

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

In re:

Supply Source Enterprises, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11054 (___)

(Joint Administration Requested)

Re: Docket No. 16

**DEBTORS' MOTION FOR ENTRY OF AN
ORDER SHORTENING AND LIMITING THE NOTICE
WITH RESPECT TO THE DEBTORS' BIDDING PROCEDURES MOTION**

The above-captioned debtors and debtors in possession (the "Debtors") hereby move this Court (the "Motion") for entry of an order, in substantially the form attached hereto as **Exhibit A** (the "Proposed Order"), shortening and limiting the notice with respect to the *Debtors' Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Designating the Stalking Horse Bidder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related*

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor's federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors' headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.



Relief [Docket No. 16] (the “Bidding Procedures Motion”)² solely as it pertains to the approval of the Bidding Procedures. In support hereof, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over the above-captioned chapter 11 cases (these “Chapter 11 Cases”), the Debtors, property of the Debtors’ estates, and these matters under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue of these Chapter 11 Cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), rule 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 9006-1.

BACKGROUND

5. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code. The Debtors have also filed a

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures Motion or the First Day Declaration (defined below), as applicable.

motion requesting joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their business and managing their properties, as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made, and no official committees have been appointed in these Chapter 11 Cases.

6. Additional factual background regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the filing of these Chapter 11 Cases is set forth in the *Declaration of Thomas Studebaker in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), which is incorporated herein by reference.

7. The specific factual background relevant to this Motion is set forth in the Bidding Procedures Motion and the *Declaration of Lisa K. Lansio in Support of the Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Designating the Stalking Horse Bidder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption And Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (the “Sale Declaration”). The Debtors hereby incorporate the Bidding Procedures Motion and the Sale Declaration by reference as if they were set forth herein.

8. While the Debtors have access to funds through a debtor in possession credit facility (the “DIP Financing”) provided by an affiliate of the Debtors’ Stalking Horse Bidder, (in such

capacity, the “DIP Lender”) time is of the essence in these Chapter 11 Cases because of the limited budget, the Debtors’ negative cashflow, and the sale milestones required as part of the DIP Financing. All of these factors will force an immediate liquidation of the Assets. Holding a hearing on, and receiving approval of, the Bidding Procedures Motion is the first step in the postpetition sale process and it is critical that process be expedited.

RELIEF REQUESTED

9. By this Motion, the Debtors seek entry of the Proposed Order, shortening the notice period with respect to the Bidding Procedures Motion and setting the Bidding Procedures Motion for hearing on or about June 6, 2024 (the “Proposed Hearing Date”), setting the objection deadline to the Bidding Procedures Motion as May 31, 2024 at 4:00 p.m. (ET) (the “Proposed Objection Deadline”), and the deadline for responses in support of the Bidding Procedures Motion to be filed on or before June 3, 2024 at 4:00 p.m. (ET) (the “Proposed Reply Deadline”).

BASIS FOR RELIEF REQUESTED

10. Local Rules 6004-1(c) requires that a sale procedures motion seeking approval of bidding and auction procedures be filed and served at least twenty-one days prior to the hearing on the sale procedures motion. *See* Del. Bankr. L.R. 6004-1(c). Local Rule 9006-1(c)(ii) further provides that objections, if any, to such a motion shall be no later than seven (7) days before the hearing date. *See* Del. Bankr. L.R. 9006-1(c)(i), (ii).

11. Local Rule 6004-1(c) contemplates that the Court may hear a motion to shorten related to a sale procedures hearing on the first hearing in the case and grant such motion upon the presentation of evidence of compelling circumstances. *Id.* at 6004-1(c). Additionally, Bankruptcy Rule 9006(c) states that “when an act is required or allowed to be done at or within a specified

time. . . the court for cause shown may in its discretion with or without motion or notice order the period reduced.” Fed. R. Bankr. P. 9006(c)(1).

