ENTERED
05/19/2020

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

In re:	§	
	§	**Case No. 20-32465**
BOS SOLUTIONS LTD.[1]	§	
	§	**Chapter 15**
Debtor in a foreign proceeding.	§	
	§	**Jointly Administered**
	§	

ORDER GRANTING EMERGENCY PETITION FOR RECOGNITION AS FOREIGN MAIN PROCEEDING PURSUANT TO SECTIONS 1515 AND 1517 OF THE UNITED STATES BANKRUPTCY CODE AND RELATED RELIEF

Ernst & Young Inc. ("EY") solely in its capacity as court-appointed receiver (the "Receiver") of (1) BOS Solutions Ltd. ("BOS Ltd."), (2) BOS Solutions Inc. ("BOS Inc."), (3) BOS Leaseco LLC ("BOS Leaseco"), (4) BOS Solutions Real Estate Inc. ("BOS Real Estate"), and (5) BOS USHoldco Inc. ("BOS Holdco") (collectively, "BOS" or the "Debtors") filed an *Emergency Petition for Recognition as Foreign Main Proceeding, or Alternatively as Foreign Nonmain Proceeding, Pursuant to Sections 1515 and 1517 of the United States Bankruptcy Code and Related Relief* ("Petition").

The Court finds that notice was proper and that no party in interest made any response in opposition to the Petition, or, if so, the relief requested in any such response was denied for the reasons stated on the record, and further finds that the relief requested in the Petition should be GRANTED. All terms not otherwise defined herein shall have the meanings provided in the Petition. In connection therewith and after due deliberations and consideration of (i) the Petition, (ii) the exhibits to the Petition, (iii) the Receivership Order (as defined below) entered in the

[1] The Debtors are: (1) BOS Solutions Ltd., (2) BOS Solutions Inc., (3) BOS Leaseco LLC, (4) BOS Solutions Real Estate Inc., and (5) BOS USHoldco Inc.

Canadian Proceeding (as defined below), (iv) all other documents filed in support thereof, and (v) the exhibits introduced at the hearing conducted in these cases, testimony of witnesses, if any, and the arguments and statements of counsel, and (vi) this Court's powers and discretion under sections 105, 1507, 1515, 1517, 1520, 1521, 1522 and 1524 of the Bankruptcy Code, and sufficient cause appearing, this Court finds and concludes as follows:

A. The Debtors are the following entities: (1) BOS Ltd., (2) BOS Inc., (3) BOS Leaseco, (4) BOS Real Estate, and (5) BOS Holdco.

B. On May 4, 2020, National Bank of Canada ("NBC") as the administrative agent (in such capacity, the "Agent") under that certain *Amended and Restated Credit Agreement* dated as of September 14, 2018 (the "Loan Agreement"), for itself and for and on behalf of a group of lenders on whose behalf NBC signed (collectively, and in such capacity, the "Lenders"), filed an Application (Receivership Order) in the Canadian Proceedings seeking the appointment of EY as receiver under section 243 of the Bankruptcy and Insolvency Act (the "BIA"), RSC 1985 c B-3 and section 13(2) of the Judicature Act, RSA 2000 c J-2 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary (the "Canadian Court") in the proceeding styled In the Matter of the Receivership of BOS Solutions Ltd., et. al, Alberta Court of Queen's Bench File No. 2001-05949 (the "Canadian Proceedings").

C. On May 4, 2020, the Canadian Court, Honorable Justice P. R. Jeffrey, granted a Receivership Order in Alberta Court of Queen's Bench File No. 2001-05949 (the "Receivership Order") appointing EY as the Receiver and manager of the Debtors.

D. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(a) and (b) and Sections 109 and 1501 of the Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

E. Venue is proper in this district pursuant to 28 U.S.C. § 1410(3).

F. This Court has constitutional authority to enter final orders in these cases under *Stern v. Marshall*, 564 U.S. 462 (2011), or, in the alternative, by consent of the parties. *See Executive Benefits Ins. Agency v. Arkinson*, 573 U.S. 25 (2014).

G. The Receiver is a "person" within the meaning of Section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of the Debtors within the meaning of Section 101(24) of the Bankruptcy Code.

H. These cases were properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.

I. The Canadian Proceedings are "foreign proceedings" within the meaning of section 101(23) of the Bankruptcy Code.

J. The Canadian Proceedings are entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

K. The Canadian Proceedings are entitled to recognition as a "foreign main proceeding" pursuant to section 1502(4) of the Bankruptcy Code and are entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code with respect to each of the Debtors. The Debtors' COMI are in Canada.

L. The Receiver is entitled to the relief afforded under section 1520 of the Bankruptcy Code.

M. There is a substantial likelihood that, with the relief granted herein, the Receiver will be able to successfully liquidate the remaining assets of the Debtors under the provisions of the Bankruptcy Code in the above-referenced chapter 15 bankruptcy cases and the BIA in the Canadian Proceeding, which will benefit all stakeholders.

N. Relief is needed to protect the assets of the Debtors or the interests of the creditors pursuant to section 1521 of the Bankruptcy Code. Therefore, the Receiver is entitled to the 1521 Relief.

O. There is a substantial threat of irreparable injury to the Debtors and their assets if the 1521 Relief is not issued. Any threatened injury to the Debtors and their assets outweighs any damage the injunction granted hereunder might cause to the opponents. The 1521 Relief would actually benefit the Debtors' creditors by ensuring an equitable and orderly distribution of assets and facilitate the Canadian Proceedings.

P. The interests of creditors and other interested entities, including the Debtors, are sufficiently protected as required by 11 U.S.C. § 1522(a), and therefore the Court may grant the 1521 Relief.

