

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

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In re: : **Chapter 11**
:
GT ADVANCED TECHNOLOGIES INC., *et al.*, : **Case No. 14-11916-HJB**
:
Debtors.¹ : **Jointly Administered**
:
: **Re: Docket No. 1892**
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**ORDER PURSUANT TO BANKRUPTCY CODE SECTION 363(b) AND BANKRUPTCY
RULE 6004(h) AUTHORIZING GTAT CORPORATION TO ENTER INTO AN
AGREEMENT WITH WAAREE ENERGIES LIMITED**

Upon the motion (the “Motion”) of the above-captioned debtors and debtors in possession (collectively, “GTAT” or the “Debtors”) pursuant to section 363(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), requesting entry of an order authorizing GTAT Corporation to enter into the Conditional Exclusivity Agreement,² with Waaree Energies Limited, an Indian company, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court

¹ The Debtors, along with the last four digits of each debtor’s tax identification number, as applicable, are: GT Advanced Technologies Inc. (6749), GTAT Corporation (1760), GT Advanced Equipment Holding LLC (8329), GT Equipment Holdings, Inc. (0040), Lindbergh Acquisition Corp. (5073), GT Sapphire Systems Holding LLC (4417), GT Advanced Cz LLC (9815), GT Sapphire Systems Group LLC (5126), and GT Advanced Technologies Limited (1721). The Debtors’ corporate headquarters are located at 243 Daniel Webster Highway, Merrimack, NH 03054.

² A copy of the Conditional Exclusivity Agreement is attached hereto as Exhibit 1.



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having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein, including the waiver of any stay imposed by Bankruptcy Rule 6004(h); and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. GTAT Corp. is authorized to enter into the Conditional Exclusivity Agreement, substantially in the form attached hereto as Exhibit 1, and perform the obligations contemplated therein.
3. Pursuant to Bankruptcy Rule 6004(h), this Order shall not be stayed and is effective immediately upon its entry.
4. The requirement set forth in LBR 7102(b)(2) that any motion filed shall have an accompanying memorandum of law is waived.
5. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: June ²³, 2015
Manchester, NH

/s/ Henry J. Boroff

HONORABLE HENRY J. BOROFF
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1 to Order

CONDITIONAL EXCLUSIVITY AGREEMENT
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This Conditional Exclusivity Agreement (the “Agreement”) is entered into by and between **GTAT Corporation**, a Delaware corporation having a place of business at 243 Daniel Webster Highway, Merrimack, NH 03054 USA (“GT”) and **Waaree Energies Limited**, an Indian company having its corporate headquarters at 602 Western Edge-I, Off Western Express Highway, Borivali (East), Mumbai – 400066, Maharashtra, India (“Waaree”) (GT and Waaree will individually be referred as “Party” and together as the “Parties”) to facilitate the set-up and operation a 40MW Merlin™ module manufacturing line at Waaree’s facility located in India (the “Waaree Facility”). Pursuant to the terms and conditions stated in this Agreement, and for other good and valuable consideration, the Parties do hereby agree that:

1. Effective Date. The “Effective Date of this Agreement is: , 2015.

2. Tools Purchase by Waaree. Waaree shall purchase one (1) attach tool and one (1) peel tool (collectively the “Tools”) from GT pursuant to purchase orders mutually agreed to by the Parties (collectively, the “Tools Purchase”). The Tools will be installed at the Waaree Facility.

3. GT is procuring the Tools from a third-party vendor (the “Tool Vendor”). In the event that GT is not able to procure the Tools from Tool Vendor or deliver the Tools to Waaree, GT will assign its contract for the Tools to Waaree, and Waaree shall obtain the Tools directly from Tool Vendor provided that no such assignment shall be effective unless and until, Waaree gives its written consent for the assignment. For the avoidance of doubt, the foregoing contingent assignment is only applicable to the specific units of equipment referenced in the definition “Tools” above, and Waaree is not authorized to purchase additional components of equipment from Tool Vendor that are similar to the Tools unless pursuant to GT’s express written authorization or unless pursuant to the Contingent License (defined in Section 8 below).

4. Grid Supply from GT. Subject to the consummation of the Tools Purchase, GT will supply Merlin™ grids to Waaree at prices no less favorable than offered to GT’s other customers, and GT will prioritize grid supply allocation to Waaree ahead of other customers. All such grids will be purchased by Waaree pursuant to purchase orders containing GT’s reasonable standard terms and conditions for similar grid sales. In the event that GT does not supply the amount of grids necessary for Waaree to satisfy the Minimum Run Rate (defined in Section 6 below), Waaree shall have the option invest capital directly with GT for the purpose of procuring the required grid capacity on terms to be mutually agreed by the Parties.

