



ENTERED
08/26/2019

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

| | | |
|-------------------------------------|---|----------------------------------|
| In re: | § | |
| | § | Chapter 11 |
| | § | |
| KP ENGINEERING, LP, <i>et al.</i> , | § | Case No. 19-34698 (DRJ) |
| | § | |
| Debtors. ¹ | § | (Joint Administration Requested) |
| | § | (Emergency Hearing Requested) |
| | § | |

**ORDER AUTHORIZING THE DEBTORS TO
CONTINUE TO (I) OPERATE THEIR CASH MANAGEMENT SYSTEM,
(II) USE EXISTING CHECKS AND BUSINESS FORMS AND
(III) MAINTAIN EXISTING BANK ACCOUNTS; AND FOR RELATED RELIEF**

[Relates to the Motion at Docket No. 9]

Upon the motion (the “**Motion**”)² of the Debtors for an order (this “**Order**”), (i) authorizing, but not directing, the Debtors to (a) maintain and use their existing cash management system, (b) continue using their existing bank accounts, checks, and business forms, and (c) continue certain payments and receipts from affiliates, and (ii) granting related relief; and the Court having reviewed the Motion and the First Day Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: KP Engineering, LP (7785) and KP Engineering, LLC (0294). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 5555 Old Jacksonville Highway, Tyler, TX 75703.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances and that no other or further notice is necessary; and the Court having determined that the legal and factual bases set forth in the Motion and the hearing with respect to the Motion establish just cause for the relief granted herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is **HEREBY ORDERED THAT:**

1. The Debtors are authorized to continue operating the Cash Management System and honor their prepetition obligations related thereto.

2. The Cash Management Banks are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof.

3. To the extent any of the Debtors' Bank Accounts are not in compliance with section 345(b) of the Bankruptcy Code, the Debtors shall have 60 days, without prejudice to seeking an additional extension, to either come into compliance with section 345(b) of the Bankruptcy Code or to seek appropriate relief from the Court.

4. The Debtors are authorized to continue to use their existing checks and business forms without alteration or change and without the designation "Debtor in Possession" or a bankruptcy case number imprinted upon them. Any new check stock or business forms used by the Debtors shall contain the designation "Debtor in Possession."

5. Notwithstanding anything herein to the contrary, all payments authorized by this Order are subject to any order approving the Debtors' use of cash collateral.

6. Subject to applicable bankruptcy or other law, any existing deposit, cash management, or treasury services agreements between the Debtors and the Cash Management Banks (the "**Bank Account Agreements**"), whether entered into prepetition or postpetition, shall govern the postpetition cash management relationship between the Debtors and the Cash Management Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, and any provisions relating to offset or charge back rights with respect to returned items, shall remain in full force and effect.

7. The Debtors and the Cash Management Banks may, without further order of this Court, agree to and implement changes to the Cash Management System and procedures related thereto in the ordinary course of business, including, without limitation, the closing of Bank Accounts or the opening of new bank accounts, and the Debtors may enter into any ancillary agreements, including new deposit account control agreements, related to the foregoing, as they may deem necessary and appropriate; provided, however, that the accounts are (a) approved depositories in the Southern District of Texas, (b) with a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC or the Federal Savings and Loan Insurance Corporation, (c) designated a "Debtor in Possession" account by the relevant bank, (d) designated as an authorized depository by the U.S. Trustee pursuant to the U.S. Trustee's Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees, and (d) with a bank that agrees to be bound by the terms of this Order. The Debtors shall provide the U.S. Trustee with prompt notice of any new accounts that are opened, or Bank Accounts that are closed, and shall include such information on the Debtors' monthly operating

reports. The Banks are authorized to honor the Debtors' requests to open or close (as the case may be) any Bank Account(s).

8. This Order shall apply to any and all Bank Accounts actually in, or linked to, the Cash Management System, even if such Bank Accounts do not appear on the list attached as Attachment 1 to the Motion. The relief granted in this Order is extended to any new bank account opened by the Debtors in the ordinary course of business after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Cash Management Bank.