12. In exercising such discretion, the court should “consider the prejudice to the parties entitled to notice and weigh this against the reasons for hearing the motion on an expedited basis.” *In re Philadelphia Newspapers, LLC*, 690 F.3d 161, 172 (3d Cir. 2012) (noting that such motions are common in light of the “accelerated timeframe of bankruptcy proceedings”). Indeed, as stated in section 102(1) of the Bankruptcy Code, “notice and a hearing” is an elastic phrase meant to take into account the “particular circumstances” of a motion. *See* 11 U.S.C. § 102(1) (stating that “‘after notice and a hearing’, or similar phrase . . . means after such notice as is appropriate in the particular circumstances”); *Rockwell Int’l Corp. v. Harnischfeger Indus., Inc. (In re Harnischfeger Indus., Inc.)*, 316 B.R. 616, 620 (D. Del. 2003) (“The policy of Section 102 is to permit the court flexibility, while ensuring that all parties have proper notice.”). Finally, Bankruptcy Code section 105(a) provides that the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

13. Here, compelling circumstances exist to shorten notice in connection with the Bidding Procedures Motion. As described in the Bidding Procedures Motion and the Sale Declaration, the Debtors believe that a prompt sale of their Assets on shortened notice as requested herein will maximize the value of their estates to the greatest extent possible under the circumstances of these Chapter 11 Cases. Sale Decl. ¶¶ 29-31. The Debtors’ Assets have been aggressively marketed prepetition for several months with the Debtors reaching out to over 70 potential parties in interest. Sale Decl. ¶¶ 11, 30-31. Known potential bidders for the Debtors’ Assets have had the opportunity to conduct extensive diligence, and parties expressing interest in have received a form asset purchase agreement. Sale Decl. ¶¶ 11-12. In fact, prior to the filing of

these Chapter 11 Cases, the Debtors entertained 5 IOIs, and were involved in intense negotiations with two parties that submitted competing LOIs—one of whom ended up as the Stalking Horse Bidder in these Chapter 11 Cases. *See generally*, Sale Decl. ¶¶ 11-22. Therefore, additional time before crystallizing the Bidding Procedures for the benefit of all parties is not necessary—that is, shortening notice with respect to approval of the Bidding Procedures Motion will not impact parties’ abilities to participate in the Sale Process and will not prejudice parties in interest who want to participate in these Chapter 11 Cases.

14. Moreover, the Debtors have a limited budget and negative cashflow that will not permit an extended stay in chapter 11 prior to the closing of a sale. Specifically, the Debtors are required to successfully close a sale of the Assets on an expedited basis consistent with the milestones set forth in the DIP Credit Agreement and Stalking Horse APA. *See* Bidding Procedures Motion, ¶¶ 25 & 26. As such, shortening notice on the hearing on the Bidding Procedures Motion will provide potential bidders with the an adequate runway and opportunity to finalize their bids, and ensure a full, fair and transparent sale process that will maximize the value of the Assets. Absent such relief, the Debtors may be unable to meet necessary milestones.

15. As the Court is aware, bidding procedures simply establish the “rules of the game” for the sale process. Having Court-approved bidding procedures in place will provide potential bidders with assurances that they are operating on a level playing field according to rules applicable to all bidders and will provide certainty as to what is required to participate in the process. Therefore, the Debtors believe that the sale process will be best served by early approval of the Bidding Procedures.

16. If the Bidding Procedures Motion is not set for hearing on the Proposed Hearing Date, the timeline for potential bidders to conduct their due diligence and submit a qualified bid

would be decreased, unless the entire sale process is delayed, which would cause the Debtors to be out of compliance with their milestones under the DIP Order, leading to a forfeiture of the DIP and risking the Debtors ability to maximize the value for their Assets to the detriment of the Debtors' stakeholders. Shortened notice is therefore necessary to permit the Debtors to maximize value of their Assets for the benefit of their estates.

17. Accordingly, due to the cash constraints, extensive prepetition marketing process, and the need to close the sale of all or substantially all of the Debtors' Assets quickly, among other reasons, it is crucial that the Bidding Procedures be approved on the proposed timeline such that the Auction (if needed), Sale, and closing can occur expeditiously, which will in turn maximize the value of the Debtors' estates.

18. Additionally, the Proposed Objection Deadline is only two business days earlier than the objection deadline required by the Local Rules. Therefore, the Debtors submit that the prejudice, if any, to parties in interest is minimal and all parties' rights to object to the substantive relief requested in the Bidding Procedures Motion are substantially preserved.