5. GT will provide certain support services which, in GT’s reasonable determination, are necessary in areas related to cell supply chain, production, marketing and quality assurance in order to support Waaree’s goal of achieving the Minimum Run Rate (as defined in clause 6 below).

6. Conditional Exclusivity in India. Subject to the consummation of the Tools Purchase and provided that Waaree achieves a minimum run rate of 1GW/year by December 31, 2018 and

maintains such run rate for each calendar year thereafter (the “Minimum Run Rate”) and complies with other material terms of this Agreement, GT shall grant to Waaree exclusive rights to manufacture, market and sell modules incorporating Merlin™ grid technology including any improvements thereto (“Advanced Technology Merlin™ Modules”) within India (the “Exclusivity”). The term of the Exclusivity shall be for a period of ten (10) years from the Effective Date of this Agreement (the “Exclusivity Period”); provided that in the event that Waaree does not (a) consummate the Tools Purchase; or (b) achieve or maintain the Minimum Run Rate, then the Exclusivity shall terminate upon notice from GT to Waaree unless the Parties otherwise agree in writing.

7. Right of First Refusal in India. In the event that GT desires to build Merlin™ grid manufacturing lines in India, GT shall grant to Waaree a right of first refusal to partner with GT to build and operate these plants based upon mutually acceptable terms and conditions to be negotiated in good faith.
8. Contingent License in the Event of GT Liquidation. For the purposes hereof, references to GT’s Bankruptcy means the following Chapter 11 bankruptcy case: U.S. Bankruptcy Court, District of New Hampshire, in re: GT Advanced Technologies, Inc., et al., Case No. 14-11916. In order to protect certain interests of Waaree during GT’s Bankruptcy, GT will place Merlin™ grid manufacturing technology in escrow (or another similar mechanism). Until such time as GT emerges from Bankruptcy, GT hereby grants to Waaree (or a third party designee reasonably acceptable to GT), a non-exclusive, non-transferable, royalty-bearing license under GT intellectual property and technology to (a) make Merlin™ grids to be utilized by Waaree only in the production of Advanced Technology Merlin™ Modules to be sold in India; and (b) procure the tools necessary to manufacture Advanced Technology Merlin™ Modules from GT’s vendors (the “Contingent License”); *provided that* such Contingent License grant may not be exercised by Waaree unless GT is unable to fulfill orders for Merlin™ grids for Waaree due to GT commencing procedures to liquidate its assets and no proposed acquirer of GT’s assets in such liquidation will be able to fulfill such orders. The nonexclusive license set forth herein will include a royalty to be paid by Waaree to GT in an amount equal to five percent (5%) of gross sales (as gross sales is reasonably defined in agreements of this nature) of Advanced Technology Merlin™ Modules. GT’s obligations and the rights granted to Waaree under this Section 8, including the Contingent License, will automatically terminate at the time that GT emerges from Bankruptcy. For purposes of this Section 8, the term “emerge from Bankruptcy” means the effective date of (a) a plan of reorganization, (b) a plan of liquidation that involves the sale of substantially all of GT’s assets, or (c) a sale of substantially all of GT’s assets pursuant to section 363 of title 11 of the United States Code.
9. Confidential Information.
 - A. In the course of providing Services to GT, Waaree understands that it may become necessary to disclose and/or exchange with Waaree certain confidential information relating to GT’s business and/or technology (“Information”). For GT, this

Information may include, but is not limited to, business and marketing strategies; products and product applications; technology; inventions; materials of construction; equipment including designs and drawings thereof; material specifications and requirements; operating conditions and environment; inspection and test plans; procedures for testing and confirming quality and workmanship; trade secrets, know-how and show-how, analytical methods and procedures; raw materials and substrates; performance targets; customers and customer information; suppliers/fabricators; development plans; data and test results; commercial operations; financial information relating to the foregoing; and any other material supplied by GT, or any authorized individual of GT, to Waaree. Information will also include any and all information, data, reports, and the like generated, whether in tangible or electronic form, by Waaree on GT's behalf under this Agreement. For the avoidance of doubt, Information shall not include information, data, reports and the like generated by Waaree that is not on GT's behalf.

