



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

I.A. No. 1324 of 2021

IN

C.P. No. 878 of 2019

In the matter of an Application under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016.

In the matter of

Mr. Sudhir Kamble

... Operational Creditor

V/s.

K & K Foundry Private Limited ... Corporate Debtor

I.A. No.1324/2021

Mr. Ravindra Chaturvedi ...Applicant/Resolution
Professional

Order Reserved on: 08.12.2022

Order Pronounced on: 02.03.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Ayush J. Rajani a/w Ms. Khushboo Shah i/b AKR
Advisors.

For the Resolution Applicant: Mr. Rohan Agarwal

Per: Shri Kuldip Kumar Kareer, Member (Judicial)



ORDER

1. This is an Application filed under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) filed by the Resolution Professional (herein after referred as the “**Applicant**”) seeking approval of the Resolution Plan submitted by the Resolution Applicant, Mr. Samir Uttamrao Kale (Promoter and Suspended Director of the Corporate Debtor), which was approved by 100% voting share of the members of the Committee of Creditors (hereinafter referred to as ‘**COC**’).

2. **The facts leading to the Application are as hereunder:**

- a. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated by this Bench by an order dated 20.03.2020 under Section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as ‘**the Code**’) (**Admission Order**) and Mr. Dinesh Gopal Mundada, was appointed as Interim Resolution Professional. The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor on 20.03.2020.
- b. The IRP, after receiving the claims from the Creditors of Corporate Debtor, constituted the Committee of Creditors. The members of the COC in its 1st meeting held on 31.07.2020, appointed Mr Ravindra Chaturvedi (**the present Applicant**) as the Resolution Professional (**RP**).
- c. The Applicant submits that the claims received and admitted by Interim Resolution Professional as under:

Sr. No.	Secured Financial Creditor	Amount Claimed	Amount Admitted	Voting
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1.	Pegasus Assets Reconstruction Pvt. Ltd.	25,09,67,680	25,09,67,680	100%
	Grand Total			100%

d. The Applicant submits that, in accordance with Regulation 27 & 35 of the IBBI (CIRP) Regulations 2016, the appointment of 2 set of registered valuers was approved during the 2nd COC meeting held on 13.10.2020 to determine Fair Value and Liquidation Value of the Corporate Debtor.

The first set of registered valuers consists of Mr. Kedar Chikodi, Mr. Ranjit Pal and Ms. Asha Ghoshal and valuer 2 is Adroit Appraisers & Research Private Limited.

The Applicant further submits that the fair value and liquidation value of (i) Plant & Machinery, (ii) Securities & Financial Assets, (iii) Land & Building, (iv) Land, (v) Building are as under:

(i) Plant and Machinery

Sr No	Particulars	Fair Value	Liquidation Value
	Adroit Valuers	3,30,85,000	2,64,70,000
	Ranjeet Pal	3,85,00,000	2,39,00,000
	Average	3,57,92,500	2,51,85,000

(ii) Securities & Financial Assets

Sr. No	Particulars	Fair value	Liquidation Value
	Adroit Valuers	1,03,41,124	83,10,824
	Asha Ghoshal	4,87,375	3,37,375
	Average	54,14,250	43,24,100

(iii) Land & Building

Sr. No	Particulars	Fair value	Liquidation Value
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	Adroit Valuers	3,90,91,226	2,98,20,569
	<u>Kedar Chikodi</u>	3,68,00,000	2,94,40,000
	Average	3,79,45,613	2,96,30,285

(iv) Land

Sr. No	Particulars	Fair value	Liquidation Value
	Adroit Valuers	2,27,60,100	1,82,08,080
	Kedar Chikodi	2,17,80,000	1,74,24,000
	Average	2,22,70,050	1,78,16,040

(v) Building

Sr. No	Particulars	Fair value	Liquidation Value
	Adroit Valuers	1,63,31,126	1,16,12,489
	Kedar Chikodi	1,50,20,000	1,20,16,000
	Average	1,56,75,563	1,18,14,245
	Total Average	7,91,52,363	5,91,39,384

- e. The Applicant submits that as per Section 25(2)(h) of the Code, the Applicant invited expression of interest (“**EOI**”) in Form-G, for submission of Resolution Plans from the potential Resolution Applicants. The Applicant further submits that the Form-G was published on 13.11.2020 in the newspapers viz. Free Press Journal, Navshakti (Mumbai Edition), the Applicant also published the Form-G on 14.11.2020 in Financial Express and Navrashta (Marathi edition covering Kolhapur). The Last date of receipt of EOI was mentioned as 01.12.2020 and last date of submission of Resolution Plan was mentioned as 22.01.2021.
- f. The Applicant further states that in furtherance of the Form-G issued by the Applicant, he received EOI from the Prospective Resolution Applicants



