

## **E- AUCTION PROCESS INFORMATION DOCUMENT**

### **Terms & Conditions**

**for**

**Participation in E-Auction Process for Sale of Ind-Barath Power (Madras) Limited (“In Liquidation”) under the provisions of Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 vide order of Hon’ble National Company Law Tribunal, Hyderabad Bench dated April 22, 2019**

**Date of Public Advertisement**

**October 23, 2019**

**Date of E-Auction**

**November 12, 2019**

**Issued by Ashish Arjunkumar Rathi**

IBBI Registration No. IBBI/IPA-001/IP-P00568 /2017-18/11010

Liquidator of Ind-Barath Power (Madras) Limited

**Email:** ipashishrathi@gmail.com; liquidationibpml@gmail.com

*(Ashish Arjunkumar Rathi is a Registered Insolvency Professional with Insolvency and Bankruptcy Board of India (IBBI). His Registration number is IBBI/IPA-001/IP-P00568 /2017-18/11010. Mr. Ashish Arjunkumar Rathi has been appointed by NCLT Hyderabad Bench, vide its order dated April 22, 2019 to manage, protect, sell and liquidate the property, assets, business and other affairs of Ind-Barath Power (Madras) Limited (in liquidation) as an agent of Ind-Barath Power (Madras) Limited only, without undertaking any personal liability).*

### **Ashish Arjunkumar Rathi**

Liquidator of Ind-Barath Power (Madras) Limited

IP Registration No. IBBI/IPA-001/IP-P00568 /2017-18/11010

#### **Registered Address and Email ID with IBBI:**

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Seawood, Nerul Navi Mumbai, Maharashtra ,  
400706 Email ID - [ipashishrathi@gmail.com](mailto:ipashishrathi@gmail.com)

#### **Communication Address:**

Ind Barath Power (Madras) Limited,  
Sanpras Corporate Capital, 115/1 & 115/29  
06th Floor, Sheraton Towers, Financial District  
Nanakramguda, Gachibowli, Hyderabad – 500032,  
Email ID - liquidationibpml@gmail.com

## NOTES:

1. This E-Auction Process Information Document is issued only for the Bidders interested in participating in the liquidation process of Ind-Barath Power (Madras) Limited as per the provisions of the Insolvency and Bankruptcy Code, 2016 (“**The Code**”/”**IBC**”) and the Rules and Regulations made thereunder.
2. The terms and conditions, deadlines etc. for participating in the electronic auction are provided in this E- Auction Process Information Document.
3. The timelines, notifications and other details for the E-Auction Process are available on the website links <http://ibpml.in> and <https://ncltauction.auctiontiger.net>. Bidders desirous to submit their Bid have to submit their Bid on E-Auction portal <https://ncltauction.auctiontiger.net>.
4. The term “Sale of assets of the Company” or “Sale of the Company” where ever used in this document shall mean, either sale of; (a) Company/business of the company on going concern basis (b) assets of the Company on slump sale basis; or (c) set of assets of the Company collectively; : on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’ in accordance with the provisions of this E-Auction Process Information Document, the Code and the Rules and Regulations made thereunder.

## DISCLAIMER

*This E-Auction Process Information Document is issued by Mr. Ashish Arjunkumar Rath (an Insolvency Professional with Registration No. IBBI/PA-001/IP-P00568 /2017-18/11010), the Liquidator appointed by the Hon'ble National Company Law Tribunal, Hyderabad Bench vide its order dated April 22, 2019, in the matter of liquidation of Ind-Barath Power (Madras) Limited for general information purposes only to provide general information only, without regard to specific objectives, suitability, financial situations and the requirements of any particular person.*

5. *The purpose of this E-Auction Process Information Document is to lay out the process for submitting the Bid by the prospective Bidders through E- Auction for participating in the process of sale of : a; (a) Company/business of the company on going concern basis (b) assets of the Company on slump sale basis; or (c) set of assets of the Company collectively; : on 'as is where is basis', 'as is what is basis', 'whatever there is basis' in accordance with the provisions of E-Auction Process Information Document, the Code and the Rules and Regulations made thereunder. Neither this E-Auction Process Information Document nor anything contained herein shall form the basis of, or be relied upon in connection with any contract, agreement, undertaking, understanding or any commitment whatsoever. This E-Auction Process Information Document does not solicit any action based on the material contained herein.*

*This E-Auction Process Information Document is not a statutory document and it has not been approved or registered with any regulatory or statutory authority of government of India or any state government or by any stock exchange in India or any other jurisdiction. Nothing herein contained or materials relating to the E-Auction Process Information Document should be construed as legal, financial, accounting, regulatory or tax advice by the Liquidator.*

*It is to be noted that no information being provided in this E-Auction Process Information Document claims to be comprehensive. Independent due diligence of the intended user/recipient of this E-Auction Process Information Document or by the Bidder is highly recommended. While this information has been prepared in good faith, no representation or warranty, expressed or implied, is or will be made and no responsibility or liability is or will be accepted is or will be expressly disclaimed by the Liquidator or by any of his representatives, officers, agents, or the Company or in relation to the accuracy, fairness, authenticity or completeness of this E-Auction Process Information Document or any other written or oral information made available to any prospective Bidder or its advisors. In so far as the information contained in this E-Auction Process Information Document includes current and historical information, the accuracy, adequacy, authenticity, correctness, fairness, and completeness of such information cannot be guaranteed. By acceptance of this E-Auction Process Information Document, the Bidder shall be deemed to have acknowledged that it has not relied upon any representation and warranty made by the Liquidator.*

*This E-Auction Process Information Document and information contained herein or disclosed should not be printed, reproduced, transmitted, sold, distributed, or published by the recipient of this E-Auction Process Information Document, without prior written approval from the Liquidator. Distributing or taking/ending/dispatching/transmitting this E-Auction Process*

*Information Document in certain foreign jurisdictions may be restricted by law, and Persons in whose possession this E-Auction Process Information Document comes should inform themselves about, and observe, any such restrictions. Neither the Liquidator, nor his professional advisors, affiliates, directors, employees, agents, representatives or managers of the process shall be liable for any damages, whether direct or indirect, special or consequential including loss of revenue or profits that may arise from or in connection with the use of this E-Auction Process Information Document, including for the Bidder not being selected as a Successful Bidder or on account of any decision taken by the Liquidator.*

*Neither the Liquidator, nor his support team, , colleagues, advisors, representatives etc. shall be liable for any damages, whether direct or indirect, including loss of revenue or profits that may arise from or in connection with the use of this E-Auction Process Information Document, including for the Bidder not being selected as a Successful Bidder or on account of any decision taken by the Liquidator.*

*Further, apart from the provisions set out in this E-Auction Process Information Document, the Bidder shall be responsible for fully satisfying the requirements and provisions of IBC and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“**Liquidation Process Regulations**”) as well as all laws in force that are or may be applicable to the Bidder or the intended manner of sale envisaged under this E-Auction Process Information Document and for obtaining consents, waiver from requisite regulatory and statutory approvals from the concerned regulators, third parties and governmental authorities in order to consummate the sale process as contemplated in the E-Auction Process Information Document.*

*Please note that the Corporate Debtor does not have any ongoing operations or employees. In view of the same, the Bidder(s) understand and acknowledge that the Company is a non-operational company and may or may not meet the criteria for being treated as a ‘going concern’ and the bidders are advised to seek legal advice before submitting bids for purchase on a going concern basis and the feasibility of the same under the extant laws. The Bidder(s) are also invited to conduct their own due diligence in this regard, including but not limited to, the state, status of completion/commissioning and condition of the project/assets of the Company. The Liquidator, his employees, representatives, advisors, etc., shall neither bear any liability nor entertain any claims regarding rejection or cancellation of a sale by the Adjudicating Authority and the Bidder(s) also acknowledge and declare that the Liquidator, his employees, representatives, advisors, etc., shall not be liable and responsible in any manner whatsoever for any claim/damage/loss/litigation arising to it, at any point of time, on account of the Company or its business is found not capable of being classified as a ‘going concern’*

*Under no circumstances shall the Bidder make any contact, direct or indirect, by any mode whatsoever, with the Company until the Liquidator gives his written permission. The Confidential Information shall be kept secret and confidential by the Bidder (s) and shall be used solely in accordance with the terms of the Confidentiality Undertaking and provisions of IBC.*

*No Person, including the Bidder shall be entitled under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise to claim for any loss,*

*damage, cost or expense which may arise from or be incurred or suffered on account of anything contained in this E-Auction Process Information Document or otherwise, including the accuracy, adequacy, authenticity, correctness, completeness or reliability of the information or opinions contained in this E-Auction Process Information Document and any assessment, assumption, statement or information contained therein or deemed to form part of this E-Auction Process Information Document, and the Liquidator or any of his respective advisors, consultants and representatives and the Company, do not have any responsibility or liability for any such information or opinions and therefore, any liability or responsibility is hereby expressly disclaimed.*

*The sale of the Company is proposed to be done on "as is where is basis", "as is what is basis", "whatever there is basis" and "no recourse" basis and the proposed sale of assets of the Company does not entail transfer of any other title, except the title which the Company had on its assets as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the moveable/immoveable assets of the Company.*

*The Bidders shall bear all its costs and charges associated with or relating to the preparation and submission of its Bid including but not limited to physical and electronic preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Liquidator or any other costs incurred in connection with or relating to its Bid.*

*This E-Auction Process Information Document is neither an agreement nor an offer by the Liquidator to the prospective Bidders or any other person. The objective of this E- Auction Process Information Document is to provide prospective Bidders with information that may be useful to them in making their Bid. It may be noted that the assumptions, assessments, statements and information contained in the E-Auction Process Information Document may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own due-diligence, investigations and analysis and should also check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this E-Auction Process Information Document and may get independent advice from appropriate sources.*

*Information provided in this E-Auction Process Information Document to the Bidder(s) has been collected and collated from several sources. This E-Auction Process Information Document may not be all inclusive and may not contain all of the information that the recipient may consider material for the purpose of submission of its Bid. The information given by no means claims to be an exhaustive account of statutory requirements and should not be regarded as complete. The Liquidator accepts no liability or responsibility for the authenticity, accuracy or otherwise for any statement or information contained in the E-Auction Process Information Document.*

*The Bidders are prohibited from giving or offering any gift, bribe or inducement and any attempt to any such act on behalf of the Bidder towards the Liquidator, or any of his respective professional advisors, affiliates, or Representatives for showing any favour in relation to this document or the process set out herein, shall render the bidder to such liability and penalty as the*

*Liquidator may deem proper, including but not limited to immediate disqualification and exclusion from the process contemplated hereunder.*

*Neither the information in this E-Auction Process Information Document nor any other written or oral information provided by the Liquidator, or any of his respective advisors, consultants and representatives is intended to form the basis of or the inducement for submission of any document or information or the Bid by any prospective Bidder or for any investment activity. It is to be noted that by procuring a copy of this E-Auction Process Information Document, the recipient accepts the terms of this Disclaimer, which forms an integral part of this E-Auction Process Information Document.*

