

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

Bemarmara Consulting a.s.

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 13-13037

*Re DKR Nos. 5 + 39*

**ORDER GRANTING RECOGNITION OF  
FOREIGN MAIN PROCEEDING PURSUANT TO SECTIONS  
105(a), 1517 AND 1520 OF THE BANKRUPTCY CODE**

Upon consideration of the Verified Chapter 15 Petition for Recognition of Foreign Proceedings and for Related Relief [Docket No. 1] (the "Verified Petition") filed by JUDr. Ing. Helena Horova, in her capacity as the authorized foreign representative (the "Foreign Representative") of the above-captioned debtor, Bemarmara Consulting a.s., f/k/a Baest a.s. (the "Debtor") in a proceeding (the "Czech Republic Proceeding") commenced pursuant to the Czech Republic's Insolvency Act and pending in the County Court in Prague, Czech Republic (the "Czech Court"), seeking entry of this final order (the "Recognition Order"); and upon consideration of the Foreign Representative's Motion For Orders Granting Provisional And Final Relief In Aid Of Foreign Proceeding (the "Motion") (D.I. 5); and upon consideration of the Declaration Of JUDr. Ing. Helena Horova In Support Of (I) Verified Chapter 15 Petition, (II) Foreign Representative's Motion For Orders Granting Provisional And Final Relief In Aid Of Foreign Proceeding, And (III) Certain Related Relief (D.I. 10), the Foreign Representative's Memorandum Of Law In Support Of (I) Verified Chapter 15 Petition And (II) Motion For Orders Granting Provisional And Final Relief In Aid Of Foreign Proceeding (D.I. 8), the Foreign Representative's Combined Answering Brief In Opposition To Objection Of Terex USA LLC And In Support Of Its Petition For Recognition Of Foreign Main Proceeding (D.I. 27) and the

letter brief of the Foreign Representative (D.I. 33); and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of the Chapter 15 Case and the Motion in this District is proper pursuant to 28 U.S.C. § 1410; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given under the circumstances; and upon the record of the hearing on the Motion including the testimony and statements of counsel; and the Court having considered the Objection Of Terex USA, LLC (“Terex”) to: (I) Request For Entry Of An Order Of Recognition, And (II) Motion For Orders Granting Provisional And Final Relief In Aid Of Foreign Proceeding (D.I. 24) and the letter brief of Terex USA, LLC (D.I. 34); and the Court having found and determined that the relief sought in the Motion is consistent with the purpose of chapter 15 of the Bankruptcy Code and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein, as set forth in the Court’s ruling made in open court on December 17, 2013; and after due deliberation and sufficient cause appearing therefor, the Court finds and concludes as follows:

- i. The Foreign Representative is a person within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative the Debtor within the meaning of section 101(24) of the Bankruptcy Code.
- ii. The Chapter 15 Case was properly commenced pursuant to sections 1504 and 1515 of the Bankruptcy Code.
- iii. The Chapter 15 Petition meets the requirements of section 1515 of the Bankruptcy Code.
- iv. The Czech Republic Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.
- v. The Czech Republic Proceeding pending in the Czech Court, which is the location of the Debtor’s center of main interest,

constitutes a foreign main proceeding pursuant to section 1502(4) of the Bankruptcy Code and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

- vi. The Foreign Representative, as a foreign representative, is entitled, without limitation, to all of the relief provided pursuant to section 1520 of the Bankruptcy Code and Section 1520 of the Bankruptcy Code is applicable to this case.
- vii. The relief granted herein is necessary and appropriate, in the interest of the public and international comity, consistent with the public policy of the United States, and will not cause any hardship to any parties-in-interest that is not outweighed by the benefits of the relief granted.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Verified Petition and Motion, to the extent it seeks final recognition of the Czech Republic Proceeding under chapter 15 of the Bankruptcy Code, are Granted to the extent set forth herein.

2. The Czech Republic Proceeding is hereby recognized as “foreign main proceeding” pursuant to section 1517 of the Bankruptcy Code.<sup>1</sup> To the extent, if at all, not previously given effect in the United States, the Order of the Czech Court entered October 5, 2012 is hereby given full force and effect in the United States.

3. All provisions of section 1520 of the Bankruptcy Code apply in this Chapter 15 Case, including, without limitation, sections 362 and 363 of the Bankruptcy Code, with respect to the Debtor and property of the Debtor that is within the territorial jurisdiction of the United States.

4. In accordance with sections 362 and 1520(a)(1) of the Bankruptcy Code, this Recognition Order operates as a stay, applicable to all entities, with respect to the Debtor and

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning ascribed to such terms in the Motion.

property of the Debtor that is within the territorial jurisdiction of the United States, as provided in the automatic stay provisions of Section 362 of the Bankruptcy Code (the “Stay”).

5. The Stay that emanates from this Recognition Order applies solely to the Debtor and no other party may argue the Stay’s applicability to them or it.

6. The Chapter 15 Petition, the Verified Petition, and this Recognition Order shall be made available by the Foreign Representative upon request to its counsel, Gellert, Scali, Busenkell & Brown, LLC, Michael Busenkell, at (302) 425-5812 or [mbusenkell@gsbblaw.com](mailto:mbusenkell@gsbblaw.com).

7. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (i) this Recognition Order shall be effective immediately and enforceable upon its entry; (ii) the Foreign Representative and the Debtor are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Recognition Order; and (iii) the Foreign Representative and the Debtor are authorized and empowered, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Recognition Order.

8. Nothing herein shall impact or impair Terex’s rights in the Czech Republic Proceeding.

9. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Recognition Order.

Dated: DECEMBER 27, 2013

  
UNITED STATES BANKRUPTCY JUDGE