

**INVITATION FOR EXPRESSION OF INTEREST**  
**ACIL LIMITED**  
**(Under Corporate Insolvency Resolution Process)**

**January 28, 2019**  
**(Updated on February 13, 2019)**

**1. BACKGROUND**

ACIL Limited (“ACIL” or “Corporate Debtor” or “Company”), is a public limited company incorporated under the provisions of the Companies Act, 1956 on April 15, 1997. The registered office of the Company is situated at Ground Floor, Building No. 108/B, Madangir Village, New Delhi-110062 and Principal Office at 3 LSC, Pamposh Enclave, Greater Kailash Part-1, New Delhi-110062.

The company is currently under Corporate Insolvency Resolution Process (CIRP) as per the provisions of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”), pursuant to the order of Hon’ble NCLT, Principal Bench, New Delhi, dated August 8, 2018.

Mr. Ravindra Loonkar, acting in his capacity as the Resolution Professional (“RP”) for the Corporate Debtor, hereby invites Expression of Interest (EOI) from prospective Resolution Applicants for the purpose of submission of Resolution Plan in respect of the Corporate Debtor within the time lines indicated in the Form G and as prescribed under Regulation 36A and 36B of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations, 2016”).

**2. BRIEF PROFILE**

Established in 1997, ACIL Limited is engaged in manufacturing of high precision engineering automotive components. It majorly manufactures crankshafts for tractors, HCV, LCV as well as two wheelers. Besides, the company also manufactures connecting rods, steering knuckles and hubs.



Over the years, it has served automobile manufacturers like John Deere, New Holland Tractors, SML Isuzu Ltd, International Tractors Limited, Honda Motorcycles & Scooters India Limited, Maruti Suzuki India Limited, Escorts Ltd., etc.

The manufacturing facility of the company is located on freehold land bearing address: Plot No. 53 and 54, Sector- 3, IMT Manesar, Gurugram, Haryana. It includes, inter alia, machines from Toyoda-Japan, Heller- Germany, Komatsu – Japan, Moriseiki.

The company set up its first crankshaft line in 1998 and at present has 10 Crank shaft lines, 1 Connecting rod line, 1 Steering knuckle line, and 4 Hub wheel lines.

The company has achieved revenue from operations for INR 145 crores as per audited financial statements for the year ended March 31, 2018. The company is working on going concern basis.

The company has won several awards and achievements including the following:

- Excellence Award in recognition of partner level performance from John Deere for continuous three years (2014-2016)  
(Partner Level Performance- A Supplier who goes above & beyond our performance, standards, reaches world class level & has a measurable effect on our level of customer satisfaction)
- Gold Certificate of Merit from India Manufacturing Excellence Awards 2016
- Silver Certificate of Merit from India Manufacturing Excellence Awards 2015



### **3. ELIGIBILITY CRITERIA**

Please refer to Annexure 'B'.

### **4. SUBMISSION OF EXPRESSION OF INTEREST**

- a. EOI is invited in relation to submission of Resolution Plan for ACIL Limited, under Corporate Insolvency Resolution Process, to be submitted in the format as set out in Annexure 'A'.
- b. Applicants shall meet the Eligibility Criteria as set out in Annexure 'B'.
- c. Applicants shall provide details as set out in Annexure 'C'.
- d. Applicants shall submit the EOI along with the supporting documents set out in Annexure 'D'.
- e. Prospective resolution applicants who had participated in the invitation for EOI published on October 15, 2018 (Original) and October 31, 2018 (Revised) and were shortlisted as eligible prospective resolution applicants and those who intend to continue with the process for submission of resolution

plan may either re-submit the EOI documents again or give a confirmation (on letter head) that the EOI documents submitted by them earlier (along with refundable deposit) are still valid and the same may be treated as the EOI documents under the new EOI process.

f. EOI shall be submitted in any of the following manner:

(i) Soft copy by email on or before February 22, 2019<sup>1</sup>, which should be addressed to 'ravi.loonkar@gmail.com'. EOI and all attachments/supporting documents should be in **pdf format**. Email should be followed by hard copy of the complete set of documents, to be delivered in person/sent by post at the address mentioned below so as to reach by February 22<sup>1</sup>, 2019.