(PRAs) within the stipulated time period. Below are the names of the prospective Resolution Applicant:

I) **Mr. Harshwardhan Reddy.**

II) **Mr. Samir Uttamrao Kale.**

- g. The Applicant submits that since Mr. Harshwardhan Reddy had not provided the process participation deposit, the member of the CoC did not accept his EoI without the process participation deposit.
- h. The Applicant submits that during the 5th CoC meeting held on 18.02.2021, the Applicant received Resolution Plan from the sole prospective Resolution Applicant from Mr. Samir Uttamrao Kale on 21.01.2021 (who is also suspended director and has claimed eligibility in terms of Section 240A r.w.s. 29A) and the same was shared with CoC members. Further, the Applicant submits that, his various observations along with the observations of Legal and Process Advisor were presented in the CoC Meetings and based there on modifications were suggested by CoC members to the RA. Accordingly, prospective Resolution Applicant agreed to look into the same and to modify and submit revised Resolution Plan.
- i. The Applicant submits that during the 6th CoC meeting held on 14.04.2021 wherein, the Resolution Applicant had assured the CoC for making payment of the Performance Guarantee of Rs. 1 Crore which is required as per the RFRP and Regulation 39 of IBBI Regulations, 2016. The Resolution Applicant agreed to submit the performance guarantee of the requisite amount by 15.05.2021. In this regard the Resolution Applicant had given an undertaking dated 15.04.2021, wherein it was stated that the Resolution Applicant would provide the Performance Guarantee on or before 15.05.2021.



j. The Applicant submits that upon request of the CoC, an Application to grant the additional 60 days was filed before this Bench. Resultantly, the CIRP period would end on 24.06.2021, being 60 days from 25.04.2021. The said application was allowed by an Order of this Bench dated 03.06.2021.

3. **The COC, in its 7th meeting held on 11.06.2021, approved Resolution Plan submitted by Mr. Samir Uttamrao Kale with a voting share of 100%. Thereafter, the compliance certificate in Form “H” was issued by the Resolution professional.**

4. **The Salient features of Resolution Plan are as hereunder:**

A. Background of the Corporate Debtor Company:

i. The Resolution Applicant being Corporate Debtor has his own knowledge of present condition of Machinery, Prospects and Finances etc.

ii. The Resolution Applicant visualizes that K&KFPL has bright business future and can see uninterrupted business growth in the coming years. The decline or financial stress of K&KFPL happened not due to management per se. See Annexure 7 & Annexure 9, Sr. No 4. The Resolution Applicant, therefore, is in the Interest of maintaining the business continuity, including relationships with key customers, and is of the opinion that existing key personnel should continue broadly with some necessary changes to suit the present times.

iii. K & K Foundry Pvt Ltd was established in year 2007. It is located In Kolhapur (MH), India.



iv. A Multicore Company is engaged in manufacturing activities of Grey Iron & S G Iron metal casting components.

v. It is a first-generation business started by a young graduate engineer.

vi. K&K Foundry Pvt Ltd is having extra ordinary client list & regular supplier to Automobile, Tractor & Engineering big players in India like Mahindra, Tata, Escorts, Kirloskars, Hyundai Motors, Greaves & many more. The recent focus is on non-Automobile & Export Market. The company has grabbed big business orders from Caterpillar India & major breakthrough export order from Camso, Canada. Many more export customers are in pipeline & expected to crack soon.

vii. Making small beginning in 2007, K&K Foundry Pvt Ltd has touched Annual Turnover of INR 60 crores for 2 consecutive years, 2013 & 2014. See Annexure 9, Sr. no 5. At that point of time, looking at continual growth of 7 years & strong market projections has made company to do huge expansion. Company has doubled its capacity with modern technologies & hitech machineries & equipment.

viii. However, in the Year 2014, market collapsed as never before. Indian Automobile, Tractor & Engineering businesses witnessed major downward trend. This market recession extended abnormally for next 4 years, till year 2017. See Annexure 9. Sr No 7. K&K Foundry Pvt Ltd has suffered for the first time in their 13-year history & expanded capacities remained unutilized during the 4 years recession period. This scenario has created financial disturbances and carried negative impact.

