

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

CIMENTO TUPI S.A.,¹

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 21-10267-jlg

**ORDER ENFORCING AND GRANTING COMITY TO THE AMENDED RJ PLAN
AND CONFIRMATION ORDER AND GRANTING RELATED RELIEF**

Upon consideration of the *Motion for Order Pursuant to §§105(a), 1507(a), 1521(a) and 1525(a) Enforcing the Brazilian Reorganization Plan and Granting Related Relief* (the “**Motion**”)² filed by the petitioner, Alberto Koranyi Ribeiro (the “**Petitioner**”), in his capacity as duly authorized foreign representative of foreign debtor Cimento Tupi S.A. (the “**Debtor**”) in respect of the judicial reorganization (*recuperação judicial* or “**RJ**”) proceeding (the “**Brazilian RJ Proceeding**”) of the Debtor pending in the Third Business Court of the Judicial District of the Capital of Rio de Janeiro, Brazil (the “**Brazilian RJ Court**”), pursuant to Federal Law No. 11.101 of February 9, 2005, as amended on December 24, 2020, of the laws of the Federative Republic of Brazil (the “**Brazilian Bankruptcy Law**”), by and through his undersigned counsel, sought entry

¹ The last four digits of the Debtor’s Brazilian tax identification number are 9223.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

of an Order (this “**Order**”), after notice, (i) enforcing and granting comity in the territorial jurisdiction of the United States to the Debtor’s plan of reorganization (together with all its exhibits, annexes and schedules and in the form that, pursuant to any modifications and clarifications effective under Brazilian Bankruptcy Law, is valid under Brazilian Bankruptcy Law, the “**Amended RJ Plan**”) and the order of the Brazilian RJ Court dated June 25, 2024 ratifying creditors’ approval of the Amended RJ Plan (the “**Confirmation Order**”), and (ii) granting the permanent injunctive and related relief described below; and this Court having reviewed the Motion and the Certificate of No Objection to the Motion for Order Pursuant to §§105(a), 1507(a), 1521(a) and 1525(a) Enforcing the Brazilian Reorganization Plan and Granting Related Relief (the “**Certificate of No Objection**”) filed with the Court on October 26, 2024; and appropriate and timely notice of the filing of the Motion; and no other or further notice being necessary or required; and this Court having determined that the legal and factual bases set forth in the Motion and all other pleadings and papers in this case establish just cause to grant the relief ordered herein, and after due deliberation thereon;

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter and enter this Order pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* dated January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11, 12 Misc. 00032* (S.D.N.Y. Feb.

2, 2012) (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Petitioner has standing to make the Motion pursuant to sections 105, 1507, 1521 and 1525 of 11 U.S.C. §§ 101 *et seq.* (as amended, the “**Bankruptcy Code**”).

D. The Petitioner and the Debtor, as applicable, are entitled to the relief granted hereby.

E. The Petitioner and the Debtor, as applicable, are entitled to the Court’s cooperation under Section 1525(a) of the Bankruptcy Code in implementing the Amended RJ Plan in the form of relief granted by this Order on the terms provided herein. The terms of the Amended RJ Plan, and the process for solicitation of votes on and confirmation of the Amended RJ Plan, in each case before the Brazilian RJ Court, provided creditors and parties in interest with appropriate due process and were not manifestly contrary to U.S. public policy.

F. Each of (i) The Bank of New York Mellon (the “**BNYM**”), in its capacity as (1) indenture trustee under the indentures related to the issuance of 9.75% Senior Unsecured Notes due 2018 in the aggregate principal amount of US\$185 million (the “**Old Notes**”) and (2) indenture trustee under the indentures relating to the issuance of new notes in connection with the Amended RJ Plan (the “**New Notes**”), (ii) the Depository Trust Company, through its nominee, Cede & Co. (“**DTC**”) in its capacity as record holder of the Old Notes and record holder of the New Notes, (iii) Prime Clerk LLC, in its capacity as the election tabulation agent (each of the parties in the foregoing clauses (i) through (iii), the “**Directed Parties**”), (iv) the Petitioner, (v) the Debtor, (vi) any other party authorized by the Debtor to implement the settlement procedures in the Amended RJ Plan (each of the parties in the foregoing clauses (i) through (vi), the “**Authorized Parties**”),

and (vii) the Settling Creditor Parties, support, have consented to, or otherwise have not opposed entry of this Order.

G. Absent the relief granted hereby, the Brazilian RJ Proceeding and the Debtor's efforts to consummate the Amended RJ Plan could be impeded by the actions of certain creditors and/or equity holders, a result that would be contrary to the purposes of Chapter 15 of the Bankruptcy Code as set forth, *inter alia*, in section 1501(a) of the Bankruptcy Code. If taken, such actions could threaten, frustrate, delay, and ultimately jeopardize the Brazilian RJ Proceeding and implementation of the Amended RJ Plan, and, as a result, the Debtor, its creditors and such other parties in interest would suffer irreparable harm for which there is no adequate remedy at law.

H. The relief granted hereby (i) is essential to the success of the Brazilian RJ Proceeding and the Amended RJ Plan, (ii) is an integral element of the Brazilian RJ Proceeding and the Amended RJ Plan and/or integral to their effectuation, and (iii) confers material benefits on, and is in the best interests of, the Debtor and its creditors, including without limitation the holders of the Old Notes and other unsecured creditors.

I. The relief sought by the Motion will not cause undue hardship or inconvenience to any party in interest and, to the extent that any hardship or inconvenience may result to such parties, it is outweighed by the benefits of the requested relief to the Debtor, its estate, and its creditors.

J. The relief granted hereby is necessary to effectuate the purposes and objectives of Chapter 15 and to protect the Debtor and the interests of its creditors and other parties in interest.

K. Appropriate notice of the filing of the Motion and a hearing scheduled for October 30, 2024 at 10:00 AM (EST) (the "**Hearing**") thereon was given, which notice is deemed adequate for all purposes, and no other or further notice need be given, and after the deadline for objections or other responses to the Motion expired with no party filing an objection or other response, the Petitioner appropriately filed the Certificate of No Objection, and the Court vacated the Hearing

upon request by the Petitioner.

L. The relief granted hereby: (i) is necessary and appropriate in the interests of the public and international comity; (ii) is consistent with the public policy of the United States; (iii) is available and warranted pursuant to sections 105(a), 1507(a), 1521(a), and 1525(a) of the Bankruptcy Code; and (iv) will not cause the Debtor's creditors or other parties in interest any hardship that is not outweighed by the benefits of granting the relief herein.

M. For all of the foregoing reasons, and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted as provided herein.
2. Subject to the terms of this Order, the Confirmation Order and the Amended RJ Plan, the Confirmation Order and Amended RJ Plan are hereby recognized, granted comity, and given full force and effect within the territorial jurisdiction of the United States and for purposes of U.S. law with respect to the Debtor and each is binding on all creditors of the Debtor and on the Directed Parties.
3. Subject to the continuing effectiveness of the Amended RJ Plan and Confirmation Order, and upon the issuances of the New Notes and New Notes Indentures, and unless otherwise specified in the Confirmation Order or the Amended RJ Plan, all claims against the Debtor that were subject to the Amended RJ Plan are hereby extinguished, discharged, cancelled or novated, and all entities (as defined in section 101(15) of the Bankruptcy Code) presently holding such claims are permanently enjoined from commencing or taking any action, suit or other proceeding to recover or offset any debt extinguished, disgorged, cancelled, novated or restructured under the

Amended RJ Plan or as a result of the Brazilian Bankruptcy Law related to the restructuring of the Debtor.

4. All entities (as defined in section 101(15) of the Bankruptcy Code) subject to this Court's jurisdiction are permanently enjoined from commencing or taking any action (i) that is in contravention of, or would interfere with or impede the administration and/or consummation of the Amended RJ Plan, the Confirmation Order or the terms of this Order, or (ii) to obtain possession of, exercise control over, or assert claims or debts that have been extinguished, discharged, cancelled or novated under the Amended RJ Plan or Confirmation Order against the Debtor and its shareholders, affiliates, sureties, guarantors, officers, managers, directors, investors, employees, attorneys, agents and representatives, each in its capacity as such, and their respective property located within the territorial jurisdiction of the United States.

5. All entities (as defined in section 101(15) of the Bankruptcy Code) subject to this Court's jurisdiction are permanently enjoined from (i) executing against any of the Debtor's assets, (ii) commencing or continuing any judicial, arbitral or other action or proceeding that in any way relates to, or would interfere with, the administration of the Debtor's estate in the Brazilian RJ Proceeding, the Amended RJ Plan, the Confirmation Order, or the implementation of the Notes Exchange, including, without limitation any prosecution of any and all unpaid judgments, settlements, notes or otherwise against the Debtor in the United States, (iii) issuing any process or discovery to or against the Debtor, (iv) taking any action to create, perfect or enforce a lien or other security interest, setoff or other claim against the Debtor or any of its property, (v) transferring, relinquishing or disposing of any property of the Debtor to any entity (as defined in section 101(15) of the Bankruptcy Code) other than the Petitioner and his duly authorized representatives or agents, (vi) obtaining or attempting to obtain possession or control over any property of the Debtor and

(vii) commencing or continuing any individual action or proceeding concerning the Debtor's property, assets, rights, obligations or liabilities to the extent they have not been stayed pursuant to sections 1520(a) and 362 of the Bankruptcy Code, *provided*, that in each case, such injunction shall be effective solely within the territorial jurisdiction of the United States.

6. Subject to receipt of payment in full of any outstanding fees and expenses due them under the documents under which they have been appointed to act, the Directed Parties are authorized and directed to take any and all reasonable and lawful actions necessary to give effect to and implement the Amended RJ Plan and Confirmation Order, at the instruction of the Debtor, including exchanging the Old Notes for the New Notes, and, upon the Debtor's delivery of the New Notes and any related documentation, cancelling the Old Notes on the records of DTC and BNYM in accordance with the Amended RJ Plan, in each case subject to the terms and conditions of the Amended RJ Plan, Confirmation Order, and of the documents under which the Directed Parties have been or will be appointed to act, and the Debtor is directed to provide reasonable compensation to and reimburse reasonable expenses of the Directed Parties in connection with such actions.

7. Notwithstanding anything to the contrary herein, the cancellation of the Old Notes and discharge of the Indenture governing the Old Notes shall not occur unless the New Notes have been issued in accordance with the Amended RJ Plan and have been distributed contemporaneously with such cancellation and discharge. For the avoidance of doubt, nothing in this Order shall in any way limit, impair or affect the rights of holders, beneficial owners, nominees of beneficial owners or agents under or related to the New Notes, once such instruments have been issued, distributed or executed, as applicable, pursuant to the Amended RJ Plan.

8. BNYM, including its agents, attorneys, successors and assigns, are authorized and directed to provide DTC with the customary documentation accepted by it, as applicable, in order to cancel and remove the Old Notes from DTC's records, as contemplated by the Amended RJ Plan.

9. The Authorized Parties are hereby authorized to take any and all additional lawful actions necessary to give effect to and implement the Amended RJ Plan and Confirmation Order, subject to (as applicable) the terms and conditions of the Amended RJ Plan, Confirmation Order, and the documents under which they have or will be appointed to act.

10. The Debtor is directed to (i) compensate the Directed Parties for performing any act for which they are directed in this Order to implement the Amended RJ Plan and Confirmation Order and (ii) reimburse the Directed Parties for fees and expenses to which they are entitled to under the Amended RJ Plan, Confirmation Order, or the documents under which they have or will be appointed to act and as permitted by applicable law; and for the avoidance of doubt, neither the Amended RJ Plan, Confirmation Order, nor this Order permits the Debtor to reduce (notwithstanding Paragraph 11 of this Order) the distributions to holders of the Old Notes as set forth in the Amended RJ Plan and Confirmation Order by the fees and expenses of the Directed Parties.

11. Nothing in this Order shall affect the rights of BNYM under the indentures related to the issuance of the Old Notes, the New Notes Indenture, the Amended RJ Plan, or the Confirmation Order to collect any of its fees and expenses, as and to the extent set forth in the applicable indenture, or as set forth under the Amended RJ Plan, or the Confirmation Order, or its lien on any payment made or consideration given with respect to the Old Notes.

12. The Directed Parties are exculpated and released from any liability for any action or inaction taken in connection with, in furtherance of or in accordance with the Brazilian RJ Proceeding, this Chapter 15 Case, this Order, the Amended RJ Plan, the Confirmation Order, or the Notes Exchange, except for any liability arising from any action or inaction constituting gross negligence, fraud or willful misconduct as determined by this Court.

13. No action taken by the Petitioner in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of the Amended RJ Plan, the Confirmation Order, any order entered in respect of this Motion, this Chapter 15 Case, any further order for additional relief in this Chapter 15 Proceeding, or any adversary proceeding or contested proceeding in connection therewith, shall be deemed to constitute a waiver of the immunity afforded the Petitioner pursuant to Bankruptcy Code sections 306 and 1510.

14. The Debtor is authorized to use any property and continue operating its business, if any, within the territorial jurisdiction of the United States.

15. Notwithstanding any provision of the Bankruptcy Rules to the contrary: (i) this Order shall be effective immediately and enforceable upon entry; (ii) other than as expressed provided in this Order, the Petitioner is not subject to any stay of the implementation, enforcement or realization of the relief granted in this Order; (iii) the Petitioner is authorized and empowered and may, in his discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of the Amended RJ Plan, the Confirmation Order, and this Order, including using or disposing of any of the Debtor's assets located in the territorial jurisdiction of the United States.

16. A copy of this Order, confirmed to be true and correct, shall be served, within seven (7) business days of entry of this Order, by facsimile, electronic mail, or overnight express

delivery, upon all Notice Parties listed in Exhibit B of the Motion. Such service shall be good and sufficient service and adequate notice for all purposes.

17. In no event shall this Order prevent the implementation of any amendments or modifications to the Amended RJ Plan that may be agreed upon by and among the Debtor and the applicable creditors and approved by the Brazilian Bankruptcy Court (or as otherwise permitted under applicable law).

18. Nothing in this Order shall limit, restrict, enjoin, modify or otherwise impair (other than by making the terms of the Amended RJ Plan enforceable in the United States and for purposes of U.S. law) any rights or obligations under any of the Amended RJ Plan Documents.

19. This Court shall retain jurisdiction with respect to the effect, enforcement, amendment or modification of this Order.

Dated: November 6, 2024
New York, New York

/s/ James L. Garrity, Jr.
Honorable James L. Garrity, Jr.
United States Bankruptcy Judge