A123 Wins Bankruptcy Court Approval Of Asset Sale

Randall Chase, AP Business Writer

WILMINGTON, Delaware (AP) — A bankruptcy judge on Tuesday approved the sale of most of the assets of failed battery maker A123 Systems Inc. to the U.S. arm of Chinese auto parts conglomerate Wanxiang Group Corp. for nearly $257 million.

In asking Judge Kevin Carey to approve the sale, attorneys for A123 noted that the winning bid submitted by Wanxiang America Corp. last week was more than double an initial $125 million offer for the company's automotive battery unit by Milwaukee-based auto parts marker Johnson Controls Inc.

Even though A123's defense-related business assets will be sold separately for $2.25 million to Navitas Systems, of Woodridge, Illinois, Wanxiang's purchase still requires approval by the Committee for Foreign Investment in the United States, a federal interagency committee that reviews sales of U.S. companies to foreign owners.

An attorney for A123 told Carey that the initial 30-day review period for CFIUS expires Wednesday, and that the panel plans to continue its investigation during a 45-day extension, meaning a decision may not come until mid-January.

Because of its role as the lead bidder, Johnson Controls is entitled to a breakup fee and expense reimbursement totaling $5.5 million. But Carey ruled that the breakup fee will be put in escrow pending an investigation by A123's official creditors committee, which suggested that Johnson Controls, after losing out on the bidding, is now lobbying for CFIUS to deny approval of the Wanxiang deal.

Carey said he was troubled by the suggestion that after participating in the auction, JCI may be now working against the sale to Wanxiang.

"Something has been raised here today that gives me pause," Carey said, adding that putting the breakup fee in escrow was the prudent thing to do.

Josh Feltman, an attorney for JCI, told Carey he had no personal knowledge of Johnson Controls working to scuttle Wanxiang's purchase of A123. But he said was aware that some members of Congress opposed the sale to Wanxiang and would have preferred that JCI won the auction.

Feltman said that even if JCI were lobbying against the deal, it was still entitled to its breakup fee and should not be penalized for "sympathizing with a bunch of Michigan congressional delegates."

Waltham, Massachusetts-based A123, which makes lithium ion batteries for electric

cars, grid storage and commercial and military applications, sought bankruptcy protection in October, three years after being awarded a $249 million Department of Energy grant.

Attorneys for A123 and the Department of Justice said Tuesday that they had reached an agreement resolving a DOJ objection to the sale. The DOJ had argued that A123 needed the government's consent for the sale because of the 2009 grant.

Under the deal, Wanxiang will acquire A123's automotive, grid and commercial business assets, including all technology, products, customer contracts and U.S. facilities in Michigan, Massachusetts and Missouri. It will also get A123's cathode powder manufacturing operations in China and its equity interest in Shanghai Advanced Traction Battery Systems Co., A123's joint venture with Shanghai Automotive.

Wanxiang has agreed that if it does not receive CFIUS approval by the time the sale closes, it will set up a trust that will become the new owner of A123. The trust would own and operate A123 until CFIUS decides whether to approve Wanxiang's purchase. If CFIUS approves the sale, the trust will be dissolved and the assets will pass to Wanxiang. If CFIUS refuses to approve the sale, the trust will dispose of A123's assets for the benefit of Wanxiang.

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