

BANKRUPTCY UPDATE

Expert Analysis

‘Avaya’ and Other Noteworthy Bankruptcy Filings in the Tech Industry

This issue of the Bankruptcy Update focuses on recent high profile bankruptcy filings in the tech sector. The column delves into the bankruptcy proceedings of Avaya, Lily Robotics and Aquion Energy

‘Avaya’

On Jan. 19, 2017, global telecommunications provider Avaya and its U.S. subsidiaries filed petitions for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York.

Contemporaneously with the bankruptcy filing, Avaya disclosed its rejection of a \$3.9 billion bid for its call-center software unit in a filing with the U.S. Securities and Exchange Commission (SEC), describing the bid as “not actionable.” Avaya also requested the SEC’s consent to the withdrawal of the registration statement for its long dormant proposed initial public offering.

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By
Edward E. Neiger



to changes in market consumption, economic conditions and a shifting business model. Going forward, the debtors intend to shift their business focus from hardware to software and attendant services. In addition, the debtors were burdened by an overleveraged capital structure and intend to restructure their balance sheet through their Chapter 11 case.

The debtors entered bankruptcy with a negotiated \$725 million debtor-in-possession (DIP) financing package, \$240 million of which was immediately available upon entry of an interim DIP financing order at Avaya’s first day hearing. The debtors gained access to the remaining liquidity following a March 3 conditional approval of its DIP financing on a final basis. Notably, the DIP financing contained limited constricting case milestones and was designed to provide Avaya with greater flexibility in moving forward with a restructuring.

On March 9, 2017, Avaya announced it secured a stalking horse bid from Extreme Networks for its networking business. The bid is valued at \$100 million and comprised a \$68 million cash component, \$22 million in assumption of liabilities and \$10 million to be held in escrow for one year. To that end, the debtors filed a motion seeking approval of bidding procedures which included a preliminary bid submission deadline of April 18, final bid deadline of May 18 and, if necessary, an auction on May 23. The motion also seeks approval of bid protections for Extreme

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Networks including a \$3 million break-up fee and \$750,000 expense reimbursement. A hearing on the bidding procedures is scheduled for April 4.

In addition, Avaya reported on March 22 that the debtors expect to file a plan of reorganization and accompanying disclosure statement by the end of March, allowing for the possibility of a June

EDWARD E. NEIGER is a co-managing partner at ASK LLP. MARIANNA UDEM, a partner at the firm, assisted in the preparation of this article.

emergence if the company is able to reach consensus for a smooth restructuring with its creditor constituencies.

Avaya Inc. (Bankr. SDNY Case No. 17-10088).

'Lily Robotics'

On Feb. 27, 2017, flying drone camera developer Lily Robotics filed a petition for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

Lily Robotics was formed in 2013 by Berkeley students who developed a self-navigating flying drone camera concept. The company grew rapidly and raised over \$18 million in venture capital, also attracting NFL Hall of Fame quarterback Joe Montana as an investor. The debtor secured 60,000 pre-orders but discovered its prototype contained extensive flaws requiring redesign and significant delay in bringing the product to market. In the interim, the debtor's customers began to request refunds and the San Francisco district attorney commenced litigation against the company for its failure to deliver the product. The culmination of these factors led Lily Robotics to seek Chapter 11 relief with the primary goals of selling its intellectual property and related assets and effectuating an orderly refund and wind-down process.

The debtor obtained court approval to use the cash collateral of its pre-petition lenders and is seeking approval of a further \$3,027,000 DIP financing facility to fund its operations under Chapter 11.

Consistent with its bankruptcy objectives, on March 14, Lily Robotics filed motions seeking permission to issue refunds and approval of a bankruptcy

sale process. The debtor submitted that it had sufficient funds to complete processing refunds in the amount of approximately \$20 million. Specifically \$18.7 million in funds earmarked for refunds are held by payment processors Tilt and Stripe and another \$6.6 million in customer cash is held by the debtor. Contemporaneously, the debtor is seeking approval of bidding procedures in connection with the sale of substantially all of its remaining assets.

The proposed sale timeline includes a bid submission deadline of June 1, an auction on June 1 and a final sale hearing on June 13. The debtor has not selected a stalking horse bidder but is seeking authority to do so and to offer such stalking horse bidder bid protections comprised of a 3 percent break-up fee and \$10,000 expense reimbursement. A hearing on both motions is scheduled for April 25.

Lily Robotics Inc. (Bankr. D. Del. Case No. 17-10426).

'Aquion Energy'

On March 8, 2017, saltwater battery developer Aquion Energy filed a petition for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

Founded in 2008 by Jay Whitacre at Carnegie Mellon University, the debtor manufactures saltwater batteries with a proprietary environmentally conscious design. As a startup, the company raised in excess of \$180 million through equity offerings, counting Bill Gates among its early investors, but was unable to attract new recent investments following negative earnings results in 2015 and 2016.

Prior to commencing its bankruptcy case, Aquion idled manufacturing of its

batteries and reduced its workforce by approximately 85 percent. The company noted that due to its cash-intensive manufacturing process it could be forced into immediate liquidation if it continued operations. In October 2016, Aquion commenced an active marketing process seeking a purchaser for its business and intends to continue this process during the bankruptcy proceeding with the hope that it culminates in a Section 363 sale of substantially all of its assets. The debtor reported that 15 potential bidders signed confidentiality agreements to conduct due diligence as of the petition date.

As of the petition date, the debtor reported that it had approximately \$6 million in cash on hand, an amount the debtor estimated exceeded its approximately \$5.1 million outstanding secured indebtedness to its pre-petition secured lender, Trinity Capital Fund II. As part of its first day relief, the debtor obtained interim authority to use Trinity's cash collateral. The terms of the interim relief require the debtor to keep a minimum of \$5.1 million cash on hand and to continue to pay Trinity interest at the default rate. The Office of the U.S. Trustee interposed an objection to the strict terms of cash collateral use but the objection was overruled at this initial stage of the case with the potential for a later revisit.

Aquion Energy Inc. (Bankr. D. Del. Case No. 17-10500).