(Note: Constitutional documents like Memorandum of Association & Articles of Association and financial statements other than that of latest financial year can be provided only in hard copy) ; or

(ii) In physical form along with all the attachment and supporting documents in an envelope, to be sent by post or delivered in person, so as to reach by February 22<sup>1</sup>, 2019 at the following address:

**Ravindra Loonkar,  
Resolution Professional, ACIL Limited,  
C/o RBSA Restructuring Advisors LLP,  
Hansalaya Building, 9C,  
15, Barakhamba Rd,  
Connaught Place, Delhi 110001**

g. Applicants shall remit refundable deposit of INR 10 lacs as follows:

(i) In case EOIs submitted by email, deposit to be remitted by RTGS/NEFT to ACIL's Bank A/c as per the details below:

**Name: ACIL Limited**

**Bank & Branch: IDBI Bank, Videocon Tower, Jhandewalan Extension Branch**

**Account Number: 0127103000016223**

**IFSC Code: IBKL0000413**

(ii) In case EOI is submitted in physical form as stated at point 'f (ii)' above, deposit can be remitted by Demand Draft favoring "ACIL Limited" payable at New Delhi. Applicant's name may be mentioned on the reverse of the Demand Draft.

## **5. LAST DATE OF SUBMISSION OF EOI:**

a. The last date for submission of EOI is February 22, 2019<sup>1</sup>, which may be extended as may be decided by RP/CoC of ACIL Ltd.

b. All the EOIs received will be reviewed by RP on behalf of CoC and shortlisted eligible applicants will be accordingly communicated.

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<sup>1</sup> Previously, this date was February 12, 2019

- c. The Information Memorandum prepared as per the provisions of the Code, details of the process and evaluation matrix, and access to Virtual Data Room will be shared with the eligible applicants upon their furnishing, as per the format attached, an undertaking of confidentiality in terms of provisions of section 29 (2) of IBC, 2016 read with Regulation 36(4) of the of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,2016.
- d. The Applicants submitting the EOI must ensure that they do not suffer from any ineligibility in accordance with the provisions of section 29A or any other provision of IBC, 2016. (Refer Annexure 'E')

**NOTE**

- 1) Criteria for Eligibility - EOIs of only those interested parties who meet the eligibility criteria specified in **Annexure 'B'** will be considered. EOIs which do not meet the criteria shall be liable for rejection. Any EOI, which may be received after February 22, 2019<sup>2</sup> shall be liable for rejection.
- 2) RP/CoC has the right to cancel or modify the process without assigning any reason and without any liability. In this regard please be informed that this is not an offer document or an invitation for sale or the solicitation of an offer to buy, purchase or subscribe to any securities, if any, of the Company and is issued with no commitment. Applicants should regularly visit the ACIL website at <http://www.acilltd.com> to keep themselves updated regarding clarifications/ amendments/ time- extensions, if any.
- 3) RP/CoC reserves the right to withdraw Invitation to seek EOI and change or vary any part thereof at any stage and also reserve the right to disqualify any potential bidder, should it be so necessary at any stage.
- 4) No oral conversations or agreements with the Resolution Professional or any official, agent or employee of the Resolution Professional, or any member of the CoC shall affect or modify any terms of this EOI.
- 5) Neither the RA nor any of representatives of the RA shall have any claims whatsoever against the Resolution Professional or any member of the CoC or any of their directors, officials, agents or employees arising out of or relating to this EOI.
- 6) By submitting a proposal, each Prospective Resolution Applicant/bidder shall be deemed to acknowledge that it has carefully read the entire EOI and all the relevant documents/information/process and has fully informed itself as to all existing conditions and limitations.

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<sup>2</sup> Previously, this date was February 12, 2019

## ANNEXURE A

[On the Letterhead of the Entity Submitting the EOI]

### EXPRESSION OF INTEREST

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

To

RAVINDRA LOONKAR  
RESOLUTION PROFESSIONAL  
ACIL LIMITED  
C/o RBSA RESTRUCTURING ADVISORS LLP,  
HANSALAYA BUILDING, 9 C,  
15, BARAKHAMBA RD,  
CONNAUGHT PLACE, DELHI 110001  
E-mail ID: ravi.loonkar@gmail.com

**Subject: Expression of Interest in relation to submission of Resolution Plan for ACIL Limited undergoing Corporate Insolvency Resolution Process.**

Dear Sir,

In response to the public advertisement in Business Standard dated January 28, 2019 and further on February 13, 2019 (“Advertisement”) inviting Expression of Interest (“EoI”) for submission of resolution plan (“**Resolution Plan**”) as per the provisions of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”), we confirm that we have understood the eligibility criteria mentioned in Annexure B and Form-G (invitation for EoI) and confirm that we meet the necessary threshold and criteria mentioned therein and submit our EoI for submission of a Resolution Plan for ACIL Limited (“**Corporate Debtor**” or “**Company**”).

