

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**IA 740/MB-IV/2021**

**In**

**CP (IB) No.543/MB-IV/2018**

Under Section 30 of IBC, 2016

Mr. Avil Menezes

Resolution Professional of Kail Limited

.... Applicant

In the matter of:

Cool Tech Appliances Private Limited

...Financial Creditor

V/s

Kail Limited

...Corporate Debtor

**Order Dated: 12.01.2023**

*Coram:*

Mr. Manoj Kumar Dubey  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Applicant (RP) : Mr. Rohan Rajadhyaksha a/w  
Mr. Dhruvad Vaghani, Mr. Ajiz  
M K and Mr. Rishabh Sethi i/b  
Lex Aeterna Practices,  
Advocates.

For the Successful Resolution  
Applicant(s) : Mr. Nausher Kohli i/b  
Mr. Debarshi Dutta and

Mr. Aayush Kevlani,  
Advocates.

**ORDER**

*Per: Kishore Vemulapalli, Member (Judicial)*

1. This is an application being IA No. 740/MB-IV/2021 filed by Mr. Avil Menezes, the Applicant, under Section 31(1) of IBC, 2016 (the Code), for approval of the Resolution Plan submitted by Aryan Mining & Trading Corporation Private Limited, for the Corporate Debtor KAIL Limited (hereinafter called as the "Corporate Debtor") and approved by CoC with requisite majority of 99.71%.
2. The brief submissions on behalf of the Applicant is as under:

Background:

- a) Applicant was appointed by this Tribunal as the Resolution Professional pursuant to consolidation order dated 08<sup>th</sup> August 2019 passed by this Hon'ble Tribunal in M.A. No. 1306/2018 in CP No. 02/2018 & Ors.
- b) The Corporate Debtor is a company incorporated under the Companies Act, 1956 with CIN bearing no. U99999MH1995PLC131152 having its registered office at Auto Cars Compound, Adalat Road, Aurangabad - 431005 and is in the business of manufacturing / trading of domestic electronic appliances and development of IT / ITES Infrastructure.

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- c) The Corporate Debtor has also ventured in the business of IT Park development in Kolkata and obtained approval from Special Secretary of Commerce and Industries Development, West Bengal in 2005, for construction of IT Development Park. On the basis of the said approval, the Corporate Debtor decided to develop the Salt Lake factory premises as an IT Park in 2 (two) phases.
- d) The Corporate Debtor is presently undergoing Corporate Insolvency Resolution Process (“CIR Process”) pursuant to company petition (IB) no. 543/MB/2018 (“Company Petition”) filed by the Operational Creditor (as mentioned hereinabove) which was duly admitted by this Hon’ble Tribunal vide its order dated June 08, 2018 (“Insolvency Commencement Date”). The Corporate Debtor has shut down its manufacturing activities since July 2017. By the said order, Mr. Mahender Khandelwal (IP Regn. No. IBBI/IPA-001/IP-P00033/2016-17/10086) was appointed as the interim resolution professional (“IRP”) of the Corporate Debtor.
- e) The IRP constituted a Committee of Creditors (“CoC”) of the Corporate Debtor pursuant to Section 21 of the Code and filed a report on 05 July, 2018 certifying constitution of the committee of the Corporate Debtor to this Hon’ble Tribunal pursuant to Regulation 17(1) of the CIRP Regulations.
- f) The CoC in the first meeting held on 13<sup>th</sup> July 2018, by a majority vote, resolved to appoint the IRP as a Resolution Professional (“Erstwhile Resolution Professional”) of the Corporate Debtor.

- g) The Erstwhile Resolution Professional, in consultation with the CoC, in the second CoC meeting held on 21<sup>st</sup> August 2018, appointed two Registered Valuers namely Kanti Karamsey & Co and RBSA Advisors (collectively referred to as the “Registered Valuers”) as registered valuers in accordance with Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”).
- h) The Applicant submits that the Fair Market Value and Liquidation Value as per the Valuation Reports submitted by the Registered Valuers are as under:

(Rs. In Crore)

Sr. No.	Particulars	Valuer 1		Valuer 2		Average	
		FV	LV	FV	LV	FV	LV
1.	Land & Building	571.7	427.3	542.3	354.0	557.0	390.7
2.	Plant and Machinery	7.9	4.1	7.8	3.9	7.8	4.0
3.	Financial Assets	25.5	20.5	25.6	17.2	25.5	18.9
	<b>Total</b>	<b>605.1</b>	<b>451.9</b>	<b>575.7</b>	<b>375.1</b>	<b>590.4</b>	<b>413.5</b>

- i) That pursuant to their appointment, the Registered Valuers duly carried out the valuation of the assets of the Corporate Debtor in order to ascertain fair value and liquidation value of the assets of the Corporate Debtor as on the Insolvency Commencement Date of the Corporate Debtor, i.e. as of 08th June, 2018.

- j) Prior to the consolidation order, the Erstwhile Resolution Professional had convened 8 (eight) CoC meetings of the Corporate Debtor, as follows:

<b>Particulars</b>	<b>Date of CoC Meeting</b>
1 <sup>st</sup> CoC Meeting of the Corporate Debtor	13 July, 2018
2 <sup>nd</sup> CoC Meeting of the Corporate Debtor	21 August, 2018
3 <sup>rd</sup> CoC Meeting of the Corporate Debtor	01 October, 2018
4 <sup>th</sup> CoC Meeting of the Corporate Debtor	15 October, 2018
5 <sup>th</sup> CoC Meeting of the Corporate Debtor	01 November, 2018
6 <sup>th</sup> CoC Meeting of the Corporate Debtor	19 December, 2018
7 <sup>th</sup> CoC Meeting of the Corporate Debtor	15 February, 2019
8 <sup>th</sup> CoC Meeting of the Corporate Debtor	02 April, 2019

- k) Pursuant to the consolidation order dated 08th August 2019 in the Consolidation Application, the Applicant was appointed as the Resolution Professional of the Corporate Debtor. It may be noted that vide the said order dated 08<sup>th</sup> August 2019, the Corporate Debtor was kept out of the consolidation of CIRP with the 13 other group companies of Videocon group, including Videocon Industries Limited.
- l) Under the consolidation order dated 08<sup>th</sup> August 2019, this Tribunal excluded the period of 180 days with regard to the CIRP

with respect to the Corporate Debtor which was expiring on 04<sup>th</sup> February 2020. As per the Consolidation Order, this Tribunal held that:

*“88. In cases of M/s KAIL Ltd and M/s Trend electronics Ltd., these two Corporate Debtors have been kept out of consolidation, therefore, their respective independent Balance Sheet should be made the basis for preparation of Information Memorandum as on 31.03.2018. As far as the question of liabilities of the consortium of banks is concerned, those are to be ascertained independently and for that a simple calculation method i.e. proportionate to the value of assets of these two Corporate Debtors, be computed for preparation of Information memorandum. The RP being a professional and expert of preparation of Statement of Accounts, hence, hereby given a liberty to adopt any other method through which the nexus between the liabilities of the Financial Creditors be established with the assets of the debtor company so that the asset-liabilities evaluation be precisely computed. It is expected that after ascertainment of true and correct picture of assets and liabilities of these two Corporate Debtors and on advertisement of EoI, some legitimate and serious Resolution Applicants may appear with a Resolution plan.”*

- m) Pursuant to the provisions of Section 25(2)(h) of the Code, the IRP invited expression of interest (“EoI”) from prospective resolution applicant (“PRA”) for the purpose of submission of the resolution plan for the Corporate Debtor. Pursuant to the CoC approving the eligibility criteria in the 9<sup>th</sup> meeting of the CoC held

on 06th September 2019, the Applicant published 'Form G' on 14<sup>th</sup> September 2019 in Business Standard (all locations within India), Loksatta (Aurangabad) and Bartaman Patrika (Kolkata) for inviting EoIs from PRAs. pursuant to the Form G published on 14<sup>th</sup> September 2019, the Applicant was in receipt of EoI from the following PRAs:

<b>Sr. No.</b>	<b>Name of the PRAs</b>
1.	India Resurgence Fund
2.	J.C. Flowers Asset Reconstruction Pvt Ltd. (JCFARC); and Limber Infrastructure Solutions Private Limited (LISPL)
3.	JM Financial Asset Reconstruction Company Limited
4.	Hillman Bakers Private Limited
5.	Unicon Commotrade Private Limited
6.	Deepak Polymers Private Limited
7.	Riverview Vanijya Private Limited

- n) PRAs as listed in Serial Nos. 4, 5, 6 and 7 did not satisfy the eligibility criteria laid down by the CoC. In this regard, the CoC in its 10<sup>th</sup> meeting held on 05<sup>th</sup> November 2019, were of the view that the investors which have expressed their interest only for a particular property of the Corporate Debtor factory may not be considered at this stage and their names should not be included in the provisional list of PRA since they do not meet the eligibility criteria. The Applicant further submits that during the 10<sup>th</sup> CoC

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meeting, it was informed to the CoC that one of EoI from Terai Group of Companies was received after the last date of submission of EoI. The CoC was informed that Terai was eligible as per the eligibility criteria approved by the CoC. In this regard, the CoC in its 10<sup>th</sup> meeting approved the inclusion of Terai in the provisional list of PRAs. The Applicant further submits that the methodology with respect to the restatement of liabilities pursuant to consolidation order dated 8<sup>th</sup> August 2019 and the nexus between assets and liabilities presented by the Applicant was agreed by the majority of the CoC members in its 10<sup>th</sup> meeting. The Applicant states that the Request for Resolution Plan (“**RFRP**”) including Evaluation Matrix as per the Regulation 36B of CIRP Regulations was approved by the CoC in its 10<sup>th</sup> meeting.

- o) Pursuant to Section 29 of the Code read with Regulation 36(2) of the CIRP Regulations, an Information Memorandum was prepared by the Applicant in such form and manner containing such relevant information as specified under the CIRP Regulations for formulating a resolution plan. The Applicant further submits that the Information Memorandum was only been shared with the members who have provided a confidentiality undertaking as required under the Code and CIRP Regulations.
- p) In the 11<sup>th</sup> CoC meeting of the Corporate Debtor held on 11<sup>th</sup> December 2019 agreed to amend and extend the timelines in Form G for submission of EoI and submission of the Resolution Plans as some of the PRAs had shown interest to submit the EoI

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after the last date of submission of the EoI. In this regard, Amended Form G was published on 12<sup>th</sup> December 2019 in Business Standard (all locations within India), Loksatta (Aurangabad) and Bartaman Patrika (Kolkata) for inviting EoIs from PRAs.

- q) Since no Resolution Plans were received from the PRAs and also requests were made by the PRAs to extend the last date of submission of Resolution Plans, the Applicant informed the same to the members of the CoC in the 12<sup>TH</sup> CoC meeting of the Corporate Debtor held on 15<sup>TH</sup> January 2020. The Applicant in the said meeting also informed the CoC that 2 (two) EoIs were received after the last date of the submission of EOI namely from MKJ Tradex Private Limited (“MKJ”) on 03<sup>rd</sup> January 2020 and Techno Electric & Engineering Company Limited (“Techno”) on 13<sup>th</sup> January 2020. The Applicant submits that after due deliberation, the members of the CoC in the 12<sup>th</sup> meeting of the CoC of the Corporate Debtor held on 15<sup>th</sup> January 2020 agreed and approved on the following:
- i. Since the last date of CIR Process is ending on 04<sup>th</sup> February 2020, the CoC agreed to extend the CIR Process by further period of 90 days; and
  - ii. Publish Amended Form G on 16<sup>th</sup> January 2020 and extend the present timeline and allow 2 (two) days’ extension for submission of EOI i.e., upto 17<sup>th</sup> January, 2020 and a time period upto 30<sup>th</sup> January 2020 for submission of resolution plans.

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- r) Pursuant to the approval for extension of further period of 90 days was approved by the CoC, an application bearing no. 349 of 2020 was filed before this Tribunal.
- s) The Applicant submits that as per the last date of submission of resolution plans i.e. as on 30<sup>th</sup> January 2020, the Applicant was in receipt of a resolution plan from Techno. In this regard, the Applicant in the 13<sup>th</sup> CoC meeting of the Corporate Debtor held on 31<sup>st</sup> January 2020 informed the CoC about the Resolution Plan received from Techno. During the said meeting, the CoC also deliberated on the Resolution Plans from other PRA and the requests from some of the PRAs to extend the last date of submission of resolution plans. The Applicant submits that after due deliberation, the CoC agreed and approved the extension for submission of Resolution Plans by further period of 30 days subject to extension being granted by the Tribunal for further period of 90 days. The CoC in the said meeting also approved the process to be kept open for any other PRA who are keen on submitting resolution plan(s) for the Corporate Debtor.
- t) This Tribunal vide order dated 04<sup>th</sup> February 2020 approved the extension by a further period of 90 days and accordingly the last date of CIRP was expiring on 04<sup>th</sup> May 2020.
- u) During the 14<sup>th</sup> CoC meeting of the Corporate Debtor held on 06<sup>th</sup> March 2020, it was informed to the CoC that based on the last meeting whereby the CoC had agreed to keep the process open for other PRA to submit resolution plan(s), the Applicant had received 2 EoIs from the PRAs namely consortium of

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Salarpuria Properties Private Limited and Sattva Developers Pvt Ltd (“Salarpuria Sattva Consortium”). The Applicant submits that after due deliberation the CoC in the said meeting approved and agreed to extend the last date of submission of Resolution Plan.

