

PROCESS DOCUMENT

AND

INVITATION FOR EXPRESSION OF INTEREST

Invitation for submission of Expression of Interest ('EoI') for sale of DC Industrial Plant Services Private Limited, in Liquidation, on 'Going Concern Basis' under the provisions of Insolvency and Bankruptcy Code, 2016 as per the Order passed by Hon'ble National Company Law Tribunal ('NCLT') on June 19, 2019

BY

MR. RAM RATAN MODI

LIQUIDATOR FOR

**DC INDUSTRIAL PLANT SERVICES PRIVATE LIMITED
(IN LIQUIDATION)**

REGISTRATION NO.: IBBI/IPA-001/IP-P-00051/2017-18/10125

PARTNER, RESURGENT RESOLUTION PROFESSIONALS LLP

DATE OF PUBLIC ADVERTISEMENT: NOVEMBER 14, 2019

LAST DATE FOR SUBMISSION OF EOI: NOVEMBER 25, 2019

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SECTION 1: INTRODUCTION

A. About DC Industrial Plant Services Private Limited (in Liquidation) (the “Corporate Debtor”)

DC Industrial Plant Services Private Limited (In Liquidation) (“DCIPSPL” / “Corporate Debtor”) is under liquidation process under the provisions of Insolvency & Bankruptcy Code, 2016 (“IB Code”) vide order Number, CP (IB) No. 45/KB/2018 dated 19.06.2019 of **Hon’ble National Company Law Tribunal, Kolkata Bench. Mr. Ram Ratan Modi**, Partner Resurgent Resolution Professionals LLP having IP Registration No: IBBI/IPA-001/IP-P00051/2017-18/10125 has been appointed as liquidator (the “Liquidator”) of the Corporate Debtor vides order no. CP (IB) No. 45/KB/2018 dated 19.06.2019.

Under Regulation 32 (e) and (f) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Liquidator intends to sale the Corporate Debtor as a going concern or the business (s) of the Corporate Debtor as a going concern subject to relinquishment of security interest where an asset of Corporate Debtor is subject to security interest.

DC Industrial Plant Services Private Limited (In Liquidation) was incorporated on 08.06.1983. The registered office of the company is at Park Plaza, 6A, South Block, 71, Park Street, Kolkata -700016 and Factory is at Doharia, P.O Ganganagar, Kolkata 700132.

Presently, Corporate Debtor is in operation under the supervision of the Liquidator.

Corporate Debtor presently is in the business of: (i) Turnkey project execution services including design, manufacture, supply, installation and commissioning followed by operation and maintenance of Ash Handling Plants for large thermal power stations and industrial boiler (ii) manufacturer of Dry Fly Ash and Wet Ash Handling Systems incl. for Bottom Ash Handling System to achieve a pollution free plant (iii) Operation and Maintenance services for Ash Handling Plants ranging from 160 MW to 700 MW (iv) Sell of Spares to the projects

The Corporate Debtor has State-of-the-art manufacturing facility near Kolkata Airport over 3 Acres (over 12,000 Sq. Mt.) of land having a covered shed of more than 4500 sq. Mt. The premise is equipped with standby Diesel Generating machine with total combined power generating capacity of 150 KV.

More than 200 motivated and experienced professionals are supporting various activities of the Company as listed below:-

- Design & Engineering
- Project Management
- Procurement

- Manufacturing
- Quality Systems
- Site Execution
- Operation & Maintenance
- Supply of Spares

In 1984, **DCIPS** entered into a long term technology transfer agreement with United Conveyor Corporation (UCC), USA for transfer of technical know-how of Ash Handling Systems valid upto December 1992.

In 1990 and then in 1993, **DCIPS** entered into new agreements with UCC for further up gradation of technology which was valid till July 2000. DCIPS is now free to use all UCC technologies acquired through various technical collaborations with UCC.