Along with our EoI, we have also provided information, in the prescribed format, as required under ‘Annexure D’.

We further undertake that the information furnished by us in this EoI and Annexures along with are true, correct, complete, and accurate to the best of our knowledge.

Based on this information we understand you would be able to evaluate our preliminary proposal in order to pre-qualify for the above-mentioned proposal.

Further, we agree and acknowledge that:

- (a) The EoI will be evaluated by the RP/ process advisor on behalf of the Committee of Creditors (“CoC”) of the Company based on the information provided in the Annexures and attached documents to determine whether we qualify to submit a proposal for the proposed transaction;
- (b) the RP/ CoC reserve the right to determine at their sole discretion, whether or not we qualify for the submission of the proposal and may reject the EoI submitted by us without assigning any reason, without any liability whatsoever;
- (c) the RP/ the CoC reserve the right to request for additional information or clarification from us for

the purposes of the EoI and we shall promptly comply with such requirements. Failure to satisfy the queries of RP/ CoC may lead to rejection of our submission pursuant to EoI;

- (d) Meeting the qualification criteria set out in Form G/ Annexure – B alone does not automatically entitle us to participate in the next stage of the bid process;
- (e) We understand that every information and records provided in expression of Interest is true and correct and discovery of any false information or record at any time will render the us ineligible to submit resolution plan, result in forfeiture of our refundable deposit and attract penal action under the code.
- (f) We shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to ourselves or any other person and comply with the requirements under sub-section (2) of Section 29 of the Insolvency & Bankruptcy Code, 2016.
- (g) We are not ineligible person(s) in terms of provisions of Section 29A of the IBC, 2016.
- (h) All other documents as required under Annexure D are attached herewith.

Yours Sincerely,

On behalf of [*Insert the name of the entity submitting the EoI*] Signature:

\_\_\_\_\_  
Name of Signatory :  
Designation :  
Company :  
Seal/Stamp :

*NOTE: The person signing the EOI and other supporting documents should be an authorized signatory and relevant authorization documents should be furnished upon demand.*

**“ANNEXURE – B”**

**ELIGIBILITY CRITERIA FOR QUALIFICATION**

**Category A** - In case of a private/ public limited company, LLP, body corporate whether incorporated in India or outside India, non-corporate entities like individuals, partnership firms, etc.

Minimum tangible net worth (TNW) of Rs. 20 crores (as per Companies Act, 2013 in case of companies) as per the latest audited Financial Statements which shall not be older than 12 months from the date of issue of this Invitation for Expression of Interest. Applicant should have net profit for at least 3 financial years out of 5 previous financial years.

**Category B** - In case of Financial Institutions (FI\*) / Mutual Funds / Private Equity/ Venture Capital Funds, Domestic/ Foreign Investment institutions, Non-Banking Finance Companies (NBFC#), Asset Reconstruction Companies, Banks and similar entities:

Total Assets Under Management (AUM) / Loan Portfolio shall be at least Rs. 100 crores as per the latest audited Financial Statements which shall not be older than 12 months from the date of issue of Invitation for Expression of Interest.

\*FI as defined under Section 45I(c) of RBI Act

# NBFC as defined under Section 45I(f) of RBI Act

In case of consortium, any one of the members shall meet the aforesaid criteria mentioned for either Category A or Category B.

The prospective resolution applicant shall provide refundable deposit of INR 10 lacs to ACIL Limited.

**“ANNEXURE C”**

**Profile of Prospective Resolution Applicant**

**1. Name and Address:**

a. Name of the Organization/Company/Firm/Individual:

b. Registered office:

c. Corporate office:

d. Telephone No:

e. Email:

**2. Date of Establishment/Incorporation/Birth:**

**3. Core Area of operation:**

**4. Contact Person:**

a. Name:

b. Designation:

c. Telephone No:

d. Email:

**5. Other Information:**

- a. For category A Prospective RAs: Tangible net worth (TNW) (as per Companies Act, 2013 in case of companies) as per the latest audited financial Statements which shall not be older than 12 months from the date of issue of Expression of Interest and net profit for last 5 years, to be provided in the following format:

<b>INR Crores</b>	<b>31.03.2018</b>	<b>31.03.2017</b>	<b>31.03.2016</b>	<b>31.03.2015</b>	<b>31.03.2014</b>
<b>Net Profit</b>					
<b>Tangible net worth</b>					

- b. For category B Prospective RAs: Total Assets Under Management (AUM) / Loan Portfolio as per the latest audited financial Statements which shall not be older than 12 months from the date of issue of Expression of Interest, to be provided in the following format:



