

Raser Wins \$12.5M DIP Loan, Drops Auction Plan

By **Lance Daroni**

Law360, Wilmington (June 1, 2011) -- Geothermal energy company Raser Technologies Inc. won a Delaware bankruptcy court's blessing Wednesday for a \$12.5 million debtor-in-possession loan after appeasing wary creditors by scrapping a plan to auction off ownership of the reorganized company.

U.S. Bankruptcy Judge Kevin J. Carey signed off on the loan, saying the financing would help preserve Raser's assets and give it time to go through a proper Chapter 11 reorganization process.

"Which I think, under these circumstances, is better than the original auction process that was proposed," the judge said at a Wednesday hearing.

Provo, Utah-based Raser filed for bankruptcy protection April 29 after its only operational plant, Thermo No. 1, which provides power to Anaheim, Calif., failed to power up to expectations, creating a liquidity crisis that halted development of the company's other projects, according to court documents.

The company had a plan in hand to auction off the equity of the reorganized business, with two major bondholders — Linden Capital LP and Tenor Capital Management LP — expected to take control with a nearly \$20 million bid comprised of \$2.5 million in cash and the rest credit. The auction would allow for an upgrade of Raser's sputtering power plant, according to court documents.

The two bondholders also agreed to provide the DIP loan, but the official committee of unsecured creditors soon objected to the agreement, saying the terms of the loan put the lenders in the "driver's seat," with provisions allowing the lenders to lock in a plan process before unsecured creditors could negotiate their recoveries.

"[The provisions] undermine the fundamental principle that a debtor operating in Chapter 11 owes a fiduciary duty to all of its creditors, not merely to its lenders who may exert undue leverage against the debtor," the committee said in its objection.

The DIP loan also intertwined with the proposed auction procedures to guarantee that no superior bids will emerge, according to the committee.

But after extensive negotiations, Raser agreed to drop the auction plan, the debtor's attorney Peter S. Partee of Hunton & Williams LLP said at the hearing. The lenders also increased the loan by almost \$4 million to \$12.5 million, reduced the interest rate to 12.5 percent, and extended its maturity to Sept. 30 in response to the court's warning that the reorganization may not proceed as quickly as anticipated, the attorney said.

Under the new DIP agreement, Raser will need to confirm its reorganization plan by Sept. 12, according to Partee. The debtors will use \$6 million of the loan to pay down secured debt attached to its operating plant.

Raser listed \$41.8 million in assets and \$107.8 million of liabilities in its bankruptcy petition. The company owes \$57 million on 8 percent convertible notes, \$25 million of which are held by Linden and Tenor, according to court documents. Merrill Lynch & Co. Inc. holds a \$22.6 million unsecured claim related to financing for the operating plant.

The company also has \$10.3 million in secured debt owed to Zurich American Insurance Co. and Prudential Insurance Co. of America.

Raser is represented by Peter S. Partee, Richard P. Norton, Neil B. Glassman, Jamie L. Edmonson and Gianclaudio Finizio of Hunton & Williams LLP.

The official committee of unsecured creditors is represented by Michael G. Busenkell and Francis A. Monaco of Womble Carlyle Sandridge & Rice PLLC, and Douglas E. Spelfogel and Richard J. Bernard of Foley & Lardner LLP.

The case is In re: Raser Technologies Inc., case number 1:11-bk-11315, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by Andrew Park.

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