DCIPS acquired latest UCC technology know-how in the following areas:

1. Bottom Ash Jet Pumping Systems.
2. Fly Ash Vacuum Conveying System.
3. Fly Ash Pressure Conveying Systems.
4. Silo and Silo Unloading Systems.
5. Bottom Ash Dewatering & Storage Bin systems.

B. Liquidation

Hon'ble NCLT, Kolkata Bench on June 19, 2019 passed an order for commencement of liquidation proceedings of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016. Mr. Ram Ratan Modi has been appointed as Liquidator by NCLT for liquidation proceedings of the Corporate Debtor and public announcement for the same was issued on June 21, 2019. The said order was modified on July 31, 2019.

In accordance with the said order of Hon'ble NCLT the Liquidator has now sought for sale of Corporate Debtor as a 'going concern' as per Regulation 31 (e) and (f) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Under Regulation 32 (e) and (f) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Liquidator intends to sale the Corporate Debtor as a going concern or the business (s) of the Corporate Debtor as a going concern subject to relinquishment of security interest where an asset of Corporate Debtor is subject to security interest.

SECTION 2: INVITATION TO EXPRESSION OF INTEREST

A. Expression of Interest (EoI)

This Expression of Interest (EoI) is invited from prospective bidders (“**Bidders**”) to submit their expression of interest for purchase of Corporate Debtor, along with all its assets and liabilities, as identified by Liquidator, in consultation with Stakeholders’ Consultation Committee for which liquidation proceedings have been initiated for the Corporate Debtor under the provisions of Chapter III of the Insolvency and Bankruptcy Code, 2016.

EOI is invited from Bidders having a positive net worth, as on 31.03.2019, as per the certificate of the Statutory Auditor of the Bidder.

The Bidder (each member of Consortium in case of Consortium Bidding) shall be required to sign and deliver a Non-Disclosure Agreement (“**NDA**”) as a condition for receiving the complete information of the Corporate Debtor including group of assets and liabilities.

B. Transaction Process

The transaction process for the Corporate Debtor shall be completed in two stages, brief of which are provided hereunder:

STAGE-I

- a) Submission of EoI by interested buyers/purchasers in separate sealed envelopes before the due date of submission of EOI along with earnest money deposit of Rs. 10.00 Lakhs (“EMD”).
- b) Screening and short listing of Bidders by the Liquidator (“Shortlisted Bidders”) as per the eligibility criteria provided in Clause 3 below.

STAGE-II

- a) Signing of Non-Disclosure Agreement as per format attached and marked as **Annexure-A** with Shortlisted Bidders.
- b) Access to data room for due diligence by Shortlisted Bidders who have signed the Non-Disclosure Agreement.
- c) Submission of bid(s) by Shortlisted Bidders (Bid Format to be published separately).
- d) Declaration of Shortlisted Bidder as successful bidder (‘Successful Bidder’) after the consultation/approval of Stakeholders’ Consultation Committee and NCLT, as required.
- e) Signing of agreements/contracts with Successful Bidder for purchase of Corporate Debtor.

C. Time Frame for the Transaction

Sr. No.	Particulars	Date
1.	Public Advertisement and uploading of this Process Document and Invitation of EoI	14.11.2019
2.	Start Date of receiving queries Through Email: liquidator.dcindustrial@gmail.com	14.11.2019
3.	Last Date of receiving queries Through Email: liquidator.dcindustrial@gmail.com	20.11.2019
4.	Submission of responses to the queries raised vide FAQs	21.11.2019
5.	Last Date of Submission of EoI	25.11.2019
6.	Shortlisting of Bidders as per eligibility criteria	27.11.2019
7.	Last Date of Signing of NDA with Shortlisted Bidders	28.11.2019
8.	Submission of Bids by Shortlisted Bidders	To be decided later
9.	Declaration of Successful Bidder	To be decided later
10.	Signing of necessary documents/agreements with Successful Bidder	To be decided later

The Liquidator shall bear no responsibility for non-receipt of EoIs/any other correspondence sent by e-mail or any other mode as provided in this Process Document.