- v) The Applicant submits that on account of country being threatened with spread of COVID - 19 pandemic and in order to take necessary effective measures to prevent its spread across the country, the Central Government and State Government from time-to-time issued orders whereby the Central Government and / or State Government announced lockdown.
- w) In this regard the CIRP of the Corporate Debtor has been extended from time to time due to the lockdown imposed by the Central Government and / or State Government and considering the registered office of the Corporate Debtor is situated in Maharashtra on account of Hon’ble National Company Law Appellate Tribunal vide its order in its Suo Moto - Company Appeal (AT) (Insolvency) No. 01 of 2020.
- x) The Applicant submits that pursuant to the invitation for submitting EoIs, 13 (thirteen) PRAs submitted their EoIs and showed interests in submitting Resolution Plans. However, out of total 13 PRAs, only 9 (nine) were found to be eligible to submit Resolution Plans. Out of 9 (nine) eligible PRAs, only 1 (one) resolution plan was submitted by Techno and the other PRAs who had submitted their EoI originally did not show any further interest in submitting a Resolution Plan for the Corporate Debtor.

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The Applicant further submits that the said resolution plan by Techno was submitted on 30<sup>th</sup> January 2020.

- y) The Applicant submits that Techno who had submitted their plan on 30<sup>th</sup> January 2020 had requested for a further period of 14 days to revisit their plan which was submitted on 30<sup>th</sup> January 2020, as they were going through various challenges and needed time to revisit and reassess the resolution plan due to the current pandemic situation. The Applicant informed the CoC about Techno's request which was then deliberated and discussed by the Proforma Respondents in the 15<sup>th</sup> CoC meeting held on 17<sup>th</sup> June 2020 and after due discussions, the CoC resolved, with requisite majority, to extend the last date for submission of resolution plan upto 6<sup>th</sup> July 2020 and agreed to Techno re-submitting their revised resolution plan in accordance with the RFRP.
- z) The Applicant submits that pursuant to the above, due to no further interests shown by other PRAs, the CoC agreed to open the resolution plan submitted by Techno during the 16<sup>th</sup> CoC meeting held on 07<sup>th</sup> July 2020. The Applicant further submits that the Proforma Respondents deliberated upon the resolution plan in detail in the 17<sup>th</sup> meeting of the CoC held on 23<sup>rd</sup> July 2020 and 18<sup>th</sup> meeting of the CoC held on 18<sup>th</sup> August 2020. The Applicant further submits that as discussed and decided in the 17<sup>th</sup> meeting of the CoC, the CoC requested Techno to relook at



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opportunities to submit a revised Resolution Plan, the CoC discussed and deliberated that given the interest shown by 3 new PRAs and keeping in mind the objectives of the Code including without limitation the revival/rehabilitation of the Corporate Debtor in a time-bound manner for the maximisation of the value of assets of the Company and balancing the interests of all the Stakeholders and the fact that there is some time left in the CIRP, all efforts must be made to ensure that the Corporate debtor does not go into liquidation by inviting fresh Resolution Plans from all interested Resolution Applicants for the Corporate Debtor in a fair and transparent manner. In this regard, the CoC in its 19<sup>th</sup> meeting for the purpose of the revival/rehabilitation of the Corporate Debtor in a time-bound manner for the maximisation of the value of assets of the Corporate Debtor and balancing the interests of all the Stakeholders, decided to invite Expression of Interests / Resolution Plans from all the interested eligible prospective resolution applicants (including all the earlier prospective resolution applicants in accordance with Regulation 36B(7) of CIRP Regulations) as a final effort to ensure that the Corporate Debtor does not go into liquidation.

- cc) The Applicant submits that during the 19<sup>th</sup> meeting of the CoC held on 24<sup>th</sup> September 2020, the Applicant apprised the CoC on the fair value and the liquidation value of the Corporate Debtor as on the Insolvency Commencement Date. The CoC deliberated on the same and were of the view that the current pandemic may have adversely affected the valuation of the assets of the Corporate Debtor including one of the properties situated at Salt

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Lake Property since it is reserved for IT / ITES activities. The Applicant further submits that the CoC deliberated that since the valuation was done as on the Insolvency Commencement Date i.e. 8<sup>th</sup> June 2018, which is more than 2 years old, the CoC were of the view that it is important to conduct a fresh valuation exercise from the existing Registered Valuers in order to determine the fair value and liquidation value of the assets of the Corporate Debtor as on 24<sup>th</sup> September 2020 and the same should be considered for taking all further decisions by the CoC and for all purposes envisaged under the provisions of the Code.

- dd) In this regard, the Applicant filed an application bearing no. 1942 of 2020 before this Tribunal. The said application has been heard from time to time and is pending before this Tribunal. The Applicant craves leave to refer to and rely upon the necessary details of the said application as and when produced.
- ee) The Applicant submits that the Applicant was in receipt of a letter dated 31<sup>st</sup> August 2020 from the promoters of Videocon Group proposing restructuring/resolution of the debt of 15 Companies of the Videocon Group, including KAIL Limited. The Applicant further submits that the Applicant vide email dated 7<sup>th</sup> September 2020 had requested the promoters for the clarification/details on the proposal submitted. Subsequently, vide email dated 2<sup>nd</sup> November 2020, the Applicant had received revised proposal under section 12A of the Code for the 15 Videocon Group Companies including the Corporate Debtor and the same was forwarded to the members of the CoC vide email dated 03<sup>rd</sup> November 2020 for their perusal and discussion in the

meeting. The Applicant submits that the Applicant in the 20th CoC meeting of the Corporate Debtor held on 03<sup>rd</sup> November 2020 deliberated the same with the CoC and the CoC decided that the discussion on the matter may be deferred pending the deliberations by the creditors in the consolidation of Videocon Industries Limited given the commonality of the proposal and the decision taken by the CoC will be communicated in due course to the Applicant.

- ff) The Applicant submits that pursuant to the discussions in the 19<sup>th</sup> CoC meeting wherein the CoC had directed the Applicant to issue Form G for fresh expression of interest and resolution plans from eligible PRAs, the Applicant had published amended Form G which was published on 1st October 2020 with the last date for submission of EoI as 7th October 2020 and the last date for submission of resolution plan as 31st October 2020.
- gg) The Applicant submits that subsequently, the Applicant had received EoIs from the following PRAs:

<b>Sr. No.</b>	<b>Name of the PRA</b>
1.	Aryan Mining & Trading Corporation Private Limited (“Aryan Mining”)
2.	Moonlink Buildcon Private Limited (“Moonlink”)
3.	Goodluck Infra Developers Private Limited (“Goodluck Infra”)

- hh) The Applicant submits that Aryan and Moonlink were found to be eligible and hence were included in the list of PRAs. However, Goodluck Infra did not satisfy the eligibility with respect to the net worth as well as the turnover and hence was excluded from the list of PRAs. With respect to Techno, the Applicant submits that vide email dated 30<sup>th</sup> October 2020, Techno had informed that their last resolution plan which was submitted was to be considered and treated as the resolution plan submitted in response to the fresh Form G issued on 1<sup>st</sup> October 2020 without any further changes or revision. However, subsequently, vide email dated 31<sup>st</sup> October 2020, Techno informed the Applicant that they are willing to make an upward revision in the commercial bid and requested for additional time of at least 7 -10 days for submitting the revised resolution plan.
- ii) The Applicant submits that in the 20<sup>th</sup> CoC meeting of the Corporate Debtor held on 03<sup>rd</sup> November 2020, the Applicant informed the CoC that Moonlink had submitted resolution plan vide email dated 31<sup>st</sup> October 2020. The Applicant in the said meeting also informed the CoC that Aryan Mining and Techno have sought extension in submission of Resolution Plan. The members deliberated on the same and approved agreed to extend the last date for submission of the Resolution Plan up to 23<sup>rd</sup> November 2020.
- jj) The Applicant submits that the Applicant was accordingly in receipt of resolution plans from the following PRAs:

Name of the PRA	Date of submission of
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	<b>Resolution Plan</b>
Moonlink Buildcon Private Limited	31 October, 2020
Aryan Mining & Trading Corporation Private Limited	23 November, 2020
Techno Electric and Engineering Co. Limited	23 November, 2020

- kk) The Applicant submits that pursuant to discussion with the CoC in the 21<sup>st</sup> CoC meeting of the Corporate Debtor held on 24<sup>th</sup> November 2020, the resolution plans submitted by Moonlink, Aryan and Techno were opened in the 21<sup>st</sup> CoC meeting of the Corporate Debtor. The members in the said meeting deliberated on the matter and agreed that a group consisting of the top 6 (six) lenders by voting share can engage in the negotiations on the basis of the discussions held in the CoC meeting and any other CoC member willing to join; may join the said discussion meeting.
- ll) The Applicant submits that pursuant to discussions in the 21<sup>st</sup> CoC meeting of the Corporate Debtor held on 24<sup>th</sup> November 2020, the CoC had requested the Applicant to facilitate meetings with Techno, Aryan Mining and Moonlink for further negotiations on the Resolution Plans submitted by them. The meetings with the representatives of Techno, Aryan Mining and Moonlink was scheduled on 3<sup>rd</sup> December 2020 and 17<sup>th</sup> December 2020 to negotiate the terms of the Resolution Plans. Techno, Aryan Mining and Moonlink were requested to submit

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the code compliant Resolution Plan on or before 31<sup>st</sup> December 2020. In this regard, Resolution Plans were submitted by Techno, Aryan Mining and Moonlink which were opened and deliberated in the 22<sup>nd</sup> CoC meeting of the Corporate Debtor held on 04<sup>th</sup> January 2021. After due deliberation on the Resolution Plans submitted, it was agreed that the Applicant shall submit compliance of the Resolution Plans, feasibility and viability report of the Resolution Plans and process on conducting inter-se bidding.

- mm) The Applicant submits that pursuant to discussions in the 22<sup>nd</sup> CoC meeting of the Corporate Debtor held on 04<sup>th</sup> January 2021, negotiations were held with Techno, Aryan Mining and Moonlink on 12<sup>th</sup> January 2021. The Applicant submits the Applicant had requested Techno, Aryan Mining and Moonlink to submit final resolution plan by 17<sup>th</sup> January 2021. The Applicant submits that the Applicant in the 23<sup>rd</sup> CoC meeting of the Corporate Debtor held on 20<sup>th</sup> January 2021 apprised the CoC that the Applicant was in receipt of the revised final plan from Techno, Aryan Mining and Moonlink. The Applicant submits that after due deliberation on the resolution plans submitted by Techno, Aryan Mining and Moonlink, the CoC was of the view that it may be fair to give one final round to all the 3 (three) PRAs to submit a revised commercial offer. In this regard, the Applicant informed Techno, Aryan Mining and Moonlink about the decision of the CoC and informed them to submit revised resolution plans by 03<sup>rd</sup> February 2021.

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- nn) The Applicant submits that, in the various CoC meetings of the Corporate Debtor including in the 23<sup>rd</sup> CoC meeting held on 20<sup>th</sup> January 2021, the CoC deliberated on status of the leasehold rights of the Corporate Debtor over the Salt Lake Property whereby as per the Deed of Rectification dated 05<sup>th</sup> July 1991, the lease of period of 999 years granted in favour of the Corporate Debtor over the Salt Lake Property shall revert to the lessor free from all encumbrances on liquidation of the status of the Corporate Debtor which is a public limited company. The Applicant submits that the CoC deliberated on this issue and enquired whether the same was considered by the Registered Valuers while arriving at the liquidation valuation and the CoC requested the Applicant to communicate the same with the Registered Valuers and bring these facts to their notice.
- oo) The Applicant submits that pursuant to said request, the Applicant vide his email dated 21<sup>st</sup> January, 2021 sought clarifications from the Registered Valuers respectively as to whether the above was taken into consideration for ascertaining the liquidation value and if not, then based on the documents, provide an addendum to the original valuation report considering the above, if deemed fit.
- pp) The Applicant submits that pursuant to discussions in the 23<sup>rd</sup> CoC meeting of the Corporate Debtor held on 20<sup>th</sup> January 2021, it was requested to Techno, Aryan Mining and Moonlink to submit their revised Resolution Plans on or before 03<sup>rd</sup> February 2021 either by way of an addendum to the Resolution Plan or a revised final Resolution Plan incorporating the comments

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suggested by the CoC and the Applicant. The Applicant submits that the Applicant was in receipt of revised final plans from Techno, Aryan Mining and Moonlink on 03<sup>rd</sup> February 2021. The Applicant submits that the revised Resolution Plans were opened in the 24<sup>th</sup> CoC meeting of the Corporate Debtor held on 04<sup>th</sup> February 2021. The Applicant submits that the CoC was informed that the Resolution Plans received from Techno, Aryan Mining and Moonlink were in compliance with the provisions of the Code and CIRP Regulations.

