

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 (BLS)

(Jointly Administered)

Re: Docket No. 16

UST Obj. Deadline: June 13, 2024 at 5:00 p.m. (ET)

Hearing Date: June 18, 2024 at 11:30 a.m. (ET)

UNITED STATES TRUSTEE'S LIMITED OBJECTION
AND RESERVATION OF RIGHTS IN RESPONSE 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 RELIEF

Andrew R. Vara, the United States Trustee for Region Three (the "U.S. Trustee"), through his undersigned counsel, hereby submits this limited objection (this "Limited Objection") and reservation of rights in response 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*

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.



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 [D.I. 16] (the "Motion"),² and in support of this Limited Objection respectfully states:

PRELIMINARY STATEMENT

1. The Debtors propose to pay their DIP Lender and stalking horse bidder an expense reimbursement of up to \$750,000 in the event that the DIP Lender is outbid. However, Third Circuit case law provides that court should only approve bid protections like the expense reimbursement when the protections were necessary to induce a party to bid. Here, the stalking horse purchased the Debtors' secured debt prior to the commencement of these cases and seeks to credit bid both its DIP Facility and a portion of the prepetition secured debt to purchase substantially all of the Debtors' assets. Therefore, the stalking horse required no inducement to bid, and no bid protections are warranted.

2. Accordingly, the Court should deny the Motion to the extent that it proposes an impermissible expense reimbursement for the Debtors' DIP Lender and stalking horse bidder.

JURISDICTION, VENUE AND STANDING

3. This Court has jurisdiction to hear and determine this Limited Objection pursuant to: (i) 28 U.S.C. § 1334; (ii) applicable order(s) of the United States District Court of the District of Delaware issued pursuant to 28 U.S.C. § 157(a); and (iii) 28 U.S.C. § 157(b)(2).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.

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

5. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with overseeing the administration of chapter 11 cases filed in this judicial district. The duty is part of the U.S. Trustee’s overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the Courts. *See Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a “watchdog”).

6. The U.S. Trustee has standing to be heard on this Limited Objection pursuant to 11 U.S.C. § 307. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that U.S. Trustee has “public interest standing” under 11 U.S.C. § 307, which goes beyond mere pecuniary interest).

BACKGROUND

A. The Chapter 11 Cases

7. On May 21, 2024 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (this “Court”), thereby commencing the above-captioned chapter 11 cases (the “Chapter 11 Cases”).

8. The Debtors continue to manage and operate their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

9. On June 3, 2024, the U.S. Trustee appointed an Official Committee of Unsecured Creditors in the Chapter 11 Cases pursuant to section 1102(a)(1) of the Bankruptcy Code (the “Committee”).

10. As of the date hereof, no trustee or examiner has been requested in the Chapter 11 Cases.

11. On May 22, 2024, the Debtors filed the Motion.

12. By and through the Motion, the Debtors seek the entry of an order, among other things, approving proposed bidding procedures for a sale of substantially all of the Debtors' assets (the "Bidding Procedures").³

B. Specific Provisions of the Proposed Bidding Procedures

13. The proposed stalking horse bidder for the sale transaction is TZ SSE Buyer LLC (the "Stalking Horse"). Motion, ¶ 29. The Stalking Horse is also the DIP Lender in these Chapter 11 Cases (*see* D.I. 49 (the "Interim DIP Order"), Preamble at ¶ B), and the holder of the Prepetition Secured Obligations, which obligations the Debtors assert totaled approximately \$140,000,000 (plus PIK interest) as of the Petition Date. *See, e.g.*, D.I. 3, ¶ 20.

14. The Stalking Horse "has proposed a credit bid of \$63 million" for substantially all of the Debtors' assets. Motion, p. 28. However, the Bidding Procedures provide that the Stalking Horse "shall have the absolute and unconditional right to credit bid . . . all or a portion of the aggregate amount of . . . its secured claims under the DIP Facility, Prepetition Term Loan Facility, and Prepetition ABL Facility[.]" D.I. 16-1, § IV. The \$60,000,000 DIP Facility includes \$20,000,000 in new money loans. Thus, the Stalking Horse would be entitled to credit bid, at a minimum, up to approximately \$160,000,000 for the Debtors' assets.⁴

15. The Debtors also propose to grant the Stalking Horse an expense reimbursement of up to \$750,000 (the "Expense Reimbursement") for "out-of-pocket costs and expenses incurred

³ The Motion also separately seeks approval of the sale transaction itself at a sale hearing that the Debtors have proposed be held on July 1, 2024. For the avoidance of doubt, this Limited Objection only addresses the relief sought with respect to the Bidding Procedures. The U.S. Trustee reserves all rights to raise any and all objections to the sale transaction at the appropriate time.