ix. Company is registered under MSME and GST.

x. Now the Foundry market from end of year 2020 has shown steep rise and fundamentally looks very strong for the future. According to the



current world casting production, India is at no, 2 position in the world whereas China is at No. 1 position. But given the recent outrage against China globally, most companies worldwide are looking at India as the next destination for their metal casting component requirements. Thus, Kolhapur has the biggest opportunity in the foundry business, being the no 1 hub of the Indian Foundry Industry. In addition, company's existing customers with existing components are asking for huge numbers. As part of marketing restructuring, Group has focused on non-Automobile & non-Tractor segments. See Annexure 9. Sr No 6.

xi. Simultaneously, as an exercise of operations restructuring Company has taken the advantage of lean period during recession and done remarkable task to reduce manufacturing costs in major operational heads like Electricity, Manpower, Productivity, Consumptions, Processes and many more. The cost reductions done are by various tools and techniques of Value Analysis and Value Engineering.

xii. The right revival support to K&K Foundry Pvt Ltd will improve top line revenues and reduce costs and the Company will emerge stronger than ever and is poised to lead through industry changes coming in next decade and be Leader in India Market.

xiii. Last but not the least K&K Foundry Pvt Ltd has successfully created its own brand In Indian Foundry Industry. K&K Foundry Pvt Ltd is first choice in casting commodity for their current customers.

B. Background of the Resolution Applicant

- i. This Resolution Plan is submitted by the Resolution Applicant, Samir Uttamrao Kale, who is the Promoter and Suspended Director of Corporate Debtor, being- eligible as Resolution Applicant u/s 29A read with sec 240A of Insolvency and Bankruptcy Code.



1	Name of the Resolution Applicant	Samir Uttamrao Kale
2	Corporate Identity No. / Limited Liability Identification No.	Individual, (Suspended Director of Corporate Debtor) (Eligible as Resolution Applicant u/s 29A read with sec 240A of Insolvency and Bankruptcy Code)
3	Constitution	Individual
4	Address of the registered office and principal office (if any)	Promoter & Suspended Director, K&K Foundry Private Limited, 049/1. MID C, Shroll, Kolhapur-416 122 (MH), India.
5	Address for correspondence of Resolution Applicant	17, "Samir", Laxmanrao Mohite Colony, Kadarnwadi Road, Kolhapur 4160 03 Maharashtra-India. Mobile: +919765993999 Email: samirkale@knk-group.com

C. TERM, IMPLEMENTATION SCHEDULE AND MONITORING OF THE RESOLUTION PLAN

- a. Without prejudice, it is clarified that, in case this Resolution Plan is approved by the Adjudicating Authority, then the same shall not be subject to any expiry and shall remain valid and binding till implementation of the Resolution Plan and completion of all obligations of the Resolution Applicant and payment of all monies (including to the Financial Creditors in full), as full and final settlement of liabilities of the of the CD in terms of this Resolution Plan.
- b. The Resolution Plan envisages a structured instalment payment as full and final settlement of all dues of all stakeholders and creditors



(Financial, Operational, Employees & Workmen and Statutory Dues) of the Corporate Debtor. Reliefs and concessions are sought from Financial Creditors, Operational Creditors, Statutory Authorities etc. The Resolution Applicant will arrange to infuse fresh funds to meet the needs of start-up expenses and working capital for the successful implementation of Resolution Plan.

Terms & Conditions Forming Part of this Resolution Plan

- c. On approval of this Resolution Plan by NCLT, the Resolution Plan and all the definitive documents, if any, executed between the RA and creditors of the Corporate Debtor providing the terms for acquisition by the RA of the Corporate Debtor, full and final settlement of debt of the Corporate Debtor, waiver of charges, etc., in relation to the Corporate Debtor, shall supersede and replace the terms of the agreements with all existing creditors of the K&KFPL (including, without limitation, any financing documents entered into by the company with its Financial Creditors) and the rights, obligations, liabilities and duties of the Corporate Debtor, its existing and new shareholders, directors, promoters, any third party guarantors and/or security providers shall be governed strictly by the terms of the Resolution Plan and the definitive documents executed pursuant thereto.
- d. The RA will not undertake any liability exceeding the amount payable to all creditors as agreed in this Resolution Plan or the definitive documents executed pursuant to this Resolution Plan and NCLT Order.
- e. All investments to be made pursuant to approval of this Resolution Plan will be made in Indian Rupees.
- f. Neither the Corporate Debtor nor the Resolution Applicant shall be liable to meet or discharge any claims raised by any creditors in



respect of any amounts due to them other than those claims forming a part of the approved Resolution Plan.