## **INDEX**

1.	INFORMATION MUST BE READ BEFORE BIDDING.....	7
2.	KEY DEFINITIONS .....	9
3.	INTRODUCTION.....	12
4.	AN OVERVIEW OF THE COMPANY .....	13
5.	ELIGIBILITY.....	15
6.	DOCUMENTS REQUIRED TO ASCERTAIN ELIGIBILITY OF THE BIDDER .....	18
7.	SITE VISIT.....	19
8.	DUE DILIGENCE/ DATAROOM/ CLARIFICATIONS.....	20
9.	MODE OF SALE AND RESERVE PRICE .....	21
10.	EARNEST MONEY DEPOSIT .....	23
11.	DEFAULT BY SUCCESSFUL BIDDER AND ITS CONSEQUENCES.....	25
12.	DECLARATION OF SUCCESSFUL BIDDER.....	25
13.	FRAUDULENT AND CORRUPT PRACTICES .....	26
14.	COSTS, EXPENSES AND TAX IMPLICATIONS .....	27
15.	GOVERNING LAW AND JURISDICTION .....	28
16.	TIMETABLE .....	29
	FORMAT A (EMD-BANK GUARANTEE).....	31
	FORMAT B (EMD-ASSOCIATE/ASSOCIATE COMPANY).....	34
	ANNEXURE I (AFFIDAVIT AND UNDERTAKING) .....	36
	ANNEXURE II (BID APPLICATION FORM) .....	39
	ANNEXURE III (BID DECLARATION FORM).....	43
	ANNEXURE IV (TECHNICAL TERMS OF E-AUCTION SALE) .....	45
	ANNEXURE V (CONFIDENTIALITY UNDERTAKING).....	47

## **1. INFORMATION MUST BE READ BEFORE BIDDING**

- 1.1 This E-Auction Process Information Document has been issued for the purpose of carrying out E-Auction by either by sale of: a) Company/business of the company on going concern basis (b) assets of the Company on slump sale basis; or (c) set of assets of the Company collectively; : on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’ in accordance with the provisions of the Code and the Rules and Regulations made thereunder.
- 1.2 The information provided in this E-Auction Process Information Document should be read together with the provisions of the Code and the Rules and Regulations made thereunder. In the event of a conflict between this E-Auction Process Information Document and the Code or the Rules and Regulations made thereunder, the provisions of the Code and/or the Rules and Regulations made thereunder, as the case may be, shall always prevail.
- 1.3 The information contained in this E-Auction Process Information Document or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Liquidator, is provided to Bidder(s) on the terms and conditions as set out in this E-Auction Process Information Document.
- 1.4 The Liquidator, its support team, advisors, employees, personnel, etc. have no responsibility towards the authenticity of the trademark registration of the brand / name ‘Ind-Barath Power (Madras) Limited (IBPML)’. Successful Bidder is/are advised to conduct their own legal diligence towards continuing with the same name. This E-Auction Process Information Document does not constitute advice and the Liquidator, its support team, advisors, employees, personnel, etc. should not be held responsible for any sort of claim on the name IBPML by any constitution / party (including related party (ies)). The Liquidator hereby excludes any warranty, express or implied by any party on the name Ind-Barath Power (Madras) Limited. No responsibility is taken by the Liquidator, its support team, advisors, employees, personnel, etc. regarding any implications on the future usage of the name Ind-Barath Power (Madras) Limited.
- 1.5 The Liquidator, its support team, advisors, employees, personnel, etc. also hereby disclaim any and all liability for any statements made or omitted to be made in this E-Auction Process Information Document or, any action taken or omitted to be taken pursuant to this E-Auction Process Information Document. The Liquidator may in his absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this E-Auction Process Information Document. Further, the Bidders must specifically note that the Liquidator reserves the right to change, update, amend, supplement, modify, add to, delay or otherwise annul or cease the E-Auction process/liquidation proceedings at any point in time, without any liability whatsoever in this regard, for any reason whatsoever determined in his sole discretion without obligation to notify any Person of such revision or changes.
- 1.6 The issuance of this E-Auction Process Information Document does not imply that the Liquidator is bound to select a bidder or to appoint the preferred Bidder as Successful Bidder

for acquisition of the Company and the Liquidator reserves the right to reject all or any of the Bidders or their Bid(s) without assigning any reason whatsoever.

- 1.7 M/s E-Procurement Technologies Limited (“**E-Auction Service Provider**”) has been appointed as the E-Auction Service Provider. The sale of the Company as contemplated in this E-Auction Process Information Document shall be undertaken by the E-Auction Service Provider for and on behalf of the Liquidator through an E-Auction platform provided on the website portal of the E-Auction Service Provider (“**Platform**”). Other details with respect to the E- Auction are as follows and the relevant annexures and formats are provided herein:

Type of Bid	E-Auction (online only)
Seller	Ashish Arjunkumar Rathi (Liquidator for IBPML)
Website of E-Auction Service Provider	<a href="https://ncltauction.auctiontiger.net">https://ncltauction.auctiontiger.net</a>
Service Provider	M/s. E-Procurement Technologies Ltd
Annexures and formats	<p><b>Format A:</b> Format of the bank guarantee for submission of Earnest Money Deposit (EMD) by the Bidder</p> <p><b>Format B:</b> Format for letter for submission of EMD by Associate/Associate Company (where applicable)</p> <p><b>Annexure I:</b> Affidavit and Undertaking</p> <p><b>Annexure II:</b> Bid Application Form (to be duly filled in and signed and stamped by the bidder and uploaded)</p> <p><b>Annexure III:</b> Bid Declaration Form (to be duly filled in and signed, stamped by the Bidder and uploaded along with the Bid Application Form)</p> <p><b>Annexure IV:</b> Technical Terms and Conditions of E-Auction</p> <p><b>Annexure V:</b> Confidentiality Undertaking</p>

All terms and conditions with respect to sale of a) Company/business of the company on going concern basis (b) assets of the Company on slump sale basis; or (c) set of assets of the Company collectively; : on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’; shall be governed in accordance with the provisions of Code and the Rules and Regulations made thereunder read with the directions issued by the Liquidator and the National Company Law Tribunal from time to time. As mandated by the NCLT, the Liquidator shall exercise all rights with respect to sale of the Company and it would be open to the Liquidator to appoint such experts, professionals or other persons, as the Liquidator might think necessary to facilitate the Liquidator in conducting the sale of the Company.

- 1.8 The Annexures and Formats to this E-Auction Process Information Document shall form an integral part hereof and this E-Auction Process Information Document shall always be read in conjunction with the Annexures and Formats appended hereto.
- 1.9 This E-Auction Process Information Document is neither transferable nor assignable.



- 1.10 All title documents in relation to assets of the Company as is available with the Liquidator shall be made available on request to the Liquidator at Data Room maintained at the link <https://www.cdslvdr.com>. Nothing contained in this E- Auction Process Information Document shall be deemed to relieve, wholly or partially, directly or indirectly, the Bidder from their compliance with the Code, any other law in force, and/ or any instrument having the force of law, as may be applicable to them.
- 1.11 The Bidder shall inform themselves concerning, and shall observe and comply with, any applicable legal requirements.
- 1.12 The laws of the Republic of India are applicable to this E-Auction Process Information Document.

## **2. KEY DEFINITIONS**

- 2.1 “**Adjudicating Authority**” or “**NCLT**” shall mean the National Company Law Tribunal, Hyderabad Bench;
- 2.2 “**Affidavit and Undertaking**” shall mean the affidavit and undertaking provided by the Bidder substantially in form and manner as annexed in **Annexure I** hereto;
- 2.3 “**Applicable Law(s)**” shall mean, any or all the applicable laws, codes, regulations, rules, guidelines, circulars, re-enactments, revisions, applications and adaptations thereto, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority, rules, regulations, orders and interpretations of any governmental authority, court or statutory or other body applicable for such transactions including but not limited to the IBC, Liquidation Process Regulations, Companies Act, 1956 / 2013 (as applicable), Competition Act, 2002 , Income Tax Act, 1961, The Goods and Services Tax Act, 2017, Transfer of Property Act, 1882, Sale of Goods Act, 1930, Foreign Exchange Management Act, 1999, whether in effect as of the date of this E-Auction Process Information Document or thereafter and each as amended from time to time;
- 2.4 “**Bid**” means any bid or offer along with other documents, submitted by the Bidder(s) as required in terms of the Public Advertisement and E- Auction Process Information Document issued by the Liquidator and in accordance with the provisions of IBC read together with the Liquidation Process Regulations as amended from time to time and the Applicable Law(s);
- 2.5 “**Bidder (s)**” shall mean a Person or Persons as the case may be, who submitted a Bid as per the E-Auction Process Information Document; and shall include a Qualified Bidder or the Successful Bidder, as the case may be, and as the context requires;
- 2.6 “**Bid Application Form**” shall mean the form as specified in **Annexure II** of this E-Auction Process Information Document;
- 2.7 “**Bid Declaration Form**” shall mean a declaration by the Bidders in form as specified in **Annexure III** of this E-Auction Process Information Document;

- 3       **“Company”** shall mean Ind-Barath Power (Madras) Limited, a company incorporated in India under the Companies Act of 1956 (Now Companies Act 2013), having its registered Office at Plot No.30A Road No.1 Film Nagar Jubilee Hills Hyderabad, 500033 and having its corporate office at Sanpras Corporate Capital, #115/1 & 115/29, 6<sup>th</sup> Floor, Sheraton Towers, Financial District, Nanakramguda, Gachibowli, Hyderabad – 500032
- 3.1       **“Confidential Information”** shall mean any and all information and other materials disclosed, furnished, communicated or supplied by or on behalf of the Liquidator to any bidder, in written or electronic or verbal form, including without limitation, and shall include (without limitation) the following types of information of a similar nature: any commercial and / or financial information, improvement, know how, intellectual property, discoveries, ideas, concepts, papers, techniques, models, data, documentation, manuals, flow charts, research, process, procedures, functions and other information related to price lists and pricing policies, and including any other information which the Company/Liquidator identifies to be confidential at the time of disclosure to the relevant bidder, and shall also include any information that is provided by the Liquidator or his representatives pursuant to the liquidation process or through the Confidentiality Undertaking.
- 3.2       **“Confidentiality Undertaking”** shall mean an undertaking as specified in **Annexure V** herewith;
- 3.3       **“Data Room”** shall mean the virtual data room maintained by the Liquidator, created for the Qualified Bidders to access information in relation to the Company;
- 3.4       **“E-Auction Process”/“E-Auction”** shall mean the electronic auction process for sale of the Company conducted in accordance with the provisions of IBC, Liquidation Process Regulations, Applicable Law(s) and this E- Auction Process Information Document inviting Bid from the Bidders for consummating the sale of: a) Company/business of the company on going concern basis (b) assets of the Company on slump sale basis; or (c) set of assets of the Company collectively; : on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’; in accordance with the provisions of the Code and the Rules and Regulations made thereunder.
- 3.5       **“E-Auction Process Information Document”** means this document including all the annexures, formats hereto, for the purposes of setting out the process for submission of a bid and selection of Successful Bidder in accordance with the provisions of the IBC and Liquidation Process Regulations and shall include all supplements, modifications, amendments, addendums, alterations or clarifications thereto issued in accordance with the terms hereof;
- 3.6       **“Eligibility Criteria”** shall mean collectively the Financial Criteria and the legal criteria as specified in the Clause 5 of this E-Auction Process Information Document;