<b>INR Crores</b>	<b>31.03.2018</b>	<b>31.03.2017</b>	<b>31.03.2016</b>	<b>31.03.2015</b>	<b>31.03.2014</b>
<b>Assets Under Management</b>					
<b>Committed Fund</b>					

- c. Names of Promoters.
- d. Other companies in the group (including holding company, subsidiary companies and associate companies).
- e. Names of Directors.
- f. History if any, of the Company or its holding company/subsidiary companies /associate companies being declared a ‘willful defaulter’, ‘non-cooperative borrower’, or ‘non-performing asset’.
- g. Any other relevant information.

**“ANNEXURE – D”**

**SUPPORTING DOCUMENTS TO BE ATTACHED WITH EOI**

- 1) For all Prospective RAs - Profile of RA
- 2) For all Prospective RAs - Copies of Certificate of Incorporation / Registration and Constitutional Documents (such as Memorandum of Association and Articles of Association)
- 3) For category ‘A’ Prospective RAs - Audited financial statements for immediately preceding 5 (five) years of the RA of which the latest financial statement shall not be older than 12 months from the date of issue of invitation for EOI.
- 4) For Category ‘B’ Prospective RAs – Audited Financial Statements not older than 12 months from the date of issue of invitation for EOI.
- 5) An undertaking pursuant to Regulation 36A (7) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, draft of which is provided herein below under Annexure F.

**“ANNEXURE E”**

**Section 29A of the Insolvency and Bankruptcy Code, 2016**

**Person 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 undischarged insolvent;

(b) is a willful 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 non-performing 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 registered 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.

<On the stamp paper of INR 100, General Agreement Article 5(c) >

**“ANNEXURE F”**

**UNDERTAKING**

This confidentiality undertaking has been signed by \_\_\_\_\_, a potential resolution applicant (as per Section 5 (25) of Insolvency & Bankruptcy Code, 2016 (“Code”)), having its office at \_\_\_\_\_ acting through Mr./Ms. \_\_\_\_\_, the authorized signatory / authorized representative (“**Resolution Applicant**”, which expression shall, unless repugnant to the context, include its successors, legal representatives, permitted assigns and administrators in business) in favour of Mr. Ravindra Loonkar, Resolution Professional, ACIL Limited, having registration no. IBBI/IPA-002/IP-N00433/2017-2018/11206, on \_\_\_\_\_ day of \_\_\_\_\_, 2019.

WHEREAS ACIL Limited, a company registered under Companies, Act, 1956 (hereinafter referred as “**Corporate Debtor**”) is under corporate insolvency resolution process *vide* Hon’ble National Company Law Tribunal, Principal Bench, New Delhi (“**NCLT**”) order dated August 08, 2018 and Mr. Ravindra Loonkar having registration no. IBBI/IPA-002/IP-N00433/2017-2018/11206 was appointed as interim resolution professional (“**IRP**”). Subsequently, the IRP has been appointed as the resolution professional for the Corporate Debtor by the committee of creditors (“**Resolution Professional**”).

WHEREAS the Resolution Professional, pursuant to the meeting of the committee of creditors held on January 22, 2019 and in terms of Section 25(2)(h) of the Code and Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), has issued an invitation for expression of interest (“**EOI**”), which was published in Business Standard on January 28, 2019 and further on February 13, 2019, pursuant to which the Resolution Professional shall be inviting the Resolution Applicant to submit resolution plan for the Corporate Debtor in terms of Section 30(1) of the Code.

**THEREFORE, the Resolution Applicant hereby declares and undertakes as follows:**

1. The Resolution Applicant declares and undertakes that it will not divulge any information including any financial information of the Corporate Debtor disclosed to it by the Resolution Professional (or any other person on behalf of the Resolution Professional) and any part of the information received 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 constitute Confidential Information.