- g. Any Person that has provided any form of security/guarantee from and on behalf of, and/or in order to secure any obligations of the Corporate Debtor, shall not be entitled to exercise any subrogation rights in respect of such arrangement and there shall be no rights or claims against the Corporate Debtor. All obligations, liabilities, claims or proceedings against the Corporate Debtor in this regard shall be deemed to be owed and due as on the insolvency commencement date of the Corporate Debtor, shall unconditionally stand revoked, extinguished, waived, withdrawn and abated from the Effective Date.
- h. Notwithstanding anything to the contrary contained in this Resolution Plan or any other documents, including any definitive documents, the Resolution Applicant agrees and confirms that there are no conditions, assumptions and/or qualifications for effectiveness of the Resolution Plan by the Resolution Applicant, whether before or after the approval of the same by NCLT. The Resolution Applicant unconditionally and irrevocably agree and undertake to implement and give effect to the transactions contemplated in the Resolution Plan.
- i. Notwithstanding anything to the contrary contained in this Resolution Plan or any other document, the Resolution Applicant agrees that the obligation of the Resolution Applicant to make payment to any stakeholder under this Resolution Plan is unconditional and irrevocable and is not subject to any approval other than approval of the Resolution Plan by the Hon'ble National Company Law Tribunal.



Important Clarifications:

- I) All the new quasi equity shares or Redeemable Preference Shares to be Issued and allotted to the investors in terms of this Resolution Plan shall be subject to the provisions of Companies Act, 2013 and its applicable Regulations, Guidelines, Rules and other enactments, although the shares of K&KFPL are not listed any of the Stock Exchange/s of India, currently.

- II) From the date of NCLT Order being implemented all encumbrances, security interest, liens and/or attachments created or suffered to exist over the assets of Corporate Debtor, whether by contract or by any applicable law, shall not be allowed to exist once the relevant payments are made and shall be irrevocably released and all the enforcement commenced by any person/body over any of the assets of the Corporate Debtor to secure the debt of Corporate Debtor shall stand released, assigned and reversed in favour of the Resolution Applicant upon full and final settlement of the dues, as proposed under this Resolution Plan without the requirement of any further deed or action on the part of the Resolution Applicant or the Corporate Debtor.

- III) Provided that, liquid assets including in the form of fixed deposit receipts held by or lien marked in favour of the Financial Creditors of the Corporate Debtor as security/margin for performance bank guarantees issued by such Financial Creditors on behalf of the Corporate Debtor, shall be released, assigned and reversed in favour of the Resolution Applicant upon full and final settlement of the dues as proposed under this Resolution Plan. The said liquid assets shall be adjusted by the respective Financial Creditors against the debt owed to them by the Corporate Debtor.



- IV) On approval of this Resolution Plan by the Order of NCLT, the Resolution Applicant/investor would not be liable for any liabilities, either contingent or otherwise, of past, present or future, other than those mentioned in the IM and all litigations against the K&KFPL shall stand fully satisfied on payment of the amounts mentioned in this Resolution Plan.
- V) For the purpose of Implementation of the Resolution Plan, the RA is exempt from obtaining approval of the Competition Commission of India, in terms of Section 5 of the Competition Act, 2002.
- j. On payment of the amounts mentioned herein to the Creditors/Stake Holders, entire liability of K&KFPL under all agreement(s)/contract(s) for payments/repayments of all amounts, shall stand fully satisfied and no creditor/stakeholder shall have any claim(s) on the basis of any Agreement(s)/Contract(s) of whatsoever nature.
- k. Upon the Resolution Plan receiving approval of the NCLT, in the event of any inconsistency between the terms set out in the Resolution Plan as approved by the NCLT and the terms set out in any agreement, documents, arrangement executed between the company/the guarantors/security providers/Founder Promoters/ directors/employees and any of its creditors, the terms set out in the approved Resolution Plan by NCLT shall prevail over to the extent of such inconsistency. Any deviation from NCLT order is subject to approval from NCLT.
1. The Resolution Applicant appreciates that payments to the creditors as per the Resolution Plan is of utmost importance for successful resolution. To ensure successful implementation of the Resolution Plan, the RA would nominate a Monitoring Committee (as mentioned earlier in para No: VIII) to steer and supervise its successful implementation.



Timelines of implementing the Proposed Resolution Plan:

1. Step by step approach with timelines for implementing the proposed Resolution Plan once approved by the Adjudicating Authority and issuance of the order for the same is given below:

I) Required approvals and timelines for obtaining the same: These may Include:

- RBI/SEBI approvals, if any: **Not needed as no Forex is Involved and CD is unlisted.**
- Ministry of Corporate Affairs/ ROC approvals: **Within 180 days, if required.**

II) Infusion of capital, as envisaged in the proposed resolution plan: Infusion of capital shall commence immediately after the Effective Date and the capital shall get infused in tranches.

III) Settlement of relevant stakeholder including Financial Creditors, Operational Creditors and payment of CIRP Costs, etc., as per details of the financial proposal:

CIRP Costs within 60 Days of the effective date, Operational Creditors within 60 Days of the effective date, Workmen within 60 days of effective date, Statutory dues within 60 days of effective date, Upfront Payment of Rs 35 lacs to secured Financial Creditor within 60 days of the effective date.

IV) Other relevant steps and timelines, as applicable: **Nil, as of now**

V) Note: Minimum settlement period is considered as 60 days from the Effective date. This period is required mainly to increase the Authorised Capital of CD by fulfilling the ROC compliances, particularly in the matter



of Investors capital infusion and allotting them the redeemable preference shares. Also, there would be considerable formalities to complete with respect to NCLT after the effective date.

Illustrative implementation plan:

Step	Key Steps
1.	Approval of the Committee of Creditors and Adjudicating Authority
	<ul style="list-style-type: none">• The Resolution Plan will have to be approved by the CoC.• Post receipt of the approval of the CoC, the Resolution Plan will have to be filed with the Adjudicating Authority for its approval.
2.	Reconstitution of Board and constitution of Monitoring Committee
	Upon approval of plan by Adjudicating Authority, the following actions be taken: A Monitoring Committee will be constituted in the manner provided In Para VIII.
3.	Repayment of priority dues
	Payment of all dues of the Corporate Debtor w.r.t. relevant stakeholders including Financial Creditors, Operational Creditors, CIRP costs shall be made by the RA as per above. Provided further that, payment of CIRP Costs shall be made in priority to all other debts of the Corporate Debtor. Moreover, payment to Operational Creditors under the Resolution Plan shall be done prior to payment of Financial Creditors of the Corporate Debtor.
4.	Seeking approvals and Implementation of the transaction structure
	Please refer to above Clause (Timelines of implementing the Proposed Resolution Plan).
5.	Other actions, as applicable
	Nil



D. DETAILS OF THE PROPOSED RESOLUTION / TRANSACTION STRUCTURE

Financial Plan Debt Resolution

In keeping with the provisions of Section 30 (and see also Regulation 37) of IBC, the following is the financial Resolution Plan.

- **Payment/Reimbursement of Resolution Process costs:** The CIRP costs would be settled at Rs 50 Lakhs or at actuals, **whichever is higher**. The actual CIRP costs, whatsoever would be paid, in priority to all other creditors of the Corporate Debtor, within 60 Days from the Effective Date.
- **Full and Final Settlement of Secured Financial Creditors:** As per the Updated Creditors list by RP vide email dated 11/02/2021, the admitted claim of Secured Financial Creditors is Rs. 25,09,67,680.00. RA proposes to pay a total of Rs 2254.00 lakhs as follows:
 - a. Rs 35.00 lakhs by way of upfront payment from internal accruals.
 - b. Rs 2044.00 lakhs by way of 22 quarterly instalments over 6 years beginning with the quarter ending 31st December, 2021.
 - c. Rs 175.00 lakhs by way of allotment of 6-year tenure zero coupon OCDs.

The above details are very well set out in cashflow statements.

- **Settlement of Workmen and Employees:** All Employee / workers would be settled and paid in full Rs 36.86 Lacs, as against the stated dues of Rs 36.86 Lacs as per the updated list of creditors sent by RP vide email dated 11/02/2021. This would settle all the Employee/ Workers full and finally by payment of Rs 36.86 Lacs within 60 days from the Effective Date.
- **Full and Final Settlement of Operational Creditors:** All Operational Creditors would be settled at Rs 52.14 Lacs, as against the stated dues of Rs 8, 71,46,944.00 as per the updated list of creditors sent by RP vide email dated 11/02/2021. This would settle all the Operational Creditors



full and finally by payment of Rs 52.14 Lacs within 60 Days from the Effective Date.