⁴ The Motion does not make clear how the DIP Facility's proposed \$40,000,000 roll up of prepetition "ABL Obligations" will be treated for purposes of determining the full amount of the Stalking Horse's credit bid rights.

by Stalking Horse Bidder prior to termination of the Stalking Horse APA in connection with the transactions contemplated thereby, including the reasonable and documented fees and expenses of outside legal counsel, financial advisors, and any other advisors that the Stalking Horse Bidder engages in its discretion.” Motion, ¶ 47. However, the Stalking Horse is already entitled to recover all of its fees and expenses “in connection with the Chapter 11 Cases” through the Interim DIP Order, including professional costs and fees, whether incurred pre- or postpetition. *See* D.I. 49, ¶ 14(a). The Interim DIP Order expressly includes fees and expenses related to “the credit bid of the DIP Obligations and/or the Prepetition Secured Obligations.” *Id.*

16. The Bidding Procedures further provide that the “Minimum Bid Amount” for non-Stalking-Horse bids must be greater than or equal to the Stalking Horse Bid, plus \$100,000, plus the Expense Reimbursement. Motion, p. 15, ¶ 4. In other words, assuming the Stalking Horse is entitled to the full Expense Reimbursement, the minimum overbid is approximately \$850,000.

17. Moreover, “any bid that is not the Stalking Horse Bid must provide sufficient consideration to allow the Debtors to repay, in full in cash, (x) all of the Obligations under the DIP Facility in accordance with the terms thereof and (y) the amount of the Prepetition Secured Obligations (as defined in the Interim DIP Order) that are credit bid by the Stalking Horse Bidder[.]” D.I. 16-1, § VI.A, ¶ 4.

LIMITED OBJECTION

I. The Court Should Not Approve the Expense Reimbursement.

18. The U.S. Trustee objects to the Motion to the extent that it seeks approval of the Expense Reimbursement.

19. The Court should only approve the Expense Reimbursement if it determines that the Expense Reimbursement constitutes an actual and necessary cost of preserving the Debtors’

estates. *See In re O'Brien Env't'l. Energy, Inc.*, 181 F.3d 527, 535 (3d Cir. 1999). To make that determination, the Court must find that the Expense Reimbursement “provide[s] some benefit to the debtor’s estate.” *Id.* at 536. Such a benefit may exist if the Expense Reimbursement: (i) “promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited”; or (ii) “induce[s] a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely[.]” *See id.* at 537. Neither of those circumstances applies in these Chapter 11 Cases.

20. First, the Expense Reimbursement will not promote more competitive bidding. The Stalking Horse is the Debtors’ DIP Lender, and assertedly holds Prepetition Secured Obligations against the Debtors totaling approximately \$140,000,000. The Debtors propose to allow the Stalking Horse to credit bid up to at least approximately \$160,000,000. The Bidding Procedures require that any non-Stalking-Horse bid take out, in cash, both the DIP Obligations *and* whatever portion of the Prepetition Secured Obligations the Stalking Horse actually bids.

21. Second, there is more than ample incentive for the Stalking Horse to protect its investment here, and the Expense Reimbursement was not required to induce the Stalking Horse to bid on the Debtors’ assets. The Stalking Horse purchased the Prepetition Secured Obligations prior to the commencement of these Chapter 11 Cases and the filing of the Motion. That purchase was not conditioned upon the Stalking Horse’s receipt of the Expense Reimbursement, and it follows that the Expense Reimbursement was not required to induce the Stalking Horse to credit bid the value of the debt that it had already purchased.

22. Accordingly, the Court should not approve the Expense Reimbursement because the Debtors have failed to establish that it constitutes an actual and necessary cost of preserving the estate.

II. The Bidding Procedures Must Comply with the Local Bankruptcy Rules.

23. While unclear, the Bidding Procedures appear to provide that only Qualified Bidders and the Consultation Parties (including the members of the Committee and its counsel) are permitted to attend the Auction. *See* D.I. 16-1, p. 11, § A. However, the Local Rules require that “[u]nless otherwise ordered by the Court, the Sale Procedures Order shall: . . . (C) State that the auction will be conducted openly and all creditors will be permitted to attend.” Del. Bankr. L.R. 6004-1(c)(ii)(C). For the avoidance of doubt, and in accordance with the Local Rules, the proposed order approving the Bidding Procedures should expressly provide that the Auction will be conducted openly and all creditors will be permitted to attend.

RESERVATION OF RIGHTS

24. The U.S. Trustee leaves the Debtors to their burden of proof and reserves any and all rights, remedies and obligations to, among other things, complement, supplement, augment, alter or modify this Limited Objection and reservation of rights, assert any objection, file any appropriate motion, or conduct any and all discovery as may be deemed necessary or as may be required and to assert such other grounds as may become apparent upon further factual discovery. The U.S. Trustee specifically reserves his rights to assert any and all objections to the proposed sale transaction described in the Motion, which objections are not addressed herein.

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WHEREFORE, the U.S. Trustee respectfully requests that the Court enter an order: (i) denying the Motion to the extent it seeks approval of the Expense Reimbursement; (ii) expressly providing that any Auction shall be conducted openly and all creditors will be permitted to attend; and (iii) granting such other and further relief as the Court deems just and equitable.

Dated: June 13, 2024

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
REGIONS 3 AND 9

By: /s/ Malcolm M. Bates

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CERTIFICATE OF SERVICE

I, Malcolm M. Bates, hereby certify that on June 13, 2024, I caused to be served a copy of this Limited Objection by electronic service on the registered parties via the Court's CM/ECF system and upon the following parties in the manner specified:

Via Electronic Mail

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Dated: June 13, 2024

/s/ Malcolm M. Bates

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