- qq) The Applicant submits that pursuant to the discussion in the 23<sup>rd</sup> CoC meeting of the Corporate Debtor and based on the clarifications sought from the Registered Valuers, the Applicant informed the CoC during the 24<sup>th</sup> CoC Meeting held that the Registered Valuers have reverted on the clarifications sought vide email dated 21<sup>st</sup> January 2021. Accordingly, the Registered Valuers vide email dated 30<sup>th</sup> January 2021 and 02<sup>nd</sup> February 2021 informed the Applicant that the same was not considered by them. In this regard, the Registered Valuers provided revised values for the Salt Lake assets of the Corporate Debtor. However, due to the legal complications and lack of clarity on the survival of the leasehold rights in a liquidation process, the Registered Valuers provided the liquidation value under two (2) scenarios:

Scenario 1 – Scenario 1 assumes that the leasehold rights survive under a liquidation process and same can be transferred to another entity in the event of the liquidation of the Corporate Debtor.

Scenario 2 - Scenario 2 is assumes that the Salt Lake land parcel shall revert back to the lessor upon liquidation of the Corporate Debtor.

In light of the above scenarios, the Applicant during the 24th meeting of the CoC presented the following revised values received from the Registered Valuers:

(Rs. In Crore)

Sr. No	Particulars	Valuer 1			Valuer 2			Average		
		FV	LV - I	LV - II	FV	LV - I	LV - II	FV	LV - I	LV - II
1	Land & Building	531.7	395.3	38.3	520.9	339.0	19.5	526.3	367.2	28.9
2	Plant & Machinery	7.9	4.1	4.1	7.8	3.9	3.9	7.8	4.0	4.0
3	Financial Assets	25.5	20.5	20.5	25.6	17.2	17.2	25.5	18.8	18.8
	<b>Total</b>	<b>565.0</b>	<b>419.9</b>	<b>62.9</b>	<b>554.3</b>	<b>360.1</b>	<b>40.6</b>	<b>559.7</b>	<b>390.0</b>	<b>51.8</b>

- rr) The Applicant states that the Applicant during the 24<sup>th</sup> meeting of the CoC also informed to the CoC that the Resolution Plan values for the Corporate Debtor had been arrived at after following an elaborate process for value discovery and value maximisation, wherein the CoC had also annulled an earlier process and invited Resolution Plans from interested prospective Resolution Applicants, pursuant to which the current 3 (three) PRAs had been received. Thereafter, multiple discussions had been conducted with each of the 3 (three) PRAs and opportunities were provided to them to increase their Resolution

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Plan values. After such elaborate discussions and opportunities, the Resolution Plans had been submitted by Aryan, Moonlink and Techno.

- ss) In light of the above scenarios, the CoC during the 24<sup>th</sup> meeting of the CoC deliberated on the same and accordingly the Applicant sought views from each member of the CoC for the purpose of considering the liquidation value on the basis of the abovementioned scenarios. The Applicant submits that each of the members (except representative from Bank of Maharashtra and IFCI Limited), after discussions and deliberations, stated that the liquidation value under Scenario 2 (and the average liquidation value arrived at under Scenario 2) will be considered for all the purposes in connection with the CIRP of the Corporate Debtor. Thereafter, the CoC deliberated on the Resolution Plans, feasibility and viability and the manner of distribution to the Financial Creditors under the resolution plan.
- tt) The Applicant submits that in the 25<sup>th</sup> CoC meeting of the Corporate Debtor held on 09<sup>th</sup> February 2021, the resolution plans submitted by Techno, Aryan Mining and Moonlink were further deliberated with the CoC. The Applicant submits that during the said CoC meeting, the CoC deliberated on
- (i) provisions of Regulation 39(3B) of CIRP Regulations;
  - (ii) feasibility and viability of the plans;
  - (iii) evaluation matrix;

(iv) compliances under Regulation 39B, Regulation 39C and Regulation 39D of CIRP Regulations

and accordingly, the CoC decided to put the Resolution Plans of Techno, Aryan Mining and Moonlink for voting.

uu) The Applicant submits that pursuant to the resolution plans of Techno, Aryan Mining and Moonlink put for voting in the 25<sup>th</sup> CoC meeting, the CoC has approved the resolution plan dated 23<sup>rd</sup> November 2020, as amended from time-to-time upto 03<sup>rd</sup> February 2021 (“Resolution Plan”) of Aryan Mining & Trading Corporation Private Limited (“Successful Resolution Applicant”) with requisite majority. The Applicant submits that voting results in relation to the resolution plans submitted by Techno, Aryan Mining and Moonlink are as follows:

<b>Resolution No.</b>	<b>Yes (%)</b>	<b>No (%)</b>	<b>Abstain (%)</b>	<b>Final Status</b>	<b>Resolutions</b>
1	15.94	84.06	0	Rejected	To consider and approve the Resolution Plan submitted by Techno Electric & Engineering Company Limited
2	99.71	0.29	0	Approved	To consider and approve the Resolution Plan submitted by Aryan Mining & Trading Corporation Private Limited
3	1.79	98.21	0	Rejected	To consider and approve the Resolution Plan submitted by Moonlink Buildcon Private Limited
4	92.56	7.44	0	Approved	To consider and approve the additional professional fees payable to the valuers for

					providing the addendum to the valuation report which shall constitute a part of Corporate Insolvency Resolution Process Cost
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The Applicant submits that the voting line was kept open for a period of 5 weeks from the 25th meeting of the CoC held on 09<sup>th</sup> February 2021 until 17th March 2021 based on the requests from the CoC from time to time.

- vv) The Applicant submits that in order to conduct the verification under Section 29A of the Code, the Applicant had appointed Bagchi & Gupta (“Bagchi”) for Moonlink and Aryan and Mazars for Techno. The Applicant submits that based on the reports submitted by Bagchi & Mazars, Moonlink, Aryan and Techno are complaint under Section 29A of the Code.
- ww) The Applicant submits with respect to the proposal, vide letter dated 31<sup>st</sup> August 2020, under section 12A of the Code received from Mr. Venugopal Dhoot for the 15 Group Companies of Videocon (including KAIL Limited), the Applicant submits that it was brought to the notice of the Applicant that the said proposal was rejected by the Committee of Creditors of the Consolidated Videocon Companies and a Resolution Plan was approved for the Consolidated Videocon Companies. The Applicant further submits that it was also informed to the Applicant that the Resolution Professional of the Consolidated Videocon Companies has filed an application before this Tribunal for the approval of the Resolution Plan in relation to the

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Consolidated Videocon Companies in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, as amended. The Applicant submits in view of the said developments and in light of the fact that no separate proposal was submitted in relation to the Corporate Debtor, despite several follow ups since 02<sup>Nd</sup> November 2020 regarding their proposal, the said consolidated improvised proposal submitted on 02<sup>nd</sup> November 2020 becomes infructuous w.r.t the Corporate Debtor as the same cannot be implemented and hence that the said proposal was not put up for voting before the members of the CoC of the Corporate Debtor.

- xx) The Applicant submits that the CIRP of the Corporate Debtor has been extended from time to time due to the lockdown imposed by the Central Government and / or State Government and considering the registered office of the Corporate Debtor is situated in Maharashtra, for the purpose of computing the period of CIRP, the Applicant has considered the lockdown extension till 28<sup>th</sup> February 2021 and in this regard the CIRP of the Corporate Debtor was expiring on 12<sup>th</sup> April 2021.
- yy) The Applicant states that as per the CIRP Regulations as amended, while approving a Resolution Plan under section 30 (4) of the Code, the CoC shall consider the below the regulations and the same shall be submitted along with Resolution Plan to this Tribunal:

**i. Regulation 39B of CIRP Regulations:**

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*The Applicant submits that Regulation 39B of CIRP Regulations requires the CoC to make best estimate of the amount required to meet liquidation costs, in consultation with the Resolution Professional. Where the estimated value of the liquid asset is less than the estimated liquidation costs, the CoC shall approve a plan providing for contribution for meeting the difference between the two. The Applicant submits that as the estimated liquidation cost is less than the estimated liquid assets, contribution by Financial Creditors shall not be required.*

**ii. Regulations 39C of CIRP Regulations:**

*The Applicant submits that as Regulation 39C of CIRP Regulations requires that if the plan is not approved and an order for liquidation is passed under section 33 of the Code; the CoC may recommend that the liquidator first explore sale of the Corporate Debtor as a going concern or sale of the business of the Corporate Debtor as a going concern. Where CoC recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern.*

**iii. Regulation 39D of CIRP Regulations:**

*The Applicant submits that this Regulation 39D of CIRP Regulations requires the CoC, in consultation with the Resolution Professional, to fix the fee payable to the liquidator, if an order for liquidation is passed under section 33 for:*

- (a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013
- (b) the period, if any, used for sale as going concern (sale of business as a whole or business units separately); and
- (c) the balance period of liquidation
- zz) The Applicant states that the CoC during its 25<sup>th</sup> meeting enquired that it is mandatory requirement for the CoC to vote on the aforesaid two regulations at during the 25<sup>th</sup> meeting of the CoC and whether the CoC can pursue these agendas in the event CoC rejects the plans. The Applicant states that it was deliberated that Regulations 39C and 39D of CIRP Regulations appear to be recommendatory in nature and Regulation 39(3B) of CIRP Regulations allows for convening of another CoC meeting and re-voting on plan(s) in the event if none of the two plans receive requisite votes. Thus, these agendas may be pursued in the ensuing CoC meeting, if none of the Resolution Plans receive requisite majority. Accordingly, the CoC in the said meeting agreed to defer the two agendas.
3. The Applicant submits that as on the date of this Application, following is the summary of claims of the creditors of the Corporate Debtor:

Nature of Creditor	Claims Received (INR)	Claims Admitted (INR)
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	in Crores)	in Crores)
Financial Creditor	28,500	25,088
<b><u>Operational Creditor</u></b>		
Vendors	9.7	3.9
Statutory Departments	103.6	101.3
<b>Subtotal – OC</b>	<b><u>113.3</u></b>	<b><u>105.2</u></b>
<b><u>Employee Claims</u></b>		
Workers	8.2	7.5
Employees	5.1	4.5
<b>Subtotal – Employee Claims</b>	<b><u>13.3</u></b>	<b><u>12.0</u></b>
Other Creditors (Form F)	155	155
<b>Total</b>	<b>28,781.6</b>	<b>25,361.3</b>

4. The Applicant submits that the Applicant has also updated this Tribunal through various progress reports about the ongoing CIRP of the Corporate Debtor from time to time.
5. The Applicant submits that the salient features of the Resolution Plan, mandatory contents, business plan and the distribution mechanism as approved by the requisite majority of the CoC members in the 25<sup>th</sup> CoC meeting of the Corporate Debtor held on 09<sup>th</sup> February 2021 are as follows:
  - i. **Commercial Snapshot of the Resolution Plan submitted by Successful Resolution Applicant viz. Aryan Mining and Trading Corporation Private Limited:**

Particulars	Amount (in crores)
Cash Component	160.2
Payment Terms	The Payment term is within 60 days

Remarks	Unpaid CIRP cost of over and above Rs.21 crore shall be borne by the Resolution Applicant
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## ii. Section 2 - Overview of the Resolution Plan

### *Introduction*

- a) *The Resolution Plan envisages settlement of claims from Financial Creditors, Operational Creditors, Workmen and Employees, Other Creditors and Government Authorities (statutory dues, taxes etc.) (“Other Creditors”), Related Parties as well as payment towards CIRP Costs.*
- b) *The Resolution Applicant proposes to bring in a total of Rs.2,10,20,00,000/- (Rupees two hundred ten crores and twenty lakhs only) (“Total Plan Amount”) towards the abovementioned settlement / payments. The Total Plan Amount will be brought in as Equity Shares/ loan being subordinated debt or any other instrument into the Corporate Debtor through a Special Purpose Vehicle (SPV) and will be used towards payment by the Corporate Debtor to each of the stakeholders their respective amounts within the timelines specified in this Resolution Plan. The SPV may be incorporated by the Resolution Applicant prior to the NCLT Approval Date. The Resolution Applicant intends to infuse Rs.50,00,00,000/- (Rupees fifty crores only) as Working Capital within 60 days from the Effective Date as defined in this plan. The Balance residual amount of Rs.1,60,20,00,000/- (rupees one hundred sixty crores and twenty lakhs only) shall be infused and corresponding Creditors to be paid within 60 (Sixty) days from the ‘Effective Date’.*

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*Upon the payment of all the amounts to each of the stakeholders within the aforesaid period of 60 (Sixty) days from the 'Effective Date', as detailed in this Plan, the Financial Creditors shall release /relinquish the charges on all the securities as detailed in Annexure IX and issue a No Dues certificate in favour of Corporate Debtor/Resolution Applicant and satisfy their respective charge on the assets of the Corporate Debtor. For avoidance of any doubt, it is clarified that the Security Interest created by the financial creditors over the assets to secure the debts of the Corporate Debtor shall continue till the Closing Date. It is also clarified that the Security Interest created by any other Person (other than the Corporate Debtor) over its assets in favour of any of the Financial Creditors to secure the debts of the Corporate Debtor shall continue even after the Effective Date and the Financial Creditors shall have the right under their relevant agreements and Applicable Laws to take action against such Security Interest created by any other Person (other than the Corporate Debtor).*