- 3.7 **“Financial Criteria”** shall mean financial criteria as specified in the Clause 5.1 of this E-Auction Process Information Document;
- 3.8 **“Financial Eligibility Certificate”** shall mean a certificate from the auditor/ independent chartered accountant of the Bidder, in respect of its compliance with the Financial Criteria;
- 3.9 **“IBC”** shall mean Insolvency and Bankruptcy Code, 2016 as amended from time to time;
- 3.10 **“LOI”** shall mean the letter of intent issued by the Liquidator to the Successful Bidder detailing out the terms and conditions to complete the sale of assets of the Company, including the balance sale payment by Successful Bidder as per the provisions of IBC and the Liquidation Process Regulations;
- 3.11 **“Liquidation Process Regulations”** means, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 as amended from time to time;
- 3.12 **“Liquidator”** means Mr. Ashish Arjunkumar Rathi, an insolvency professional registered with Insolvency and Bankruptcy Board of India (IBBI) having registration number IBBI/IPA-001/IP-P00568 /2017-18/11010, appointed by NCLT, vide its order dated April 22, 2019 to manage, protect, sell and liquidate the property, assets, business and other affairs of the Company as an agent of the Company only in accordance with section 34 and other applicable provisions of the IBC;
- 3.13 **“Person”** shall mean an individual, a partnership firm, an association, a corporation, a limited company, a trust, a body corporate, bank or financial institution or any other body, whether incorporated or not;
- 3.14 **“Public Advertisement”** shall mean an announcement dated xx xx, 2019 in newspaper(s) Business Standard(All India Edition), Daily Thanti (Hyderabad Edition) and Sakshi (Hyderabad Edition) inviting an expression of interest from the Bidders, who shall submit their Bid to participate in the liquidation process of the Company in accordance with the provisions of IBC and Liquidation Process Regulations;
- 3.15 **“Qualified Bidder(s)”** shall mean a Bidder who fulfills the eligibility criteria listed out in the E-Auction Process Information Document;
- 3.16 **“Representatives”** shall include directors, officers, employees, affiliates, agents, consultants, advisors or such other representatives of the relevant Person expressly authorised by such Person pursuant to corporate authorisations, powers of attorney, or contract;
- 3.17 **“Reserve Price”** shall mean an aggregate price after rounding off to Rs. 159,42,00,000/- (Rupees One Hundred and Fifty-Nine Crores and Forty-Two Lacs only) as arrived pursuant to provisions of the Liquidation Process Regulations

- 3.18 “**Site**” shall mean the location of all the immovable and moveable properties including factories, plant and machinery and fabrication units, owned, leased or occupied by the Company, for the purposes of conducting business in India;
- 3.19 “**Site Visit**” shall mean a visit to the Site; and
- 3.20 “**Successful Bidder**” means, the Qualified Bidder whose Bid is approved and who is declared successful by the Liquidator at the end of the determined auction phase as per the provision of this E-Auction Process Information Document and in accordance with the provisions of IBC and the Liquidation Process Regulations.

*Capitalized terms used herein but not defined otherwise shall have meaning prescribed to them under the provisions of the IBC, the Liquidation Process Regulations and Applicable Law(s) to such terms as the context may require.*

### 3. INTRODUCTION

- 3.1 One of the Operational Creditors of the Company i.e. Rohan Verma Constructions Private Limited filed an application for initiation of corporate insolvency resolution process of the Company as per the provisions of IBC before the NCLT, Hyderabad which was admitted by the NCLT vide its order dated August 14, 2017 (“**CIRP Order**”). Pursuant to the CIRP Order, the management of the affairs of the Company were vested with Mr. Kranti Kumar Kedari, the Interim Resolution Professional of the Company (“**IRP**”) appointed by the NCLT with effect from August 14, 2017. Later on, the NCLT, Hyderabad vide its order dated October 18, 2017 had appointed Mr. Ashish Arjunkumar Rathi as the Resolution Professional (“**RP**”) pursuant to the decision of the committee of creditors of the Company in their meeting held on September 25, 2017, thereby replacing the IRP. The RP had been vested with the responsibility to manage the affairs of the Company and to further perform all such duties and acts as prescribed under Section 17 read with 23(2) of IBC from October 18, 2017. Since no Resolution Plan was approved by the Committee of Creditors (“**CoC**”) of the Company, the RP filed an application IA No. 457 of 2018 in CP(IB) No.150/9/HDB/2017 (“**Application**”) under Section 33 of the IBC before the NCLT for initiation of Liquidation (“**Liquidation**”) of the Company. The said Application of the RP was allowed by the NCLT vide its order dated April 22, 2019 (“**Liquidation Order**”), thereby commencing the Liquidation of IBPML on April 22, 2019. Pursuant to the Liquidation Order, the RP was appointed as the Liquidator to conduct the Liquidation Process of the Company in accordance with the provisions of IBC and Liquidation Process Regulations.
- 3.2 It is the endeavor of the Liquidator to conduct the sale of : a) Company/business of the company on going concern basis (b) assets of the Company on slump sale basis; or (c) set of assets of the Company collectively; : on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’; in accordance with the provisions of IBC and the Liquidation Process Regulations through E-Auction, read with any other Applicable Law(s) in the manner specified in this E-Auction Process Information Document.

- 3.3 The E-Auction would be conducted in the manner specified in the Liquidation Process Regulations and any other rules, regulations, orders, circulars, directions or notifications issued pursuant to or under IBC or the Liquidation Process Regulations, as the case may be, and as per directions, if any, of the NCLT in respect of the liquidation process of the Company and in the manner as specified in this E-Auction Process Information Document.
- 3.4 The Bidders are encouraged to make themselves acquainted with the provisions of the IBC and the Liquidation Process Regulations and any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be and the Applicable Laws.

#### **4. AN OVERVIEW OF THE COMPANY**

- 4.1 The Company was incorporated on 26<sup>th</sup> April 2006. The details of its plants are as follows:

The Company was set up with the aim of engaging in the business of generation and distribution of electrical energy through Thermal technology. The factory site of IBPML is situated at Sasthavinallur & Pallakkurichi villages, Sattankulam Taluka, Thoothukkudi district of Tamilnadu. The Company is a subsidiary of Ind-Barath Power Infra Limited. The shares of the company are held by Ind Barath Power Infra Limited (66.72%) and Arkay Energy (Rameshwaram) Limited (33.27%).

IBPML is an SPV incorporated for implementation of coal based thermal power plant with a capacity of 660 MW in Tuticorin, Tamil Nadu. The estimated project cost was Rs 3540 crore which was to be funded by debt to equity ratio 75:25 (with debt of Rs 2655 crore & equity of Rs 885 crore). As per CA certificate dated December 31, 2015, the company has incurred Rs 906.14 crore (26% of the total project cost) funded through debt & equity of 947.70 crore & 532.73 crore respectively. The project was earlier envisaged to achieve commercial operation date (COD) on June 30, 2013. However, currently the project is stalled.

As per information provided by the erstwhile management:

- **Land Acquisition**

The company has 641.52 acres of land at the plant location.

- **Fuel Linkage**

IBPML was awarded coal linkage by Ministry of Coal through its Standing Linkage Committee on 29<sup>th</sup> January, 2010. The coal linkage was from Mahanadi Coalfields Limited (MCL) for 70% (i.e. 462 MW) of the capacity. As per the Coal India policy, only 70% of the coal requirement for coastal power projects is to be met through domestic coal linkages. For the balance coal requirement the company intended to use imported coal.

- **Project Approvals**

The company had received approvals for the project like long term open access approval from Power Grid Corporation of India Limited for transmission of power, Coal linkage etc. The company had received MOEF clearance and other statutory approvals for implementing the project.

## 1.2 Location of the project

The project is in Valthur, Manappadu in Thoothukudi District in Tamilnadu. The project site is located at a distance of about 14 kilometers from the National Highway and 15 kilometers from Trichendur town.



The location is suitable for the proposed plant in view of the easy accessibility, availability of land and water. Further, the power plant will be easily able to connect to the nearest State & Central grid sub-station for transmitting to both Tamil Nadu Electricity Board (TNEB) & to Power Traders on merchant basis. The location of the plant can be considered technically feasible and viable based on the following factors.

- Adequate dry land is available for installation of 660 MW unit of thermal power plant.
- The plant is located at a distance of approx. 6 kilometers from the coastline, this proximity will facilitate the transport of imported coal as well as the domestic coal which is envisaged to be brought from MCL/SECL mines via Pradip/ Vishakapatnam to the Tuticorin port.
- The site is well connected by road and by rail (12 kilometers from Tiruchendur Station) and therefore no problems are envisaged for transportation of heavy equipment to site.
- Suitability of land from topography and geological aspects.
- Facility for interconnection with transmission and distribution system for evacuation of power.

## 4.2 Present Status

NCLT has vide the Liquidation Order ordered commencement of liquidation process of the Company as per Section 33 of the IBC read with Liquidation Process Regulations. Pursuant to the Liquidation Order, the Liquidator was appointed as the liquidator to perform its duties

as per the provisions of the IBC and Liquidation Process Regulations. The Liquidator is in the process of inviting qualified bidders to participate in the E- Auction for sale of: a) Company/business of the company on going concern basis (b) assets of the Company on slump sale basis; or (c) set of assets of the Company collectively; : on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’; in accordance with the provisions of IBC and the Liquidation Process Regulations, subject to the terms laid down in this E-Auction Process Document.

## 5. ELIGIBILITY

A Bidder shall not be eligible to submit a Bid in relation to the sale of the Company if it fails to meet the Financial Criteria and Legal Criteria as set out below:

- 5.1 **Financial Criteria:** The Bid would be subject to evaluation on Financial Criteria e.g. consolidated group net worth and/or funds available for deployment including the following:

**In case of Body Corporate and Individuals:** Consolidated net worth at a group level as per the audited balance sheet dated March 31, 2018 or any other audited financial statements thereafter or net worth certificate from an independent chartered accountant should be at least Rs. 25,00,00,000/- (Rupees Twenty five crores).

**For Financial Institutions/ PE Funds/ Asset Reconstruction Companies/ NBFCs/ Other Financial Investors:** Assets under management of at least Rs. 25,00,00,000/- (Rupees Twenty-five crores) in the immediately preceding completed financial year.

**For Consortium of Investors:** In case of a consortium the total net worth of the consortium jointly has to be 25,00,00,000/- (Rupees Twenty-five crores) (as per the Companies Act, 2013) in the immediately preceding completed financial year.

*A Financial Eligibility Certificate has to be provided by the Bidders evidencing their compliance with the Financial Criteria.*

*It is clarified that that Liquidator has the absolute right to relax the Financial Criteria at his discretion and can accept a Bid which doesn't meet the total net worth criteria as specified above.*

- 5.2 **Legal Criteria:**

Proviso to Section 35 (f) of the IBC provides that the Liquidator shall not sell the assets of the Company to any person who is not eligible to be a resolution applicant. Section 29A of IBC defines the persons not eligible to be resolution applicant. Section 29 A of the IBC is reproduced as below for reference purposes only:

***“Sec 29A. Persons not eligible to be resolution applicant:***

*A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person-*

- a) is an un-discharged insolvent;*
- b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);*
- c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor.*

*Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of resolution plan;*

*Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.*

*Explanation I - For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.*

*Explanation II - For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;*

- d) has been convicted for any offence punishable with imprisonment—*
  - (i) for two years or more under any Act specified under the Twelfth Schedule; or*
  - (ii) for seven years or more under any law for the time being in force:*



*Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:*

*Provided further that this clause shall not apply in relation to a connected person referred to in clause(iii) of Explanation I;*

- e) *is disqualified to act as a director under the Companies Act, 2013 (18 of 2013);*

*Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;*

- f) *is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;*

- g) *has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:*

*Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;*

- h) *has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;*

- i) *is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or*

- j) *has a connected person not eligible under clauses (a) to (i).*

*Explanation I - For the purposes of this clause, the expression “connected person” means*

- i. *any person who is the promoter or in the management or control of the resolution applicant; or*
- ii. *any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or*

- iii. *the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii)*

*Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:*

*Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;*

*Explanation II - For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely: —*

- (a) a scheduled bank;*
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;*
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);*
- (d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- (e) an Alternate Investment Fund registered with Securities and Exchange Board of India;*
- (f) such categories of persons as may be notified by the Central Government”.*

## **6. DOCUMENTS REQUIRED TO BE SUBMITTED TO ASCERTAIN ELIGIBILITY OF THE BIDDER**

- 6.1 The Bidder would need to submit the following forms, documents and authorizations as part of the E-Auction by the Bidder(s) as per the timelines prescribed in this E-Auction Process Information Document:

- 6.1.1 Ownership structure and composition of the Bidder, Proof of Identification, Current Address-Proof, PAN card, valid e-mail ID, Landline and mobile phone number etc.
- 6.1.2 Authorization to the Signatory (in case the bidder is a legal entity).
- 6.1.3 The interested bidder must submit the Financial Eligibility Certificate; and Affidavit and Undertaking (through Authorized Signatory, in case the bidder is a legal entity). The format for the Affidavit and Undertaking is attached vide **Annexure-I**.