- **Full and Final Settlement of All Statutory Dues:** would be settled at Rs 20 Lacs, as against the stated dues of Rs 5,05,17,225.00 as per the updated list of creditors sent by RP vide email dated 11/02/2021. This would settle all the Statutory Dues i.e. Direct taxes, Indirect taxes & Employees schemes as proposed elsewhere in this Resolution Plan later, full and finally by payment of Rs 20 Lacs within **60 days** from the Effective Date.
- **Full and Final Settlement of Other Creditors:** All Unsecured Financial Creditors would be settled and paid NIL, as against the stated dues of Rs 1,83,73,149.00 as per the updated list of creditors sent by RP vide email dated 11/02/2021. This would settle all the Unsecured Financial Creditors full and finally by Nil payment.
- **Summary of Creditors' Payment:**

Category o Creditors	Amount Admitted (Rs in lakhs)	Amount of settlement (Rs in lakhs)	Basis of repayment of amount (%age)	Repayment Period
CIRP Costs	N.A.	50.00 or at actuals, whichever is higher	100%	Within 60 Days of Effective Date
Secured Financial Creditors	2509.68	Total 2254.00 i.35.00 upfront ii.2044.00 In 22 quarterly instalments and iii. Allotment of 0 coupon 6 year	About 89.81% in value terms	Upfront within 60 days of effective date Over a period of 6 Years



		OCDs of face value 175.00		
Unsecured Financial Creditors	183.73	NIL	0%	N.A.
Workmen & Employee Dues	36.86	36.86	100 %	Within 60 Days of Effective date
Operational Creditors	871.46	52.14	5.96%	Within 60 Days of effective date.
Statutory Dues	505.17	20.00	3.95%	Within 60 days of effective date
Total	4106.90	2413.00	58.76%	
Additional Provision made for Start-up etc.		81.00		See Annexure 9, Sr. No. 8
Working Capital Provision		320.00		
Grand Total		2814.00		

Infusion of Funds:

The Proposed Shareholding (Approx.) Pattern:

- a. The entire existing paid up equity capital of Rs 95.00 lakhs shall continue. The equity shares will continue to be of the face value of Rs 1000.00 each.



- b. The entire existing 6% Non-Cumulative Redeemable Preference Shares of Rs 150.00 lakhs shall continue. It will continue to be of the face value of Rs 100.00 each.

Particulars	No of Share	Capital (Rs)	Remarks
Present Equity Capital	9,500	95.00 lakhs	To Continue
New Equity Issue to RA	Nil	Nil	Nil
Total Equity	9,500	95.00 lakhs	To Continue
6% Non-Cumulative Redeemable Preference Shares (Existing)	1,50,000	150.00 Lakhs	To Continue
Redeemable Preference Shares (New)	5,60,000	560.00 lakhs	To be issued against cash infusion into CD
Total proposed Investment	Rs 560.00 lakhs is contemplated to be brought in by way of cash Infusion as a draw down.		
New Funds to be utilised for Start Up, Refurbishment & Working Capital needs for the operations of K&KFPL			

The Final Shareholding Pattern

Category of Shareholder	Share capital	%age
Existing Shareholding	Rs 95.00 lakhs	100
Present shareholders including RA	Rs95.00 lakhs	100
Total	Rs 95.00 lakhs	100



E. SOURCES & UTILISATION OF FUNDS:

Description of Source of Funds: The Infusion of Rs 560 Lakhs by way of Zero Coupon Redeemable Preference Shares
Utilization of Funds: Insolvency Resolution Process Costs: Rs 50.00 Lacs or at actuals, whichever is higher
Payment to Workmen and Employee: Rs 36.86 Lacs
Payment to Operational Creditors: Rs 52.14 Lakhs
Payment to Statutory Dues: Rs 20 Lacs
Margin Money for Working Capital: Rs 320.00 lakhs
Refurbishment and Startup: Rs 81.00 Lakhs- <u>See Annexure 9 Sr No 8</u>
(Note: Upfront Payment to Secured Financial Creditors: Rs 35.00 lakhs to be made from Internal Accruals)

F. INDICATIVE TIMELINE FOR IMPLEMENTATION

Sr. No.	INDICATIVE ACTIVITY SCHEDULE ACTIVITY	Timeline (Days)
	Phase I- Approval Process	
1	Approval of Resolution Plan by the Committee of Creditors	
2	Application to Adjudicating Authority	
3	Approval of Resolution Plan by Adjudicating Authority and receipt of Adjudicating Authority Order (Effective Date)	T



4	Appointment of Monitoring Committee	T+ 15
5	Payment of CIRP cost	T+60
6	Payment of Operational Creditors	T+60
7	Payment of Workmen	T+60
8	Payment of Statutory Dues	T+60
9	Upfront payment to Secured Financial Creditor	T+60
10	ROC Approvals	T+180
11	Payment of Refurbishment Expenses	T+30
12	Reconnection of Electricity	T+30
13	Reconnection of water supply	T+15
14	Plant Repairs, Maintenance & Trial Dry Run	T+45
15	Restore Domestic Customer Connect	T+45
16	Restore Export Customer Connect	T+60
17	Restart Factory & Commencement of Production	T+60
	Phase II- Implementation of Resolution Plan	
18	Reconstitution of Board, Appointment of CEO and other key employees	T+60
19	Appointment of Internal Auditor	T+60
20	Submission of Progress Report	T+ 120
21	Tenure of Monitoring Committee	T+ Last payment to Secured Financial Creditors

G. MANAGEMENT AND CONTROL OF THE COMPANY POST APPROVAL OF THE RESOLUTION PLAN BY THE ADJUDICATING AUTHORITY-

Phase I Period - from the NCLT Approval Date –

The Phase I Period as appearing in this Resolution Plan shall mean the period from the effective date to the completion of upfront payment as per the schedule of payments as provided in this Resolution Plan. During the



Implementation Period, the Company will be monitored and managed by a Monitoring Committee-

A. Monitoring Committee -

- Upon the NCLT Approval Date, a Monitoring Committee shall be constituted comprising of 3 (three) persons of which 1 (one) is from Secured Financial Creditor, 1 (one) representative from the Resolution Applicant and 1 (one) independent representative mutually selected by the Resolution Applicant and the Secured Financial Creditor.
- Terms of appointment of the members of, and details of the functioning of the Monitoring Committee will be finalised by the Secured Financial Creditors and the Resolution Applicant jointly and any related costs relating to such appointments, and terms thereof, shall be borne by the Resolution Applicant.
- The Monitoring Committee shall be vested with all the power of the Board of Directors as envisaged under Companies Act, 2013 (amended from time to time).
- The Resolution Applicant and the secured Financial Creditor reserve the right to change their nominees to the aforesaid Monitoring Committee, if required for better and effective management of the assets.

B. Phase II Period - Upon expiry of Phase I Period –

- In the Phase II Period, the Resolution Applicants shall constitute the Board of the Corporate Debtor and retain the services of the current management team and/or appoint key managerial personnel, which may include independent professionals ("New Corporate Debtor Management"). Further, the existing organization chart as given in Annexure 4 of this Resolution Plan would be generally retained/adopted to a large extent.

Terms of Implementation and Supervision of the Resolution Plan after Phase II



1. The Resolution Applicant shall appoint an Independent Chartered Accountant's firm of repute as Internal Auditors with direct monthly reporting to the Financial Creditor with copy to the CEO of the company on terms satisfactory to it. The BOD shall review the Internal Auditor's Report and take needful corrective steps immediately thereof. The Internal Auditor shall incorporate the comments and the follow-up actions taken by the Company in its subsequent report to ensure implementation of the comments of the Internal Auditor till the implementation of plan is completed.
2. The Financial Creditor shall have a right to direct change of Internal Auditor Team at least every two financial years or any shorter period as it may deem necessary and the Board of Directors would abide by such a written request from the financial creditor within a reasonable time, no longer than 30 days from the date of such intimation of change from the Financial Creditor.
3. The Resolution Applicant shall satisfy the Financial Creditor that the progress of implementation of the said Resolution Plan and all aspects or the Resolution Plan are complied with as per the original schedule. To this end, the Resolution Applicant shall furnish to Financial Creditor such information and data as may be required by it at intervals stipulated by it. Any financial shortfall arising out of the delayed implementation of the schedule or for any other reason shall be met by the Resolution Applicant without any recourse to FIs/Banks or seeking any further reliefs/concessions from them then what has already been provided for In the Resolution Plan.
4. The Resolution Applicant shall not pay any dividend on Equity/Preference share capital till the entire outstanding dues of the Secured Financial Creditors are fully cleared.



5. The Resolution Applicant shall continue to submit its audited balance sheets (ABSs) from cut-off date onwards at the end of each financial year within three months of the finalization thereof to the Financial Creditor. It shall ensure finalization of ABS in terms of provisions of Companies Act, 2013 without fail and the BOD must ensure to avoid any delay.
6. In addition to meticulous compliance with the schedules of payments covered under the Resolution Plan, the Resolution Applicant shall ensure timely payment of all duties accruing after the scheme is implemented in full to the Central and State Governments and statutory Authorities in normal course.
7. The Resolution Applicant shall submit progress reports (PR) regarding the implementation of the Resolution Plan to Lenders on quarterly basis within one month following the end of the quarter during the first two years of the Resolution Plan and on half-yearly basis thereafter till full implementation of the progress has been satisfactory in terms of projections.
8. The Resolution Applicant shall not sell, lease, or encumber in any manner whatsoever any part of land, building, plant & machinery of equipment's or any of its fixed assets without the prior permission of the Secured Financial Creditor.
9. All the loan and security documents executed by the company/its promoters in favour of the Institutions/banks, shall remain in full force and effect, till the dues of the institutions/banks have been fully repaid.
10. The mortgage/charge on the fixed/current assets of the company in favour of the institutions would be vacated only after receipt of full and final payment of the settlement amount as envisaged in the scheme.
11. The existing guarantee of the promoters shall continue for orderly repayment of dues institutions/banks.



OBSERVATIONS AND FINDINGS:

- i. We have heard the Ld. Counsel appearing for the Resolution Professional and for the Resolution Applicant.
- ii. The Resolution Applicant is eligible to submit the Resolution Plan. The successful Resolution Applicant has given an Affidavit satisfying the eligibility criteria as per the provisions under Section 240A r.w.s. 29A of the Code since the Corporate Debtor is registered as a MSME.
- iii. As per IBC Code 30(2)(a) the Resolution Plan 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.
- iv. As per Section 30(2)(b), the Resolution Plan provides to pay Operational Creditors an amount of Rs. 72.14 lakhs against the total admitted claim of Operational Creditors of Rs. 1379.93 lakhs.
- v. The Resolution Plan also provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan under Section 30 (2) (d)
- vi. The Resolution Plan provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (e) & Regulation 38(2)(c).
- vii. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.



- viii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- ix. The Resolution Applicant or any of its related parties has not 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.
- x. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
- a. The amount due to the operational creditors under a Resolution Plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c. The Resolution Plan provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
 - d. The Resolution Plan provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The amount payable under a Resolution Plan to the Financial Creditors, who have right to vote under sub-section (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.



- f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.

- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.

- h. The Resolution Plan provides for the management and control of the business of the Corporate Debtor during its term.

- i. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.

- j. The Resolution Applicant or any of its related parties has never 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. This is in compliance of Regulation 38(1)(b) of the Regulations.

- k. The Resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)). However, the Resolution Applicant has not provided any payment to Unsecured Financial Creditors.



- xi. The Resolution Plan has been approved in the 7th COC meeting held on 11.06.2021 with 100% voting in accordance with the provisions of the Code.
- xii. In **K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is '**no more and no less**'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
- xiii. In **India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)** the Hon'ble Apex Court held that the process of consideration and approval of Resolution Plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved



Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

- xiv. In case of non-compliance of this order or withdrawal of Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant as well as the Performance Bank Guarantee.
- xv. The Hon'ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online**, clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

*“Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

- xvi. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code



and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.

- xvii. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant paras of which are extracted herein below:

“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”



xviii. In view of the discussions it is held that 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 Resolution Plan is feasible and viable. The Resolution Applicant has agreed to pay the full CIRP costs and also future costs, if any, as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and, thus, it deserves to be approved. It is ordered accordingly in the following terms:

ORDER

- a) The Interlocutory Application No. 1324 of 2021 is **allowed**. The Resolution Plan submitted by **Mr. Samir Uttamrao Kale**, is hereby approved. **It shall become effective from this date and shall form part of this order**. 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 payment of dues arising under any law for the time being in force is due.
- b) We shall clarify here that any amount recovered under any avoidance applications relating to the Corporate Debtor allowed by the Adjudicating Authority would enure unto the benefit of the Resolution Applicant.
- c) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned 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.
- d) The moratorium under Section 14 of the Code shall cease to have effect from this date.



- e) The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- f) 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.
- g) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- h) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- i) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- j) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- k) The Interlocutory Application No. **1324 of 2021** is accordingly **allowed** and **disposed of**.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)