In case the designated day happens to be a holiday; the next working day will be deemed as the event date for the respective event.

SECTION 3: QUALIFICATION CRITERIA FOR BIDDERS:

A. Qualifications in case of sole bidder:

- a) Any private limited company or public limited company registered under Companies Act 1956 or 2013, Limited Liability Partnership (LLP) or SEBI registered Alternative Investment Fund (AIF) or a company incorporated outside India, which is eligible to invest in India under the laws of India (subject to such parties obtaining all statutory approvals from the GoI/DIPP/RBI etc. by themselves).
- b) The Bidder must be eligible to bid for the Corporate Debtor under the provisions of the Insolvency and Bankruptcy Code, 2016 and must be 'fit and proper' person, i.e. not under any legal disability to be purchaser of Corporate Debtor under the applicable laws.
- c) The Bidder shall be having a positive net worth as on 31.03.2019 as certified by Statutory Auditor of the Bidder.

B. Qualifications in case of consortium bidder:

- a) Consortium of Bidders ("Consortium") may also participate in the Bidding having members as any private limited company or public limited company registered under Companies Act 1956 or 2013, Limited Liability Partnership (LLP) or SEBI registered Alternative Investment Fund (AIF) or a company incorporated outside India, which is eligible to invest in India under the laws of India (subject to such parties obtaining all statutory approvals from the GoI/DIPP/RBI etc. by themselves).
- b) The Consortium shall not have more than one (1) lead member (the "Lead Member"). The Lead Member of the Consortium should have minimum equity contribution of 51% and the minimum equity contribution by other members to qualify as a member of the Consortium should be at least 10%.
- c) Each member of the Consortium must be eligible to bid for the Corporate Debtor under the provisions of the Insolvency and Bankruptcy Code, 2016 and must be 'fit and proper' person, i.e. not under any legal disability to be purchaser of Corporate Debtor under the applicable laws.
- d) For Consortium net worth of members of the Consortium shall be positive as on 31.03.2019 (to be certified individually for Statutory Auditor of each member).
- e) A Power of Attorney/BR shall be given by each member of the Consortium authorising the Lead Member for participating in the Bid, submission of all required documents, information, contact person for all communications.
- f) If after short listing of Bidder, a Consortium Bidder desires a change in the consortium by inclusion/exclusion of members or if a non-consortium Bidder

desires to form a consortium by inducting new member(s), it shall have to apply for such change to the Liquidator. After taking consultation/s from Stakeholders Constitution Committee and/or obtaining approval from NCLT, as required, the Liquidator shall qualify/disqualify such a Consortium subject to the eligibility criteria and the following:

- a. The change shall be permitted only once per consortium.
 - b. No change in Lead Member shall be allowed.
 - c. Jumping from one consortium to another shall not be permitted.
 - d. Request for such modification/ withdrawal/ substitution shall be entertained only before the Bids are received by the Liquidator. However, the last date for such request shall be specified later.
- g) All members of Consortium shall be required to sign the Non-Disclosure Agreement.
- h) In case a Consortium is shortlisted in EoI process and subsequently selected as the Successful Bidder, it shall be required to incorporate a company ("Investment Vehicle") that shall enter into definitive agreements for completion of the transaction.

SECTION 4: INSTRUCTIONS FOR SUBMISSION OF EOI:

1. Bidders/Lead Member shall submit the Expression of Interest (EOI) in sealed envelopes in the manner as provided below:

Envelope 1-<Expression of Interest for DC Industrial Plant Services Private Limited (in Liquidation)>, in the format as set out in Annexure 'B' hereto along with all information and documents mentioned in Annexure 'C' and Annexure 'D' respectively.

Envelope 2- < Earnest Money Deposit>, in the manner provided in Clause 5 hereunder.

Envelope 1 should contain all the originally signed documents and should be sealed and duly superscribed as "Private and Confidential-Expression of Interest for DC Industrial Plant Services Private Limited (in Liquidation)".

Envelope 2 should contain the EMD-Bank Guarantee or the proof of electronic transfer of EMD and should be sealed and duly superscribed as "Private and Confidential-Expression of Interest for DC Industrial Plant Services Private Limited(in Liquidation): Earnest Money Deposit.

Envelope 1 and Envelope 2 along-with soft copy of documents contained therein, in a pen drive, shall then be placed in a third envelope ("Envelope 3"), which shall be sealed and duly super scribed as "Private and Confidential-Expression of Interest for DC Industrial Plant Services Private Limited (in Liquidation)" and shall clearly indicate the name, address and details of contact person of the Bidder/Lead Member.

2. Envelope 3 shall be submitted physically by the Bidders/Lead Member on or before September 16, 2019 (at 1600 hours IST) ("EoI Due Date") at the address mentioned below.

Mr. Ram Ratan Modi
Liquidator for DC Industrial Plant Services Private Limited (in Liquidation)
Registration No.: IBBI/IPA-001/IP-P-00051/2017-18/10125
Partner, Resurgent Resolution Professionals LLP,
6A, South Block, Park Plaza, 71,
Park Street, Kolkata, West Bengal- 700016, India

Please note that the Liquidator reserves the right to accept or reject all or any of the EoIs without communicating any reason whatsoever.

3. EoIs are liable to be rejected by the Liquidator if Bidders/members of Consortium fail to meet the eligibility criteria as specified in Clause 3 above or fail to submit EMD as provided in Clause 5 below.

4. The Bidders shall provide all the information sought in this EoI in the prescribed format. The Liquidator will evaluate only those EoIs that are received in the required formats and complete in all respects.
5. The EoI shall be typed and each page shall be signed in indelible blue ink by the authorized signatory of the Bidder/Lead Member.
6. The EoI and all related correspondence and documents in relation to the EoI shall be in English language.
7. All the alterations, omissions, additions or any other amendments made to the EoI shall be initialed by the person(s) signing the EoI.
8. If any of the envelopes is not sealed and marked as instructed above, the Liquidator assumes no responsibility for the misplacement/loss of the documents submitted and consequent losses, if any, suffered by the Bidder.
9. EoIs submitted by fax, telex, or e-mail shall not be entertained and shall be summarily rejected.
10. All enquiries related to the transaction should be addressed to the Liquidator at the email id of the Liquidator at **liquidator.dcindustrial@gmail.com**. However, the Liquidator and/or its advisors/ officers/employees are not obligated to give response/reply to any or all such queries posted by the Bidders.
11. The Bidders are required to satisfy themselves before Bidding for the Corporate Debtor and Liquidator and his advisors/employees bear no responsibility for any loss that may be incurred by the Bidder for bidding for the Corporate Debtor.

SECTION 5: EARNEST MONEY DEPOSIT

All the Bidders shall provide, along with their EOI, an amount of Rs. 10,00,000 (Rupees Ten Lakh only), as earnest money by way of a bank guarantee issued by any scheduled commercial bank in India in favour of the Guarantee Beneficiary, i.e., DC Industrial Plant Services Private Limited – in liquidation, in the format as provided in Annexure- 'E' or by way of electronic transfer in the account of the Corporate Debtor having the following details:

Name of the Account: DC Industrial Plant Services Private Limited (In Liquidation)

Name of the Bank: Canara Bank

Branch details: Lower Circular Road, Kolkata - 700020

Account No.: 0153201100644

IFSC Code: CNRB0000153

The Earnest Money Deposit (in form of Bank Guarantee or electronic transfer), which would not be bearing any interest, has to be submitted by the Bidder along with the EOI in case of Bank Guarantee or deposited in the account as mentioned above before the last date of submission of EOI, with proof of such deposit to be given in Envelope 2.