*A Bidder will need to submit the duly filled, signed and stamped Bid Application Form attached vide **Annexure II**, and duly filled, signed and stamped Bid Declaration Form by Bidders attached vide **Annexure -III**.*

- 6.2 Please note that only the Qualified Bidder(s) will gain access to documentation, additional information in relation to the Company, required for due diligence, after due submission of the Financial Eligibility Certificate; Affidavit and Undertaking and after executing a Confidentiality Undertaking.
- 6.3 Further, it should be noted that at any stage of the E-Auction Process, the Liquidator may ask for further documents from the Bidder(s) to evaluate their eligibility. The Liquidator, at his discretion may disqualify the Bidder(s) for non-submission of the requested documents.

## **7. SITE VISIT**

- 7.1 The Qualified Bidder is expected to make its own arrangements including accommodation for the Site Visit. All costs and expenses incurred in relation to Site Visits shall be borne by the Qualified Bidder.
- 7.2 In Site Visit, the Qualified Bidder(s) may carry out its own comprehensive due diligence in respect of the Company and shall be deemed to have full knowledge of the condition of the Company, its assets, relevant documents, information etc. whether or not the Qualified Bidder actually inspects or participates in the Site Visit or verifies the document provided by the Liquidator. During the Site Visit, a Qualified Bidder shall not:
  - (i) take any photographs of the Site or take any documents back with it; or
  - (ii) initiate any discussion regarding the Liquidation Process, with the personnel at Site, during the course of its Site Visit.
- 7.3 The Qualified Bidder shall not be entitled to receive any reimbursement of any expenses which may have been incurred in carrying out of due diligence, search of title to the assets and matters incidental thereto or for any purpose in connection with the Bid.
- 7.4 Any delay in completion of the Site Visit by the Qualified Bidder, shall not entitle the Qualified Bidder to any extension in the timelines, including the timeline for completion of such Site Visit or submission of the Bid, by or before the last date for submission of the Bid.

## **8. DUE DILIGENCE/DATA ROOM/CLARIFICATIONS**

- 8.1 The Liquidator shall endeavor to provide necessary assistance, facilitating the due diligence by Qualified Bidders. The information and documents shall be provided by the Liquidator in good faith.
- 8.2 The Liquidator proposes sale of : a) Company/business of the company on going concern basis (b) assets of the Company on slump sale basis; or (c) set of assets of the Company collectively; : on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’; in accordance with the provisions of IBC and Liquidation Process Regulations on “As is where is basis”, “As is what is basis”, “Whatever there is basis” and “No recourse” basis and the proposed sale as specified above does not entail transfer of any title, except the title which the Company has on the assets as on date of the transfer. All local taxes / maintenance fee / electricity / water charges/ annual lease rentals/ unearned income in case of leasehold assets, etc., outstanding as on date or yet to fall due in respect of the relevant asset should be ascertained by the Bidder and would be borne by the Successful Bidder.

*It must also be noted that the Liquidator does not give any assurance or warranty of the physical condition or title of the assets and their suitability for any sort of operation that the bidder envisages.*

### **8.3 Clarifications:**

- 8.3.1 While the data/ information provided in this E-Auction Process Information Document and the Data Room, has been prepared and provided in good faith, the Liquidator and their Representatives/advisors, etc., shall not accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, correctness, completeness or reliability of the information provided, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, correctness, reliability and completeness of the information provided, even if any loss or damage is caused to any of the Bidder by any act or omission on their part.
- 8.3.2 It is further clarified that the data/information provided in the Data Room has been prepared based on books of accounts, financial statements, Company’s website and discussions and representations by the erstwhile directors and key managerial personnel of the Company. Reasonable care has been taken in compiling various data and information, however the Liquidator along their advisors, consultants, Representatives, make no representation or warranties, express or implied, as to the quality, accuracy, authenticity, correctness, fairness and completeness of the data provided in the Data Room, and assume no liability whatsoever in respect of any inaccuracy, incompleteness, or omissions or any other deficiency of whatsoever nature in the data provided in the Data Room.

- 8.3.3 Any clarification uploaded in the Data Room shall be binding on all the Bidders and shall be deemed to form part of this E -Auction Process Information Document. No request for modifications of the clarifications shall be entertained, however, the Liquidator, may, in a fit case and as per his discretion, issue modification to the clarifications, if required. Such modifications(s) shall be binding on all the Bidders and shall be deemed to modify the clarification and be read as a part of this E-Auction Process Information Document.
- 8.3.4 A Bidder requiring any clarification on this E- Auction Process Information Document, Liquidation Process, submission of the Bid or on the Company shall email such request for clarification to [ipashisrathi@gmail.com](mailto:ipashisrathi@gmail.com) with a copy to [liquidationibpml@gmail.com](mailto:liquidationibpml@gmail.com).
- 8.3.5 The Liquidator reserves the right not to respond to any query or provide any clarification, at their sole discretion, and no extension of time and date referred to in this E-Auction Process Information Document shall be granted on the basis of not having received response to clarifications sought from the Liquidator. However, whenever any clarification is issued either *suo moto* or in response to the request by a Bidder, the same shall be uploaded in the Data Room and be accessible by all the Bidders, without disclosing the identity of the requesting Bidder, if any. Nothing in this Clause shall be considered or read as compelling or requiring the Liquidator to respond to any query or to provide any clarification to the queries raised by a bidder. The Liquidator will not be held responsible for any delay in response or non-response to clarifications raised by the Bidder.

## **9. MODE OF SALE AND RESERVE PRICES**

- 9.1 As per Regulation 32 of the Liquidation Process Regulations, the Liquidator may sell-
- (a) an asset of the Company on standalone basis;
  - (b) the assets of a Company through a slump sale;
  - (c) a set of assets of the Company collectively;
  - (d) the assets of the Company in parcel;
  - (e) the Company as a going concern; or
  - (f) the business(s) of the Company as a going concern.

Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.

- 9.2 The security interest in the assets of the Company has been relinquished by the secured creditors in accordance with Section 52(1)(a) of the IBC.
- 9.3 The Liquidator proposes to conduct sale of the (i) sale of the Company/Business of a company on a going concern basis as contemplated under Regulation 32(e) & (f) (ii) assets of the

Company on a slump sale basis as contemplated under Regulation 32 (b) of the Liquidation Process Regulations; or (iii) the sale of the set of assets of Company collectively as contemplated under Regulation 32(c) of the Liquidation Process Regulations; of the Liquidation Process Regulations through E-Auction Process and pursuant to this E-Auction Process Information Document.

- 9.4 The implementation/mechanism of such sale is however not specifically provided for in the Liquidation Process Regulations or anywhere in IBC. It is clarified that on being declared as Successful Bidder, the said Successful Bidder shall be required to complete the sale of a) Company/business of the company on going concern basis (b) assets of the Company on slump sale basis; or (c) set of assets of the Company collectively; : on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’ in accordance with the provisions of IBC and Liquidation Process Regulations, at its/his option. However, in case if a particular option is not implementable for any reason whatsoever in such case the Successful Bidder will be required to complete the transaction based on the option that is implementable without any deviation to the Bid price as specified in the Bid. After identification of a Successful Bidder, the Liquidator shall have the right to approach the NCLT for obtaining suitable directions on the implementation of such sale and any such directions shall be binding on the Successful Bidder in relation to the sale process as contemplated in this E-Auction Process Information Document.
- 9.5 The Successful Bidder agrees that it shall be bound to pay the balance sale consideration for consummation of sale of the assets of the Company within the time frame stipulated in the Liquidation Process Regulations as are applicable to this Sale process. It is clarified that any necessary approvals, consents, reliefs that may be required to be obtained by the Successful Bidder with respect to sale of assets as contemplated in this E-Auction Process Information Document have to be obtained by the Successful Bidder without any deviation from the time frame for payment of balance sale consideration as stipulated under the Liquidation Process Regulations. Any failure to obtain such necessary approvals, consents, reliefs that may be required by the Successful Bidder in respect of the sale of the assets of the Company shall not affect the E-Auction Process or sale of the Company as contemplated under this E-Auction Process Information Document. On payment of the full amount, the sale shall stand completed and the Liquidator shall execute a certificate of sale or sale deed to consummate the sale transaction as contemplated under this E-Auction Process Information Document and the Liquidation Process Regulations.
- 9.6 The Liquidator reserves the right to alter, modify, cancel or relax any of the terms and conditions mentioned in this E-Auction Process Information Document in the interest of the liquidation process of the Company including cancellation of the E-Auction Process at any point of time without incurring any liability of whatsoever nature to anyone including any Bidder. Any such alteration, modification, cancellation or relaxation of E-Auction Process shall be binding on the Bidders.
- 9.7 The Qualified Bidders, participating in the E-Auction Process, will have to Bid for an amount not less than the Reserve Price for acquiring the assets of the Company.

- 9.8 The attention of Qualified Bidders is invited to the fact that the Bidders cannot place a Bid for a value below the Reserve Price. Such Bid will stand automatically disqualified.
- 9.9 The access to the details of the assets of the Company/ Data Room will be provided only to Qualified Bidder, subject to submission of Affidavit and Undertaking, Financial Eligibility Certificate and Confidentiality Undertaking by such Qualified Bidder.

## **10. EARNEST MONEY DEPOSIT**

- 10.1 All the Bidders shall provide, prior to submission of their E- Auction, an amount which is equal to the 10% of the Reserve Price, as earnest money deposit (“EMD”).
- 10.2 It may be noted that the Bidder may request the Liquidator to permit the Bidder to submit the EMD through its Associate or Associate Company. Such payment of the EMD by an Associate or Associate Company of the Bidder shall be accompanied by a letter in the format set out in **Format B** (Earnest Money by an Associate / Associate Company). Such an Associate or Associate Company must also be a Qualified Bidder as per the requirements specified in this E-Auction Process Information Document.

Provided that, the Liquidator reserves the right to accept such a request at its sole discretion and upon such terms and conditions as it may deem fit, including but not limited to requiring such a party to submit any authorization documents or other necessary details/documents.

### **10.3 Mode of Payment of EMD and balance sale consideration and other instructions relating to EMD**

- 10.3.1 The EMD, which would not be bearing any interest, has to be paid by the Bidder prior to uploading the online Bid Application Form.
- 10.3.2 Through RTGS / NEFT to the account number of the Company as provided under:

Name	<b>Ind-Barath Power (Madras) Limited in Liquidation</b>
Account No.	0126102000003056
Bank Name	IDBI Bank
Branch	Cuffe Parade
IFSC Code	IBKL0000126

- 10.3.3 The details of any remittances in this regard shall be entered in the online form submitted by the Bidder. The entire EMD amount shall be remitted by the Bidder(s) from one bank account only and to be owned by the Bidder, except as allowed to be remitted by an Associate or Associate Company in terms of clause 10.2 above.
- 10.3.4 Bidders shall preserve the remittance challan and shall produce the same to the Liquidator as and when demanded.

10.3.5 All the payments to be made by the Bidder under the e-auction shall be intimated to the Liquidator at ipashishrathi@gmail.com/liquidationibpml@gmail.com.

10.3.6 The process under 10.3.2 to 10.3.5 aforesaid shall also be applicable to payment of the balance sale consideration in respect of the sale of assets of the Company.