19. Finally, relief similar to that requested in this Motion has been regularly granted but this Court. *See, e.g., In re Sientra, Inc.*, No. 24-10245 (JTD) (Bankr. D. Del. Feb. 14, 2024) (shortening notice of bidding procedures hearing by seven days for a motion filed prior to the first day hearing); *In re Humanigen, Inc.*, No. 24-10003 (BLS) (Bankr. D. Del. Jan. 8, 2024) (shortening notice of bidding procedures hearing by six days for a motion filed on the petition date); *In re The Rockport Company, LLC*, No. 23-10774 (BLS) (Bankr. D. Del. Jan. 18, 2022) (shortening notice of bidding procedures hearing by seven days for a motion filed prior to the first day hearing); *In re Amerimark Interactive, LLC*, No. 23-10348 (TMH) (Bankr. D. Del. Apr. 13, 2023) (shortening notice of bidding procedures hearing by four days for a motion filed on the petition date).

20. For these reasons, the Debtors respectfully submit that allowing the Bidding Procedures Motion to be considered on shortened notice at a hearing on or before June 6, 2024, is reasonable and appropriate in these circumstances.

LOCAL RULE 9006-1(e) CERTIFICATION

21. In accordance with Local Rule 9006-1(e), counsel to the Debtors notified counsel to the United States Trustee of their intention to file this Motion. Counsel for the United States Trustee has expressed concern with the relief requested in this Motion.

NOTICE

22. Notice of this motion will be provided to the following parties or their respective counsel: (a) the Office of the United States Trustee; (b) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (c) the DIP Lender; (d) the Prepetition Secured Parties; (e) the Internal Revenue Service; (f) the United States Attorney's Office for the District of Delaware; (g) the state attorneys general for all states in which the Debtors conduct business; (h) banks and financial institutions where the Debtors maintain accounts; (i) the all parties known or reasonably believed to have asserted an Interest in the Assets; (j) the Contract Counterparties; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that, in light of the nature of the relief requested, no further notice is necessary.

NO PRIOR REQUEST

23. No prior motion for the relief requested herein has been made to this Court or any other court.

[Remainder of Page Intentionally Left Blank]

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, and grant such other and further relief to the Debtors as may be just and proper.

Dated: May 21, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ M. Blake Cleary

M. Blake Cleary (No. 3614)
R. Stephen McNeill (No. 5210)
Katelin A. Morales (No. 6683)
POTTER ANDERSON & CORROON LLP
1313 N. Market Street, 6th Floor
Wilmington, Delaware 19801
Telephone: (302) 984-6000
Facsimile: (302) 658-1192
Email: bcleary@potteranderson.com
rmcneill@potteranderson.com
kmorales@potteranderson.com

and-

Felicia Gerber Perlman
Bradley Thomas Giordano
Carole M. Wurzelbacher
McDERMOTT WILL & EMERY LLP
444 West Lake Street
Chicago, IL 60606-0029
Telephone: (312) 372-2000
Facsimile: (312) 984-7700
Email: fperlman@mwe.com
bgiordano@mwe.com
cwurzelbacher@mwe.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Proposed Order

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

In re:

Supply Source Enterprises, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11054 (___)

(Joint Administration Requested)

Re: Docket No. 16

**ORDER SHORTENING AND LIMITING THE NOTICE WITH
RESPECT TO THE DEBTORS' BIDDING PROCEDURES MOTION**

Upon consideration of the motion (the "Motion")² of the above-captioned Debtors for entry of an order (this "Order"), pursuant to section 105(a) of the Bankruptcy Code, Bankruptcy Rules 2002 and 9006, and Local Rules 6004-1(c) and 9006-1(c) and (e), (i) shortening the notice period with respect to the approval of the Bidding Procedures in the Bidding Procedures Motion, and (ii) setting the hearing date and objection deadline for the Bidding Procedures Motion; and upon consideration of the Motion and all pleadings related thereto, including the First Day Declaration and the Sale Declaration; and having determined that no other or further notice of the Motion is required under the circumstances; and having determined that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and having determined that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and having determined that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and having determined that the relief requested in the Motion and provided for herein

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor's federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors' headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.

² All capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Motion.

is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein;
2. The Bidding Procedures Motion shall be heard on **June 6, 2024, at __:__ .m. (prevailing Eastern Time).**
3. Any responses or objections to the Bidding Procedures Motion may be filed **on or before May 31, 2024 at 4:00 p.m. (prevailing Eastern Time).**
4. Any reply to the responses or objections to the Bidding Procedures Motion may be filed **on or before June 3, 2024 at 4:00 p.m. (prevailing Eastern Time).**
5. The Court shall retain jurisdiction with respect to all matters arising from or related to this Order.