Q. The 1521 Relief will not disserve the public interest. The 1521 Relief is in the public interest. It sets to facilitate a cross-border proceeding that will provide a benefit to the estates of the Debtors. The 1521 Relief is supported by notions of comity and will allow the Receiver to maximize the value available from the Debtors' estates.

R. As a result, the Receiver, in its role as foreign representative of the Debtors, and the Debtors, are entitled to the full protections and rights available pursuant to Section 1521 of the Bankruptcy Code.

S. The relief granted is necessary and appropriate, in the interest of the public and international comity, consistent with the United States public policy, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting the requested relief.

T. Permitting the Debtors' current cash management system to continue pursuant to existing agreements between the Debtors and their existing depository and disbursement banks (collectively, the "Banks") will facilitate the continued operations of the Debtors while the Canadian Proceedings and this proceeding are ongoing.

U. In the Receivership Order, the Canadian Court granted the Receiver a charge (the "Receiver's Charge") on all of the Debtors' current and future assets, undertakings, and properties of every nature or kind whatsoever, and wherever located, including all proceeds thereof (collectively, the "Property") to secure payment of the reasonable fees and expenses of the Receiver and its counsel, not to exceed $1,000,000 (or such greater amount as the Canadian Court may by further order authorize). The Receiver's Charge has the priority set forth in paragraph 18 of the Receivership Order.

V. In the Receivership Order, the Canadian Court also authorized the Receiver to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed CA $2,500,000 (or such greater amount as the Canadian Court may by further order authorize) on the terms set forth in paragraph 21 of the Receivership Order. The Canadian Court granted a charge (the "Receiver's Borrowings Charge") on the Property to secure payment of the monies borrowed, together with interest and charges thereon, by the Receiver pursuant to the Receivership Order. The Receiver's Borrowings Charge has the priority set forth in paragraph 21 of the Receivership Order.

W. The Receivership Order provides that "[t]he Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities . . . , other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act* . . . ." (the "Receiver's Protections").

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Canadian Proceedings are hereby recognized as foreign main proceedings pursuant to Section 1517 of the Bankruptcy Code with respect to each of the Debtors.

2. The Receivership Order is consistent with the public policy of the United States and is therefore granted comity. The terms of the Receivership Order granted in the Canadian Proceedings under the BIA on May 4, 2020, are given full force and effect in the United States.

3. The Receiver is granted all of the relief afforded under Section 1520 of the Bankruptcy Code including the following:

(a.) Sections 361 and 362 of the Bankruptcy Code apply with respect to the Debtors and the property of the Debtors that is within the territorial jurisdiction of the United States;

(b.) Sections 363, 549 and 552 of the Bankruptcy Code apply to a transfer of an interest of the Debtors in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

(c.) the Receiver may, but is not obligated to, operate the Debtors' business and may exercise the rights and powers of a trustee under and to the extent provided by 11 U.S.C. §§ 363 and 552; and

(d.) Section 552 of the Bankruptcy Code applies to property of the Debtors that is within the territorial jurisdiction of the United States.

4. Pursuant to section 1524 of the Bankruptcy Code, the Receiver may intervene in any proceeding in a State or Federal court in the United States in which a Debtor is a party.

5. Pursuant to section 1523(a) of the Bankruptcy Code, the Receiver has standing in a case concerning any of the Debtors pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553 and 724(a) of the Bankruptcy Code.

6. The following additional relief is granted pursuant to section 1521 of the Bankruptcy Code:

(a.) The commencement or continuation of any action or proceeding concerning the assets, rights, obligations or liabilities of the Debtors, including any action or proceeding against EY in its capacity as Receiver of the Debtors, to the extent not stayed under Section 1520(a) of the Bankruptcy Code, is hereby stayed;

(b.) Execution against the assets of the Debtors to the extent not stayed under Section 1520(a) of the Bankruptcy Code is hereby stayed;

(c.) The administration or realization of all or part of the assets of the Debtors within the territorial jurisdiction of the United States is hereby entrusted to the Receiver, and the terms of the Receivership Order shall apply to the Debtors, their creditors, the Receiver, and any other parties-in-interest, and the Receiver is authorized to implement the Receivership Order;

(d.) The right of any person or entity, other than the Receiver, to transfer or otherwise dispose of any assets of the Debtors to the extent not suspended under Section 1520(a) of the Bankruptcy Code is hereby suspended unless authorized in writing by the Receiver or by Order of this Court;

(e.) The Receiver's Charge, the Receiver's Borrowing Charge, and the Receiver's Protections are granted comity and are given full force and effect in the United States on a final basis;

(f.) The Receiver may undertake the examination of witnesses, the taking of evidence, the production of documents, or the delivery of information concerning the assets, affairs, rights, obligations or liabilities of the Debtors; and

(g.) Notwithstanding Rule 7062 of the Bankruptcy Rules, made applicable to this case by Rule 1018 of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and, upon its entry, shall become final and appealable.

7. All prior relief granted in the *Order Granting Receiver's Emergency Ex Parte Application for Temporary Restraining Order and Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* [Doc. No. 17] is hereby extended on a final basis, to the extent not inconsistent with the relief granted under this Order.

8. This Court shall retain exclusive jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief or any adversary proceeding brought in and through these Chapter 15 foreign proceedings, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

9. The security provision provided in Rule 65(c) of the Federal Rules of Civil Procedure, made applicable through Rule 7065 of the Bankruptcy Rules, is unnecessary in these cases and is therefore waived.

10. This Order applies to all parties in interest in these Chapter 15 cases and all of their agents, employees, and representatives, and all those who act in concert with them or who receive notice of this Order.

Signed: May 19, 2020.

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE