

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
)
 AMES HOLDING CORP., *et al.*,¹) Chapter 11
)
) Case No. 09-14406 (CSS)
)
 Debtors.) Jointly Administered
)
)
) Re: Docket Nos. 9, 33 & 39

**FINAL ORDER (A) ESTABLISHING ADEQUATE ASSURANCE OF
PAYMENT FOR DEBTORS' UTILITY SERVICES AND (B) RESTRAINING
UTILITIES FROM ALTERING, DISCONNECTING OR REFUSING SERVICE**

Pending before the Court is the *Debtors' Motion for Order (I) Determining Adequate Assurance of Payment for Debtors' Utility Services and (II) Restricting Utilities from Altering, Disconnecting or Refusing Service* (the "Motion") filed by the Debtors² on December 15, 2009; the Court having concluded that (a) it has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b); (b) notice of the Motion is sufficient under the circumstances; (c) the relief requested in the Motion is essential to the continued operations of the Debtors' respective businesses and is in the best interests of the Debtors' respective estates and creditors; and (d) sufficient cause supports the relief sought in the Motion; and Court having held a hearing on the Motion on December 16, 2009, and having entered an Order on December 16, 2009 (the "Interim Order"), granting the relief sought in the Motion on an interim basis.

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Ames Holding Corp (6130), Axia Incorporated (5251), TapeTech Tool Co, Inc (7106), and Ames Taping Tool Systems, Inc (6440). The Debtors' corporate offices are located at 3350 Breckinridge Boulevard, Suite 100, Duluth, Georgia 30096

² Capitalized terms used in this Order, unless otherwise defined herein, shall have the meanings ascribed to them in the Motion

NOW, THEREFORE, based upon the Motion and all of the proceedings before this Court, and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is GRANTED on a final basis upon the terms and conditions set forth in this Order; and it is further

ORDERED that the Debtors are authorized, but not directed, in their discretion, to pay on a timely basis and in accordance with their pre-petition practices, all undisputed invoices for post-petition Utility Services provided by the Utility Companies to the Debtors; and it is further

ORDERED that the Debtors shall maintain the Adequate Assurance Deposit, as provided in the Interim Order, for the purpose of providing each Utility Company adequate assurance of payment for Utility Services provided to the Debtors post-petition. The Adequate Assurance Deposit shall be maintained with a minimum balance equal to fifty percent (50%) of the Debtors' estimated average monthly cost of Utility Services, which amount may be adjusted by the Debtors to account for (i) the termination of Utility Services by the Debtors regardless of any Additional Assurance Requests, (ii) agreement with Utility Companies, and (iii) the removal from the monthly figure recited in Paragraph 16 of the Motion any amount spent on Utility Services from Utility Companies which already hold security deposits from the Debtors for Utility Services; and it is further

ORDERED that, except in accordance with the procedures set forth in this Order and absent further order of the Court, all Utility Companies are (i) prohibited from altering, refusing or discontinuing Utility Services to, or discriminating against, the Debtors on account of the commencement of these chapter 11 cases or any unpaid pre-petition charges and (ii) deemed to

have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code; and it is further

ORDERED that the Debtors are authorized, but not directed, in their discretion, to pay any and all invoices for pre-petition Utility Services; and it is further

ORDERED that any Utility Company desiring additional assurance of payment for Utility Services beyond the adequate assurance described above must serve a request (an "Additional Assurance Request") so that it is received by the following parties: (i) Ames Holding Corp., 3350 Breckinridge Boulevard, Suite 100, Duluth, Georgia 30096; (ii) Rufus T. Dorsey, IV, Esq., Parker, Hudson, Rainer & Dobbs, LLP, 1500 Marquis Two Tower, 285 Peachtree Center Avenue, N.E., Atlanta, Georgia 30303; (iii) Mark D. Collins, Esq., Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801; and (iv) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn : David Klauder, Esq.); and it is further

ORDERED that any Additional Assurance Request must (a) be made in writing; (b) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (c) describe any deposits, pre-payments or other security currently held by the Utility Company; and (d) explain why the Utility Company believes the adequate assurance described above is not adequate assurance of future performance; and it is further

ORDERED that upon the Debtors' receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall have the greater of (a) 14 days from the receipt of such Additional Assurance Request *or* (b) 45 days from the Petition Date (together, the "Resolution Period") within which to negotiate with the Utility Company to resolve its

Additional Assurance Request The Resolution Period may be extended by agreement of the Debtors and the Utility Company; and it is further

ORDERED that the Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the Utility Company, without further Order of the Court, and may in their discretion, in conjunction with any such resolution, provide the Utility Company with additional adequate assurance of future payment in a form satisfactory to the Utility Company, including cash deposits, prepayments, and/or other forms of security, if the Debtors determine that such additional assurance is reasonable; and it is further

ORDERED that if the Debtors determine that an Additional Assurance Request is not reasonable and are not able to resolve such request during the Resolution Period, the Debtors, during or immediately after the Resolution Period, may request a hearing before the Court to determine the adequacy of assurances of payment made to the Utility Company, pursuant to section 366(c)(3)(A) of the Bankruptcy Code, without prejudice to the right of any Utility Company to seek relief separately under section 366(c)(3) of the Bankruptcy Code (any hearing requested by the Debtors or a Utility Company, the "Determination Hearing"); and it is further

ORDERED that, pending the resolution of an Additional Assurance Request at a Determination Hearing, the Utility Company shall be restrained from discontinuing, altering, or refusing service to any of the Debtors on account of unpaid charges for pre-petition services or on account of any objections to the adequate assurance described above; and it is further

ORDERED that any Utility Company that does not comply with the Additional Assurance Procedures is deemed to find the adequate assurance described above satisfactory and is forbidden from discontinuing, altering, or refusing service to any of the Debtors on account of

any unpaid pre-petition charges or requiring additional assurance of payment (other than the adequate assurance described above); and it is further

ORDERED that the Debtors are authorized, in their sole discretion, to amend the list attached as Exhibit B to the Motion (the "Utility Service List") to add or delete any Utility Company, and this Order shall apply to any such Utility Company that is subsequently added to the Utility Service List; and it is further

ORDERED that nothing in this Order shall be deemed to constitute (i) a finding that an entity is or is not a Utility Company under this Order or under section 366 of the Bankruptcy Code, regardless of whether such entity is listed on the Utility Service List or (ii) a post-petition assumption of any agreement under section 365 of the Bankruptcy Code; and it is further

ORDERED that, without prejudice to the rights of any party in interest (including Utility Companies) pursuant to section 366(c)(3) of the Bankruptcy Code, the Adequate Assurance Deposit shall be deemed adequate assurance of payment for any Utility Company fails to make an Additional Assurance Request; and it is further

ORDERED that the Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED that (i) the 14-day stay under Rule 6004(h) of the Bankruptcy Rules is hereby waived with respect to this Order and (ii) the terms and conditions of this Order shall be effective immediately and enforceable upon its entry; and it is further

ORDERED that nothing in this Order or in the Motion shall be deemed to constitute the post-petition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: 11/11, 2010
Wilmington, Delaware



THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE