

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

In re:	)	
	)	Chapter 11
Nogin, Inc., <i>et al.</i> ,	)	Case No. 23-11945 (CTG)
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	

**NOTICE OF POTENTIAL SALE, BIDDING PROCEDURES, AUCTION,  
SALE HEARING AND OTHER DEADLINES RELATED THERETO**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On December 5, 2023, Nogin, Inc. and its debtor affiliates (collectively, the “**Debtors**”) commenced the above-captioned cases (the “**Chapter 11 Cases**”) by filing voluntary petitions under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). In connection with the Chapter 11 Cases, the Debtors have filed the *Joint Chapter 11 Plan of Reorganization of Nogin, Inc. and Its Debtor Affiliates* (the “**Plan**”), which provides, among other things, for a series of restructuring transactions pursuant to which B. Riley Principal Investments, LLC, in its capacity as plan sponsor (the “**Plan Sponsor**” and “**Stalking Horse Bidder**”), will equitize its secured debt (which was provided in the form of debtor-in-possession financing to fund the Chapter 11 Cases) into 100% ownership of the “Reorganized Debtors” and provide for \$15.5 million in cash consideration to be distributed to the holders of 7% Convertible Senior Notes due 2026 (the “**Convertible Noteholders**”). The Debtors will provide separate notice of the Plan, the related disclosure statement, and applicable dates and deadlines relating to the confirmation timeline in the Chapter 11 Cases.

The Debtors and the Plan Sponsor, however, have agreed that the Plan shall be subject to higher and better offers through a Court-approved auction process. Accordingly, on December 18, 2023, the Debtors filed a motion [Docket No. 82] (the “**Motion**”) seeking entry of (a) an order (the “**Bidding Procedures Order**”) (i) approving bidding procedures (the “**Bidding Procedures**”)² to be used in connection with the solicitation of alternative transactions to the Plan,

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification number are: Nogin, Inc. (0703); Nogin Commerce, Inc. (0719); Native Brands Group LLC (0504). The mailing address for the Debtors is 105 E. 34th St, Suite 137, New York, NY 10016.

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Sale Notice and the terms and conditions of

which may be structured as a sale (an “**Asset Sale Transaction**”) of substantially all of the Debtors’ assets (the “**Assets**”) or an acquisition of the equity interests in the “Reorganized Debtors” (the “**Reorganized Equity Interests**”); (ii) scheduling (A) in the event that the Debtors receive any Qualified Bids, an auction (the “**Auction**”) on **February 20, 2024, at 10:00 a.m. (ET)** and (B) a final hearing to consider approval of any Asset Sale Transaction determined to be the successful bid at the Auction (the “**Sale Hearing**”) on **February 29, 2024, at 10:00 a.m. (ET)**; (iii) approving the form and manner of notice of the Bidding Procedures, the Auction and the Sale Hearing; (iv) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “**Contracts**”); (v) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract and certain other information regarding the potential assumption and assignment of Contracts; and (vi) granting related relief; and (b) if necessary based on the structure of the Successful Bid, an order (a “**Sale Order**”) (i) authorizing the Asset Sale Transaction for a sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined in Section VI.C.1 of the Bidding Procedures), with liens to attach to the proceeds of the applicable Asset Sale Transaction; (ii) authorizing the assumption and assignment of certain Contracts in connection with approved Asset Sale Transaction; and (iii) granting related relief.

On January 11, 2024, the Court entered the Bidding Procedures Order [Docket No. 162]. A Prospective Bidder (as defined in Section III below) may submit a bid for the Debtors’ Assets or the Reorganized Equity Interests in accordance with the Bidding Procedures.

The ability to undertake and consummate a transaction shall be subject to competitive bidding, as set forth herein, and approval by the Court. The proposed transaction with the Plan Sponsor shall serve as the “Stalking Horse Bid” under the Bidding Procedures, with the Plan Sponsor serving as the “Stalking Horse Bidder”.

Any party interested in submitting a bid for any of the Debtors’ Assets should contact the Debtors’ investment banker, Livingstone Partners, LLC, 443 North Clark Street, Chicago, Illinois 60654, Attention: Joseph Greenwood (phone: (312) 670-5913; email: greenwood@livingstonepartners.com).

### **KEY DATES AND DEADLINES**

#### **A. Bid Deadline**

Any Prospective Bidder that intends to participate in the Auction must submit in writing to the Bid Notice Parties a Qualified Bid (as defined in Section V.C of the Bidding Procedures) on or before February 16, 2024, at 4:00 p.m. (ET) (the “**Bid Deadline**”).

The Qualified Bid requirements are set forth in Section V of the Bidding Procedures.

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either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

## B. Auction

If the Debtors receive more than one Qualified Bid, the Debtors will conduct an Auction. If the Stalking Horse Bid is the only Qualified Bid received, the Debtors will not conduct an Auction and will proceed to confirmation of the proposed Plan and will file a notice with the Court noting the cancellation of the Auction and Sale Hearing.

The Auction, if required, will be conducted on **February 20, 2024, at 10:00 a.m. (ET)** at the office of Richards, Layton & Finger, P.A., located at One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, or at such other date, time or location designated by the Debtors after consulting with the Consultation Party. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders, and will cause publication of such change to occur on the DRC Website.

One day after the conclusion of the Auction, the Debtors will file with the Court, serve on the Sale Notice Parties (as defined in Section IX.B of the Bidding Procedures) and cause to be published on the website maintained by Donlin, Recano & Company, Inc., the Debtors' claims and noticing agent in these Chapter 11 Cases, located at [www.donlinrecano.com/nogin](http://www.donlinrecano.com/nogin) (the "**DRC Website**"), a notice of the results of the Auction, which will, among other things, (A) identify the Successful Bidder and Backup Bidder(s); (B) either include a copy of the Successful Bid and the Backup Bid or a summary of the material terms of such bids, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing the Successful Bid and the Backup Bid free of charge from the DRC Website; and (C) set forth the date, time, and location of the Sale Hearing, if any, and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

## C. Objection Deadlines

1. Sale Objection Deadline. Objections to any potential sale of the Debtors' Assets or the Reorganized Equity Interests, including (a) any objection to a sale free and clear of all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (b) entry of any Sale Order must (i) be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; and (ii) be filed with the Court by no later than **February 1, 2024, at 4:00 p.m. (ET)** and served on the Objection Notice Parties (as defined in Section IX.D of the Bidding Procedures).
2. Supplemental Sale Objection Deadline. Following service of the Notice of Auction Results, parties may object to the particular terms of the Successful Bid. Any Supplemental Sale Objection must (a) be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; and (b) be filed with the Court by no later than **February 23, 2024, at 4:00 p.m. (ET)** (the "**Supplemental Sale Objection Deadline**") and served on the Objection Notice Parties.

**D. Sale Hearing**

If necessary, the Sale Hearing shall take place on **February 29, 2024, at 10:00 a.m. (ET)** before The Honorable Craig T. Goldblatt, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

**RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES**

The Debtors reserve the right to, in their reasonable business judgment and after consultation with the Consultation Party, in a manner consistent with their fiduciary duties and applicable law, modify these Bidding Procedures, including to, among other things, extend or waive deadlines or other terms and conditions set forth herein; adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are disclosed to all Prospective Bidders and Qualified Bidders, as applicable; or otherwise modify these Bidding Procedures to further promote competitive bidding for and maximizing the value received by the Debtors' estates, in each case, to the extent not materially inconsistent with these Bidding Procedures, the Bidding Procedures Order or the Plan. For the avoidance of doubt, (x) the Debtors may not modify any terms or conditions of the Bidding Procedures that require consultation with the Consultation Party without the Consultation Party's consent and (y) the Debtors may not modify the minimum bid requirement (including the Minimum Amount) without the prior written consent of the Plan Sponsor.

**ADDITIONAL INFORMATION**

Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge by visiting the DRC Website.

**FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF THE DEBTORS' ASSETS OR REORGANIZED EQUITY INTERESTS.**

**THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, INCLUDING THE FAILURE TO FILE ANY SUCH OBJECTION BY THE APPLICABLE OBJECTION DEADLINE, SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT ANY SALE HEARING OR THEREAFTER, ANY SUCH OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, THE CONSUMMATION OF ANY APPLICABLE ASSET SALE TRANSACTION OR ACQUISITION OF THE REORGANIZED EQUITY INTERESTS, INCLUDING THE SALE OF ANY ASSETS TO A SUCCESSFUL BIDDER FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO SECTION 363(f) OF THE BANKRUPTCY CODE**

**OR ASSET PURCHASE AGREEMENT OR STOCK PURCHASE AGREEMENT  
EXECUTED BY THE DEBTORS.**

Dated: January 18, 2024  
Wilmington, Delaware

/s/ Matthew P. Milana  
Daniel J. DeFranceschi (No. 2732)  
John H. Knight (No. 3848)  
Michael J. Merchant (No. 3854)  
David T. Queroli (No. 6318)  
Matthew P. Milana (No. 6681)  
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