10.4 The EMD may also be provided either:

- (i) in the form of the cash which can be deposited by the Bidder, by way of direct bank transfer to the bank account as notified by the Liquidator; or
- (ii) by way of a bank guarantee issued by any leading nationalized bank or private sector bank of India in favour of the Company in **Format A**.

It should be noted that no interest will be paid to the Bidder in relation to such EMD.

#### 10.5 **Forfeiture of Earnest Money Deposit from the Bidder**

10.5.1 It is to be noted that the EMD furnished can be forfeited at any time, upon the occurrence of any of the following events:

- (i) if there is a breach of any of the conditions under this E-Auction Process Information Document by the Bidder or in case Bidder is found to have made any misrepresentation or fraud; or
- (ii) if Bidder is found to be ineligible to submit the Bid as per the conditions set out in Section 29A of the IBC (as amended from time to time) or is found to have made a false or misleading declaration of eligibility as per the conditions set out in Section 29A of the IBC (as amended from time to time); or
- (iii) if the Successful Bidder after being intimated by the Liquidator as Successful Bidder, fails to make the complete payment within the time stipulated in the Liquidation Regulations as per the terms of letter of intent issued by the Liquidator.
- (iv) In case of any of the above event, all the amounts deposited till that date shall be forfeited and the option to acquire the assets of the Company will be offered to the next highest Bidder, unless otherwise determined by the Liquidator at his sole discretion including cancellation of the E-Auction Process and initiation of a fresh E-Auction Process.

#### 10.6 **Set-off of EMD of the Successful Bidder**

10.6.1 Unless expressly indicated by the Bidder, the EMD shall be set-off against or used as part of the consideration that the Successful Bidder proposes to offer as a sale consideration of the Company and/or against any past dues owed by the Bidder. Dues shall include any and all obligations cast upon the bidder by law or by an order of an Adjudicating Authority during



the Corporate Insolvency Resolution Process under the IBC or otherwise.

- 10.6.2 The Bid once submitted cannot be withdrawn and in case of non-participation in E-Auction after submission of Bid, the offer will be presumed to be given at Reserve Price. The E-Auction Service Provider shall itself register the Bidder in E-Auction in such event.
- 10.6.3 In case the E-Auction fails, then the EMD paid by the Bidder shall be returned (without interest) to such applicant on a best effort basis within 60 (Sixty) days of the date of closure of E-Auction Process.
- 10.6.4 For Successful Bidders, an email confirmation will be given for being Successful Bidder on the next day of the E-Auction.
- 10.6.5 The Successful Bidder shall be required to execute a LOI provided by the Liquidator within a period of 7 days from the E-Auction date, and record unconditional acceptance of the LOI by providing the Liquidator with one copy of LOI with an endorsement stating that LOI is accepted unconditionally under the signature of the representative of the Successful Bidder.
- 10.6.6 Upon receipt of the balance sale consideration by the Successful Bidder as per the timelines prescribed under the Liquidation Process Regulation, i.e., within a period of 15 days from the date on which it was invited to provide such balance sale consideration , a sale certificate and/or conveyance document and/or transfer documents for the relevant asset/assets shall be issued/executed between the Successful Bidder and the Company as per the timelines specified in this E-Auction Process Information Document.

## **11. DEFAULT BY SUCCESSFUL BIDDER AND ITS CONSEQUENCES**

- 11.1 In the event that the Successful Bidder withdraws his Bid Application Form, the Liquidator shall have the right to invoke/ encash the bank guarantee provided with respect to the EMD or appropriate the EMD furnished by the Successful Bidder.
- 11.2 If the Successful Bidder does not furnish the balance consideration pursuant to the LOI issued by the Liquidator within the timelines stipulated under the Liquidation Process Regulations, the Liquidator shall have the right to invoke/ encash the bank guarantee provided with respect to the EMD or appropriate the EMD furnished by the Successful Bidder and the provisions of Clause 10.5.1(iv) shall apply in such case

## **12. DECLARATION OF SUCCESSFUL BIDDER**

The Liquidator at the end of the E-Auction Process, shall declare the Successful Bidder(s). The Successful Bidder(s) shall be determined on the basis of highest Bid received in respect of sale of a) Company/business of the company on going concern basis (b) assets of the Company on slump sale basis; or (c) set of assets of the Company collectively; : on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’ in accordance with the

provisions of IBC and Liquidation Process Regulations read with Terms & Conditions as specified in the E-auction portal. In case of any dispute / discrepancy, the Liquidator shall assess the E-Auction applications and declare the Successful Bidder(s) offering maximum value for the auctioned assets of the Company. This right of selecting and declaring the Successful Bidder(s) shall always solely rest with the Liquidator.

### **13. FRAUDULENT AND CORRUPT PRACTICES**

The Bidder shall observe the highest standard of ethics during the E-Auction Process and subsequently during the closure of the E-Auction Process and during the declaration of the Successful Bidder. Notwithstanding anything to the contrary contained in this E-Auction Process Information Document, the Liquidator shall reject the Bid, without being liable in any manner whatsoever to the Bidder, if the Liquidator, at his discretion, determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the E-Auction Process or has, undertaken any action in respect of such process which results in the breach of any Applicable Law including the Prevention of Corruption Act, 1988. In such an event, the liquidator may retain the EMD, without prejudice to any other right or remedy that may be available to the Liquidator under this E-Auction Process Information Document or Applicable Law(s).

For the purposes of this Clause, the following terms shall have the meaning hereinafter respectively assigned to them:

**“coercive practice”** shall mean impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the E-Auction Process;

**“corrupt practice”** shall mean:

- i. the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the E-Auction Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Liquidator or the Company, who is or has been associated or dealt in any manner, directly or indirectly with the E-Auction Process or arising there from, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Liquidator or the Company, shall be deemed to constitute influencing the actions of a person connected with the E- Auction Process);  
or
- ii. engaging in any manner whatsoever, during the E- Auction Process or thereafter, any person in respect of any matter relating to the Company, who at any time has been or is a legal, financial or technical adviser of the Liquidator or the Company, in relation to any matter concerning the E-Auction Process;

**“fraudulent practice”** shall mean a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the E-Auction Process;

**“restrictive practice”** shall mean forming a cartel or arriving at any understanding or arrangement among the Bidders with the objective of restricting or manipulating a full and fair competition in the E-Auction Process; and

**“undesirable practice”** shall mean (i) establishing contact with any person connected with or employed or engaged by the liquidator with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the E-Auction Process; or (ii) having a conflict of interest.

The Bidder shall not involve himself or for any of his Representatives in price manipulation of any kind directly or indirectly under the Applicable Law(s) by communicating with other Bidders.

The Bidder shall not divulge either his Bid or any other details provided to him by the Liquidator or during the due diligence process in respect of the assets of the Company to any other party. Prior to conduct of due diligence / Site Visits and access of Data Room, the Liquidator shall require the Bidder to execute a Confidentiality Undertaking with the Company / Liquidator.

#### **14. COSTS, EXPENSES AND TAX IMPLICATIONS**

- 14.1 The Bidder shall be responsible for all the costs incurred by it on account of its participation in the E-Auction Process, including any costs associated with participation in the discussion meeting (if any), Site Visit, etc. The Liquidator shall not be responsible in any way for such costs, regardless of the conduct or outcome of the E-Auction Process.
- 14.2 It is hereby clarified that the Bidder shall make its own arrangements including accommodation for the discussion meeting (if organised) or Site Visit and all costs and expenses incurred in that relation shall be borne by the Bidder.
- 14.3 The Bidder shall not be entitled to receive any reimbursement of any expenses which may have been incurred while carrying out the due diligence, search of title to the assets of the Company and matters incidental thereto or for any purpose in connection with the E-Auction Process.
- 14.4 It is to be noted that all taxes applicable (including stamp duty implications and registration charges) on sale of : a) Company/business of the company on going concern basis (b) assets of the Company on slump sale basis; or (c) set of assets of the Company collectively; : on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’; as the case may be in accordance with the provisions of IBC and Liquidation Process Regulations, as the case may be, would be borne by the Successful Bidders. Some of the costs and charges for the sale transaction may include *inter-alia* the following:

- (i) The sale of the Company attracts stamp duty, registration charges etc. as per relevant Applicable Law(s);
- (ii) The Successful Bidder shall bear all the necessary expenses like applicable stamp duties additional stamp duty / transfer charges, fees, etc. for transfer of assets of the Company in its name; and
- (iii) The payment of all statutory / non statutory dues, taxes, rates, assessments, charges, fees, cess or other applicable tax i.e. GST, TDS etc.
- (iv) Costs incurred by the Liquidator (including fees of any external agency, advisors, legal counsels, etc.) for verification of compliance of the Bidder of Section 29 A of IBC.

It is clarified that the balance consideration amount shall always be deemed to include the above costs and only upon payment of all the above costs along with sale consideration, the sale shall be considered as complete.

- 14.5 It is expressly stated that the Liquidator does not take or assume any responsibility for any dues, statutory or otherwise, of the Company, including such dues, if any, which may affect transfer of the assets of the Company in the name of the Successful Bidder and such dues, if any, will have to be borne /paid by the Successful Bidder.
- 14.6 The Bidder shall be responsible for fully satisfying the requirements of the IBC and the related Regulations as well as all Applicable Law(s) that are relevant for the sale of the Company. The Successful Bidder shall be responsible for obtaining requisite regulatory or statutory or third-party approvals, no-objections, permission or consents, if any, that are or may be required under Applicable Law(s) in respect of the sale of Company as contemplated in E-Auction Process Information Document.
- 14.7 If the Liquidator is required to continue to render services in relation to the Corporate Debtor after completion of sale, the Bidder shall be responsible for compensating the Liquidator for his efforts at a fee arrived at upon mutual discussion inclusive of any and all expenses incurred in this regard.

## **15. GOVERNING LAW AND JURISDICTION**

This E-Auction Process Information Document, the E-Auction Process and the other documents pursuant to the E-Auction Process Information Document shall be governed by the laws of India and any dispute arising out of or in relation to the E-Auction Process Information Document or the E-Auction Process shall be subject to the exclusive jurisdiction of the Adjudicating Authority, courts and tribunals at Hyderabad, India. However, the bank guarantee provided by the Bidder in relation to the EMD as per Format A of this document shall be subject to the exclusive jurisdiction of the courts and tribunals at Mumbai, India.

## 16. TIMETABLE

The following timetable shall apply to the E-Auction Process Information Document. The timetable may be amended by the Liquidator through issuance of an addendum to the E-Auction Process Information Document.

Sr. No.	Event	Timeline (days)
1	Public Advertisement of E-Auction	T [23.10.2019]
2	Opening of Auction Portal and this E- Auction Process Information Document made available on the website(s)	T+2 [25.10.2019]
3	(a) Submission of Affidavit and Undertaking and Declaration form by the Bidder as annexed in the E-Auction Process Information Document (b) Opening of Data Room Access to the Qualified Bidders (c) Site Visits and Discussion Meeting (d) Facilitation of Due Diligence (Access to be given only to eligible /qualified bidder- post submission of Affidavit and Undertaking and Financial Eligibility Certificate and Confidentiality Undertaking)	T to E-1 [23.10.2019 to 11.11.2019]
4	(a) Bid Declaration Form and EMD submission along with the requisite KYC declarations as specified in the Bid Application Form  (b) Closure of Data Room Access	T+2 to E-1 [25.10.2019 to 11.11.2019]  E-1 [11.11.2019]
5	E- Auction Date & announcement of the Successful Bidder	E [12.11.2019]
6	Issuance of email confirmation as Successful Bidder	E+1 [13.11.2019]
7	Execution of LOI by the Successful Bidder	E+7 [19.11.2019]
8	Return of EMD for unsuccessful Bidders, on best effort basis.	E + 60 days [11.01.2020]
9	Payment of balance consideration by Successful Bidder	< E + 15 days [As per the timelines in the Liquidation Process Regulations, on or before 27.11.2019]
10	Issuance of Sale Certificate	E+16 [28.11.2019]

\*While the timeline for submission of Bid Application Form and Bid Declaration Form is from T till E -1, please note that access to documentation, additional information and site visits will be granted only once the bidder submits the Financial Eligibility Certificate, Affidavit and Undertaking and a Confidentiality Undertaking.

Bidders should regularly visit the website(s)/link(s) mentioned in public advertisement to keep themselves updated regarding clarifications, amendments and/or extension of time, if any.

Note - The timeline for payment of final sale consideration may be extended at the sole discretion of Liquidator, to the extent permissible under the Applicable Law(s) and the Liquidation Process Regulations. In case the final sale consideration is not paid within the timelines prescribed under this document/ Liquidation Process Regulations, the Liquidator shall forfeit the EMD.

**FORMAT- A**  
**EARNEST MONEY DEPOSIT – BANK GUARANTEE**

*(To be on non-judicial stamp paper of appropriate stamp duty value relevant to place of execution)*

To  
Mr. Ashish Arjunkumar Rathi  
Liquidator of Ind-Barath Power (Madras) Limited  
Registration No. IBBI/IPA-001/IP-P00568 /2017-18/11010  
19/503, N R I Complex, Sector 54, 56, 58,  
Seawood, Nerul Navi Mumbai,  
Maharashtra ,400706  
and

[Insert Details of the Bank and Address]

**WHEREAS**

A. *[Insert name of the Bidder]* incorporated in *[India]/ [insert name of country where guarantor is incorporated]* under the *[Companies Act, [1956/2013]]/ [insert name of legislation under which the entity is incorporated]* with corporate identity number *[insert the corporate identity number of the entity]*, whose registered office is at *[insert address]* (“**Bidder**”) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR (Indian Rupees only) in accordance with the terms of the E- Auction Process Information Document dated \_\_\_\_\_ (“**E-Auction Process Information Document**”) issued by the Liquidator seeking submission of bids for the carrying out the sale of the assets of Ind-Barath Power (Madras) Limited under Liquidation.

B. This bank guarantee is required to be issued in favour of the Ind-Barath Power (Madras) Limited (under Liquidation) represented by its Liquidator, Mr. Ashish Arjunkumar Rathi (Registration No. IBBI/IPA-001/IP-P00568 /2017-18/11010) (“**Beneficiary**”), pursuant to the terms of the E-Auction Process Information Document.

C. We, *[insert name of the bank]* having our registered office at *[insert address]* (“**Bank**”) at the request of the Bidder do hereby undertake to pay to the Beneficiary at Mumbai an amount not exceeding INR *[insert the amount of Earnest Money Deposit]* to secure the obligations of the Bidder under the E-Auction Process Information Document on demand from the Beneficiary on terms and conditions herein contained.

1. Now therefore, the Bank hereby issues in favour of the Beneficiary this irrevocable and unconditional payment bank guarantee (“**Guarantee**”) on behalf of the [*Insert name of the Bidder*] for an amount.
2. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Beneficiary without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand made by the Beneficiary, a sum not exceeding the aggregate amount of INR [*Insert the amount of Earnest Money Deposit*].
3. This Guarantee shall be valid and binding on the Bank up to and including [*Insert date of validity of the Earnest Money Deposit*] and shall in no event be terminable by notice or any change in the constitution of the Bank or the Beneficiary, by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.
4. The Bank hereby expressly agrees that the demand made on it under this Guarantee shall be conclusive evidence of that such payment is due and the Bank shall not require any proof in addition to the written demand from Beneficiary, made in any format, raised at the above mentioned address of the Bank, in order to make the said payment to the Beneficiary.
5. The Bank shall make payment hereunder notwithstanding any objection by [*Insert name of the Bidder*] and / or any other person or any dispute (s) raised by the [*insert name of the Bidder*] in any suit or proceeding pending before any court or tribunal relating thereto and the Bank’s liability under this present being absolute and unequivocal. The Bank shall not require the Beneficiary to justify the invocation of this Guarantee, nor shall the Bank have any recourse against the procurer(s) in respect of any payment made hereunder.
6. This Guarantee shall be interpreted in accordance with the laws of India and the courts and tribunals at Mumbai shall have exclusive jurisdiction. The Bank represents that this Guarantee has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Bank in the manner provided herein.
7. This Guarantee shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Bank.
8. This Guarantee shall be a primary obligation of the Bank and accordingly the Beneficiary shall not be obliged before enforcing this Guarantee to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder or to exercise, levy or enforce any distress, diligence or other process against the Bidder. The Bank waives any such right to that extent.



9. The Bank further unconditionally agrees with the Beneficiary that the Beneficiary shall be at liberty, without Bank's consent and without affecting in any manner the Bank's obligations under this Guarantee, from time to time:

- (i) Vary and/or modify any of the terms of the E-Auction Process Information Document;
- (ii) Extend and/or postpone the time of performance of the obligations of the Bidder under the E-Auction Process Information Document; or
- (iii) Forbear or enforce any rights exercisable by the Beneficiary against the Bidder under the terms of the E-Auction Process Information Document.

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Beneficiary or any indulgence by the Beneficiary to the Bidder or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under the Guarantee.

10. The Bank hereby agrees and acknowledges that the Beneficiary shall have a right to invoke this Guarantee either in part or in full, as it may deem fit.

11. Our liability under this Guarantee is restricted to INR \_\_\_\_\_ only) and it shall remain in force until [*Insert Earnest Deposit Validity Date*], with an additional claim period of 30 (thirty) days thereafter.

12. The Bank Guarantee shall be extendable for such period as may be directed by the Beneficiary.

13. Failure to re-issue or extend this Guarantee in accordance with Clause 11 above shall entitle the Beneficiary to invoke this Guarantee.

In witness whereof the Bank, through its authorised officer, has set its hand and stamp on this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_.

Signature of the Bank Official:

Name of the Bank Official:

Designation with Bank Stamp

**Witness**

1. \_\_\_\_\_  
Name and Address

2. \_\_\_\_\_  
Name and Address

Attorney as per power of attorney No. \_\_\_\_\_

For:

\_\_\_\_\_ [Insert Name of the Bank]

Banker's Stamp and Full Address:

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2019

Notes:

The Stamp paper should be in the name of the Bank

**FORMAT B**  
**EARNEST MONEY DEPOSIT PAYMENT BY AN ASSOCIATE COMPANY/ASSOCIATE**

To

**Mr. Ashish Arjunkumar Rathi,**

Liquidator of Ind-Barath Power (Madras)

Limited (in Liquidation)

Registration No. IBBI/PA-001/IP-P00568 /2017-18/11010

19/503, N R I Complex, Sector 54, 56, 58,

Seawood, Nerul Navi Mumbai,

Maharashtra ,400706

[Copy to:]

[Insert name of the Bidder with address]

Dear Sir,

**Sub:** Payment of the amounts of EMD on behalf of the Bidder in relation to the auction of Ind-Barath Power (Madras) Limited (under liquidation) ("**Company**") or its business on a going concern or slump sale basis or through the sale of the set of assets of the Company collectively on 'as is where is basis', 'as is what is basis', 'whatever there is basis' basis as per Liquidation Process Regulations.

In light of the Bid for Ind-Barath Power (Madras) Limited submitted by [Insert name of the Bidder with address] in accordance with and subject to the provisions of the E-Auction Process Information Document dated \_\_\_\_\_ in relation to the captioned transaction ("**E-Auction Process Information Document**"), issued by the Liquidator, [Insert name and address of the Associate/Associate Company and address of the head office] hereby declares and confirms it is [an/the] [Insert relationship of the Associate/Associate Company with the Bidder] of the Bidder ("**Associate/Associate Company**"), and the payment of the EMD vide [Insert mode of payment] ("**Payment**") is on behalf of the Bidder. The Associate Company acknowledges that such amounts paid as EMD shall be subject to the terms of the E-Auction Process Information Document and hereby waives any right to claim any refund or adjustment of the amounts of such payment except in accordance with the terms of the E-Auction Process Information Document.

The Associate/Associate Company hereby represents and warrants that payment of amounts on behalf of the Bidder is in compliance with Applicable Law.

Capitalized terms used but not defined in this letter shall have the meanings ascribed to such terms in the E-Auction Process Information Document.

Yours sincerely,

[Signature and name of the Authorised Officer of the Associate/ Associate Company] Rubber stamp/  
seal of the Associate/Associate Company

## **ACKNOWLEDGMENT**

We hereby acknowledge and confirm the statements set out above by the Associate/Associate Company.

Yours sincerely,

[Signature and name of the Authorised Officer of the Bidder]

Rubber stamp/seal of the Bidder

**ANNEXURE I**  
**AFFIDAVIT AND UNDERTAKING**

Date:

**Mr. Ashish Arjunkumar Rathi,**  
Liquidator of Ind-Barath Power (Madras)  
Limited (in Liquidation)  
Registration No.IBBI/IPA-001/IP-P00568  
/2017-18/11010  
19/503, N R I Complex, Sector 54, 56, 58,  
Seawood, Nerul Navi Mumbai,  
Maharashtra ,400706

**Sub:** Disclosure and Undertaking on eligibility under Section 29A of the Insolvency and Bankruptcy Code, 2016

Dear Sir,

- A. I hereby submit this declaration under Section 29A of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) as inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018 and further amendments thereto:

I have understood the provisions of Section 29A of IBC and confirm that I am eligible to submit my bid under section 29A of IBC. I confirm that in accordance with the provisions of section 29 A of IBC, *inter-alia*, neither [XYZ Limited nor any person acting jointly or in concert with XYZ Limited nor any of their connected person:

- (I) Is an un-discharged insolvent;
- (II) Is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
- (III) At the time of submission of the Bid, has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor;
- (IV) Has been convicted for any offence punishable with imprisonment – (i) for two years or more under any Act specified under the Twelfth Schedule; or (ii) for seven years or more under any law for the time being in force: Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release

from imprisonment : Provided further that this clause shall not apply in relation to a connected person referred to in clause(iii) of Explanation I.

- (V) Is disqualified to act as a director under the Companies Act, 2013;
- (VI) Is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- (VII) Has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this IBC;
- (VIII) Has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this IBC;
- (IX) Has been subject to any disability, corresponding to clauses (a) to (h) of Section 29A, under any law in a jurisdiction outside India; or
- (X) Has a connected person (as defined in Explanation to Section 29A) who is ineligible under clauses (a) to (i) of Section 29A of IBC.

I therefore, confirm that XYZ Limited is eligible under Section 29A of IBC submit its Bid for Ind-Barath Power (Madras) Limited – In Liquidation.

- B. I declare and undertake that in case XYZ Limited nor any person acting jointly or in concert with XYZ Limited nor any of their connected person becomes ineligible at any stage during the Liquidation Process, it would inform the Liquidator forthwith on becoming ineligible.
- C. I also undertake that in case XYZ Limited nor any person acting jointly or in concert with XYZ Limited nor any of their connected person becomes ineligible at any time after submission of EMD, then the EMD would be forfeited and the same would be deposited in the account of Ind-Barath Power (Madras) Limited – in liquidation.
- D. I confirm that the said declaration and disclosure is true and correct and the undefined legal terms in this undertaking shall have the same meaning as ascribed to them under IBC and regulations thereunder.
- E. I am duly authorized to submit this declaration by virtue of [*Insert the details of the corporate authorisations*]

(DEPONENT)

VERIFICATION

I, the deponent above, do hereby solemnly declare and affirm that the above statement given by me is true and correct to the best of my knowledge and belief and nothing stated above is false or misrepresentation or misleading.