*The term 'Effective Date' as used in this Resolution Plan shall mean the date on which the copy of the order from the Adjudicating Authority approving the Resolution Plan under Section 31 of the I & B Code, 2016 is uploaded on the NCLT website. This Resolution Plan will be funded from internal accruals of Aryan Mining & Trading Corpn Private Limited (hereinafter referred to as AMTCPL), the Resolution Applicant for KAIL Ltd, the Corporate Debtor. The source of funding as mentioned in Annexure XIII which includes amounts held by the Resolution Applicant including its associates / affiliates / group entities, by way of (i) fixed deposits; (ii) bank accounts; and (iii) money market mutual funds.*

- c) *The Total Plan Amount of INR 2,102,000,000/- (Indian Rupees Two Hundred Ten Crores and Twenty Lakhs Only) shall be split into Financial Creditors Settlement Amount of Rs.125,05,78,069/- (Rupees one hundred twenty-five crores five lakhs seventy-eight thousand and sixty-nine only) and Other Stakeholders' Settlement Amount of Rs.35,14,21,931/- (Rupees thirty-five crore fourteen lakh twenty-one thousand nine hundred and thirty-one only).*
- d) **Manner of payment of Total Plan Amount** – *The Total Plan Amount (including the Financial Creditors Settlement Amount and Other Stakeholders' Settlement Amount) shall be paid in the following manner:*
- A. *The Financial Creditors Settlement Amount of Rs.125,05,78,069/- (Rupees one hundred twenty-five crores five lakhs seventy-eight thousand and sixty-nine only) shall be paid to the Financial Creditors within 60 days from the 'Effective Date' as per the terms of this Resolution Plan. Resolution Applicant will pay an amount of Rs.125,05,78,069/- (Rupees one hundred twenty-five crores five lakhs seventy-eight thousand and sixty-nine only), as full and final settlement towards the Financial Creditors who in turn will allocate the funds for distribution as per the collective decision/wisdom of the members of the Committee of Creditors towards respective Financial Creditors for settlement of their respective dues towards the Corporate Debtor. The Financial Creditors who do not vote in favour of the Resolution Plan shall be paid the amounts that they would be entitled to receive in accordance with sub-section (1) of section 53 in the event of a liquidation of the Corporate Debtor and the Financial Creditor*

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*Settlement Amount shall be proportionately adjusted. Further, the payment to the dissenting Financial Creditors shall be paid in priority to the payment to the Financial Creditors.*

*B. The Other Stakeholders' Settlement Amount of Rs.35,14,21,931/- (Rupees thirty-five crore fourteen lakh twenty-one thousand nine hundred and thirty-one only) shall be distributed in the following manner, provided however, full and final payment to other stakeholders shall be made in priority to the payment to the Financial Creditors:*

*i. First and foremost is the payment towards CIRP Cost incurred to conduct the Corporate Insolvency Resolution Process for KAIL Ltd., the Corporate Debtor. Resolution Applicant shall pay INR 21,00,00,000/- (Indian Rupees Twenty-One Crores only) as incurred to conduct the Corporate Insolvency Resolution Process for the Corporate Debtor.*

*If the CIRP Cost exceeds INR 21,00,00,000/- (Indian Rupees Twenty-One Crores only) then such additional amounts shall be brought in by the Resolution Applicant and it is clarified that such amounts will be over and above the Total Plan Amount.*

*ii. Secondly, the Resolution Applicant will pay in full and final towards dues of Workmen & Employees based on the total amount of claims admitted being Rs.120,366,793/- (Rupees twelve crore three lakh sixty-six thousand seven hundred and ninety-three only). On the payment of this Amount as*

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*approved by the Adjudicating Authority the liability of the Corporate Debtor towards Workmen & Employees will be NIL. An Exhibit with details of the fund allocated towards each operational creditor has been provided along with this plan and marked as Annexure "XVI".*

*It is further clarified that if the admitted claim towards the dues of workmen and employees amounting to Rs.12,03,66,793/- (Rupees twelve crore three lakh sixty-six thousand seven hundred and ninety-three only) exceeds till the approval of this Resolution Plan by the Adjudicating Authority then Rs.12,03,66,793/- (Rupees twelve crore three lakh sixty-six thousand seven hundred and ninety-three only) shall be paid proportionately.*

*iii. After payment under Clause 1 (d) (B) (i) and (ii) above, an amount of Rs.2,10,55,138/- (Rupees two crore ten lakhs fifty-five thousand one hundred and thirty-eight only) shall be paid to the Operational Creditors and other statutory authorities in proportion to their claim. On payment of this Amount as approved by the Adjudicating Authority, the liability of the Corporate Debtor towards Operational Creditors will be NIL. An Exhibit with details of the fund allocated towards the Operational Creditors and other statutory authorities has been provided along with this plan and marked as Annexure "XV".*

*iv. The admitted claim of Other Creditors amounting to Rs.1,55,00,00,000/- (Rupees one hundred and fifty-five crores*

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*only) have been allocated NIL amount as their claim has being classified under 'Contingent Claim' by the Resolution Professional in the List of Creditors. On implementation of the approved plan, the liability of Infotel Telecom Infrastructure Pvt Ltd who are the only creditor under the head 'Other Creditors' will have NIL claim towards the Corporate Debtor/ Resolution Applicant.*

- v. *The admitted claim of Related Party to the Corporate Debtor amounting to Rs.9,53,16,187.11 (Rupees nine crore fifty-three lakh sixteen thousand one hundred eighty-seven and eleven paise only) as uploaded on the Virtual Data Room have been allocated NIL amount in the Resolution Plan. On implementation of the approved plan, the liability of the related parties under the head 'List of Related party claim as on 16<sup>th</sup> August, 2019 will have NIL claim towards the Corporate Debtor/ Resolution Applicant.*
- e) *The Bid Bond Guarantee ("BBG") of Rs.20,000,000/- (Rupees two crores only) is being submitted along with this Resolution Plan in terms of the requirement of the Request for Resolution Plan for the Corporate Debtor.*
- f) *The Total Plan Amount has been arrived at on the basis of the independent due diligence by the Resolution Applicant and disclosures / information provided in the Information Memorandum and the Virtual Data Room for preparation of this Resolution Plan for the Corporate Debtor. In particular, the Resolution Applicant has valued the land parcels, building and plant & machinery as detailed in Annexure VIII,*

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*owned by, or given on lease to the Corporate Debtor based on the information available on the data room, and the due diligence by the Resolution Applicant and, the Resolution Applicant understands that these assets are validly owned and under peaceful possession of the Corporate Debtor and there are no claims on them by any third party. Based on the due diligence by the Resolution Applicant, the Resolution Applicant understands that the Corporate Debtor has not given these lands on lease, easements or leave and licence and there is no possession (whether valid or adverse or forced) on any of these assets by a third party.*

- g) Notwithstanding anything contained in this Resolution Plan (including the Annexures, formats and Appendices hereto), the Resolution Applicant unequivocally agrees, acknowledges and confirms that:*
- (i) the implementation of the Resolution Plan and the acquisition of the Corporate Debtor pursuant to this Resolution Plan by the Resolution Applicant shall be on “as is where is” basis;*
  - (ii) neither the Resolution Professional nor any member of the Committee of Creditors nor any of their respective advisors have provided or are providing any representation, warranty or undertaking, either expressly or by implication, as to the accuracy or completeness of any information disclosed in the Virtual Data Room or in any other written or oral communication transmitted or made available to the Resolution Applicant;*
  - (iii) the Resolution Applicant has conducted its own independent due diligence on and made its own independent assessment of the business, business prospects and assets of the Corporate Debtor and*

*has satisfied itself basis its own due diligence and assessment to participate in the Resolution Plan process for the Corporate Debtor and submit its Resolution Plan for the Corporate Debtor; and*

- (iv) the effectiveness and the implementation of this Resolution Plan is not contingent or conditional upon any conditions, assumptions and/or qualifications.*

**iii. Section 3 - Mandatory Contents of the Resolution Plan**

**1. Payment of CIRP Costs**

- a) CIRP Costs shall be paid in full and in priority over payments to be made to any other Creditors during the committed period for payment being within 60 days from the Effective Date.*

*The Resolution Professional shall provide a statement, containing details of the CIRP Costs as approved by the COC from time to time as on the Effective Date, to the Resolution Applicant. In case the CIRP costs exceed the amount mentioned in clause 1(d)(B)(i) above, the exceeded amount shall be brought in by the Resolution Applicant and such amounts shall be over and above the Total Plan Amount.*

**2. Payment to Workmen & Employees**

- a) As per the disclosures in the Information Memorandum and the Virtual Data Room, claims by Workmen & Employees of the Corporate Debtor amounts to Rs.13,29,46,878/- (Rupees thirteen crore twenty-nine lakh forty-six thousand eight hundred seventy-eight only) out of which claims aggregating to Rs.12,03,66,793/- (Rupees twelve crore three lakh sixty-six thousand seven hundred and ninety-*

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*three only) have been verified and admitted by the Resolution Professional for the purposes of CIRP for the Corporate Debtor.*

- b) *It is hereby clarified that the admitted claim of Rs.12,03,66,793/- (Rupees twelve crore three lakh sixty-six thousand seven hundred and ninety-three only) towards dues of workmen and employees shall be paid in full in order of priority in terms of I&B Code, 2016.*
- c) *It is further clarified that if the admitted claim towards the dues of workmen and employees amounting to Rs.12,03,66,793/- (Rupees twelve crore three lakh sixty-six thousand seven hundred and ninety-three only) exceeds till the approval of this Resolution Plan by the Adjudicating Authority then Rs.12,03,66,793/- (Rupees twelve crore three lakh sixty-six thousand seven hundred and ninety-three only) shall be paid proportionately.*
- d) *On implementation of the approved plan, the liability of the Workmen and Employees will be NIL claim towards the Corporate Debtor/ Resolution Applicant.*

### **3. *Payment to Operational Creditors***

- a) *In terms of the I&B Code, 2016, the Operational Creditors must be paid the higher of:*
- (i) the amount to be paid to such creditors in the event of a liquidation of the Corporate Debtor under Section 53 of the I&B Code, 2016; or*
  - (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan*

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*had been distributed in accordance with the order of priority in Section 53(1) of the I&B Code, 2016.*

- b) On the basis of the list of creditors and their respective claims as admitted by the Resolution Professional, the Resolution Applicant states that the amounts that will be paid in terms of section 53 of the Code towards the Operational Creditors (excluding Workmen & Employees) and Other Operational Creditors, including Government authorities will be NIL, given the Corporate Debtor goes into liquidation. The payments under Clause 1 (d) (B) (i) and (ii) of Section 2 will be paid as proposed in the Plan approved by NCLT, Mumbai Bench.*
- c) As per the list of creditors as provided in the Information Memorandum and the Virtual Data Room circulated by the Resolution Professional on October 8, 2020, total claims filed by Operational Creditors (excluding Workmen & Employees) aggregate to Rs.113.25 Crore out of which claims aggregating to Rs.105.28 Crore have been verified and admitted for the purposes of CIRP by the Resolution Professional.*
- d) All the Operational Creditors, including Government authorities (Statutory dues, tax liabilities, penalties, interest etc.), and excluding Workmen and Employees of the Corporate Debtor as indicated in the above paragraph shall be paid out of the Other Stakeholders' Settlement Amount being Rs.2,10,55,138/- (Rupees two crore ten lakh fifty-five thousand one hundred and thirty-eight only) proportionately as per their admitted claims.*

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- e) *It is further clarified that if the admitted claim towards Operational Creditors, including Government authorities (Statutory dues, tax liabilities, penalties, interest etc.), and excluding Workmen and Employees of the Corporate Debtor amounting to Rs.105.27 Crore exceeds till the approval of this Resolution Plan by the Adjudicating Authority then Rs.2,10,55,138/- (Rupees two crore ten lakh fifty-five thousand one hundred and thirty-eight only) shall be paid proportionately.*
- f) *As per regulation 38(1) of the CIRP Regulations, the Operational Creditors should be paid in priority to the Financial Creditors. So, the aforesaid amount shall be paid prior to the payment to the Financial Creditors.*
- g) *Workmen & Employees as well as Operational Creditors, including Government Authorities and other Creditors whose claims have been rejected by the Resolution Professional have been allocated 'Nil' amount and any claim towards the same will stand discharged on approval of this Resolution Plan by Hon'ble NCLT, Mumbai Bench. All other creditors, as on the Insolvency Commencement Date irrespective of whether their claims were admitted, rejected or contingent, will stand discharged for 'Nil' payment on approval of this Resolution Plan by Hon'ble NCLT, Mumbai Bench.*
- h) *No claim pertaining to the Corporate Debtor will be entertained other than specified in the Virtual Data Room for preparation of resolution plan for the Corporate Debtor.*
- i) *On implementation of the approved plan, the Operational Creditors will have NIL claim towards the Corporate Debtor/ Resolution*

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*Applicant for any claim pertaining to a period prior to Insolvency Commencement Date.*

**4. *Payment to Financial Creditors***

- a) *Financial Creditors who are classified as related parties as per the Information Memorandum shared by the Resolution Professional shall be paid 'Nil' amount. All amounts due or payable by the Corporate Debtor to the Financial Creditors who are related parties given in Section 5(24) of the I & B Code, 2016 in relation to the corporate debtor and Section 5(24A) of the I & B Code, 2016 in relation to an individual". ("Related Parties"), whether admitted as claims or not shall stand cancelled/waived by the respective Financial Creditor, and upon approval of the Resolution Plan, the Financial Creditors who are Related Parties shall have no claim whatsoever against the Corporate Debtor, and any and all such claims shall stand waived and written off. On implementation of the approved plan, the liability of Financial Creditors who are classified as Related Parties will have NIL claim towards the Corporate Debtor/ Resolution Applicant.*
- b) *All the other Financial Creditors with aggregate admitted claims of INR 2057.50 Crores as per the Information Memorandum and the Virtual Data Room shared by the Resolution Professional shall be paid out of the Financial Creditors Settlement Amount. The Resolution Applicant will pay an amount of INR 125,05,78,069/- (Indian rupees one hundred twenty-five crores five lakhs seventy-eight thousand and sixty-nine only) in full and final to the Financial Creditors who in turn will allocate the funds for*

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*distribution as per the collective decision/wisdom of the members of the Committee of Creditors towards respective Financial Creditors for settlement of their respective dues towards the corporate debtor. The said amount will not include amounts due to creditors being classified as Related Parties. Further, upon remittance of the Financial Creditors Settlement Amount in accordance with Clause 1 (d) of Section 2 above, Financial Creditors are required to issue No Dues Certificate and satisfy their respective charge over the assets of the Corporate Debtor. Further, upon payment of the Financial Creditors Settlement Amount in accordance with this Resolution Plan, none of the Financial Creditors will have any right to invoke any corporate guarantee given by KAIL Limited in respect of any of its group company, associates or affiliates. The financial creditors who do not vote in favour of the resolution plan shall be paid the amounts that they would be entitled to receive in accordance with sub-section (1) of section 53 in the event of a liquidation of the Corporate Debtor and the Financial Creditor Settlement Amount shall be proportionately adjusted. Further, the payment to the dissenting Financial Creditors shall be paid in priority to the payment to the Financial Creditors.*

- c) *Upon Settlement of dues of each Financial Creditor as per this Resolution Plan and the payment of the Financial Creditors Settlement Amount within the timelines specified herein, the Financial Creditors to issue ‘No Dues Certificate’ and release the Security Interest over the assets of Corporate Debtor:*
- i. *All tangible and intangible assets (including properties, whether freehold, leasehold or license basis, trademarks, brand*

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- names) of the Corporate Debtor shall be re vested in the Corporate Debtor from the Closing Date, free and clear of all Encumbrances in favour of the Financial Creditors; and*
- ii. All title deeds and other documents (including charge documents, if any) held by the Financial Creditors shall be returned to the Corporate Debtor after receipt of the Financial Creditors Settlement Amount and the financial creditors shall perform all the acts and deeds, as required, to file necessary charge satisfaction with Registrar of Companies and release of Security Interest over the assets of KAIL Ltd after receipt of the Financial Creditors Settlement Amount.*
- d) It is clarified that each Financial Creditor shall have the rights under Applicable Laws and the respective financing documents against the other entities which are co-obligors of the Corporate Debtor namely Videocon Industries Limited, Videocon Telecommunications Limited, Trend Electronics Limited, Electroworld Digital Solutions Limited, Value Industries Limited, Evans Fraser and Co. (India) Limited, Millennium Appliances India Limited, Sky Appliances Limited, PE Electronics Limited, Techno Electronics Limited, CE India Limited, Applicomp (India) Limited, Techno Kart India Limited; and Century Appliances Limited and the same shall not be affected in any manner whatsoever notwithstanding anything contained in this Resolution Plan.*
- e) The Resolution Plan shall in no way affect the validity and enforceability of:*

(i) *the personal guarantees executed by any person in the promoter group of the Corporate Debtor, in respect of the debts of the Corporate Debtor;*

(ii) *the corporate guarantees executed by third parties in respect of the debts of the Corporate Debtor; and*

(iii) *any other security created by a third party for securing the debt of the Corporate Debtor;*

*and the Financial Creditors shall be entitled to take all steps and remedies and recourse available to them in Applicable Law for the non-recovery of the uncovered financial debt (i.e., the total dues of the Financial Creditors less the consideration received by such Financial Creditors as part of the Resolution Plan) from such guarantors and / or third-party security providers, under their respective security documents.*

f) *It is clarified that nothing herein shall in any manner prejudice or impair the rights of any Financial Creditor to enforce its rights under any personal guarantee or third-party guarantee or third-party security that has been issued for the benefit for such Financial Creditor by a Person (other than the Corporate Debtor).*

g) *It is further clarified for abundant caution and clarity, that nothing herein shall be construed as any Financial Creditor having assigned or transferred its rights under any personal guarantee or third-party guarantee or third-party security that has been issued for the benefit for such Financial Creditor by a Person (other than the Corporate*

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*Debtor), which will continue to vest in and ensure for the benefit of such Financial Creditor.*

- h) *It is further clarified that the Resolution Plan shall not in any manner prejudice the rights of the Financial Creditors that are available to them under any contract or Applicable Laws to recover the balance amounts from any third party which may be a principal borrower / debtor / co-obligor, and for whose benefit the Corporate Debtor may be the corporate guarantor or security provider or co-obligor.*
- i) *It is clarified that if there is any breach of the terms of this Resolution Plan (including, but not limited to, carrying out the steps involved in implementation of this Resolution Plan) by the RA, the earlier rights of the Financial Creditors (i.e., the rights that existed under the facility documents and other agreements prior to the implementation of this Resolution Plan) will revive and continue to be in effect.*
- j) *As per the information shared by the Resolution Professional, the outstanding Bank Guarantees issued by Financial Creditors to the extent of INR 5,69,000/- are still live. Such bank guarantees are secured by 100% cash margin. In cases where the value of such bank guarantees becomes part of the admitted claims, the Resolution Applicant proposes no separate treatment i.e. they'll be paid out of the Financial Creditors Settlement Amount only. In cases where the value of such Bank Guarantees are not included in the admitted claims, the Resolution Applicant shall provide 100%*

*Counter Bank Guarantee/Fixed Deposit equivalent to the live Bank Guarantee.*

*The details of the Live Bank Guarantee as provided by the resolution professional is as under:*

<b><i>Name of Project</i></b>	<b><i>Amount of Bank Guarantee</i></b>	<b><i>Name of Bank</i></b>
<i>CESC Limited</i>	<i>Rs.2,07,000/-</i>	<i>State Bank of India</i>
<i>WBSEDCL</i>	<i>Rs.3,62,000/-</i>	<i>State Bank of India</i>
<b><i>Total</i></b>	<b><i>Rs.5,69,000/-</i></b>	

*It is hereby clarified that as part of the Resolution Plan, the RA assumes that the Financial Creditors shall extend support in extending the Bank Guarantees as may be required by the beneficiaries. The Financial Creditors shall ensure timely extension of Bank Guarantees as and when requested by the Corporate Debtor and the RA. The RA clarifies that the aforesaid bank guarantees shall continue to be secured by 100% cash margin.*

## ***5. Restructuring of Capital***

### ***5.1 Current Structure***

*As on March 31, 2018, Corporate Debtor has an authorized share capital of INR 48,00,00,000/- divided into 4,80,00,000 Equity Shares of INR 10/- each. As on March 31, 2018, KAIL Limited has an issued capital of INR 47,00,50,000/- divided into 4,70,05,000 equity shares of 10/- each and subscribed & paid-up*

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*share capital of INR 47,00,50,000/- divided into 4,70,05,000 equity shares of 10/- each.*

## **5.2 Restructured Capital**

*On or prior to the Closing Date but in any event simultaneously or after the infusion of the Total Plan Amount for payment to the various creditors, the Resolution Applicant proposes the following re-organisation of the capital structure of the Corporate Debtor. The proposed reorganization of capital structure shall take place without any further act, deed or instrument. The proposed reorganization shall take place simultaneously and effect of every part shall take place as a whole. Order of Adjudicating Authority approving this Resolution Plan shall be deemed to be adequate approval for the proposed reorganization of Capital structure. As part of the Resolution Plan, the Resolution Applicant is eligible to open and operate an Escrow Account alongside a joint signatory being one other member from the Monitoring Committee as decided in the MC in the name of the Corporate Debtor.*

## **5.3 Cancellation of Existing Shares Capital Reduction**

*All existing issued, subscribed and paid-up equity share capital of the Corporate Debtor shall stand completely cancelled and all rights of the equity shareholders shall be extinguished and written-off. Order of the Adjudicating Authority approving the Resolution Plan shall be deemed to be order approving the write off of the equity share capital of the Corporate Debtor. The Applicant reserves the right to change the capital structure/instruments proposed herein in a manner which best suits its business strategy.*

#### **5.4 Issuance of Shares to Resolution Applicant**

- 5.4.1 *Simultaneously with the infusion of the Total Plan Amount for the payment to the Creditors pursuant to this Resolution Plan, the Resolution Applicant through a SPV will infuse INR 1 Crore (Indian Rupees One Crore Only), by way of subscribing to 10,00,000 equity shares, face value of INR 10 each, of the Corporate Debtor.*
- 5.4.2 *For the avoidance of doubt, it is clarified that filings to be made with the jurisdictional registrar of companies in relation to the reorganization of capital structure under this Resolution Plan, as required, shall be completed after the Effective Date, in accordance with the time limits prescribed under Applicable Law.*
- 5.5 *To the extent any secretarial filings, corporate actions and / or any other actions, filings, intimations, etc. are required to be made in connection with any step set forth above, the Monitoring Committee shall be deemed to be fully authorized to act on behalf of the Corporate Debtor and to undertake all such actions until the Resolution Applicant assumes control over the Corporate Debtor.*
- 5.6 *The above-mentioned cancellation of existing issued, subscribed and paid up equity shares and issue of equity shares to Resolution Applicant shall take place simultaneously. For avoidance of doubt, it is clarified that the control of the Corporate Debtor will be given to the Resolution Applicant only upon receipt of the Financial Creditors Settlement Amount.*

*5.7 Resolution Applicant prays to the Adjudicating Authority to pass necessary orders / give appropriate directions to give effect to the reorganization of capital structure of the Corporate Debtor as contemplated above.*

**6. Management of the Corporate Debtor by the Resolution Applicant**

**a) Appointment of Turnaround experts:**

- i. The management team of the Resolution Applicant will consist of dynamic leaders and an executive team with expertise in all aspects of the electronic manufacturing industry and across various associated asset classes (“Management Team”). The said professionals will be hired after the Effective Date and shall assume their duties post-Closing Date. Pertinent to mention that the costs will be incurred by the RA, without any deductions from the amounts payable to the Financial Creditors or other stakeholders.*
- ii. The Management Team shall supervise the turnaround plan of Corporate Debtor.*
- iii. The Corporate Debtor shall endeavour to secure new contracts in line with the going concern concept and therefore the Resolution Applicant shall hire appropriate resources for the purpose, if need so arises. During the transition, certain contracts shall be sub-contracted to reputed contractors, if required.*

**b) Formation of Board and credentials of board members:**

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*On the Closing Date, the existing Board of Directors of the Corporate Debtor shall be replaced by a new board comprising of 3 (three) members from senior management or nominees of the Resolution Applicant as well as independent directors.*

**c) *Managerial competence and technical capabilities:***

*Appointment of Chief Executive Officer, Chief Operating Officer and Chief Financial Officer and other key personnel in Sales & Marketing, Finance, HR and Operations, Turnaround Experts with managerial competence and technical capabilities.*

*The Resolution Applicant has a deep managerial bandwidth who will oversee the operations of the Corporate Debtor. After the Closing Date appropriate personnel would be appointed to run the day-to-day management of the Corporate Debtor which could be retention of existing management team of the Corporate Debtor or other appropriate / experienced personnel hired by the Resolution Applicant.*

**d) *Appointment of Auditors (Statutory and Internal):***

*After the Closing Date, the Resolution Applicant shall have the right to replace the existing auditors (statutory and internal) of the Corporate Debtor and appoint new auditors as deemed fit.*

**e) *Retention of Employees:***

*After the Closing Date, the Resolution Applicant shall undertake a comprehensive evaluation exercise to assess capabilities of existing employees and shall retain / remove as deemed fit. Gaps in the*

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*organization hierarchy shall also be identified out of this exercise and capable resources shall be brought in to strengthen the human resources.*

## **7. Business Plan**

### **a) Estimated reasons for the present position of the Corporate Debtor**

*In the opinion of the Resolution Applicant, the stress in the infrastructure sector coupled with dearth in the capital expenditure and working capital has added to trigger the financial stress of the Corporate Debtor which cascaded into deep financial as well as operational stress.*

### **b) Operational efficiencies expected, synergies with the existing business, contribution to the operations of proposed facilities**

*The Resolution Applicant is a prominent Business House in Eastern part of India with over three decades of experience in multiple economic activities including Mining and Real Estate verticals with in-house project-management, construction management and property management teams (under its associates and subsidiaries), giving it an edge to constantly innovate and deliver the best.*

### **c) Detailed financial projections for the tenor of the debt proposed in the Resolution Plan including revenue projections based on the production plan, profit and loss, balance sheet, and cash flow statements, key ratios and assumptions**

### **d) The Resolution Applicant proposes to pay the Total Plan Amount within 60 days from the 'Effective Date'. All financial, operational**

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*and other creditors will be settled as per the resolution plan from the funds brought in by the Resolution Applicant in terms of Clause 1 (b) of Section 2.*

**8. Management and control of the Corporate Debtor after approval of Resolution Plan**

**a) Peaceful Handover of the Corporate Debtor to the Resolution Applicant**

*As on the Closing Date and specifically, after receipt of the Financial Creditors Settlement Amount by the Financial Creditors, the Corporate Debtor will be handed over to the Resolution Applicant in its entirety. Pertinent to mention that until the payments are made, the Monitoring Committee shall overlook the affairs of the Corporate Debtor till the Closing Date.*

**b) Release of Resolution Professional and Dissolution of CoC**

*The Resolution Professional was appointed by the NCLT and the CoC was formed by the Resolution Professional during the conduct of the Corporate Insolvency Resolution Process. The Resolution Professional shall be released of his/her duties and responsibilities under the I&B Code, 2016 and the regulations made thereunder and the CoC shall be dissolved with effect from the Effective Date. The MC shall monitor the activities of the Corporate Debtor and the implementation of the Resolution Plan in accordance thereafter till the Closing Date, being the date when the entire plan is completely implemented and all the payments have been made to the stakeholders, as envisaged under this Resolution Plan.*

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*Pertinent to mention that control of the CD will be handed over to the RA only after payments of Financial Creditors Settlement Amount have been made to the respective Financial Creditors. It is clarified that the CoC/RP shall have no obligations in respect of the implementation of the Resolution Plan, and that all duties and obligations to implement this Resolution Plan resides solely with the Resolution Applicant.*

**c) Going Concern**

*The Corporate Debtor shall continue as a going concern and operate in its normal course of business upon implementation of the Resolution Plan. With effect from the Effective Date, the management of affairs of the Corporate Debtor would be done through the Monitoring Committee till the Closing Date.*

**d) Reconstituted Management / Board of Directors**

- i. The Resolution Applicant shall hold 100% shareholding in the restructured share capital of Corporate Debtor. The Resolution Applicant shall be in control and management of affairs of the Corporate Debtor and business of Corporate Debtor shall be carried on by the new management as appointed by Resolution Applicant post the Closing Date.*
- ii. Pursuant to the approval of the Plan by the NCLT, all existing Directors shall cease to remain and act as the Director of the Corporate Debtor immediately on Effective Date.*

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*iii. With effect from the Effective Date, the management of affairs of the Corporate Debtor would be done through the Monitoring Committee till the Closing Date.*

*Post the Closing Date, the entire management control of the corporate debtor will vest with the Resolution Applicant for the management of the day-to-day affairs after the payments have been made by the Resolution Applicant in accordance with the terms of this Resolution Plan. At the same time the Resolution Applicant realizes that given the complexities of the business like this, the Resolution Applicant will evaluate the need of human resource to revive the Corporate Debtor.*

*iv. Change of Signatories to Bank Accounts, Issue and Allotment of the Promoter Equity Shares and Availing of Loan.*

*On the Effective Date, the Signatories to the Bank Account will change with immediate effect. The Monitoring Committee will be constituted and the signatories to the Bank account will constitute representative of the RA alongside either of the signatory from the representative of the FC /the RP.*

*The Monitoring Committee shall be empowered to pass the following resolutions unanimously or by majority of the Votes:*

*a. Approve the opening of an Escrow Account for implementation of the Resolution Plan for the Corporate Debtor. The signatories to the bank account will constitute representative of the RA alongside either of the signatory from the representative of the Financial Creditor /the RP.*

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*Pertinent to mention that the control of the Corporate Debtor will transfer to the Resolution Applicant only on the Closing Date.*

- b. On the Closing Date the MC will expedite the issuance and allotment of and allotting the Promoter Equity shares to the Resolution Applicant and its nominee(s) in dematerialised form, free of all Encumbrances in consideration for the Equity Subscription Amount.*
- c. On the Closing Date the MC will authorize any Person to make the relevant entries in and update the register of members of the Corporate Debtor to reflect the aforesaid changes;*
- d. On the Closing Date the MC will authorize any Person to file requisite forms and returns on behalf of the Corporate Debtor with the Registrar of Companies for the aforesaid issuance and allotment of, the Promoter Equity Shares to the Resolution Applicant and/or its nominees; and*
- e. approving / authorising such other matters as may be necessary and incidental in relation to the above or which may be required to give effect to this Resolution Plan.*
- f. The consent of the shareholders of the Corporate Debtor for (a) issue and allotment of the Promoter Equity Shares as required under Sections 42 and 62 of the Companies Act; and (b) availing of borrowings in respect of the Loan*

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*Amount under Section 180(1)(c) of the Companies Act, 2013 shall be deemed to have been obtained.*

- v. *Any change in the members managing the Corporate Debtor shall not affect the validity and enforceability of any agreement, lease deed, contract, etc. executed by the Corporate Debtor with various parties, authorities, companies, etc. save and except the provisions and scope of alterations / modifications / amendments as also such reliefs and concessions provided to the Resolution Applicant and the Corporate Debtor under this Resolution Plan.*
- vi. *After the Closing Date, the Resolution Applicant will appoint Statutory Auditors as per the Applicable Laws. Appointment of Key Managerial Personnel and Company Secretary will be done by Resolution Applicant as per Applicable Law after the Closing Date.*

**9. Supervision and implementation of the Resolution Plan**

- a) *In terms of section 30(2) of the I&B Code, 2016, Term of the Resolution Plan and its implementation schedule; mechanism regarding the management and control of the business of the Corporate Debtor after the approval of the Resolution Plan is set out in detail below:*
  - i) *This Resolution Plan shall be valid and binding on all the stakeholders once it gets approved by the Adjudicating Authority in accordance with Section 31(1) of the I&B Code, 2016. The*

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*Resolution Applicant envisages to conclude implementation of the Resolution Plan within 60 days from the 'Effective Date'.*

- ii) *In terms of Section 30(2) of I&B Code, 2016 read with RFRP, the Resolution Applicant proposes to form a Monitoring Committee ("MC") comprising of Two representatives from the Committee of Creditors and one representative from Resolution Applicant along with Resolution Professional (or any other resolution professional/expert who may be appointed by the representatives of the CoC and the RA). RP/any other resolution professional/expert appointed is proposed a monthly fee of INR 3 lakhs per month for his services as member of the Monitoring Committee (MC). Such MC shall overview the implementation of the Plan as approved by Hon'ble NCLT and will be empowered to do all such things that are necessary, desirable or expedient for the implementation of the Resolution Plan and payment of the Total Plan Amount within 60 days from the Effective Date. Pertinent to mention that only on the Closing Date the Corporate Debtor will be handed over to the Resolution Applicant in its entirety. The MC will also overview the implementation of the resolution plan as approved by the Hon'ble NCLT. The representatives of the Resolution Applicant will be responsible for the entire day to day operations of the Corporate Debtor on an 'as-is-where-is' basis during the implementation of the Resolution Plan and will periodically appraise the MC about the affairs of the Corporate Debtor. The Resolution Applicant will bear all the costs and / or expenses associated with MC and / or incidental thereto as well as the*

*costs and expenses associated with the day to day operations of the Corporate Debtor, from the Effective Date till the Closing Date. It is clarified that such costs and/or expenses associated with MC and/or for running the day to day operations of the Corporate Debtor shall not be deducted from the Total Resolution Amount.*

*iii) As on the Closing Date a new Board of Directors will be constituted and the control of the Corporate Debtor shall be handed over to the Resolution Applicant. The balance sheet of the Corporate Debtor will thereafter be re-casted to formulate the revised financials for the corporate debtor as on the Closing Date to give effect to the implementation of this Resolution Plan.*

***b) Implementation Schedule***

<b><i>Sr. No.</i></b>	<b><i>Activity (Activities are in sequence)</i></b>	<b><i>Indicative Time</i></b>
<i>1.</i>	<i>Receipt of LOI from the Committee of Creditors</i>	<i>X (as per RFRP)</i>
<i>2.</i>	<i>Acceptance of the LOI by the Resolution Applicant and submission of the Performance Guarantee</i>	<i>X+3</i>
<i>3.</i>	<i>Filing of Application with Adjudicating Authority for Approval of the Resolution Plan</i>	<i>RP actionable</i>
<i>4.</i>	<i>Date on which the copy of the Order for Approval of Resolution Plan by the Adjudicating Authority is uploaded on the NCLT website being the "Effective Date"</i>	<i>A</i>
<i>5.</i>	<i>Constitution of Monitoring Committee</i>	<i>Within A+5</i>

6.	<i>Opening Escrow Account for the Corporate Debtor</i>	<i>Within A+5</i>
7.	<i>Infusion of Fund by Resolution Applicant</i>	<i>Within A+60</i>
8.	<i>Payment of the CIRP Costs by the Corporate Debtor from the funds lying in the Designated Bank Account in priority to any of the other class of Creditors</i>	<i>Within A+60 in accordance with the Code</i>
9.	<i>Discharge of the Admitted Liabilities towards Workmen and Employees in terms of the approved resolution plan</i>	<i>Within A+60 in accordance with the Code</i>
10.	<i>Discharge of the Admitted Liabilities towards Operational Creditors in terms of the approved resolution plan</i>	<i>Within A+60 in accordance with the Code</i>
11.	<i>Discharge of the liabilities of the Financial Creditor in terms of the approved resolution plan</i>	<i>Within A+60 in accordance with the Code</i>
12.	<i>Satisfaction of Charge on the assets of the Corporate Debtor by Financial Creditors and Issuance of No Due Certificate to the Corporate Debtor /Resolution Applicant</i>	<i>Within A+60 in accordance with the Code but after payment of the Financial Creditor Settlement Amount</i>
13.	<i>Cancellation and reduction of the entire issued share capital of the Corporate Debtor (including Preference Shares and Equity Shares) except Promoter Equity Shares issued by the Corporate Debtor to the Resolution Applicant</i>	<i>Within A+60</i>
14.	<i>Reconstitution of the Board of Directors of the Corporate Debtor such that the nominees of Resolution Applicant shall constitute the members of the Board of the Corporate Debtor</i>	<i>Within A+60</i>

15.	<i>Amendments to Memorandum of Association &amp; Article of Association of the Corporate Debtor</i>	<i>Within A+60</i>
16.	<i>Infusion of the Equity Subscription Amount and the loan amount into the Designated Bank Account by the Resolution Applicant and Issue of Promoter Equity Shares by Corporate Debtor to Resolution Applicant</i>	<i>Within A+60</i>
17.	<i>Change of signatories to bank accounts, issuance, and allotment of the Promoters Equity Shares to the Resolution Applicant and/ or its nominees and approval of the borrowings of the Corporate Debtor in respect of the Loan Amount.</i>	<i>Within A+60</i>
18.	<i>Change in the Registered Office of the Corporate Debtor</i>	<i>After Closing Date</i>
19.	<i>Restatement of assets and liabilities of the Corporate Debtor on account of impairment by the Resolution Applicant</i>	<i>After Closing Date</i>

*c) It is clarified that unless there is any stay on the implementation of the Resolution Plan by any appellate court or tribunal, the Resolution Applicant shall make the payments in accordance with the timelines mentioned above.*

*10. The Financial Creditors will continue to have charge on the assets mortgaged or hypothecated or charged to them by any means by the Corporate Debtor till receipt of the total Financial Creditors Settlement Amount in accordance with Clause 1 (d) of Section 2 above and pursuant to such payment to the Financial Creditors will cease to have any charge on the assets of the Corporate Debtor as stated above. Further, upon remittance of the Financial Creditors Settlement*

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*Amount in accordance with Clause 1 (d) of Section 2 above, Financial Creditors are required to issue No Dues Certificate and satisfy their respective charge on the assets of the Corporate Debtor as per Annexure VI of the Resolution Plan on the date of Remittance. Further none of the Financial Creditors will have any right to invoke any corporate guarantee given by KAIL Ltd. to any of its group company, associates or affiliates. The payments to the dissenting financial creditors (if any), shall be made in terms of sub clause (a) of Clause 1(d) of Section 2 of this Resolution Plan.*

11. *On and from the Date of payment to respective creditors in terms of the resolution plan as approved by Hon'ble NCLT, Mumbai Bench, the Corporate Debtor will not be liable for any payments to be made to Workmen, Employees, Operational Creditors, Financial Creditors, CIRP Costs or towards insurance, taxes, other statutory dues or towards contingent liabilities, whatsoever for any period pertaining prior to the Insolvency Commencement Date.*

12. **OTHER TERMS:**

**1) Concessions, Reliefs and Dispensation Sought**

*The Resolution Applicant asks for the reliefs, concessions and dispensations set out in **Annexure VI from the Adjudicating Authority** to enable the Resolution Applicant to expedite the implementation of this Resolution Plan.*

*It is clarified that this Resolution Plan will not be conditional upon the reliefs and concessions sought for under this Clause 12, read with*

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*Annexure VI, and the obligations of the Resolution Applicant under the terms of this Resolution Plan (including in respect of the quantum of payment or settlement to be made to a creditor and the timeline within which the payment or settlement is to be made) shall remain unaffected even if any relief or concession is not granted by the NCLT or any relevant judicial or Governmental Authority. It is further clarified that unless there is any stay on the implementation of the Resolution Plan by any appellate court or tribunal, the Resolution Applicant shall make the payments in accordance with the timelines herein.*

## **2) Going Concern**

*The Resolution Applicant would take over the Corporate Debtor as a going concern as per the provisions of I&B Code, 2016. The operations and management of the Corporate Debtor will be continued in the normal course of the business as is being run currently during the CIRP Period by the Resolution Professional upon implementation of the proposed Resolution Plan. Unless as stated above any receivable as received by the Corporate Debtor post approval of the Resolution Plan will be utilised by KAIL Limited towards improvement of the business in its normal course.*

*Should the Adjudicating Authority or the Appellate Authority or any other Court finally reject the Resolution Plan as proposed by the Resolution Applicant, then the Resolution Plan shall fail.*

6. The Applicant submits that pursuant to the approval of the Resolution Plan, the Successful Resolution Applicant has accepted the Letter of Intent submitted by the Applicant in accordance with

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the RFRP on 19<sup>th</sup> March 2021. The Applicant further submits that the Successful Resolution Applicant has remitted a sum of Rs.21,02,00,000/- (Rupees twenty-one crores two lakhs only), aggregating to the sum total of 10% (ten percent) of the Resolution Applicant Contribution under the Resolution Plan, to the Corporate Debtor's account maintained with State Bank of India. A copy of the Letter of Intent and Account Statement is attached and marked hereto as Exhibit "DD" and Exhibit "EE" respectively.

7. The Applicant submits that this Application for the approval of the Resolution Plan is being filed before the expiry of the period of CIRP provided in Section 12 of the Code.
8. The Applicant submits that the Applicant has preferred this present application in furtherance of the Applicant's duties as the Resolution Professional of the Corporate Debtor and the Applicant submits that the Applicant has complied with all the applicable regulations towards discharge of his functions as the Resolution Professional of the Corporate Debtor. The Applicant further submits that the Resolution Plan of the Successful Resolution Applicant has been prepared in compliance of the Code and all the requisite Regulations which was been approved by the required majority of the CoC.
9. The Applicant submits that the compliance certificate in Form H as prepared as the Applicant / Resolution Professional is also annexed to the Application and marked as Exhibit "FF" in compliance with Regulation 39(4) of CIRP Regulations.
10. When the matter was listed on 11.10.2022, the Applicant at the time of hearing was asked for clarification on the treatment of the

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operational creditors (Government & Statutory Dues) under the resolution plan in view of the Rainbow Judgement. In view of the above, the Applicant has filed an Additional Affidavit dated and submits as under:

- a) The CoC of the Corporate Debtor, on 09<sup>th</sup> February 2022 had approved the Resolution Plan dated 03<sup>rd</sup> February 2021 submitted by Aryan Mining & Trading Corporation Private Limited (“Successful Resolution Applicant”) with the requisite majority of 99.71%. Accordingly, the Applicant filed the Application before this Tribunal for the approval of the Resolution Plan.
- b) During the CIRP of the Corporate Debtor, the Statutory Creditors had filed their claim which was either admitted or rejected in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 and Regulations framed thereunder. Accordingly list of Operational Creditors (including Statutory Creditors) was prepared and the same was uploaded on the website of the Corporate Debtor.
- c) In light of the Rainbow Judgement, some Statutory Creditors being Operational Creditors will now be considered as Secured Operational Creditors and thus treatment to such Secured Operational Creditors will be as per Section 30(2) of the Code and Regulation 38(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), 2016.

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- d) Applicant Submitted that the total claims admitted of the Operational Creditors (excluding the workmen and employees' dues) considered in the Resolution Plan is approx. Rs.105,27,56,890 (Rupees one hundred five crores twenty-seven lakhs fifty-six thousand eight hundred and ninety only).
- e) Applicant Submitted that the as per Clause 1(d)(B)(iii) of Section 2 of the Resolution Plan, a total of Rs.2,10,55,138/- (Rupees two crores ten lakhs fifty-five thousand one hundred and thirty-eight only) is proposed to be paid by the Successful Resolution Applicant to the Operational Creditor other than workmen and employee (including statutory creditors) in proportion to their claims.
- f) Accordingly, payments proposed to each Operational Creditors under the Resolution Plan is approximately 2% of their respective admitted claim.
- g) Moreover, the total amount of admitted claim against the Secured Creditors which includes Secured Operational Creditors basis the Rainbow Judgement and Secured Financial Creditors, is approx. Rs.24740.1 crores (Rupees twenty-four thousand seven hundred forty crores and ten lakhs only). It is pertinent to highlight that in case the total Resolution Amount less the amount allocated towards unpaid CIRP cost is to be distributed in accordance with Section 53 of the Code, such Secured Creditors would approximately be paid 0.56% of their respective admitted claim.

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- h) It is evident from the above that under the Resolution Plan, the Secured Operational Creditors are proposed to be paid an amount higher than the amount what is stated under Section 30(2) of the Code and thus, the Resolution Plan is in compliance with Rainbow Judgement.
- i) In the consolidation order dated 08th August 2019 (“Consolidation Order”) (Ref. Pg. No. 6 and Exhibit A at Pg. No. 60 - of the Application) passed by this Tribunal, it was directed to the Resolution Professional of the entities that were kept out of consolidation, which includes the Corporate Debtor in the present case, to derive a simple calculation method i.e. the proportionate value of assets of the Corporate Debtor for the purpose of preparation of information memorandum and deriving a nexus between liabilities of financial creditors with the assets of the Corporate Debtor so that the asset – liabilities evaluation be precisely computed.
- j) The CoC in its 9<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> CoC meeting held on 06<sup>th</sup> September 2019, 05<sup>th</sup> November 2019, and 11<sup>th</sup> December 2019 respectively, discussed, deliberated and decided on the methodology for the purpose complying with the order of this Hon’ble Tribunal. Accordingly, the CoC of the Corporate Debtor agreed on the methodology.
- k) The liabilities, though it was restated basis the Consolidation Order for the purpose of deriving a nexus between the asset – liabilities to enable legitimate and serious resolution applicants to submit resolution plans during the CIRP of the Corporate

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Debtor, it is important to highlight that the voting rights remain unchanged of such financial creditors which was based on the overall claim admitted by the Resolution Professional.

- l) The claims of the financial creditors for the purpose of calculation of the value to be distributed in case of liquidation under Section 53 of the Code would also be considered as against the overall claims and not the restated claims.
- m) The members of the CoC in the 24<sup>th</sup> CoC meeting held on 09<sup>th</sup> February 2021 have in their commercial wisdom discussed, deliberated and decided that the Scenario 2 would be the practical and realistic scenario in considering the revival of the Corporate Debtor.
- n) The total resolution plan amount is higher than the average liquidation value and hence, the proposed amount as per the Resolution Plan would be higher than the amount to be paid to secured creditors in the event of a liquidation of the Corporate Debtor under Section 53 of the Code.
- o) As per Clause 3(e) of Section 3 (*Mandatory Contents of the Resolution Plan*) of the Resolution Plan, it is proposed that the operational creditors shall be paid prior to the payment of the financial creditors in accordance with Regulation 38(1) of the CIRP Regulations. The Relevant clause is produced hereto for the sake of convenience:

*“(e) As per regulation 38(1) of the CIRP Regulations, the operational creditors should be paid in priority to the financial*

*creditors. So, the aforesaid amount shall be prior to the payment to the Financial Creditors.”*

p) In light of the abovementioned clauses under the Resolution Plan, the Resolution Plan has made provisions to pay the operational creditors more than the minimum amount each of the secured operational creditors are supposed to receive as per Section 30(2) of the Code and Regulation 38(1) of the CIRP Regulations and thus the Resolution Plan is compliant with the decision Rainbow Judgement.

11. The Resolution Applicant sought reliefs under resolution plan out of which are as follows:

- a) Consider and allow this Application;
- b) Consider and approve the Resolution Plan submitted by Aryan Mining & Trading Corporation Private Limited approved by the CoC under section 31 (1) of the Code;
- c) Consider closure of the CIRP of the Corporate Debtor on approval of the Resolution Plan under the Code;
- d) Consider declaring under Section 31(3) (a) of the Code that the moratorium under section 14 (1) of the Code shall cease to have effect from the date this Tribunal passes an order approving the Resolution Plan;
- e) Pass such other orders or directions in the interest of the Justice which this Tribunal deems fit.

12. The Applicant submitted that the Compliance Certificate in Form - H under Regulation 39(4) of the Regulations showing the compliances of the Plan as mandatorily required under the Code and Regulations and that the Plan had been approved by the CoC which is produced as hereunder:

**FORM H  
COMPLIANCE CERTIFICATE**

13. (Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

1. I, Avil Menezes, an insolvency professional enrolled with The Indian Institute of Insolvency Professional of ICAI and registered with the Board with registration number IBBI/IPA-001/IP-P00017/2016-2017/10041, am the resolution professional for the Corporate Insolvency Resolution Process (CIRP) of Kail Limited.

2. The details of the CIRP are as under:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Description</b>
1	Name of the CD	KAIL Limited
2	Date of Initiation of CIRP	08 June 2018
3	Date of Appointment of IRP	13 June 2018
4	Date of Publication of Public Announcement	15 June 2018
5	Date of Constitution of CoC	06 July 2018

6	Date of First Meeting of CoC	13 July 2018
7	Date of Appointment of RP - As per the Consolidation order Dated August 08, 2019.	08 August 2019
8	Date of Appointment of Registered Valuers	RBSA Advisors LLP - 24 August 2018 Kanti Karamsey & Co. - 24 August 2018
9	Date of Issue of Invitation for EoI	(Originally – 14 September 2019) (First Extension-15 October 2019) (Second Extension - 12 December 2020) (Third Extension - 16 January 2020) (Corrigendum to the 3rd extension calling for EOI's and Resolution Plans upto 5 March, 2020 vide publication dated 7 February 2020)  (Fourth Extension – 09 March 2020) (Fifth Extension - 21 March, 2020) (Sixth Extension –

		05 April 2020) (Seventh Extension - 04 May 2020) (Eighth Extension – 15 May 2020) (Ninth Extension - 22 June, 2020) (Tenth Extension – 01 October, 2020) (Final – 06 November, 2020)
10	Date of Final List of Eligible Prospective Resolution Applicants	10 <sup>th</sup> October, 2020
11	Date of Invitation of Resolution Plan	10 November, 2019
12	Last Date of Submission of Resolution Plan	(Originally – 28 November 2019) (First Extension-10 December 2019) (Second Extension - 14 January 2020) (Third Extension - 30 January 2020) (Corrigendum to the 3rd extension calling for EOI's and Resolution Plans upto 5 March, 2020 vide publication dated 7 February 2020)

		(Fourth Extension – 21 March 2020) (Fifth Extension - 04 April, 2020) (Sixth Extension – 25 April 2020) (Seventh Extension - 14 May 2020) (Eighth Extension – 13 June 2020) (Ninth Extension – 06 July 2020) (Tenth Extension – 31 October 2020) Final - 23 November, 2020
13	Date of Approval of Resolution Plan by CoC	17 March, 2021
14	Date of Filing of Resolution Plan with Adjudicating Authority	20 March, 2021
15	Date of Expiry of 180 days of CIRP	04 February, 2020
16	Date of Order extending the period of CIRP	05 February, 2020
17	Date of Expiry of Extended Period of CIRP	12 April, 2021 (Date of Expiry of the extended period was 04 May, 2020. The same has been extended due the exclusion of 343 days on account of the lockdown

		imposed by the Central and the State Governments)  Based on the above, the date of expiry of extended period of CIRP is 12 April, 2021.
18	Fair Value	INR 559.66 Crores
19	Liquidation value *	Scenario 1 – INR 390.0 Crores  Scenario 2 - INR 51.75 Crores
20	Number of Meetings of CoC held	25 (Twenty-Five)

\*Note: The members in the 24<sup>th</sup> CoC had decided that since the valuers have given liquidation value under 2 scenarios, the liquidation value under Scenario 2 (and the average liquidation value arrived at under Scenario 2) will be considered for all the purposes in connection with the CIRP of the Corporate Debtor. This was with a view to ensure that a realistic view of the situation is taken into account and the elaborate value discovery and value maximisation process is taken to a logical conclusion.

3. I have examined the Resolution Plan received from Resolution Applicant, Aryan Mining & Trading Corpn Private Limited and approved by Committee of Creditors (CoC) of KAIL Limited.
4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicant Aryan Mining & Trading Corpn Private Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 99.71 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) I sought vote of members of the CoC by electronic voting system which was kept open from 11 February, 2021 to 17th March, 2021, i.e. atleast 24 hours as per the regulation 26.

5. The list of financial creditors of the KAIL Limited being members of the CoC and distribution of voting share among them is as under:

Sr. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	State Bank of India	16.93	Voted For
2	Union Bank of India	12.28	Voted For
3	Central Bank of India	12.23	Voted For

4	Bank of Baroda	11.25	Voted For
5	IDBI Bank	10.17	Voted For
6	Canara Bank	8.57	Voted For
7	Punjab National Bank	5.57	Voted For
8	Indian Bank	5.6	Voted For
9	ICICI Bank	5.22	Voted For
10	UCO Bank	3.98	Voted For
11	Indian Overseas Bank	3.96	Voted For
12	IFCI Limited	1.87	Voted For
13	Infotel Business Solutions Limited	1.79	Voted For
14	Bank of Maharashtra	0.29	Voted For
15	Jammu & Kashmir Bank	0.29	Dissented
	<b>Total</b>	<b>100</b>	<b>99.71</b>

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.
7. The amounts provided for the stakeholders under the Resolution Plan is as under: (Amount in Rs. Crores)

Sr. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	73.2	73.2	0.54	0.50%
		(ii) who voted in favour of the resolution plan	27976.8	24565.6	122.33	0.44%
		Total[(a) + (b)]	28050.0	24638.8	122.87	0.44%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not				

Sr. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
		vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan	450.1	450.1	2.25	0.50%
		Total[(a) + (b)]	450.1	450.1	2.25	0.50%
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) Government	109.62	102.61	2.05	1.87%
		(ii) Workmen	7.66	7.49	7.49	97.78%
		(iii) Employees	5.62	4.54	4.54	80.78%
		(iv) For goods and services	6.52	2.59	0.05	0.77%
		Total[(a) + (b)]	129.42	117.23	14.13	10.92%
4	Other debts and dues		127.88	9.53	NIL	0.00%
Grand Total			28757.4	25215.7	139.25	0.48%

**Notes:**

1. Total amount provided under Resolution Plan is INR 210.20 Crore, for clarity bifurcation of same is provided below:

Particulars	Amount in Crore
Resolution Plan Value	210.20
Less: Working Capital to be infused by Resolution Applicant	50.00
Cash Component	160.20
- CIRP Cost	21.00
- Secured Financial Creditor (who did not vote in favour of Resolution Plan)	0.54
- Secured Financial Creditor (who voted in favour of Resolution Plan)	122.28
- Unsecured Financial Creditors	2.24
Operational Creditors (Including Workmen and Employees)	14.14

2. CIRP Cost INR 21 Crore is not included in the “INR 139.20 Crore- Amount provided under Resolution Plans” as mentioned in table above.

3. Unpaid CIRP Cost over and above INR 21 Crore shall be born by the Resolution Applicant.

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sr. No.	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	4,70,05,000	NIL	100%	NA

9. The compliance of the Resolution Plan is as under:

Sr. No.	Description/Requirement	Whether Complied or Not (Yes / No)	Relevant clause nos. under the Resolution Plan)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Yes	Covered under 1(a), brief details of the Resolution Applicant
30(1)	Affidavit stating that the Resolution Applicant is eligible under Section 29A of the IBC, 2016	Yes	As an annexure to the Resolution Plan
Section 30(2) of the Code:			
(a) r/w Regulation 38(1)(a) of CIRP Regulation	provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;	Yes	Clause 1 of Section 3 at Page No. 1 of the Resolution Plan.  <b>Note:</b> CIRP Cost shall be paid in full and in priority over payments to be made to any other creditors within 60 days from Effective Date.
(b)	provides for the payment of debts of operational creditors in such manner as may be specified by the	Yes	<u>Payment to Workmen and Employees:</u> - Clause 2(b) of

	<p>Board which shall not be less than-</p> <p>(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or</p> <p>(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53 of the Code.</p> <p>whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor</p>	<p>Section 3 at Page No. 15 of the Resolution Plan</p> <p><u>Payment to Operational Creditors:</u> - Clause 3(e) of Section 3 at Page No. 17 of the Resolution Plan</p> <p><u>Payment to Dissenting Financial Creditors:</u> - Section 3, Clause 4(b) at Page No. 18 of the Resolution Plan.</p>
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(c)	provides for the management of the affairs of the Corporate debtor after approval of the resolution plan	Yes	Section 3, Clause 6 and 8 from Page Nos. 22-23 and Page No. 24-26 of the Resolution Plan
(d)	The implementation and supervision of the resolution plan	Yes	Section 3, Clause 9 at Page No. 26-27 of the Resolution Plan
(e)	does not contravene any of the provisions of the law for the time being in force	Yes	Section 4, Clause 1 at Page No. 31 of the Resolution Plan
(f)	confirms to such other requirements as may be specified by the Board	-	Regulations 37 and 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

*Regulation 37 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulation, 2016 –*

A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following:

(a)	transfer of all or part of the assets of the corporate debtor to one or more	Not proposed by the	-
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	persons	Resolution Applicant	
(b)	sale of all or part of the assets whether subject to any security interest or not	Not proposed by the Resolution Applicant	-
(ba)	restructuring of the corporate debtor, by way of merger, amalgamation and demerger	Not proposed by the Resolution Applicant	-
(c)	the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons	Yes	Clause 5 of Section 3 at Page Nos. 20 – 22 of the Resolution Plan
(ca)	cancellation or delisting of any shares of the corporate debtor, if applicable	Partially	Clause 5.3 of Section 3 at Page No. 21 of the Resolution Plan.
(d)	satisfaction or modification of any security interest	Yes	Clause 1(b) of Section 2 at Page No. 10 of the Resolution Plan  Clause 4(b) of Section 3 at Page No. 17 of the Resolution Plan; and  Clause 10 of Section 3 at Page No. 29 of the Resolution Plan  Clause 8 of Section 4 at Page No. 33 of the Resolution Plan
(e)	curing or waiving of any breach of the terms of any debt due from the corporate debtor	Not proposed by the Resolution	-

		Applicant	
(f)	reduction in the amount payable to the creditors	Not proposed by the Resolution Applicant	-
(g)	extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor	Not proposed by the Resolution Applicant	-
(h)	amendment of the constitutional documents of the corporate debtor	Yes	Section 3, Clause 9(b), Pt.15 at Page No. 29 of the Resolution Plan
(i)	issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose	Yes	Section 2, Clause 1(b) at Page No. 10 of the Resolution Plan
(j)	change in portfolio of goods or services produced or rendered by the corporate debtor	Not proposed by the Resolution Applicant	-
(k)	change in technology used by the corporate debtor	Not proposed by the Resolution Applicant	-
(l)	obtaining necessary approvals from the Central and State Governments and other authorities	Yes	Section 4, Clause 4 at Page No. 31 of the Resolution Plan

<b><u>Regulation 38 of CIRP Regulations - Mandatory contents of the resolution plan</u></b>			
1(a)	The amount payable under a resolution plan to the operational creditors shall be paid in priority over financial creditors	Yes	<u>Payment to Workmen and Employees:</u> - Clause 2(b) of Section 3 at Page No. 15 of the Resolution Plan  <u>Payment to Operational Creditors:</u> - Clause 3(e) of Section 3 at Page No. 17 of the Resolution Plan
1(b)	to the financial creditors, who have a right to vote under subsection (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan	Yes	<u>Payment to Dissenting Financial Creditors:</u> - Section 3 , Clause 4(b) at Page No. 18 of the Resolution Plan.
(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.	Yes	Section 4, Clause 2 at Page No. 31 of the Resolution Plan
(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past	Yes	Section 4, clause 3 at Page 31 of the Resolution Plan
2	A resolution plan shall provide:		
	(a) the term of the plan and its implementation schedule	Yes	Clause 9(a) (i) at Page No. 26 of the Resolution

			Plan  Section 3, Clause 7(c) at Page No. 23 of the Resolution Plan-Implementation Schedule
	(b) the management and control of the business of the corporate debtor during its term; and	Yes	Section 3, Clause 6 and 8 from Page Nos. 22-23 and Page No. 24-26 of the Resolution Plan
	(c) adequate means for supervising its implementation	Yes	Section 3, Clause 9 at Page No. 26-27 of the Resolution Plan
3	A resolution plan shall demonstrate that		
(a)	addresses the cause of default	Yes	Section 4, Clause 4 at Page No. 31 of the Resolution Plan
(b)	is feasible and viable;	Yes	Section 4, Clause 4 at Page No. 31 of the Resolution Plan
(c)	has provisions for its effective implementation;	Yes	Section 4, Clause 4 at Page No. 31 of the Resolution Plan
(d)	has provisions for approvals required and the timeline for the same; and	Yes	Section 4, Clause 4 at Page No. 31 of the Resolution Plan
(e)	the resolution applicant has the capability to implement the resolution plan	Yes	Section 4, Clause 4 at Page No. 31 of the Resolution Plan

**Regulation 39 of CIRP Regulations**

(a)	an affidavit stating that it is eligible under section 29A to submit resolution plans	Yes	Section 4, Clause 13 at Page No. 32 of the Resolution Plan
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(c)	an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code	Yes	Annexure VIII of the Resolution Plan Documents
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes	Avoidance application filed before the Hon'ble NCLT on 14 August, 2020
39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Yes	A sum of INR 21,02,00,000/- aggregating to 10% of the contribution under the Resolution Plan is remitted to the account of the Corporate Debtor maintained with State Bank of India.  The Successful Resolution Applicant will provide with Performance Bank Guarantee at the earliest. Accordingly, upon receipt of the Performance Bank Guarantee, the amount remitted by the Successful Resolution Applicant shall be remitted back to the Successful

			Resolution Applicant.
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10. The CIRP has been conducted as per the timeline indicated as under:

<b>Section of the Code / Regulation No.</b>	<b>Description of Activity</b>	<b>Latest Timeline under regulation 40A</b>	<b>Actual Date</b>
Section 16(1)	Commencement of CIRP and Appointment of IRP	08-Jun-18	08-Jun-18
Regulation 6(1)	Publication of Public Announcement	11-Jun-18	15-Jun-18
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	22-Jun-18	27-Jun-18
Regulation 13(1)	Verification of Claims	29-Jun-18	04-Jul-18
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	NA	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	01-Jul-18	05-Jul-18
Section 22(1) and regulation 17(2)	First Meeting of the CoC	08-Jul-18	13-Jul-18
Regulation 35A	Determination of fraudulent and other transactions	01-Oct-18	10-Aug-20
Regulation 27	Appointment of two Registered Valuers	25-Jul-18	21-Aug-18
Regulation 36 (1)	Submission of Information Memorandum to CoC	01-Aug-18	01-Aug-18
	Submission of Information Memorandum to CoC pursuant to the Consolidation Order dated 08 August, 2019	1-Oct-19	1-Oct-19
Regulation 36A	Invitation of EoI	22-Oct-19	14-Sep-19

<b>Section of the Code / Regulation No.</b>	<b>Description of Activity</b>	<b>Latest Timeline under regulation 40A</b>	<b>Actual Date</b>
	Publication of Form G	22-Oct-19	14-Sep-19
	Provisional List of Resolution Applicants	16-Nov-19	24-Oct-19
	Final List of Resolution Applicants	26-Nov-19	08-Nov-19
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	21-Nov-19	10-Nov-19
	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants pursuant to Reissue of Form G dated 01 October, 2020	-	08-Oct-20
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	28-Mar-21	20-Mar-21
Section 31(1)	Approval of Resolution Plan	12-Apr-21	-

11. The time frame proposed for obtaining relevant approvals is as under:

The Successful Resolution Applicant has sought certain reliefs, concessions and dispensation as more particularly set out in Annexure VI (List of Concession, Reliefs, and Dispensation Sought) of the Resolution plan. Further, as per Section 4 of the Resolution Plan, the Resolution Applicant has stated that other than the approval of the NCLT, no other approvals are required for the implementation of the Resolution Plan or making payments to any of the stakeholders of the Corporate Debtor pursuant to this Resolution Plan.

12. The Resolution Plan is not subject to any contingency: Yes

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same): Not Applicable

14. The Resolution Plan is being filed 20 days before the expiry of the period of CIRP provided in section 12 of the Code.

15. Provide details of section 66 or avoidance application filed / pending.

Sr. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Fraudulent transactions under section 66	10 August, 2020	NA	NA

15A. The committee has approved a plan providing for contribution under regulation 39B as under:

15B. The committee has recommended under regulation 39C as under:

a. Sale of corporate debtor as a going concern: NA

b. Sale of business of corporate debtor as a going concern: NA

The members in the 25<sup>th</sup> CoC Meeting unanimously decided that the above shall be discussed and pursued in the ensuing CoC meeting, if none of the resolution plan receive requisite majority.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D - NA

16. The members in the 25<sup>th</sup> CoC Meeting unanimously decided that the above shall be discussed and pursued in the ensuing CoC meeting, if none of the resolution plan receive requisite majority.

I, Avil Menezes hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

Name of the Resolution Professional: Avil Menezes

IP Registration No: IBBI/IPA-001/IP-P00017/2016-17/10041

Address as registered with the Board: 416, Crystal Paradise Co-op Soc. Ltd. Dattaji Salvi

Marg, Above Pizza Express, Off Veera Desai Road, Andheri West, Mumbai – 400053

Email id as registered with the Board: [avil@caavil.com](mailto:avil@caavil.com)

Date: 23.03.2021

.....”

14. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.

**ORDER**

15. The Application IA No. 740 of 2021 in CP (IB) No. 543 of 2018 be and the same is allowed. The Resolution Plan submitted by Aryan Mining & Trading Corporation Private Limited annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.
- i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
  - ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
  - iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.

- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-  
Manoj Kumar Dubey  
Member (Technical)  
12.01.2023  
Asmita, LRA

Sd/-  
Kishore Vemulapalli  
Member (Judicial)