In case of submission of bank guarantee as EMD the same shall be valid for a period of minimum 180 days from the last date of submission of EOI.

Submission of EOIs without bank guarantee or proof of electronic transfer, as applicable, shall be rejected.

EMD shall be returnable within 30 days of announcement of Successful Bidder, except in the case of such Shortlisted Bidder whose bid is approved by the Liquidator/NCLT/Stakeholders' Consultation Committee.

SECTION 6: LAST DATE OF SUBMISSION OF EOI

The last date for submission of EOI is September 16, 2019(at 1600 hours IST). In case the designated day happens to be a holiday; the next working day will be deemed as the last date for submission of EOI.

All the EOIs received will be reviewed by Liquidator and any of his appointed consultants/advisors.

NOTES:

- 1) Liquidator has the right to cancel or modify the process without assigning any reason and without any liability. This is not an offer document and is issued with no commitment. Bidders should regularly visit the website of Corporate Debtor at www.dcips.com/ and also at www.resurgentrp.com to keep themselves updated regarding clarifications/ amendments/ time-extensions, if any.
- 2) Liquidator reserves the right to withdraw EoI and change or vary any part thereof at any stage and also reserves the right to disqualify any potential bidder, should it be so necessary at any stage.
- 3) No oral conversations or agreements with the Liquidator or any advisor, official, agent or employee of the Liquidator, the Company shall affect or modify any terms of this EoI.
- 4) Neither the Bidder nor any of the Bidder's representatives shall have any claims whatsoever against the Liquidator, the Corporate Debtor or any of his/its advisors, officials, agents or employees arising out of or relating to this EoI.
- 5) By submitting a proposal, each Bidder shall be deemed to acknowledge that it has carefully read the entire EoI and has fully informed itself as to all existing conditions and limitations.
- 6) Any cost, expenses or charges pertaining to submission of EoI along with all required documents and proofs and the costs of due diligence and site visit, if any, as per Stage-II, shall be borne by the Bidder and in no case the Liquidator or the Corporate Debtor be liable to reimburse or pay such costs, expenses or charges whether the Bidder is shortlisted for submission of Bids or not.

NON-DISCLOSURE AGREEMENT

This Confidentiality Agreement is dated [•] 2019 between:

[•], a company/LLP incorporated under the laws of [•] and having its registered office at [•] (hereinafter referred to as "**Receiving Party**", which expression shall, unless it be repugnant to the context or meaning thereof, shall mean and include its successors and permitted assigns);

AND

DC Industrial Plant Services Private Limited (in Liquidation), a company incorporated under the laws of India and having its registered office at 6A, South Block, Park Plaza 71, Park Street, Kolkata WB 700016 India, through Liquidator (hereinafter referred to as "**Disclosing Party**", which expression shall, unless it be repugnant to the context or meaning thereof, shall mean and include its successors and permitted assigns);

WHEREAS the Disclosing Party intends to disclose certain information to the Receiving Party regarding **DC Industrial Plant Services Private Limited (in Liquidation) for the purpose of conducting a Due diligence on the Disclosing Party;**

AND WHEREAS the Receiving Party has agreed to keep the information confidential on the terms of this Agreement;

NOW THEREFORE in consideration of the foregoing and the mutual agreements contained in this Agreement (the receipt and adequacy of which are acknowledged), the Parties agree as set forth below.

1. Defined Terms.

As used in this Agreement, the following terms have the meanings set forth below.

"**Affiliate**" means, in respect of a Party, any Person (other than a natural person) which (a) is controlled directly or indirectly by such Party, or (b) is directly or indirectly controlled by a Person which directly or indirectly controls such Party. "Control" means the right to appoint majority of directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

"**Agreement**" means this confidentiality agreement, as amended, modified, restated, replaced or supplemented from time to time.

"Business Day" means any day of the year, other than a Saturday, Sunday or any days on which major banks are closed for business in India.

"Confidential Information" means all information relating to Disclosing Party's business, operations, assets, liabilities, plans, prospects and affairs, which has been or is disclosed to or acquired by the Receiving Party regardless of whether such information is in oral, visual, electronic, written or other form and whether or not it is identified as "confidential".

"Law" means any applicable law, statute, code, constitution, treaty, ordinance, order, decree, directive, rule, published policy, regulation or decision of any competent judicial, legislative, administrative, ministerial, departmental or regulatory body or authority or by the rules, policies or other requirements of any relevant stock exchange.

"Notice" has the meaning specified in Section 9.

"Party" means either **Receiving Party** and **Disclosing Party** and any other Person who may become a party to this Agreement. These parties may be referred to individually as "Party" or collectively as "Parties". Reference to a Party includes such Party's Representatives and affiliates and their Representatives.

"Person" means a natural person, partnership, limited partnership, limited liability partnership, and corporation, limited liability Corporation, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental or other regulatory entity, and pronouns have a similarly extended meaning.

"Representative" means any director, officer, employee, agent, or advisor of that Party, including accountants, counsel, lenders, consultants and financial advisors.

"Work Papers" means all notes, analyses, compilations, forecasts, data, studies, interpretations, or other documents prepared by, on behalf of or for the benefit of, the Receiving Party that contain, reflect, summarize, analyze, discuss or review any Confidential Information.

2. Interpretation

In this Agreement, the words "including", "includes" and "include" mean "including (or includes or include) without limitation". The expression "Section" or other subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. Words referencing the singular include a reference to the plural and *vice versa*.

3. Non-Disclosure of Confidential Information.

- (a) The Receiving Party will keep strictly confidential all Confidential Information and Work Papers and will not, and will cause its Representatives not to, disclose or use such Confidential Information or Work Papers except as permitted by this Agreement.
- (b) The restrictions set out in Section 3(a) do not apply to Confidential Information or any part of it that:
 - (i) is or becomes generally available to the public other than as a result of disclosure directly or indirectly by the Receiving Party;
 - (ii) is or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party;
 - (iii) is or was independently acquired or developed by the Receiving Party, its affiliates or their respective Representatives without violating its obligations under this Agreement or any other obligation of confidentiality it may have to the Disclosing Party;
 - (iv) is required to be disclosed by Law, unless such Law permits the Receiving Party, its affiliates or their respective Representatives to refrain from making such disclosure for confidentiality or other reasons; or
 - (v) the Disclosing Party has expressly permitted in writing that the particular Confidential Information may be disclosed.
- (c) The Receiving Party may disclose Confidential Information and its Work Papers to its Representatives but only to the extent that its Representatives need to know the Confidential Information or Work Papers for purposes of evaluating such Confidential Information or Work Papers, have been informed of the confidential nature of the Confidential Information and Work Papers and agree to be bound by and act in accordance with the confidentiality provisions of this Agreement.
- (d) The Receiving Party acknowledges that it and its Representatives are bound by all applicable privacy law with respect to any personal information disclosed under this Agreement.
- (e) The Receiving Party hereby acknowledges that it is aware, and that the Receiving Party will advise its Representatives who are informed as to the matters that are the subject of this agreement, that applicable securities laws prohibit any person who has material, non- public information

concerning the matters which are the subject of this agreement from purchasing or selling securities of the Disclosing Party, including an affiliate, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

