPP Grant in accordance with the terms of the CARES Act to ensure that the PPP Grant is forgiven, specifically to pay: salaries; wages; vacation, parental, family, medical, and sick leave; allowances for dismissal or separation;

payments for group health care benefits, including insurance premiums; retirement benefits; rent; utilities; mortgage interest, and interest on other existing debt. The Debtor shall deposit the PPP Grant in a separate bank account at PNC Bank established for purposes of holding the PPP Grant funds and will withdraw funds from the account only for use in accordance with the terms of the CARES Act.

5. **Binding Effect Of PPP Grant.** The definitive documentation for the PPP Grant and this Final Order shall constitute and evidence the validity and binding effect of the Debtor's obligations under the PPP Grant, which such obligations shall be enforceable against the Debtor, its estate, and any successors thereto, including without limitation, any trustee or other estate representative appointed in this chapter 11 case, or any case under chapter 7 of the Bankruptcy Code upon the conversion of this case, to the extent the the PPP Grant is not fully forgiven pursuant to the terms of the CARES Act.

6. **Administrative Expense Claims.** All obligations under the PPP Grant (including principal and interest), to the extent not forgiven pursuant to the CARES Act, shall be and hereby are granted and allowed as administrative expense claims in this chapter 11 case under sections 364(b), 503(b), and 507(b) of the Bankruptcy Code.

7. **Good Faith.** Based on the findings set forth in this Final Order and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended, or vacated by a subsequent order of this or any other court, PNC Bank shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code and, no such appeal, modification, amendment, or vacatur shall affect the validity and enforceability of any disbursements made hereunder or administrative expense claims authorized or created by this Final Order.

8. **Inconsistency.** In the event of any inconsistency between the terms and conditions of the CARES Act and this Final Order, the provisions of the CARES Act shall govern and control.

9. **Binding Effect.** This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable immediately upon execution hereof.

10. **Waiver Of Stay.** Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Final Order.

11. **Retention Of Jurisdiction.** This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

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