Group Led By Former Chairman and CEO Kaleil Isaza Tuzman Revises Acquisition Offer and Raises Concerns Regarding KIT digital Sale Process

Posted on Tuesday, February 12, 2013 by admin

Believes company is being purposefully driven to a distressed sale by current insiders

NEW YORK, Feb. 11, 2013 /PRNewswire/ — Dear KIT digital board of directors:

In an open letter to you on November 23rd, 2012, a group led by me outlined our disappointment with the direction you have taken KIT digital, Inc. ("KITD" or the "Company"), made a preliminary bid to take the Company private, and offered a detailed operational plan to recover value for shareholders. On December 5th, 2012, we revised our contingent bid for the Company in another open letter to the board—to a range of $1.35 -$1.70 per share—representing a 112% premium to the $0.72 closing price of the Company's shares on December 4, 2012.

While you insinuated to KITD shareholders at the time that our bid lacked bona fide capital support, you have in fact been confidentially aware of two large private equity firms with whom we have partnered and have known that we possess the capability to complete this transaction. Nevertheless, during the course of December 2012 your only meaningful response to our offer was a requirement that we agree to a two-year standstill in order to engage in any discussions regarding an acquisition of the Company. We do not believe that requiring us, or any other party, to execute a standstill as a condition to initiate discussions regarding a potential acquisition is in the best interest of shareholders at this juncture. This view is underscored by our knowledge of other bidding groups who executed standstill agreements in connection with the Company's previously disclosed strategic transaction process and have been subsequently unable to obtain general responses and specific due diligence information from the Company.

We believe your approach of requiring prospective buyers to agree to long-term standstills and the subsequent unresponsiveness of KITD management represents a purposeful approach to eliminate open competition for the Company's assets, thereby eroding the value of the Company and denying shareholders value they would otherwise receive in a competitive acquisition transaction.

We believe that requiring outside bidders to agree to a long-term standstill also represents a conscious, structural advantage in the strategic sale process for the Company's largest shareholder, JEC Capital Partners ("JEC Capital" or "JEC"). Given KITD's recent announcement of a restatement of historical financials and its de-listing from NASDAQ, it is very difficult for outside parties to develop a clear picture of the Company's current financial and operating condition. In his position as chief executive officer of KITD, JEC Capital managing partner Peter Heiland has unique access to information and can rely upon this information in developing a bid for the Company. We believe JEC has purposefully driven down the value of KITD and is either: (a) working with an affiliate or entity otherwise "friendly" to JEC to complete a presumptively arms-length transaction with which JEC could be subsequently involved, (b) planning to bid immediately after an artificially low-priced third party transaction is announced—which results in JEC's own standstill being released, or (c) planning a pre-arranged or pre-packaged bankruptcy filing in which JEC or a JEC affiliate would be the stalking horse bidder for the assets of the Company or otherwise materially benefit. We believe any of these outcomes would provide less value to the Company's shareholders than an open, competitive and transparent bidding process for the Company's assets.

Mr. Heiland has previously been the benefactor of investing in distressed situations where information asymmetry and insider positioning can generate meaningful returns. The case of GSI Group, where by his own description Mr. Heiland "engineered its recapitalization", closely follows the pattern of JEC's involvement in KITD. JEC Capital was a large, activist investor in GSI Group, which also made an open-ended announcement that it would restate its historical financials, de-listed from NASDAQ and lost the vast majority of its market capitalization immediately prior to a bankruptcy filing. GSI Group was put through bankruptcy with Mr. Heiland's leadership, resulting in JEC Capital materially increasing its stake in the Company and ultimately selling for a massive profit after GSI Group re-emerged from bankruptcy in 2010.

Our concerns with KITD's current management and sale process extend beyond the standstill issue and JEC's potential self-dealing. You have also chosen to keep KIT digital investors in the dark regarding some of the Company's most troubling challenges and liabilities. For example, on January 2, 2013, Invigor Group brought legal suit against KIT digital seeking recovery of nearly $15 million it is purportedly owed pursuant to the Company's acquisition of Hyro, Ltd. in June 2012. Alternatively, we understand there may be over 30 million shares issuable to Invigor pursuant to the terms of the Hyro acquisition. The Company has not disclosed the Invigor lawsuit or openly discussed the contingent share issuance liability with shareholders. We also have reason to believe the Company has sold off certain assets and/or intellectual property without fully disclosing these sales to the market.

Finally, you have attempted to undermine our group's bid to acquire the Company through intimidation: terminating senior managers at the Company supportive to our group, threatening your existing staff with repercussions related to potential communication with and support of our group, and withholding severance payments to senior professionals who have left the Company and subsequently supported our efforts. The Company's actions in this area have included a refusal to properly remove executives no longer with the Company from the Company's foreign subsidiaries' boards—in an apparent effort to cause these executives to incur expense and potential liability and discourage our outside bid for the Company.

Your actions overall have demonstrated a blatant disregard for outside shareholders not represented amongst you on the board. We believe the Company is being purposefully driven towards an insufficiently competitive, distressed asset sale—to the advantage of current insiders—possibly to be executed under federal bankruptcy protection.

We will continue to pursue all available means of delivering value to Company shareholders. We believe all parties currently subject to standstill agreements with respect to an acquisition of the Company or its assets should be immediately released from said agreements. We remain willing to lead an open-market, take-private bid of the Company. Given the Company's current stock price, liquidity crisis and need for a significant, primary capital infusion, our revised offer would be in a range of $0.70-$1.00 per share—representing, at the midpoint of the range, a 93.2% premium to the $0.44 closing price of the Company's shares on Friday, February 8, 2013. Our offer is subject to due diligence, your release of certain parties from standstill agreements, and a mutually acceptable definitive agreement.

Respectfully,

Kaleil Isaza Tuzman

On behalf of KIT Capital, Ltd.

This entry was posted in News, PR. Bookmark the permalink.

← Group Led by Former Chairman and CEO Kaleil Isaza Tuzman Extends Revised Acquisition Offer to KIT Digital Board of Directors

KIT Capital's Colombian property featured in The New York Times →