IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH (COURT -II)

KOLKATA

I.A (IB) (PLAN) NO. 28/KB/2025

In

CP (IB) NO. 254/KB/2019

Application under section 30 and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016.

IN THE MATTER OF:

Mr. Santanu T Ray, RP of M/s Kaizen Power Ltd.

……Applicant

IN THE MATTER OF:

UCO Bank

… Financial Creditor

Versus

Kaizen Power Limited

……Corporate Debtor

I.A. (IBC)(Plan) No. 28/KB/2025 was reserved for orders on 15th July, 2026. The following details need to be clarified:

1. This Tribunal, upon hearing the Successful Resolution Applicant, the Resolution Professional, and the Suspended Board of Directors, vide an order dated 12th February, 2026, remanded the Resolution Plan back to the CoC. This Tribunal was of the considered view that the CoC had not appropriately deliberated upon the feasibility and viability of the Resolution Plan submitted by the SRA, insofar as it had approved the plan without examining the net-worth certificate, comfort letter, and financial disclosures regarding debt and equity infusion. Furthermore, prior to approving the Resolution Plan, the CoC had failed to consider the revisions made concerning APIIC.

2. Subsequently, a supplementary affidavit has been filed by the Resolution Professional of Kaizen Power Ltd., in compliance of the order dated 12th February, 2026. Vide the supplementary affidavit, the Resolution Professional has brought on record the minutes of the 25th and 26th meeting of the CoC, the addendum submitted by the SRA and the voting results.

3. The relevant discussion held by the CoC concerning feasibility and viability of the plan, as recorded in the minutes of the 26th CoC meeting[1] is reproduced hereinbelow:-

> *With regard to feasibility and viability:*
>
> *The representative of UCO Bank enquired with the SRA that the Hon'ble NCLT vide order dated 12.02.2026 in clause 11.8 had observed that the feasibility and viability of the Resolution Plan of JKDL ought to have discussed in detail by the COC.*
>
> *The representatives of JKDL replied that with regard to the feasibility and viability of the Resolution Plan, Mr. Narula apprised the members. JKDL is one of the group companies of J. Kumar Infraprojects Limited one of the listed Company in Infrastructure sphere having a net worth of approx. INR 3000 Crores. That also JKDL has been in the business of realtors, developers, financers and brokers of types of building and structures including houses, flats, apartments, offices, godowns, warehouses, shops, factories, sheds, hospitals etc. for a period of 15 years.*
>
> *JKDL proposes to develop a Private Industrial Park on the above-mentioned land parcel. The development will primarily focus on Small and Medium Enterprises (special emphasis on the Pharmaceutical and Allied Industries sector). The development shall be undertaken in accordance with the Government of Andhra Pradesh Industrial Policy and G.O. Ms. No. 31 dated 09/03/2025, which outlines the establishment Industrial Parks with*

[1]Minutes of the 26th CoC meeting is annexed to the Supplementary Affidavit filed on 09th March, 2026 at p. 33

Plug and Play Industrial Infrastructure.

He further added that following are the key features of the Proposed Industrial Park.

Key Features of the Proposed Industrial Park

Plug and Play Infrastructure: Ready-built factory spaces, utility connections, common facilities, and one-stop industry service centers. Sectoral Focus: Pharmaceutical, Biotechnology, Medical Devices, Chemical Intermediates, and related industries. Cluster Development: Alignment with the state's vision to promote sector-specific clusters (e.g., Pharma, Life Sciences). Private Sector Participation: Park to be developed, operated, and maintained through private financing, with possible participation from strategic partners.

Thereater, referring to the ***clause 8.4 (Plan to revive Corporate Debtor)*** *in the Resolution Plan dated 04.08.2025, the representatives of JKDL apprised that JKDL plan to infuse Rs. 21 Crores in the Corporate Debtor to resume and ramp up the operations, which will create direct and indirect employment opportunities, promotion of allied industrial value chains, Contribution to the Gross State Value Addition (GSVA) in line with the Government's Vision 2047.*

He also added that the above plan has been in line with the preamble of the IBC, 2016 and industrial development roadmap set by the Government of Andhra Pradesh. Hence, in all manner this Resolution Plan is feasible and viable considering the sound background of the SRA, established credentials coupled with good track record of SRA with all the stakeholders.

With regard to Funding of Resolution Plan amount:

Mr. Batra, representative of JKDL apprised the members that source of funds for the Resolution Plan shall be as follows, which is also a matter of fact as the same has been submitted by the SRA before the Hon'ble NCLT vide affidavit dated 26.11.2025:

(A)Equity Contribution: by J. Kumar Developers Limited

Rs. 10,00,00,000/ (Rupees Ten Crores) supported by provisional Net Worth of JKDL as on 31.03.2025 of Rs. 17.76 Crores and

(B) Debt by HDFC Bank

Rs. 44,62,99,107/- (Rupees Forty-Four Crores Sixty-Two Lakhs Ninety-Nine Thousand One Hundred and Seven Only) shall be funded by HDFC Bank. Comfort Letter dated 18.11.2025 was also submitted before the Hon'ble NCLT.

It was further apprised to the members that there are no pre conditions stipulated by the HDFC Bank, hence, in all manner, JKDL has capability of implementing the Resolution Plan in toto.

Both the members of CoC were of the opinion that considering the detailed presentation and clarifications provided through the Addendum dated 24.02.2026 and the financial strength of the SRA as evidenced from the papers placed on record by the RP, the CoC noted that the Resolution Plan dated 04.08.2025, read with the Addendum dated 24.02.2026, is feasible and viable".

4. The discussions regarding the amendment clauses pertaining to APIIC, sought to be done by way of the addendum, in the 26th CoC meeting are also reproduced hereinbelow:-

> *"Mr. Lovkesh Batra, representing the SRA, presented the Addendum and informed that this Addendum forms an integral part of the Resolution Plan dated 04.08.2025 and further clarified that the Addendum address and resolve the concerned clauses relating to APIIC. He mentioned that, insofar as the clauses relating to APTIC are concerned, there were nine (9) clauses in the Resolution Plan dated 04.08.2025, out of which seven (7) clauses have been deleted and two (2) clauses have been updated through the Addendum. He further stated that the updated two (2) clauses set out the factual status of the leasehold rights and provide for unconditional payment to APIIC, over and above the total financial proposal and records the intention of the SRA to establish a Private Industrial Park, subject to applicable laws, the terms of the lease deed, and necessary approvals of APIIC and other competent authorities. The key updates are as follows:*
>
> *With regard to APIIC:*
>
> *Clause 4.6.3; The said clause inter-alia contained that previously pertaining that lease rent to APIIC shall become payable only upon the Corporate Debtor being granted peaceful possession of the premises. This clause is now deleted.*
>
> *Renumbered Clause 4.6.3 (formerly 4.6.4); it inter-alia provides that Show Cause Notice dated 28.02.2013 and 03.04.2019 which were issued by APIIC to terminate the*

lease deed dated 25.10.2010, were stayed by the Hon'ble Commercial Court of Hyderabad in C.O.P. No. 45 of 2019 vide order dated 03.05.2019. Further, that an Arbitration Application No. 94 of 2019 was filed under section 11 of the Arbitration and Conciliation Act, 1996 by the Corporate Debtor inter-alia seeking appointment of Sri Justice Madan Lokur as the sole arbitrator in connection with the lease deed dated 25.10.2010. During the CIRP, the said proceedings were sine die adjourned in view of the moratorium provisions. On 04.03.2025, the stay granted vide order dated 03.05.2019 was vacated. The said order dated 04.03.2025 has been challenged by the RP before the Hon'ble High Court, pending adjudication. Hence, lease hold rights in favor of Corporate Debtor are sub judice and subject to Arbitration Proceedings. This clause merely sets out the factual position regarding the leasehold rights.

Clause 4.6.4 (formerly 4.5.1): Acknowledges that though APIIC has not filed any claim during the CIRP, the SRA proposes an unconditional commercial settlement of Rs. 1,54,84,156 (representing 6.7% of calculated total rent of Rs. 23,11,06,806/-) without admission of any liability or acknowledgement of enforceable dues.

The representative of UCO Bank enquired whether this amount is included in the Total Resolution Plan amount of Rs. 33,62,99,107/-, The SRA replied that amount of Rs 1,54,84,156/- which has been proposed by them to APIIC is over and above the total Resolution Payment amount of Rs. 33,62,99,107/-.

He further added that initially this payment of Rs. 1,54,84,156/- to APIIC was payable to APIIC within 7 working days only on conversion of lease hold land into free hold land by APIIC, however, presently, the said condition has been deleted and the amount offered to APIIC vide Addendum is unconditional. This clause provides for the unconditional payment to the APIIC and intent of the SRA to establish a Private Industrial Park, subject to applicable laws, the terms of the lease deed, and necessary approvals of APIIC and other competent authorities.

Clauses 4.5.2 to 4.5.7 These clauses previously inter-alia sought mandatory cancellation of show-cause notices and the conversion of land to freehold status. These clauses have been deleted.

The SRA further assured the CoC that the financial outlay proposed to creditors remains unchanged despite these amendments which have been made only for the purpose of clarification and consideration of the feasibility and viability of the plan by the COC. That apart from the above, there are no updates in the Resolution Plan.

The representative of JKDL also apprised the members that apart from APIIC land, CD also have a land situated at Freehold land: Sy. No. 1,2,3,6,7-1,8,11,12,9 Vijayaramapuram Agraharam, Sy. No. 131, Krishnampalem Village, Rambilli Mandal, Anakapali District, which also forms part of the Resolution Plan.”

5. With reference to the order dated 04th March, 2025 passed by the Commercial Court at Hyderabad, whereby the interim stay was revoked, the Hon'ble High Court of Telangana, vide its order dated 15.04.2026, set aside the said order and issued the following directions:-

> *"22. COMCA No.3 of 2026 is accordingly disposed of by setting aside the impugned Docket Order dated 04.03.2025. We however, deem it fit to direct the appellants as well as the respondent to resume the arbitration proceedings forthwith from the stage at which it was adjourned, preferably within three weeks from the date of this judgment. It is made clear that none of the Parties shall cause any impediment to or delay the arbitration proceedings. The interim protection granted to the appellant No.1 on 03.05.2019 by the Commercial Court shall continue during the pendency of the arbitration or until orders passed by the Sole Arbitrator in keeping with the Moratorium provisions of the IBC."*

6. The minutes of the 26th meeting of the CoC record that *"JKDL proposes to develop a Private Industrial Park on the above-mentioned land parcel."* However, the minutes refer to two distinct land parcels – one owned by APIIC and the other being freehold land owned by the Corporate Debtor. In these circumstances, the expression *"above-mentioned land parcel"* is vague as it fails to clarify whether the SRA proposes to develop the Private Industrial Park exclusively on the land owned by APIIC or on both land parcels, including the freehold land owned by the Corporate Debtor.

7. Be that as it may, it is seen from the records, that the SRA intends to build a Private Industrial Park, on APIIC's land parcel, after obtaining all relevant approvals from the Government and the relevant Statutory Authorities including the APIIC. As such, the resolution plan is prima facie subject to the approval of APIIC for its successful implementation.

8. APIIC in its Rejoinder in **IVN.P.(IBC) no. 7/KB/2026** at paragraph 35 has submitted as follows:-

> *35. **The commercial wisdom of CoC cannot validate a legally flawed Resolution Plan:** it is further submitted that the CoC's commercial wisdom cannot clothe a legally defective plan with immunity from judicial scrutiny. A business judgment cannot be described as "wise" when it rests on a legally impossible assumption. From the various CoC minutes, including the 25th and 26th CoC meetings, it is apparent that the CoC evaluated feasibility on the premise that APIIC would cooperate in creating a Private Industrial Park under G.O.Ms.No. 31. The APIIC has already refused such cooperation and is actively contesting the CD's leasehold.*

9. As such APIIC, on affidavit, has stated that it has "*already refused such cooperation and is actively contesting the CD's leasehold*". Even otherwise, the successful implementation of the Resolution Plan, being prima facie dependent upon the approval and cooperation of APIIC, ought to have clearly provided for the course of action to be followed in the event APIIC refuses to

grant the requisite approvals. This is necessary to assess whether the Resolution Plan would remain feasible and viable in such a situation.

10. However, no such provision has been made either in the Addendum or in the minutes of the 26th meeting of the CoC, wherein the feasibility and viability of the Resolution Plan were considered by the CoC.

11. Thus, in view of the contrary stand taken by APIIC with regard to the Resolution Plan submitted by the SRA, it is necessary to clarify what course of action would be adopted by the SRA in the event APIIC refuses to grant the approvals contemplated under the Resolution Plan, and whether the Resolution Plan would remain feasible and viable in such circumstances. We further direct the Resolution Professional to place the Resolution Plan, along with the addendum, for re-voting by the members of the CoC upon completion of the deliberations/discussions in respect of the aspects set out hereinabove.

12. As such, the RP is directed to convene a meeting of the CoC, within a period of 7 (Seven) days from the date of this order, with the SRA also participating in the said meeting, to deliberate upon the limited aspect referred to hereinabove. The RP is further directed to file a supplementary affidavit enclosing the minutes of the aforesaid meeting of the CoC and the voting sheet.

13. List the matter on 31st August, 2026.

Rekha Kantilal Shah **Labh Singh**

Member (Technical) **Member (Judicial)**

Order dated the 17th of August, 2026.