

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re )  
 )  
RNFL Acquisition, LLC, )  
a Minnesota limited liability company )  
 )  
Assignor, ) C.A. No. 12722- VCL  
 )  
To: )  
 )  
DSI Assignments, LLC, )  
a Delaware limited liability company, )  
 )  
Assignee. )

**MOTION TO APPROVE (I) THE SALE OF SUBSTANTIALLY ALL OF  
ASSIGNEE’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS,  
INTERESTS AND ENCUMBRANCES; (II) DISTRIBUTION OF  
PROCEEDS; AND (III) GRANT RELATED RELIEF**

DSI Assignments, LLC (“Assignee” or “DSI”), the assignee for the benefit of creditors of RNFL Acquisition, LLC (“Assignor” or “RNFL”), respectfully requests the entry of the attached Proposed Order, approving the terms and conditions of the proposed Asset Purchase Agreement dated May 12, 2017 (the “Asset Purchase Agreement”) by and among Assignee and Sandton Credit Solutions Master Fund IV, L.P. (“Sandton”), attached hereto as Exhibit 1, and granting related relief. In support thereof, the Assignee states as follows:

**BACKGROUND**

1. On or about September 6, 2016 (the “Petition Date”), Assignee filed its *Petition for Assignment for the Benefit of Creditors* (the “Petition”),

attaching the *Trust Agreement and General Assignment for the Benefit of Creditors* (the “Assignment”), thereby commencing this proceeding. On September 26, 2016, the Court entered the *Order on Petition for Assignment for the Benefit of Creditors*, asserting jurisdiction over the Petition pursuant to 10 *Del. C.* §§ 7381 *et seq.*

2. RNFL is owned by Biogenic Reagents Ventures, a Delaware LLC, which in turn is owned by Biogenic Reagents, LLC also a Delaware LLC.

3. RNFL operated a renewable carbon facility in Gwinn, MI since 2011. That facility generated significant losses and after efforts to recapitalize RNFL, operations were discontinued and the employees laid off at the end of June 2016. Management also negotiated a three-month rent waiver from Marquette County, the owner of the underlying real property.

4. RNFL owes its secured lenders in excess of \$40 million. The senior-most debt is owed to MVC Capital, Inc., a Delaware corporation (“MVC”) in an approximate amount of \$16,956,000 as of the date of the assignment to the Assignee.<sup>1</sup> This loan is secured by all of RNFL’s assets, which includes all the plant equipment, parts inventory and other furniture, fixtures and equipment. The second lien debt is owed to Equus Total Return, Inc. (“Equus,” and with MVC, the

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<sup>1</sup> As reflected in paragraph 6 of the Affidavit of James Lynch in Support of Sale, attached hereto as Exhibit 2, the amounts to MVC have increased due to MVC’s expenditures of additional funds to protect its collateral during this Assignment and the sale process.

“Senior Secured Lenders”) in an approximate amount of \$2,186,000 as of the date of the assignment to the Assignee. This loan is secured by all of RNFL’s assets, which includes all the plant equipment, parts inventory and other furniture, fixtures and equipment. The third lien debt is owed to NNMF Sub CDE XXI, LLC and CNMC Sub-CDE 36, LLC (the “NMTC Lenders”) in an approximate amount of \$21,277,000 as of the date of the assignment to the Assignee. This loan is secured by all of RNFL’s furniture, fixtures and equipment.

5. MVC, Equus and the NMTC Lenders (collectively, the “Secured Lenders”) consented to the assignment of the assets of RNFL to the Assignee.