9. All banks maintaining any of the Bank Accounts that are provided with notice of this Order shall not honor or pay any bank payments drawn on the listed Bank Accounts or otherwise issued before the Petition Date for which the Debtors specifically issue stop payment orders in accordance with the documents governing such Bank Accounts. Each of the Debtors' banks is otherwise authorized to debit the Debtors' accounts in the ordinary course of business, without the need for further order of this Court, for all checks drawn on the Debtors' account that are cashed at such bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date.

10. Each of the Debtors' banks is authorized to debit the Debtors' accounts in the ordinary course of business, without the need for further order of this Court, for all checks or other items deposited in the Debtors' accounts prior to the Petition Date that have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent that the Debtors were responsible for such items prior to the Petition Date.

11. The Cash Management Banks are authorized, without further order of this Court, to deduct all applicable service charges or fees, including Bank Fees, whether arising prepetition

or postpetition, from the applicable Bank Accounts in the ordinary course and consistent with historical practice. The Cash Management Banks are further authorized to charge back to the appropriate accounts of the Debtors returned items (including, without limitation, returned checks or returned items resulting from ACH transactions, wire transfers, or other electronic transfers of any kind), regardless of whether such returned items were deposited or transferred prepetition or postpetition. Any postpetition fees, charges, and expenses, including, without limitation, Bank Fees, chargebacks, or other reimbursement or payment obligations arising under the Bank Account Agreements are entitled to administrative expense priority status pursuant to section 503(b) of the Bankruptcy Code.

12. Subject to the terms set forth herein, any bank, including the Cash Management Banks, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to the Petition Date should be dishonored or honored pursuant to any order of this Court, whether such checks, drafts, wires, or other transfers are dated or made prior to, on, or after the Petition Date. No bank that honors a check or other item drawn on any account that is the subject of this Order (a) at the direction of the Debtors, (b) in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (c) on account of an innocent mistake despite implementation of reasonable handling procedures, shall be deemed to be nor shall be liable to the Debtors or their estates, or any other party on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Order.

13. Any banks, including the Cash Management Banks, are further authorized to honor the Debtors' directions with respect to the opening and closing of any Bank Account and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions. No Cash

Management Bank shall have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

14. All banks with which any Debtor maintains bank accounts are authorized and directed to follow any instruction made pursuant to any Bank Account Agreement, including any blocked account or control agreement, by any lender party to such agreement with respect to the disposition of any such accounts and all deposits therein maintained with such bank following the exercise of any remedies of such lender.

15. The Debtors are authorized to enter into and engage in transfers to and from affiliates in the ordinary course of business on the terms described in the Motion.

16. The Debtors are authorized to continue intercompany transactions and honor all intercompany claims in the ordinary course of business, and the Debtors shall (a) put in place accounting procedures to identify and distinguish between prepetition and postpetition intercompany claims, (b) continue to maintain current records with respect to all such intercompany transactions so that all intercompany claims may be readily ascertained, traced, and properly recorded on intercompany accounts and (c) provide reasonable access to such records to the U.S. Trustee and any official statutory committee appointed in these chapter 11 cases.

17. Nothing contained in the Motion or this Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of the Debtors that did not exist as of the Petition Date or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

18. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against any of the Debtors under the Bankruptcy Code or other applicable

nonbankruptcy law; (b) a waiver of any Debtor's or any other party in interest's rights to dispute any claim on any grounds; (c) an assumption, adoption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion, this Order or any order granting the relief requested by the Motion; (e) an admission as to the validity, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of any Debtor's estate; (f) a waiver of any Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (g) waiver of any claims or causes of action which may exist.

19. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions, and the Debtors are authorized to replace any prepetition checks or electronic transfers relating to the prepetition obligations approved herein that may be dishonored or rejected.

20. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

21. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules for the Southern District of Texas are satisfied by such notice.

22. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall take effect immediately upon its entry.

23. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

24. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: August 26, 2019.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE