



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

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Order Filed on February 8, 2024
by Clerk
U.S. Bankruptcy Court
District of New Jersey

Attorneys for the Debtor

In re:

**FLYING FISH BREWING
COMPANY, LLC,**

Debtor.

Case No. 23-21917-JNP

Chapter 11

**ORDER (A) ESTABLISHING BIDDING PROCEDURES IN CONNECTION
WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE
AND CLEAR; AND (B) SCHEDULING A SALE APPROVAL HEARING**

The relief set forth on the following pages, numbered two (2) through nine (9) is hereby **ORDERED**

DATED: February 8, 2024

**Honorable Jerrold N. Poslusny, Jr.
United States Bankruptcy Court**

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This matter having come before the Court on Motion (a) For Entry of an Order Establishing Sale and Bidding Procedures in Connection with the Sale of Substantially all of the Debtors' Assets; and (b) Authorizing Sale Free and Clear of All Liens and Encumbrances filed by debtor Flying Fish Brewing Company, LLC (the "Debtor"), in connection with the sale of substantially all of Debtor's Assets (any capitalized terms used herein and not otherwise defined have been defined in said Motion and shall have the same meaning in this Order), it is by the United States Bankruptcy Court for the District of New Jersey,

ORDERED that the Motion is hereby GRANTED subject to the following provisions of this order; and it is further

ORDERED that the bid and sale procedures (the "Bid Procedures") appended hereto are APPROVED, and it is further

ORDERED that this Order establishing bidding procedures (the "Bid Order") shall be served upon all creditors and parties in interest, and made available to all third parties who may bid on the Debtor's Assets or make a Qualified Offer for the Debtor's Assets, and it is further

ORDERED that the debtors shall conduct an auction and accept bids through February 13, 2024 at 10:00 a.m. (the "Auction") pursuant to the Bid Procedures; and the Court shall conduct a hearing on approval of any proposed sale pursuant to the Auction commencing at **10 a.m. on February 15, 2024** ("Approval Hearing"); and it is further

ORDERED that any objections to the approval of any proposed sale(s) may be presented at the Approval Hearing; and it is further

ORDERED that pending further order of this Court, all proceeds from the Sale of the Debtor's assets realized from the Auction (the "Sale Proceeds") shall be retained in the trust account of the Debtor's counsel (McDowell Law, PC) subject to disbursement; and it is further

ORDERED, that unless otherwise ordered by the Court, promptly after the Approval Hearing, the Debtor shall disburse the Sale Proceeds to its priority secured creditor, Celtic Capital Corporation ("Celtic") in an amount sufficient to fully satisfy its claim; and it is further

ORDERED, that any buyer's premium due CRG Capital Recovery Group, LLC ("CRG") may be paid after entry of the Court's order following the Approval Hearing if a sale is approved; and it is further

ORDERED that any expense reimbursement due or to become due to CRG shall be paid by the Debtor only after CRG files a fee application for such expenses and secures the approval the Court therefor; and it is further

ORDERED that within two (2) business days of the entry of this Bid Order, Debtor shall pay to FRG-X-NJ1 LP, rent due for January 2024 owing from Debtor, as tenant, to FRG-X-NJ1 LP, as landlord.

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APPROVED BID AND SALE PROCEDURES ATTACHED HERETO

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BID AND SALE PROCEDURES

I. Before the Auction

(A) **Going Concern**. Debtor, with the participation and assistance of CRG, shall

(1) advertise, solicit, develop and acquire private offers for the Going Concern, subject to higher and better bids sought at the Auction, as further provided below;

(2) require all Going Concern offers to be in writing and include (i) the name, address, email and telephone number of the offeror; (ii) a description of the offeror's business; (iii) the offeror's financial statements for the preceding two years or other evidence of financial wherewithal sufficient to consummate the sale reasonably acceptable to the Debtor; and (iv) secure an accompanying advance deposit equal to 10% of the offer;

(3) review all offers for the Going Concern upon receipt and, within 24-hours of receipt, request further information concerning an offer once received if needed;

(4) conditionally accept, in its sole discretion and based on its best business judgment, a Going Concern offer at any time through the initiation of the Auction subject to the exposure of that offer to higher and better bids at the Auction as provided below; and

(5) pay a break-up fee of three percent (3%) of any conditionally accepted offer for the Going Concern (a "Break-Up Fee") if a higher and better offer for the Going Concern is received at the Auction, as provided below.

(B) **IP Assets**. Debtor, with the participation and assistance of CRG, shall

(1) advertise, solicit, develop and acquire private offers for the IP Assets, subject to higher and better bids sought at the Auction, as further provided below;

(2) require all IP Asset offers to be in writing and include (i) the name, address, email and telephone number of the offeror; (ii) a description of the offeror's business; (iii) the offeror's financial statements for the preceding two years or other evidence of financial wherewithal sufficient to consummate the sale reasonably acceptable to the Debtor; and (iv) secure an accompanying advance deposit equal to 10% of the offer;

(3) review all offers for the IP Assets upon receipt and, within 24-hours of receipt, request further information concerning an offer once received if needed;

(4) conditionally accept, in its sole discretion and based on its best business judgment, an IP Asset offer at any time through the initiation of the Auction subject to the exposure of those offers to higher and better bids at the Auction as provided below; and

(5) pay a break-up fee of three percent (3%) of any conditionally accepted offer for the IP Assets (each, a "Break-Up Fee") if a higher and better offer for the IP Assets is received at the Auction as provided below.

(C) **The Hard Assets**. Debtor, with the participation and assistance of CRG, shall

(1) advertise and sell its Hard Assets at the Auction; and

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(2) require all prospective bidders to (i) provide financial statements for the preceding two years or other evidence of financial wherewithal acceptable to the Debtor; (ii) provide valid credit card information or other acceptable form of payment; (iii) review the past auction performance of each prospective bidder as tracked by the online auction platform Bidspotter; (iv) review of all negative past comments concerning each prospective bidder as reported to Bidspotter; and (v) secure an advance payment of a deposit by each prospective bidder of \$500.00.

(D) **Pre-Auction Deposits.** All deposits required by these bidding procedures shall be in the form of cash, bank wire, certified check or, in the case of a deposit for a Hard Asset, credit card hold which deposit shall be paid to the Debtor (each a "Deposit"). Each Deposit is subject to jurisdiction of this Bankruptcy Court, shall be deposited and maintained with the trust account of the Debtor's counsel (McDowell Law, PC) and thereafter shall be processed as provided below subject to court order.

(E) **Qualified Bids and Offers.** A bid that satisfies the pre-auction requirements shall be a "Qualified Bid." A private offer for the Going Concern or the IP Assets as provided herein that satisfies the pre-auction requirements shall be a "Qualified Offer."

II. At the Auction

(A) **The Auction.** CRG shall conduct the Auction on-line through the on-line bidding platform Bidspotter, and the entirety of the Auction shall be documented and recorded.

(B) **Order of Auction.** The Auction shall be conducted in the following order:

(1) Provided that Debtor has received a Qualified Offer for the Going Concern, the Qualified Offer for the Going Concern shall be announced at the Auction, along with any applicable Break-Up Fee, and then exposed to higher and better bids. The best price for the Going Concern, whether by the announced Qualified Offer or a higher and better bid made at the Auction, shall be the "Going Concern Leader;"

(2) Provided that Debtor has received a Qualified Offer for all of the Debtor's IP Assets, the Qualified Offer for the IP Assets will be announced at the Auction, along with any Break-Up Fee, and then exposed to higher and better bids. The best price for the IP Assets as a whole, whether by the announced Qualified Offer or a higher and better bid made at the Auction, shall be the "IP Assets Leader;"

(3) The whole of the Debtor's Hard Assets shall be exposed to bidding at the Auction. The highest bid for the Hard Assets as a whole shall be the Hard Assets (Whole) Leader; and

(4) The individual Hard Assets shall each be exposed to bidding at the Auction. The highest bid for each Hard Asset shall be a Hard Asset (Subset) Leader.

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(C) **Other Miscellaneous Bidding Procedures.** The following, additional bidding procedures shall apply at the Auction:

(1) a \$50,000 overbid amount shall apply to bids on the Going Concern (the “Going Concern Overbid Amount”) which Going Concern Overbid Amount shall be announced at the Auction prior to the solicitation of bids for the Going Concern;

(2) a \$10,000 overbid amount shall apply to bids on the IP Assets (the “IP Assets Overbid Amount”) which IP Assets Overbid Amount shall be announced at the Auction prior to the solicitation of bids for the IP Assets;

(3) all higher and better bids on the assets encompassed by a Qualifying Offer must (i) if an initial higher and better bid (an “Initial Bid”), exceed the amount of the Qualifying Offer by the amount of the applicable Break-Up Fee plus the applicable Overbid Amount; and (ii) for every subsequent higher and better bid after the Initial Bid, exceed the amount of the preceding bid by the applicable Overbid Amount;

(4) every Winning Bidder shall make a 10% deposit to Debtor on the date of the Auction if the required deposit has not already been provided by the Bidder before the Auction;

(5) every Winning Bidder shall provide to the Debtor on the date of the Auction adequate evidence of financial responsibility and ability to consummate the sale if not already provided by the Bidder before the Auction;

(6) if a Qualified Offer announced at the Auction (i) is bettered by a subsequent higher and better bid, then the Debtor’s conditional acceptance of the Qualified Offer shall be deemed revoked upon the fall of the Auctioneer’s hammer; and (ii) is **not** bettered by a subsequent higher and better bid, then the Debtor’s conditional acceptance of the Qualified Offer shall become a final acceptance subject only to the provisions for determining the winner(s) of the Debtor’s Assets and final Bankruptcy Court approval;

(7) all bids and offers shall be irrevocable until the conclusion of the Auction unless otherwise provided in this Order.

(D) **Determining the Winners.** The Debtor shall utilize the following procedure to determining the winners of its Assets at the conclusion of the Auction (each, a “Winning Bid,” or a “Winning Offer,” as the case may be):

(1) The Debtor shall determine which is greater, the amount offered for the Hard Assets by the Hard Assets (Whole) Leader, if any, or the sum of the amounts offered by all of the Hard Asset (Subset) Leaders. Whichever is greater shall be the “Hard Asset Best Offer(s);”

(2) If the amount offered by the Going Concern Leader equals or exceeds the sum of the IP Asset Leader, if any, plus the Hard Asset Best Offer(s), then the Going Concern Leader will be deemed the successful purchaser of all of the Debtor’s Assets as provided herein.

(3) If there is no Going Concern Leader or if the amount offered by the Going Concern Leader is less than the sum of the IP Asset Leader, if any, plus the Hard Asset Best Offer(s), then the IP Asset Leader and the Hard Asset Best Offer(s) shall be deemed the successful purchasers of the Assets encompassed by their respective offers.

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III. After the Auction

(A) Handling of Deposits. All Deposits shall be

(1) retained by the Debtor and processed as further provided by the Bankruptcy Court if the bid or offer associated with the Deposit becomes a Winning Bid or a Winning Offer that is approved by the Bankruptcy Court, and the Asset sale to the Winning Bidder or Winning Offeror is consummated as provided herein;

(2) retained by the Debtor and processed as further provided by the Bankruptcy Court if the bid or offer associated with the Deposit becomes a Winning Bid or a Winning Offer that is approved by the Bankruptcy Court, and the Asset sale to the Winning Bidder or Winning Offeror is not consummated by such Winning Bidder or Winning Offeror;

(3) returned to the bidder or offeror, without interest within twenty-four hours of the conclusion of the Auction, if the bid or offer associated with the Deposit does not become a Winning Bid or Winning Offer;

(4) returned to the Winning Bidder or Winning Offeror, without interest within twenty-four hours of the Court's refusal to approve the Winning Bid or Winning Offer associated with the Deposit; or

(5) returned to the Winning Bidder or Winning Offeror, without interest within twenty-four hours of the deadline to consummate the sale of Assets associated with the Winning Bid or Winning Offer if the Winning Bid or Winning Offer associated with the Deposit is approved by the Bankruptcy Court, and the Asset sale to the Winning Bidder or Winning Offeror is not consummated by the Debtor.

(B) Notice of the Approval Hearing. Within twenty-four hours of the conclusion of the Auction, the Debtor shall file with the Court and serve by email transmission on the U.S. Trustee, counsel for the Secured Creditors, all interested parties requesting notice, all makers of Qualified Offers, and all participants at the Auction who have provided a valid email address (together, the "Asset Sale Interested Parties") a notice containing:

(1) a list identifying all Winning Bids and Winning Offers; the Assets encompassed by each such Winning Bid and Winning Offer; and the amount of each such Winning Bid and Winning Offer;

(2) a list of the amounts and payees of all Break-Up fees to be paid upon consummation of the sale of the Debtor's Assets, if any;

(3) the date, time and location of the Bankruptcy Court hearing to approve the Winning Bids and the Winning Offers (the "Approval Hearing"); and

(4) the deadline by which any objection to the Bankruptcy Court's approval of the Winning Bids and the Winning Offers must be filed with the Bankruptcy Court and served upon the Debtor, the Secured Creditors and the U.S. Trustee.

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(C) **Objections to the Asset Sales.** Any objections to entry of an order approving a Winning Bid or a Winning Offer must be presented no later than at the Approval Hearing. Any Asset Sale Interested Party or any other party who fails to assert an objection in accordance with the requirements of this Bid Order will be barred from asserting any objection to the consummation and performance of the sale of the Debtor's Assets to the Winning Bidders and the Winning Offerors.

(D) **At the Approval Hearing.** On the day of the Approval Hearing, the Debtor shall request Bankruptcy Court approval of the Winning Bids and the Winning Offers and permission to (i) consummate the sale of the Assets encompassed by each such approved Winning Bid and Winning Offer and (ii) pay all required Break-Up Fees, as further provided herein.

(E) **Consummation of the Asset Sales.** Provided that the Bankruptcy Court approves the Winning Bids and the Winning Offers at the Approval Hearing,

(1) the Winning Bidders and the Winning Offerors, as the case may be, shall be sold the Debtors' Assets encompassed by their respective Winning Bids and Winning Offers (each, an "Asset Sale") in accordance with the order entered by the Bankruptcy Court at the Approval Hearing (the "Approval Order");

(2) every Winning Bidder and every Winning Offeror, as the case may be, shall pay for the Debtor's Assets sold to them pursuant to the Approval Order by cash; wire transfer; or certified, bank, cashier's, title company or attorney trust account check at a closing that is to occur within forty-eight (48) hours of the entry of the Approval Order by the Bankruptcy Court.

(F) **Payment of Break-Up Fees.** Provided that the Bankruptcy Court approves the Winning Bids and the Winning Offers at the Approval Hearing, and the resulting Asset Sales to the Winning Bidders and the Winning Offerors are consummated, Debtor shall pay all required Break-Up Fees from the proceeds of the Asset Sales as provided herein and in the Court's Approval Order.

(G) **Removing Purchased Assets.** Winning Bidders or Winning Offerors who have purchased Hard Assets shall have ten (10) days from the date of the Approval Order to remove the purchased Hard Assets from the Debtor's premises at their own expense, and shall maintain adequate insurance to cover the cost of any potential damages to the Debtor's premises or other Hard Assets caused by such removal.

IV. Miscellaneous

(A) **Bankruptcy Court Jurisdiction.** All Winning Bids and Winning Offers, and the person(s) or entity(ies) making them, remain subject to the exclusive jurisdiction of the Bankruptcy Court with respect to all matters related to such Winning Bids, Winning Offers, the Auction and sale of the Debtor's Assets.

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(B) **Contingency Bids and Offers.** Notwithstanding anything contained in this Order to the contrary, if for any reason a Winning Bidder or a Winning Offeror fails to consummate the purchase of the Debtor's assets as provided above, the bidder with the next highest and best bid or offer will automatically be deemed to have submitted the Winning Bid or Winning Offer. To the extent the Debtor consents, the Debtor and each such bidder(s) or offeror(s) are authorized to effect the transaction contemplated herein as soon as is commercially reasonable. In such event, the Debtor shall file with the Bankruptcy Court and serve on the Asset Sale Interested Parties a notice describing the failed sale consummation and substituted bid or offer along with a proposed order approving the same. If there are no objections to the substitute sale within five (5) days of service of the notice by the Debtor, the Bankruptcy Court will be asked to enter an order approving the substitute sale without further notice or hearing. In such event, the Debtor specifically reserves the right to seek all available damages from the defaulting bidder(s) or offeror(s), and shall retain any Deposit paid by them.

(C) **Amendment of Bidding, Auction and Sale Procedures.** Should need arise and good business judgment support, the Debtor may modify any bidding, auction or sale procedures described herein without further Court order subject to consultation with Celtic, Holly Smith (subchapter v trustee) and the Office of the U.S. Trustee.