- B. GT considers such Information to be proprietary and confidential and, accordingly, requires that this Information be received and handled by Waaree on the basis described in this Agreement. Waaree agrees to retain the Information in strict confidence and will not disclose, disseminate or otherwise transfer any Information, during the term of of this Agreement and for a period of for two (2) years after the expiration or termination of the Agreement, to anyone other than GT's employees or other authorized individuals with whom Waaree may be associated in Waaree work or whom GT may designate, without first obtaining written consent from GT to make such disclosure.
- C. Limited Use. Waaree agrees not to use any of the Information for any purpose other than as contemplated under this Agreement as hereinabove stated.
- D. Exceptions to Confidentiality and Limited-Use. Waaree will not have any obligations of confidence or limited-use to GT with respect to:
 - i. Information which was known to Waaree prior to any disclosure to Waaree by GT and which prior knowledge can be established by competent written or other tangible proof.
 - ii. Information which is now available to the public, or which in the future becomes available to the public through no fault of Waaree's (in which event Waaree's obligation of strict confidence with respect thereto will terminate on the date that such Information becomes available to the public).
 - iii. Information which is disclosed to Waaree at any time by a third party having the right to make such disclosure to Waaree, and without any obligation of confidence on Waaree's part to the third party with respect to said disclosure.
 - iv. Information which is released from its confidential status by the prior written consent of GT.

For the purposes of this Agreement, Information will not be deemed to be fully disclosed to the public merely because a partial disclosure of such Information may be generally embodied in information available to the public, or individual elements thereof may be separately found to be available to the public.

10. General Indemnity. Waaree shall defend, indemnify and hold GT and its successors, assigns and licensees harmless from any and all claims, actions and proceedings, and the resulting losses, damages, costs and expenses (including reasonable attorneys' fees) arising from any claim, action or proceeding based upon or in any way related to Waaree's breach of this Agreement, or in the event that Waaree does not satisfy its obligations pursuant the terms of the purchase orders applicable to the Tools Purchase; provided that such indemnification amount shall not exceed the purchase price contemplated in the purchase orders applicable to the Tools Purchase. For the avoidance of doubt, the foregoing general indemnity and limitations applicable thereto do not apply to any purchase orders or other contracts for the supply of grids or other products by GT to Waaree.
11. Term; Termination; Effect of Termination.
 - (a) Term. The term of the Agreement (the "Term") shall commence upon the Effective Date and shall continue thereafter (unless terminated earlier hereunder) until the expiration of the Exclusivity Period.
 - (b) Termination. This Agreement may be terminated upon written notice by a Party to the other Party upon the failure of the other party to perform any material term, condition or covenant of the Agreement, which failure has not been cured within thirty (30) days of the date of written notice of such failure given by the other party.
 - (c) Effect of Expiration or Termination. Upon the expiration or termination of the Agreement pursuant to the terms hereof, the Exclusivity granted hereunder shall also expire or terminate (as applicable), and GT shall have no further obligations hereunder; provided that the terms, conditions and obligations set forth in Section 9 (Confidentiality) and Section 10 (General Indemnity) shall survive the expiration or termination of this Agreement.
12. GENERAL DISCLAIMER. EXCEPT WITH REGARD TO THE REPRESENTATIONS AND WARRANTIES SET FORTH IN ANY PURCHASE ORDERS REFERENCED IN THIS AGREEMENT, GT MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ALL REPRESENTATIONS OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

13. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE), UNDER ANY WARRANTY OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE, OR ANY LOSS OF PROFITS OR REVENUES, OR ANY COST OF THE OTHER PARTY'S LABOR, RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH THE EQUIPMENT OR A PARTY'S PERFORMANCE UNDER, OR BREACH OF, THIS AGREEMENT. THE REMEDIES EXPRESSLY PROVIDED HEREIN ARE THE PARTIES' SOLE AND EXCLUSIVE REMEDIES, WHETHER CLAIMS ARE BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITIES SET FORTH HEREIN WERE BARGAINED FOR AND ARE ESSENTIAL TERMS OF THIS AGREEMENT AND THAT, BUT FOR SUCH EXCLUSIONS AND LIMITATIONS, THE PURCHASE PRICE WOULD BE HIGHER. IN NO EVENT SHALL EITHER PARTY'S LIABILITY IN CONNECTION WITH THIS AGREEMENT EXCEED THE PURCHASE PRICE CONTEMPLATED IN THE PURCHASE ORDERS APPLICABLE TO THE TOOLS PURCHASE.
14. Expenses. Whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with the Agreement and the transactions contemplated hereby shall be borne and paid by the Party incurring such costs and expenses.
15. Waiver. Any failure on the part of either Party hereto to comply with any of its obligations, agreements or conditions hereunder may only be waived in writing by the Party to whom such compliance is owed. Any such waiver by any Party will not be considered as a waiver of any subsequent failure to comply with any such obligation, agreement or condition or any other hereunder.
16. Assignment. The assignment of rights or obligations from or in connection with this Agreement by any Party to any third party requires the written consent of the other Party; provided, however, that this Agreement is freely assignable by GT during the Bankruptcy, including, without limitation, in connection with a plan of reorganization, a plan of liquidation for the sale of substantially all of GT's assets, or a sale of substantially all of GT's assets pursuant to section 363 of title 11 of the United States Code.
17. Entire Agreement. This Agreement and any purchase orders contemplated hereunder constitute the entire understanding and agreement between the Parties with respect to the transactions contemplated herein and supersedes all prior agreements or negotiations between Waaree and GT regarding the same. Any modification of or amendment to this Agreement will be mutually agreed to in writing by both Parties.
18. Authorization. The Parties represent and warrant to each other that they are duly authorized and have the authority to enter into this Agreement.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Hong Kong, without giving effect to any law or rule that would cause the laws of any jurisdiction other than Hong Kong to be applied. The United Nations Convention for the International Sale of Goods is expressly disclaimed and shall not apply hereto.
20. Arbitration. The Parties hereby waive any right to institute a court or other dispute resolution proceeding and acknowledge that arbitration in accordance with this section is the sole and exclusive means of resolving any dispute, controversy, claim or difference relating to or arising out of, or in connection with, this Agreement or any breach hereof ("Dispute"), except that the Parties may initiate other formal proceedings to the extent necessary in order to avoid the expiration of any applicable limitations period. Despite such action, the Parties shall continue to participate in good faith in the arbitration procedures specified in this section.
- (a) Escalation; Arbitration. The Parties shall initially attempt in good faith to resolve any Dispute through face-to-face negotiations between senior executives of each party. If the Dispute is not resolved within thirty (30) days (or such other period of time mutually agreed upon by the Parties) of commencing such face-to-face negotiations, or if the party against which a claim has been asserted refuses to attend such negotiations or does not otherwise participate in such negotiations within thirty (30) days (or such other period of time mutually agreed upon by the Parties) from the date of its receipt of notice of a Dispute, then the Parties agree that any such Dispute shall be submitted to binding arbitration as provided herein.
- (b) Arbitration Procedure. All Disputes shall be referred to the Hong Kong International Arbitration Centre for arbitration in Hong Kong by an arbitration board consisting of three (3) arbitrators in accordance with its arbitration rules then in effect. Each party consents to service of process with respect to any such Dispute by any method of notice specified in this Agreement. All arbitrators shall use English as the working language and documentary evidence and testimony will be given in English. If a document tendered in evidence in arbitration has been translated from English to another language or vice versa, the English version of that document shall control.
- (c) Effect of Arbitration. The decision of a majority of the arbitrators shall be final and binding on the Parties, may be enforced by any court of competent jurisdiction and cannot be the subject of any appeal. Subject to any exceptions set forth in this Agreement, the arbitrators shall not have the authority to award punitive or special damages (including any lost profits) and awards shall be consistent with the limitations on liability set out in this Agreement. In the absence of a contrary ruling by the arbitrators, each party shall pay its own costs and fees in connection with the arbitration.
21. Compliance with Laws.

- a. The Parties and their respective directors, officers, employees, consultants, contractors, agents and owners shall comply with all applicable laws and regulations relating to the Agreement and the performance of their obligations and exercise of their rights hereunder, including all applicable export control laws and laws prohibiting corrupt practices (e.g., United States Foreign Corrupt Practices Act).
 - b. Notwithstanding anything herein to the contrary, neither Party shall use, or export, assign or otherwise transfer (whether by assignment, sale, operation of law or otherwise) to any person, entity or country, the Agreement or any rights or obligations hereunder or exercise any rights hereunder, which, if done by the other party directly, would violate any laws of India, the United States or any other applicable laws and regulations (including any export control laws or regulations) or which would otherwise result in the other Party being in violation of any such laws or regulations.
22. Independent Contractors. Each Party is an independent contractor engaged in the operation of its own respective business, and nothing in the Agreement shall be construed to create a partnership, agency, joint venture, pooling, franchise or employer-employee relationship between the Parties. Neither Party shall be responsible for the compensation, payroll-related taxes, workers' compensation, accident or health insurance or other benefits of employees of the other Party. Neither Party has the power or authority to act for, represent, or bind the other party in any manner.

IN WITNESS WHEREOF, the Parties have executed this Conditional Exclusivity Agreement, effective as of the Effective Date stated above.

GTAT CORPORATION

By: _____
Name: Hoil Kim
Title: Vice President & General Counsel

WAAREE ENERGIES LIMITED

By: _____
Name: _____
Title: _____