2. The Resolution Applicant further unconditionally and irrevocably undertakes and declares that:
  - a) the Confidential Information shall be kept confidential by the Resolution Applicant and shall be used solely as allowed under the Code;
  - b) the Resolution Applicant shall not disclose, publish or reveal or cause it to be disclosed, published or make available to any other person, or use or allow others to disclose or use, the Confidential Information in any manner whatsoever, other than for the sole purpose of submitting a resolution plan for the Corporate Debtor in accordance with the provisions of the Code;
  - c) the Resolution Applicant shall not use the Confidential Information to cause any undue gain or undue loss to itself or any other person including Corporate Debtor;
  - d) the Resolution Applicant shall comply with all provisions of law for the time being in force relating to confidentiality and insider trading;
  - e) the Resolution Applicant shall protect any intellectual property of the Corporate Debtor which it may have access to;
  - f) the Confidential Information may only be disclosed to and shared with any employees or advisors or consultants (collectively, the “**Representatives**”) by the Resolution Applicant, in accordance with applicable laws, 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 corporate insolvency resolution process of the Corporate Debtor, provided that the Resolution Applicant 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. The Resolution Applicant shall be responsible for any breach of the terms of this confidentiality undertaking by any of the Representatives it has disclosed the Confidential Information to;
  - g) the Resolution Applicant shall ensure that all Confidential Information is kept safe and secured at all times and is protected from any theft or leakage;
  - h) the Resolution Applicant shall immediately destroy and permanently erase all Confidential Information upon the approval of a resolution plan by the NCLT under Section 31(1) of the Code or upon an order for liquidation of the Corporate Debtor being passed by the NCLT under Section 33 of the Code; and
  - i) the Resolution Applicant shall take all necessary steps to safeguard the privacy and confidentiality of the information received and shall use its best endeavors 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 Corporate Debtor, all information related

to disputes by or against the Corporate Debtor and any other matter pertaining to the Corporate Debtor as may be specified. Further, the Resolution applicant shall ensure that it does not use such information to cause an undue gain or undue loss to itself or any other person. The Resolution Applicant shall ensure that it will comply with the provisions of Section 29 (2) of the Code.

- j) the Resolution Applicant shall ensure that it meets the criteria specified by the committee of creditors in terms of Section 25 (2) (h) of the Code and will provide relevant records evidencing the same.
  - k) that the Resolution Applicant is not a person ineligible to submit a resolution plan under Section 29A of the Code to the extent applicable and will provide relevant information and records to enable an assessment of the same.
  - l) that the Resolution Applicant shall intimate the Resolution Professional forthwith if it becomes ineligible under Section 29A of the Code at any time during the Corporate Insolvency Resolution Process of the Corporate Debtor.
  - m) that every information and records provided by the Resolution Applicant in the expression of interest is true and correct and discovery of any false information or record at any time will render the Resolution Applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code.
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 Resolution Applicant was already in the public domain without violation of any provisions of applicable laws;
  - b) information which, after disclosure to the Resolution Applicant becomes publicly available and accessible without violation of applicable laws or a breach of this confidentiality undertaking;
  - c) information which was in the possession of the Resolution Applicant prior to its disclosure, as evidenced by the records of the Resolution Applicant;
  - d) information that is received by the Resolution Applicant from a third party which is not in breach of its confidentiality obligations hereunder; and
  - e) information that is required to be disclosed by the Resolution Applicant (and to the extent required to be disclosed) pursuant to the requirements of applicable laws, or order of a judicial, regulatory or administrative authority, provided however the Resolution Applicant should use its best endeavours to provide prior intimation of such disclosure to the Resolution Professional, and ensure that any disclosure is made to the minimum extent legally required in order to comply with applicable law and no more.
4. No representation or warranty has been provided by the Resolution Professional in relation to the authenticity or adequacy of the information provided to the Resolution Applicant, including



Confidential Information, and the Resolution Applicant would not have any claim against the Resolution Professional or any person acting on its behalf or the Corporate Debtor in relation to any information provided in the Information Memorandum, the RFRP and the Data Room.

5. Nothing in this confidentiality undertaking shall have the effect of limiting or restricting any liability arising as a result of fraud or willful default.
6. The Resolution Applicant agrees and acknowledges that in the event of a breach or threatened breach by the Resolution Applicant or the Representatives of the Resolution Applicant, provisions of this confidentiality undertaking, money or damages may not be an adequate remedy for a breach of any of the provisions of this confidentiality undertaking and it is reasonable that the Resolution Applicant or the Corporate Debtor shall be entitled to injunctive relief, specific performance and other equitable relief for any threatened or actual breach of the provisions of this confidentiality undertaking.
7. The Resolution Applicant hereby represents and warrants that it has the requisite power and authority to execute, deliver and perform its obligations under this confidentiality undertaking.
8. This confidentiality undertaking and any dispute, claim or obligation arising out of or in connection with it shall be governed by and construed in accordance with Indian laws and the courts at New Delhi shall have exclusive jurisdiction over matters arising out of or relating to this confidentiality undertaking.

Signed on behalf of

\_\_\_\_\_

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

(Name and Designation)

Authorised Signatory

\_\_\_\_\_