6. The Agreement between the Assignee and RNFL provided that RNFL is unable to pay its debts in full.

7. Prior to the Assignment, in February 2016, Assignor, with the consent of the Secured Lenders, engaged Piper Jaffray to (i) prepare an information memorandum describing Assignor and its affiliates, their historical performance including existing operations, facilities, contracts, customers, management and projected financial results and operations; (ii) assist Assignor in compiling data and appropriate documents related to a potential sale of substantially all of the assets of Assignor and its affiliates either through one sale or multiple sales of the parts; (iii) assist Assignor in developing a list of over 400 suitable potential buyers and

commencing the marketing process; (iv) coordinate the execution of confidentiality agreements for potential buyers wishing to review the information memorandum; (v) assist Assignor in coordinating management calls and site visits for interested buyers and work with the management team to develop appropriate materials for such presentations and visits; (vi) solicit competitive offers from potential buyers; (vii) advise and assist Assignor in structuring the transaction and negotiating the transaction agreements; and (viii) otherwise assist Assignor and its counsel as necessary through closing on a best efforts basis.

8. During the period commencing on February 2016 and continuing through July of 2016, Piper Jaffray actively solicited the sale of Assignor. During that period, Piper Jaffray contacted hundreds of potential buyers or financing firms to all relevant markets. Despite all of these efforts, Assignor was not able to consummate a transaction to sell the company.

9. During the course of Piper Jaffray's efforts to sell Assignor, it became clear that utilization of Assignor's assets is a very proprietary process involving a large number of patents held by Assignor's affiliate, Biogenic Reagents Ventures, LLC ("BRV").

10. Assignor's assets and the Secured Lenders' collateral consist primarily of equipment for the production of renewable reagents and biofuels for use in the renewable energy production markets (the "Purchased Assets"). The

Purchased Assets were appraised prior to the execution of the Assignment with a going-concern value of between \$18 and \$20 million. The machinery and equipment owned by Assignor have a liquidation value substantially lower than an on-going plant sale, and the assets do not have a higher value for use outside the processes developed by BRV. The maximum value in Assignor's assets can only be realized through a going concern sale in concert with a sale of BRV's assets.

11. The efforts to sell the assets of Assignor continued uninterrupted after the Assignment. Just prior to and after the Assignment, representatives of MVC took an active role in the continued sale efforts, along with assistance from the former CEO of the Assignor, who had extensive knowledge as to the plant assets and the BRV owned patents, and who the Assignee contracted with to provide services in connection the sale process.

12. Post Assignment, the marketing efforts continued by re-initiating conversations with the potential parties from the prior process. This process was done for another 10 months to ensure that an exhaustive marketing process was completed across core and non-core companies and traditional and distressed asset financial firms.

13. These extended sale efforts culminated in an offer to purchase the Purchased Assets of Assignor pursuant to the Asset Purchase Agreement. Pursuant to the Asset Purchase Agreement, Sandton will pay \$19,878,022 for

Assignor's Purchased Assets. This offer present the highest offer received for the Assignor's Purchased Assets during the entirety of the pre and post-assignment sale process.

14. Further information concerning the Assignor and the sale process can be found in the Affidavit of James Lynch in Support of Sale (the "Lynch Affidavit"), attached hereto as Exhibit 2.

### **THE ASSET PURCHASE AGREEMENT**

15. The Asset Purchase Agreement includes, among other things, the following terms and conditions:

- a. Amount of the Purchase Price.           \$19,878,022
- b. Earnest Money Deposit.               None.
- c. Closing Date.                         The Closing shall take place at 1:00 p.m. prevailing Eastern Time no later than one day after the date of Chancery Court approval.
- d. Sale Free and Clear of Liens. The Assets will be sold to the Purchaser free and clear of all claims with any claims attaching to the proceeds of the sale. Effective upon Closing, the conveyance of the assets by the Assignee to Sandton shall (i) constitute a legal, valid, and effective transfer of the assets; (ii) and vests Sandton with all right, title, and interest of RNFL and the Assignee in and to the assets, free and clear of all claims with such claims to attach to the proceeds of the sale of the assets (the "Proceeds"); and (iii) the sale order shall constitute a determination that all claims of any kind or nature relating to RNFL are barred and enjoined as against the Assets or Sandton.

- e. Access to Books and Records. Purchaser will provide Seller with reasonable access for the purpose of administering the General Assignment.
- f. Transportation of Purchased Assets. Purchaser shall be responsible for all packaging and transportation, if any, of the Purchased Assets.
- g. “As Is” Sale. Purchaser is acquiring the Purchased Assets “as is, where is” with all faults and defects.
- h. Applicable Taxes. Purchaser will be responsible for any transfer or other sales or use tax applicable to the purchase of the Purchased Assets.

### **RELIEF REQUESTED**

16. By this Motion, the Assignee seeks the entry of the Proposed Order to approve the terms and conditions of the sale of the Purchased Assets to the Purchaser on substantially similar terms to those included in the Asset Purchase Agreement. Additionally, the Assignee seeks permission to sell any remaining assets of the Assignor free and clear of any and all claims, liens or other encumbrances, with such claims, liens or other encumbrances attaching to the proceeds of any sale. This relief requested by the Assignee is intended to maximize value for the Assignors’ estates, creditors and other stakeholders as expeditiously as possible.

17. Pursuant to 10 *Del. C.* § 7381 *et. seq.*, a person may make “a voluntary assignment of his or her estate, real or personal, or of any part thereof to any other person in trust for his or her creditors or some of them.” 10 *Del. C.* §§ 7381-87. In connection with the Assignment and the Trust Agreement, the

Assignee has determined, in the exercise of its sound business judgment that entry into the Asset Purchase Agreement on the terms and conditions proposed by Purchaser is appropriate and is in the best interests of the Assignor's estate and creditors.

18. As set forth above, and in paragraph 9 through 12 of the Lynch Affidavit, the Assignee and its primary Secured Creditor, MVC, have spent over a year marketing the Purchased Assets. As set forth in paragraph 16 of the Lynch Affidavit, it is likely, due to the necessity of selling the Purchase Assets at the same time as a sale of BRV's assets, that the proposed transaction is not only the best transaction available, it is the only transaction available that preserves the going concern value of the Purchase Assets for the benefit of the Assignor's creditors. Finally, the proposed sale price for the Purchased Assets falls firmly within the value range provided by the independent appraiser noted in paragraph 11 of the Lynch Affidavit.

19. After reviewing the terms and conditions of each proposed offer, and after consultation with certain of the Assignor's secured lenders, Assignee determined that the Asset Purchase Agreement is the highest and best offer for the Purchased Assets. The Assignee and Purchaser negotiated the Asset Purchase Agreement without collusion, in good faith and at arm's-length,

including all terms and conditions the Assignee is seeking approval of pursuant to this Motion.

20. The Assignee has limited cash resources. No other party has come forward with an offer for which the Secured Creditors are willing to release their liens. The Assignee believes that the value of the assets and, therefore, the consummation of the Sale will be seriously jeopardized if Assignee is not authorized to enter into the Asset Purchase Agreement on the terms and conditions proposed by the Purchaser.

21. Accordingly, the Assignee requests that the Court (i) authorize the Assignee to sell the Purchased Assets on substantially similar terms as those provided in the Asset Purchase Agreement to the Purchaser; and (ii) authorize the Assignee to sell any assets remaining in the Assignor's estate free and clear of any claims, liens and other encumbrances.

### **NOTICE**

22. The Assignee plans to serve a copy of this Motion, the Proposed Order, and a notice of the Motion on all known creditors as of the Petition Date and provide creditors with **fifteen days' notice** by first class mail and electronic mail (where known) to object to the relief sought in this Motion. For reference, a copy of the notice is attached hereto as Exhibit 3. After the expiration of this objection deadline, Assignee will either submit a new proposed order

addressing any objections or, if there are no objections, Assignee will request that the Court enter the Proposed Order filed contemporaneously herewith.

WHEREFORE, the Assignee respectfully requests that this Court (i) grant this Motion and the relief requested herein; (ii) if no objections are received, enter the Proposed Order after the expiration of the 15 day notice period; and (iii) grant such other and further relief as it deems just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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May 17, 2017