

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF PUERTO RICO

IN RE:

ALCO CORPORATION

XXX-XX4986

Debtor(s)

CASE NO. 12-00139 MCF

Chapter 11

FILED & ENTERED ON 07/23/2012

**ORDER AUTHORIZING AND APPROVING (I) THE SALE OF CERTAIN OF THE
DEBTOR'S ASSETS FREE AND CLEAR OF LIENS,
CLAIMS, INTERESTS AND ENCUMBRANCES**

On June 22, 2012 the Debtor filed a motion requesting pursuant to Section 363 of the Bankruptcy Code authorizing the sale to BTB Corporation of certain assets of the Debtor related to the operation of the asphalt plant located at Hatillo, Puerto Rico, free and clear of all liens, claims, interests and encumbrances for the amount of \$400,000.00, plus the payment in kind of a purchase of liquid asphalt. ("The Sale Motion") (Docket 154). On July 2, 2012, Betteroads Asphalt Corp., Betterecycling Corporation and Petroleum Emulsion Manufacturing Corporation ("The Betteroads Group") filed an objection to the Sale Motion. (Docket 183). On July 10, 2012, the Debtor and MAPFRE filed their respective replies to the objection filed by the Betteroads Group. (Dockets 187 and 188). Thereafter, the Betteroads Group filed a reply to the Debtor and MAPRE's motions. The Betteroads Group did not have an objection that the assets be sold to BTB Corporation. They instead requested adequate protection and insisted in having the sales proceeds deposited in court due to an alleged administrative insolvency of the Debtor.

1 After having conducted a hearing and considering the arguments of all parties present, as
2 well as all of the objections raised by opposing parties and it appearing that the relief requested in
3 the Sale Motion the sale of Debtor's assets, as specified herein is in the best interests of the Debtor,
4 its estate and creditors and other parties in interest; and upon the record of this case; and after due
5 deliberation thereon; and good cause appearing therefore,
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8 **IT IS HEREBY FOUND, ORDERED, ADJUDGED, AND DECREED THAT:**

9 1. The Court has jurisdiction over the Motion and the relief requested therein as it pertains to
10 this Order pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Motion in this district is proper
11 under 28 U.S.C. §§ 1408 and 1409.
12

13 2. The statutory predicates for the relief sought in the Motion are sections 363(b) and 363(f)
14 of the Bankruptcy Code, and Federal Rule of Bankruptcy Procedure 2002, 6004, 6006 and 9014.
15

16 3. As evidenced by the record of this case, and based on the representations of counsel and
17 other testimony or evidence proffered with the Motion: (a) proper, timely, adequate and sufficient
18 notice of the Motion has been provided to all creditors and parties in interest (b) such notice was
19 good and sufficient, and appropriate under the particular circumstances; and (c) no other or further
20 notice of the Motion is or shall be required.
21

22 4. As demonstrated by: (a) the testimony or other evidence proffered or adduced with or in
23 the Motion; (b) the representations of counsel made in the Motion; and (c) any other testimony or
24 evidence proffered during the course of this case; the Debtor has marketed the Assets and conducted
25 the sale process in the best interest of the Debtor, its estate and Creditors and other parties in
interest.

5. The Debtor has demonstrated both: (a) good, sufficient, and sound business purpose and
justification; and (b) compelling circumstances for the Sale, pursuant to 11 U.S.C. § 363(b), in that,

1 among other things, the Sale at the current time will maximize the value of the Assets for the benefit
2 of the Debtor's creditors and estate. The Sale will also provide cash for operations, specifically the
3 purchase of raw materials. Based on the Monthly Operating Reports and Debtor's proffer, the Court
4 finds that the Debtor is operating a going concern and is not administratively insolvent. Therefore,
5 the carve out provided for purchase of raw materials is in the benefit of the Debtor's unsecured
6 creditors and the estate.
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9 6. The offer for purchase was submitted by BTB Corporation, without collusion, in good
10 faith, and from an arm's length bargaining position. Neither the Debtor nor BTB Corporation has
11 engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under
12 section 363(n) of the Bankruptcy Code. BTB Corporation is not an "insider" of the Debtor as that
13 term is defined in section 101 of the Bankruptcy Code. The good faith of BTB Corporation is
14 evidenced by, among other things, the following facts: (a) the Debtor and the Purchaser have
15 engaged in arms' length negotiations in good faith and the Purchase Agreement is the product of
16 such negotiations among the parties; and (b) all payments to be made in connection with the
17 Purchase Agreement have been disclosed.
18
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21 7. Upon closing, BTB Corporation shall be deemed a good faith purchaser of the Assets
22 under 11 U.S.C. § 363(m) and, as such, is entitled to all of the protections afforded thereby. The
23 consideration provided by BTB Corporation for the Assets pursuant to the Purchase Agreement:
24 (a) is fair and reasonable; (b) is the highest and/or best offer for the Assets; (c) will provide a greater
25 recovery for the Debtor's creditors than would be provided by any other practical available
alternative; and (d) constitutes reasonably equivalent value and fair consideration under the
Bankruptcy Code and under the laws of the United States and any state, territory, or possession
thereof including the Commonwealth of Puerto Rico.

1 8. The transfer of the Assets to BTB Corporation will be a legal, valid, and effective transfer
2 of the Assets and, under section 363 of the Bankruptcy Code, will vest BTB Corporation with all
3 right, title, and interest of the Debtor in and to the Assets free and clear of all Interests and Liens.
4

5 9. One or more of the standards set forth in 11 U.S.C. § 363(f) has been satisfied with respect
6 to the Assets. At Closing, the Purchase Agreement will be a valid, legal and effective conveyance of
7 the Assets to BTB Corporation.
8

9 10. Any objections to the Sale Motion are overruled and the Motion is GRANTED in its
10 entirety, as amended herein pursuant to the representations made by the parties in open court during
11 the hearing held to consider the Sale Motion.
12

13 11. The Debtor and BTB Corporation shall enter into, subject to the entry of this Order, a
14 purchase agreement, wherein the Debtor and BTB Corporation agree that the purchase price to the
15 Debtor is \$400,000.00 (the "**Purchase Price**"), to be paid upon
16 closing by certified or manager's check. The closing will be held on July 23, 2012 at 1:00 PM at the
17 office of counsel for the Debtor.
18

19 12. The sales proceeds will be distributed in the following manner:
20

21 a. Debtor will provide payment to BPPR upon closing of the amount of
22 \$150,000.00 on account of its secured claim.
23

24 b. Debtor will segregate the amount of \$200,000.00 on account of MAPFRE's
25 secured.
26

27 c. The Debtor will retain the amount of \$50,000.00 to be used entirely for the
28 purchase of raw materials.
29

30 13. The Court further finds that the Betterroads Group is not entitled to adequate protection
31 because a bonafide dispute exists regarding the validity of their secured interest over the Debtor's
32

1 property.

2 14. Pursuant to section 363(b) and 363 (f) of the Bankruptcy Code, the Debtor is authorized
3 and directed to consummate the Sale, pursuant to and in accordance with the terms and conditions of
4 this Order.
5

6 15. The Debtor is authorized and directed to execute and deliver, and empowered to perform
7 under, consummate and implement, all documents that may be reasonably necessary or desirable to
8 implement the Sale, for the purpose of assigning, transferring, granting, conveying and conferring to
9 BTB Corporation, and delivering possession of, the Assets.
10

11 16. Pursuant to 11 U.S.C. §§ 105(a) and 363(f), on the Closing Date the Assets shall be
12 transferred to BTB Corporation, and shall be free and clear of all any liens, secured claims,
13 unsecured claims, encumbrances, rights of setoff, recoupment, netting or deductions, and/or interests
14 of any kind or nature whatsoever, with all such Interests of any kind or nature whatsoever to attach
15 to the net proceeds of the Sale in the order of their priority, with the same validity, force and effect
16 which they now have as against the Assets, subject to any claims and defenses the Debtor may
17 possess with respect thereto.
18

19 17. The transfer of the Assets to BTB Corporation constitutes a legal, valid, and effective
20 transfer of the Assets, and shall vest BTB Corporation with all right, title, and interest of the Debtor
21 in and to the Assets free and clear of all Interests of any kind or nature whatsoever and whether
22 known or unknown.
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20. Nothing in this Sale Order or any agreement approved by this Sale Order releases,
nullifies, precludes, or enjoins the enforcement of any liability to a governmental unit under police
or regulatory statutes or regulations that any entity would be subject to as the owner or operator of
property after the date of entry of this Sale Order. Nothing in this Order or any agreement approved

1 by this Sale Order authorizes transfer to the proposed buyer of any licenses, permits, registrations, or
2 other governmental authorizations and approvals without the proposed buyer's compliance with all
3 applicable legal requirements under non-bankruptcy law governing such transfers.
4

5 21. The preceding paragraph shall not be viewed as an admission by the Debtor that there are
6 currently any known violations of any police or regulatory statutes or regulations at the facility.
7

8 22. As provided by Rules 6004(g) and 6006(d) of the Federal Rules of Bankruptcy
9 Procedure, this Order shall not be stayed for 10 days after the entry of the Order and shall be
10 effective immediately upon entry.
11

12 SO ORDERED.

13 In San Juan, Puerto Rico this 23th day of July 2012
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16 Mildred Caban Flores
17 U.S. Bankruptcy Judge

18 C: DEBTOR
19 CARMEN D CONDE TORRES
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