

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

Hearing Date: February 25, 2025
Hearing Time: 10:00 a.m.
Hearing Location: Syracuse, New York

In re:

CRUCIBLE INDUSTRIES, LLC.,

Chapter 11

Debtor.

**THE UNITED STATES TRUSTEE’S OBJECTION
TO DEBTOR’S MOTION FOR AUTHORIZATION OF THE SALE
OF SUBSTANTIALLY ALL OF THE ASSETS OF DEBTOR**

TO THE HONORABLE WENDY A. KINSELLA, CHIEF UNITED STATES BANKRUPTCY
JUDGE:

William K. Harrington, United States Trustee for Region 2 (the “United States Trustee”), in furtherance of his duties and responsibilities, set forth in 28 U.S.C. §§ 586(a)(3),(5), submits this objection to the motion by Crucible Industries, LLC., (“Debtor”) seeking authorization for the sale of substantially all of the assets of Debtor free and clear of liens, claims, encumbrances, and interests, and for other related relief (the “Motion”). In support of this objection, the United States Trustee respectfully submits as follows:

1. On December 10, 2024, (“Petition Date”), Crucible Industries, LLC filed a voluntary chapter 11 petition for relief under Title 11 of the United States Code (the “Bankruptcy Code”).
2. The Debtor continues to operate as a debtor in possession under Sections 1107(a) and 1108 of the Bankruptcy Code.
3. A committee of unsecured creditors was appointed on January 3, 2025.

4. The Motion was filed on December 12, 2024 and sought approval of Bidding Procedures and other related relief, pursuant to a proposed Asset Purchase Agreement (“APA”), with respect to the sale of certain assets to EraSteel, Inc. (“EraSteel”).

5. An order approving the Motion, in part, was entered on December 20, 2024, setting deadline and approval requirements and procedures for competing bids and scheduling a hearing date and respective deadlines to consider the approval of the sale (“Bidding Procedures Order”). On January 21, 2025, the Court entered a Supplemental Order modifying the Bidding Procedures Order to address terms of the Break-Up Expense Fee, and setting new dates for the proposed sale of assets and related deadlines (“Supplemental Order”).

6. The Supplemental Order changed the Bid Deadline date to February 13, 2025, the Auction to February 21, 2025, and the Sale Hearing to February 25, 2025. In addition, the Supplemental Order approved a modified Notice of Auction and Sale Hearing to include a deadline for objections to Debtor’s sale of assets of February 18, 2025 at 4:00 p.m.

7. First, without knowledge of the outcome of the Auction, the parties cannot determine if the proposed sale represents the highest and best offer, or if the sale represents sound business judgement of the Debtor. Second, if EraSteel is the successful bidder, the Motion should be denied because the proposed terms of sale are violative of applicable law as set forth below.

8. Section 363(b) of the Bankruptcy Code provides that a debtor-in-possession, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate”. 11 U.S.C. § 363.

9. When a debtor seeks to sell substantially all of its assets outside of a plan of reorganization or liquidation, the Second Circuit requires that the decision to sell assets outside

the ordinary course of business be based upon the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996).

10. Under Second Circuit law, the court must find that the debtor has a “good business reason” to grant a sale under 11 U.S.C. § 363 outside the ordinary course of business.

The relevant factors in consideration of such a request to sell assets include:

[t]he proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value.

In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983).

11. The applicant bears the burden of demonstrating that the proposed sale will aid in the debtor’s reorganization and is supported by good business judgment. *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 677 (Bankr.S.D.N.Y.1989).

12. A sale of substantially all of a debtor’s assets outside of a plan must still provide creditors with the protections afforded under the Bankruptcy Code including adequate notice and information. *See In re Naron & Wagner, Chartered*, 88 B.R. 85, 87-90 (Bankr. D. Md. 1988) (citing *Lionel Corp.*). Where a Chapter 11 debtor is liquidating all or substantially all its assets without providing unsecured creditors with adequate information pursuant to 11 U.S.C. § 1125, unsecured creditors are not offered an opportunity to protect their interests through the Chapter 11 voting and confirmation process. *Id*

13. A sale that is solely for the benefit of secured creditors violates the underlying principles of the Bankruptcy Code. *See, e.g., In re Lionel*, 722 F.2d at 1071; *In re Fremont Battery Co.*, 73 B.R. 277, 279 (Bankr. N.D. Ohio 1987). Indeed, the principal goal of the reorganization provisions of the Bankruptcy Code is to benefit all creditors of the Chapter 11 debtor by preserving going concern values and thereby enhancing the amounts recovered by all creditors. *See In re Timbers of Inwood Forest Associates, Ltd.*, 808 F.2d 363, 373 (5th Cir. 1987), *aff'd*, 484 U.S. 365 (1988).

14. Here, the proposed sale to EraSteel pursuant to the terms of its APA would result in no benefit other than to the secured lender because the sale contemplates the termination of Debtor's business, leaving no viable path for reorganization.

15. Should this Court find that the sale satisfies the Second Circuit's sound business judgment standard, the sale should provide a sufficient carve-out for payment for administrative expenses and professional fees through closure of the case and for general pre-petition unsecured creditors. Absent these provisions, the estate bears a significant burden to the detriment of unsecured creditors and risks absolute administrative insolvency. Such a result violates the *Lionel* factors.

WHEREFORE the United States Trustee requests that the Court deny the Motion in its entirety, together with any other and further relief the Court may deem just and necessary.

Dated: February 18, 2025
Utica, New York

Respectfully submitted,
WILLIAM K. HARRINGTON
UNITED STATES
TRUSTEE FOR REGION 2

By: /s/ Erin P. Champion
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