(DEPONENT)

**ANNEXURE II**  
**BID APPLICATION FORM**

(Please fill up separate Bid application)

Date:

**Mr. Ashish Arjunkumar Rathi, Liquidator**

Liquidator of Ind-Barath Power (Madras) Limited (in Liquidation)

Registration No.IBBI/IPA-001/IP-P00568 /2017-18/11010

19/503, N R I Complex, Sector 54, 56, 58,

Seawood, Nerul Navi Mumbai,

Maharashtra ,400706

Dear Sir,

I am desirous in participating in the E-Auction Process of Ind-Barath Power (Madras) Limited (under liquidation) announced by you on xx,xx 2019 in newspaper(s) Business Standard (All India edition), Daily Thanti (Tamil Edition) and Sakshi (Hyderabad Edition)

The Details of the Company for the purposes of remittance of payment is as follows:

Name	
Account Number	
Bank Name	
Branch	
IFSC Code	

The Details of the Bidder is as follows:

Name	
Constitution of the Bidder	
Contact No.	
Email ID	
PAN No.	
Address	
Details against EMD	

I/We/M/s. also enclose copies of the required KYC documents. We request you to kindly verify the same and arrange with the auction portals for issue of an ID and password for us to enable us to take part in the E-Auction.

Place:

On behalf of the Bidder

Date:



**Terms and Conditions of the E-Auction are as under:**

In addition to the E-Auction Process Information Document, following terms and conditions apply:

1. E-Auction is being held on “**AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS**” and will be conducted “On Line”. The E-Auction will be conducted through the approved service provider M/s. E-Procurement Technologies Ltd. via its website <https://ncltauction.auctiontiger.net>. E-Auction Process Information Document containing Bid Documents will be available at <https://ncltauction.auctiontiger.net>. Interested bidders can register, bid and receive confirmation of their bid online. The requisition of additional information, if any, be sent to [liquidationibpml@gmail.com](mailto:liquidationibpml@gmail.com) with a copy to [ipashishrathi@gmail.com](mailto:ipashishrathi@gmail.com) disclosing the identity of the interested Bidder.
2. The Bidders should make their own independent inquiries regarding the encumbrances, title of assets put on auction and claims/rights/dues/ affecting the assets of the Company and should conduct their own due-diligence prior to submitting their Bid. The e-Auction advertisement does not constitute and will not be deemed to constitute any commitment or any representation of the Liquidator. The Company / its business is proposed to be sold on slump sale basis or a going concern basis or through a set of assets of the Company collectively on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’ basis or, as applicable, with all the existing and future encumbrances/claims/dues/demands whether known or unknown to the Liquidator. Liquidator shall not be responsible in any of way for any third party claims/ rights/ dues.
3. The Bidders should submit the evidence for EMD deposit like UTR number along with the request letter for participation in E-Auction as follows:
  - (i) In case of individuals: (a) Proof of identification (KYC) viz. Voter ID card/ Driving License/ Passport etc., (b) Current Address-Proof for communication, (c) PAN card of Bidder, (d) Valid Email ID, (e) contact number (Mobile/Landline) (f) and all other relevant documentation in relation to the bidding process.
  - (ii) In case the Bidder is a Company/Entity: (a) Copy of original authorization letter at company letter head, in the name of the individual authorized to collect Letter of Intent on behalf of the company; (b) Copy of ID Proof of the authorized representative like AADHAR/Passport etc; (c) Copy of PAN Card of the Company; (d) Copy of Memorandum and Articles of Association of the company; and (e) All relevant documentation related to the E-Auction Process to the office of the Liquidator by the timelines as specified in this document. Scanned copies of the original of these documents can also be submitted to the email of the Liquidator at [ipashishrathi@gmail.com](mailto:ipashishrathi@gmail.com)/[liquidationibpml@gmail.com](mailto:liquidationibpml@gmail.com).
  - (iii) At the time of delivery the authorized person would have to show the original documents of: (i) Original authorization letter of the Company; (ii) Original ID Proof

of the authorized representative/ Individual appearing like AADHAR/Passport etc and (iii) Original PAN Card of the Company/ Individual.

4. Name of the Prospective Bidders will be identified and conveyed by Liquidator to participate in online E-Auction on the portal as per timelines specified in the E-Auction Process Information Document. The Prospective Bidder shall be required to be registered with the E-Auction Service Provider for generation of login credentials to enable the prospective Bidder to participate in the E-Auction on the appointed date i.e., 12.11.2019.
5. It should be the responsibility of the Prospective/Interested Bidders to inspect and satisfy themselves about the assets of the Company before submission of the Bid.
6. Liquidator has right to demand any additional documents from the Bidder for the E- Auction Process. In case such additional documents are not provided by the Bidder, the Liquidator in his own discretion may disqualify the Bid.
7. The E-Auction of the assets of the Company would be conducted on 12.11.2019.
8. The EMD of unsuccessful bidders shall be refunded on a best effort basis within 60 (Sixty) days from the date of E-Auction. The EMD shall not bear any interest.
9. In case of the Successful Bidders, the EMD in cash may be adjusted towards the balance sale consideration. The EMD shall not bear any interest.
10. The Liquidator will intimate through mail to the Successful Bidder, detailing the total payable amount for consummating the sale of the Company and other terms and conditions. The Successful Bidder would have to pay the balance sale consideration amount less EMD for the sale of the Company within time stipulated in this E- Auction Process Information Document. Any default in payment of the bid amount by the Successful Bidder would entail forfeiture of EMD already deposited and the Company may be put to re-auction and the defaulting Bidder shall have no claim / right in respect of Company / amount paid whatsoever.
11. The Successful Bidder shall bear the applicable stamp duties/ additional stamp duty / transfer charges, fee, taxes, Good and Services Tax, etc. and also all the charges incidental to the process as envisaged under IBC and the Liquidation Regulations including statutory/ non statutory dues, taxes, rates assessment charges fees etc. owing to anybody.
12. The Liquidator has the absolute right to accept or reject any or all offer(s), including the highest offer or adjourn / postpone/ cancel the E-Auction or withdraw any asset or portion thereof from the e-auction proceedings at any stage without assigning any reason there for.
13. The sale certificate will be issued and / or transaction / sale documents executed in the name of Successful Bidder(s) only and will not be issued in any other name(s).

14. The sale of the Company as contemplated under this document shall be subject to conditions prescribed under the Insolvency & Bankruptcy Code, 2016 read with amendments and rules/regulations made thereunder.
15. The Bidder may submit his offer as per the process specified in the E-Auction Process Information Document.
16. The decision of the Liquidator on declaration of Successful Bidder shall be final and binding on all the Bidders.
17. The Bidders are required to keep themselves updated for any revisions in the terms and conditions of E-Auction by regularly visiting the links and website addresses of the Company as mentioned in this E-Auction Process Information Document.

Date: \_\_\_\_\_

Place : \_\_\_\_\_

**Ashish Arjunkumar Rathi, Liquidator**

Liquidator of Ind-Barath Power (Madras)

Limited (in Liquidation)

Regd. No. IBBI/IPA-001/IP-P00568/201718/11010

19/503, N R I Complex, Sector 54, 56, 58,

Seawood, Nerul Navi Mumbai,

Maharashtra ,400706 Email ID -

[ipashishrathi@gmail.com](mailto:ipashishrathi@gmail.com)

Communication Address: -

Ind Barath Power (Madras) Limited,

Sanpras Corporate Capital,

115/1 & 115/2906th Floor, Sheraton Towers,

Financial District Nanakramguda, Gachibowli,

Hyderabad – 500032, Email ID - liquidationibpml@gmail.com

Ashish Arjunkumar Rathi has been appointed by NCLT as Liquidator and granted a certificate of registration to act as an insolvency professional by the Insolvency and Bankruptcy Board of India, his Registration No. is IBBI Reg. No: IBBI/IPA-001/IP-P00568 /2017-18/11010. The affairs, business and property of Ind-Barath Power (Madras) Limited (in Liquidation) are being managed by the Liquidator, Ashish Arjunkumar Rathi, who acts as agent of Ind-Barath Power (Madras) Limited (in Liquidation) only and without personal liability.

**ANNEXURE III**  
**BID DECLARATION FORM/ DECLARATION BY BIDDERS**

To  
Mr. Ashish Arjunkumar Rathi,  
Liquidator of Ind-Barath Power (Madras)  
Limited (in Liquidation)  
Registration No. IBBI/PA-001/IP-P00568 /2017-18/11010  
19/503, N R I Complex, Sector 54, 56, 58,  
Seawood, Nerul Navi Mumbai,  
Maharashtra ,400706  
Dear Sir,

1. I / We, the Bidder (s) aforesaid do hereby state that, I / We have read the entire terms and conditions for the sale of assets of the Company as specified in the Public Advertisement and E-Auction Process Information Document and have understood them fully. I /We, hereby unconditionally agree to confirm with and to be bound by the said terms and conditions of the Public Advertisement and E-Auction Process Information Document and agree to take part in the E-Auction Process.
2. I / We declare that the Earnest Money Deposit/EMD and documents submitted in relation to the Eligibility Criteria as specified in the E-Auction Process Information Document and that the particulars of remittance and all other information given by me/us in the online form is true and correct.
3. I / We further understand and agree that if any of the statement / information revealed by me / us is found to be incorrect and / or untrue, the Bid submitted by me / us is liable to be cancelled and in such case, the EMD and / or any monies paid by me / us is liable to be forfeited by the Liquidator and the Seller will be at liberty to annul the offer made to me/us at any point of time.
4. I / We also agree that after my /our offer given in my /our Bid in relation to the sale of the Company as contemplated under the E-Auction Process Information Document, is accepted by the Liquidator and if, I / We, fail to accept or act upon the terms and conditions of the sale or am / are not able to complete the transaction within the time limit specified under the E-Auction Process Information Document or the Liquidation Process Regulations for any reason whatsoever and /or fail to fulfil any / all the terms and conditions of the E- Auction and letter of intent, the EMD and other monies paid by me / us along with the online form and thereafter, are liable to be forfeited along with other deviations pertaining to forfeiture of EMD as specified in the E-Auction Process Information Document. The timeline for payment of final sale consideration may be extended by Liquidator at his sole discretion and as per the Liquidation Process Regulations, to the extent permissible under the Applicable Law(s). In case final sale consideration is not paid within timeline stated in the Liquidation Process Regulations, the Liquidator shall forfeit EMD.

5. I / We understand that in the event that my bid is unsuccessful, the EMD shall be retained by the Liquidator and returned best effort basis within 60 (Sixty) days of the date of closure of E-Auction Process. I / We, state that I / We, have fully understood the terms and conditions herein and agree to be bound by the same.
6. I / We confirm that our participation in the E-Auction Process, submission of Bid or the sale of the Company, pursuant to the provisions of the E-Auction Process Information Document will not conflict with, or result in a breach of, or constitute a default under (i) our constitutional documents; or (ii) any Applicable Law; or (iii) any authorization or approval of any government agency or body; or (iv) any judgement, order, injunction, decree, or ruling of any court or governmental authority, domestic or foreign binding on me / us; or (v) any agreement to which I am / we are a party or by which I am / We are bound.
7. I/ We understand that I/We shall be responsible for fully satisfying ourselves with the requirements of the IBC and the related regulations as well as all Applicable Law(s) that are relevant for the E-Auction Process and consummating the sale of assets of the Company. I/We shall be responsible for obtaining requisite regulatory or statutory or third-party approvals, no-objections, permission or consents, if any, that are or may be required under Applicable Law(s) for consummation of sale of: a) Company on going concern basis; or (b) business of Company on going concern; (c) Company's business on slump sale basis or (d) set of assets collectively, on 'as is where is basis', 'as is what is basis', 'whatever there is basis' in accordance with the provisions of IBC and Liquidation Process Regulations. However, in case a particular mode of sale is not implementable for any reason whatsoever, I/ We understand and undertake to complete the transaction based on the option that is implementable without any deviation to the Bid price as specified in our initial Bid.
8. I/We fully understand and undertake any and all the risks associated with the various modes of sale as detailed in the E-Auction Process Information Document and that the responsibility of necessary due diligence and its outcome shall always lie only with me/us. By submitting the Bid pursuant to the present E-Auction Process, I/We hereby unconditionally declare and confirm that I/We have verified, ascertained and satisfied myself/ourselves as to the condition, state, status of completion/commissioning, location and any other requisite details of the Company, including but not limited to, its project, assets, rights, liabilities, etc., and therefore the Liquidator, his employees, representatives, advisors, etc., shall not be liable and responsible in any manner whatsoever for any claim/damage which I/We may suffer for the reason of such condition, state, status of completion, etc. as referred above.
9. The decision taken by the Liquidator with respect to the selection of the Successful Bidder and communicated to us shall be binding on me/us.
10. I/We also undertake to abide by the additional conditions if announced during the e-auction including any announcement(s) on correction of and / or additions or deletions to the time of auction portal being offered for sale.

11. I/We confirm that the Liquidator, his employees, representatives, advisors, etc., shall not be liable and responsible in any manner whatsoever for my/our failure to access and Bid on the E-Auction portal due to any unforeseen circumstances etc. before or during the E-Auction event.
12. I/We hereby confirm that I/we are eligible to submit our Bid in relation to sale of the assets of the Company under Section 29A of the Insolvency and Bankruptcy Code, 2016 read with subsequent amendments thereto.
13. The capitalized terms not defined in this Bid Declaration Form and phrase “sale of the Company” shall have the same meaning as ascribed to it in the E-Auction Process Information Document.

(Signature with SEAL)

Name:

Address:

Email:

**ANNEXURE IV**  
**TECHNICAL TERMS & CONDITIONS OF E-AUCTION SALE**

1. Intending bidders shall have a valid e-mail ID, valid PAN Card and know your customer documents to register with the E - Auction Service Provider.
2. Bidders have to register themselves with the E-Auction Service Provider.
3. Only upon verification of the online form and confirmation of remittance of EMD will the Qualified Bidders be declared and thereafter, permitted to access the Platform for bidding for the Company.
4. The Bidder shall be solely responsible for all consequences arising out of the Bid submitted by him (including any wrongful bidding) and no complaint/ representation will be entertained in this regard by the agency/ the Liquidator. Hence, Bidders are cautioned to be careful to check their bid amount(s) and alter/rectify their Bid if required before confirming the Bid submitted.
5. Bidders should not disclose their User ID as well as password and other material information relating to the bidding to anyone to safeguard its secrecy.
6. Bidders are advised to change the password immediately on receipt thereof.
7. The Affidavit and Undertaking and Bid Declaration Form by the Bidders as per the formats substantially provided in Annexure I and III respectively of the E- Auction Process Information Document be executed by the Bidders in accordance with Applicable Law(s) and it must be in issued in accordance with the constitutional documents of the Bidder, if applicable, after obtaining all corporate approvals as may be required. The extract of constitutional documents and certified copies of the corporate approvals must be enclosed with the Bid Declaration Form by the Bidders. In case of Bidder being an individual, the declaration must be personally signed by the Bidder. In case the Bidder is not an individual, the declaration must be signed by a person who is in full time employment of the Bidder and duly authorized to sign the same.
8. All the aforementioned documents are required to be uploaded on the portal and the original physical copies thereof shall be provided by the Successful Bidder to the Liquidator in accordance with the E- Auction Process Information Document.
9. All Bid(s) placed are legally valid bids and are to be considered as bids from the Bidder himself. Once the Bid is placed, the Bidder cannot reduce or withdraw the Bid for whatever reason. If done so, the EMD deposited by the Bidder shall be forfeited.
10. The highest Bid on the E-Auction date shall supersede all the previous bids of the respective Bidders. The Bidder with the highest offer/ bid does not get any right to demand for acceptance of his Bid.

11. After the conclusion of the E-Auction of the Company, the Successful Bidder shall be informed through a message generated automatically by the portal, of the outcome of the E-Auction. A separate intimation shall also be sent to the Successful Bidder. The date of sending of the e-mail intimating the Successful Bidder shall be considered as the date of receipt of the Intimation i.e. date of intimation.
12. Bidders may encounter certain unforeseen problems such as time lag, heavy traffic, and system/ power failure at the Bidder's end. To avoid losing out on bidding because of above-mentioned reasons, it is advised not to wait for the last moment. The Bidders are required to keep themselves updated with any revised terms and conditions of E-Auction by regularly visiting the links of the auction portal and website of the Company as mentioned in this E-Auction Process Information Document.



## ANNEXURE V

### CONFIDENTIALITY UNDERTAKING

This Confidentiality Undertaking has been signed by (**Name of potential Bidders**) having its office at \_\_\_\_\_ acting through Mr. (**Name of person authorised by potential Bidder(s)**), the authorized signatory/authorized representative (“**Bidder**”), which expression shall, unless repugnant to the context, be deemed to include its successors, assigns or legal representative) in favour of Mr. Ashish Arjunkumar Rathi, an Insolvency Professional having registration no. IBBI/IPA-001/IP-P00568/2017-18/11010.

WHEREAS Ind-Barath Power (Madras) Limited, a company registered under Companies, Act, 1956 (hereafter referred as the “**Company**”) is undergoing liquidation vide NCLT Hyderabad Bench (“**NCLT**”) order dated April 22, 2019. Vide the said NCLT Order Mr. Ashish Arjunkumar Rathi, a registered insolvency professional with Insolvency and Bankruptcy Board of India (IBBI) having registration number IBBI/IPA-001/IP-P00568 /2017-18/11010 has been appointed as liquidator to manage, protect, sell and liquidate the property, assets, business and other affairs of Ind-Barath Power (Madras) Limited (in liquidation) (“**Liquidator**”).

WHEREAS the Liquidator has invited prospective Bidders for the purpose of submission of Bid through E-Auction Process in respect of sale of the Company in accordance with the provisions of E-Auction Process Information Document and provisions of Insolvency and Bankruptcy Code, 2016 (“**IBC**”) read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“**Liquidation Process Regulations**”).

WHEREAS the Liquidator is required to share certain data, documents in relation to the Company for facilitating the prospective Bidder(s) in their due diligence after receiving an undertaking from each of the potential Bidder(s) to the effect that such member shall maintain confidentiality of the information received from the data room and during the course of due diligence and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under IBC and Liquidation Process Regulations.

**THEREFORE, the Bidder (s) hereby declare(s) and undertake(s) as follows:**

1. The Bidder(s) shall not divulge any part of the information contained accessed through the data room which shall mean the virtual data room maintained by the Liquidator, created for the Qualified Bidders to access information in relation to the Company (“**Data Room**”) or any other data shared by the Liquidator, through oral or written communication or through any mode to anyone and the same shall constitute “**Confidential Information**”. Any information or documents generated or derived by the recipients of Confidential Information that contains, reflects or is derived from any Confidential Information shall also be deemed as Confidential Information.
2. The Bidder (s) further unconditionally and irrevocably undertake and declare that:
  - a) the Confidential Information shall be kept secret and confidential by the Bidder (s) and shall be used solely in accordance with the terms of the IBC;

- b) the Bidder(s) shall not use the Confidential Information to cause any undue gain or undue loss to itself, the Company, Liquidator or any other person;
  - c) the Bidder(s) shall comply with all provisions of Applicable Law(s) for the time being in force relating to confidentiality and insider trading;
  - d) the Bidder (s) shall protect any intellectual property of the Company which it may have access to;
  - e) the Confidential Information may only be disclosed to and shared with any employees or its advisors by the Bidder(s), in accordance with Applicable Law(s), including in relation to confidentiality and insider trading, and terms of this Confidentiality Undertaking on a strict need-to-know basis and only to the extent necessary for and in relation to the liquidation process of the Company, provided that the Bidder binds such employees and third parties, by way of an undertaking/ agreements, to terms at least as restrictive as those stated in this Confidentiality Undertaking.
  - f) the Bidder(s) shall ensure that all Confidential Information is kept safe and secured at all times and is protected from unauthorised access, use, dissemination, copying, any theft or leakage;
  - g) the Bidder(s) shall immediately destroy and permanently erase all Confidential Information upon the completion of sale of the Company as provided under E-Auction Process Information Document and the Liquidation Process Regulations;
  - h) the Bidder(s) shall take all necessary steps to safeguard the privacy and confidentiality of the information received through the access of the Data Room and shall use its best endeavour to secure that no person acting on its behalf divulges or discloses or uses any part of the Confidential Information, including but not limited to the financial position of the Company, all information related to disputes by or against the Company and other matter pertaining to the Company; and
  - i) the Bidder(s) shall be responsible for any breach of obligations under this confidentiality undertaking (including any breach of confidentiality obligations by any employee or advisor or agent or director of the Bidder) and shall indemnify the Liquidator for any loss, damages, expenses and costs incurred by the Liquidator due to such breach of such obligations by the Bidder (s) or any person acting on its behalf.
3. Notwithstanding anything to the contrary contained herein, the following information shall however not be construed as Confidential Information:
- a) information which, at the time of disclosure to the Bidder(s) was already in the public domain without violation of any provisions of Applicable Law(s); or

- b) information which, after disclosure to the Bidder(s) becomes publicly available and accessible without violation of Applicable Law(s) or a breach of this Confidentiality Undertaking; or
  - c) information which was, lawfully and without any breach of this Confidentiality Undertaking, in the possession of the Bidder (s) prior to its disclosure, as evidenced by the records of the Bidder(s).
- 4. The Bidder(s) hereby expressly agrees and acknowledges that the Liquidator makes no representation, warranty or inducement, whether express or implied, as to the accuracy, completeness, authenticity or adequacy of the information (including but not limited to the Confidential Information) provided to the Bidder(s) in the E-Auction Process Information Document/ Data Room. The Bidder(s) further agrees and acknowledges that the Liquidator shall not be liable to the Bidder(s) for any damage arising in any way out of the use of the Confidential Information and further that the Bidder(s) shall not have any claim against the Liquidator or the Company in relation to any information provided.
  - 5. The terms of this Confidentiality Undertaking may be modified or waived only by a separate instrument in writing signed by the Bidder(s) and the Liquidator that expressly modifies or waives any such term.
  - 6. Damages may not be an adequate remedy for a breach of this Confidentiality Undertaking and the Liquidator is therefore entitled to the remedies of injunction, specific performance and other equitable relief for a threatened or actual breach of this Confidentiality Undertaking.
  - 7. Nothing in this Confidentiality Undertaking shall have the effect of limiting or restricting the liability of the Bidder(s) arising as a result of its fraud or wilful default as defined under Applicable Law(s).
  - 8. The undersigned hereby represents and warrants that it has the requisite power and authority to execute, deliver and perform its obligations under this Confidentiality Undertaking.
  - 9. This Confidentiality Undertaking and any dispute, claim or obligation arising out of or about it shall be governed by and construed in accordance with Indian laws and the courts and tribunal of Hyderabad shall have exclusive jurisdiction over matters arising out of or relating to this Confidentiality Undertaking.
  - 10. Capitalised terms not defined under this Confidentiality Undertaking shall have the same meaning as provided in the E-Auction Process Information Document.

I further declare that I, the undersigned have full knowledge of the contents provided in this undertaking and have absolute authority to sign this undertaking on behalf of [*insert the name of the Bidder (s)*].

Signed on behalf of

(Name of Bidder(s))

by Mr. \_\_\_\_\_

(Name and Designation)

Authorised Signatory

Date:

Place:

*Note- In case of consortium, undertaking to be executed by each of the members*