- (f) The Receiving Party is responsible for any breach by its Representatives of any of the provisions of this Agreement whether or not they have agreed in writing to be bound by such provisions. The Receiving Party will, at its sole expense, take all reasonable measures to ensure that its Representatives do not breach any of the provisions of this Agreement.
- (g) If the Receiving Party is required to make disclosure of any or all of the Confidential Information and/or its Work Papers pursuant to Law it will (unless otherwise prohibited by Law and to the extent possible), after consultation with the Disclosing Party:
 - (i) give the Disclosing Party immediate Notice of the requirement and the proposed content of any disclosure;
 - (ii) at the costs of the Disclosing Party, co-operate with the Disclosing Party in limiting the extent of the disclosure and in obtaining an appropriate protective order or pursuing such legal action, remedy or assurance as the Disclosing Party deems necessary to preserve the confidentiality of the Confidential Information; and
 - (iii) disclose only that portion of the Confidential Information and its Work Papers that it is, in the written opinion of the Receiving Party's counsel, legally compelled to disclose.

4. Handling and Return of Confidential Information.

- (a) The Receiving Party will keep a written record of the subject and location of all Confidential Information disclosed to it and a list of Representatives to whom Confidential Information has been disclosed and will provide a copy of the record and list immediately to the Disclosing Party upon request.
- (b) Confidential Information shall be only for review by the Receiving Party and its Representatives. The Receiving Party may not remove any proprietary, copyright, trade secret or other legend from any of the Confidential Information.
- (c) After the completion of liquidation process under the IBC,2016, the Receiving Party will and will cause its Representatives to, within 7

Business Days of the Notice:

- (i) Return to the Disclosing Party or destroy all Confidential Information without retaining any copies;
- (ii) destroy all copies of Work Papers in its possession; and

certify to the Disclosing Party in writing that this Section 4(c) has been complied with by the Receiving Party.

- (d) Notwithstanding the foregoing, neither the Receiving Party or its Representatives are required to return or destroy the Confidential Information to the extent that it is obliged by any law, court of competent jurisdiction, competent regulatory agency or authority, applicable compliance procedures or the rules of any stock exchange to keep them;
- (e) Notwithstanding the return or destruction of Confidential Information and Work Papers, the Receiving Party and its Representatives will continue to be bound by their obligations of confidentiality and other obligations hereunder.

5. No Representation or Warranty.

- (a) The Disclosing Party and the Receiving Party makes no representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information provided by it or with respect to the infringement of patents, trade-marks, copyrights, or other intellectual property rights respecting such Confidential Information, or of the rights of any other Person.
- (b) The Disclosing Party and the Receiving Party is not liable to the Receiving Party or to any other Person for any losses, liabilities, damages, claims, demands, fines, penalties or expenses resulting from, connected with or arising out of the Receiving Party's use of the Confidential Information. This Agreement does not benefit or create any right or cause of action in, or in favour of, any Person other than the Parties and shall exclude any rights under legislative provisions conferring rights under a contract to persons not a party to that contract. Only the Parties are entitled to rely on its provisions in any action, suit, proceeding, hearing or other forum subject to clause5(d)
- (c) To the extent that any Confidential Information is owned by the Disclosing Party, it will remain the exclusive property of the Disclosing Party. Nothing in this Agreement or in the disclosure of any Confidential Information confers any interest in the Confidential Information on the

Receiving Party.

- (d) The Receiving Party shall not be held liable for any damages/ liabilities arising out of the use of confidential information or the accuracy of the confidential information.

6. Remedies.

- (a) In the event of a breach of a Party's obligations under this Agreement, that Party must, immediately following discovery of the breach, give Notice to the other Party of the nature of the breach. The breaching Party must, upon consultation with the other Party, take all reasonable measures to limit the extent of the breach.
- (b) The Receiving Party acknowledges that the Disclosing Party shall be irreparably injured by breach of this Agreement which could not be adequately compensated by damages. The Disclosing Party shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement. Such remedies shall not be exclusive remedies but shall be in addition to all other remedies available in law or in equity including damages.
- (c) The rights and remedies provided in this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity. All such rights and remedies may be exercised from time to time, and as often and in such order as the applicable Party deems appropriate.
- (d) Each Party shall have a duty to use all reasonable endeavours to mitigate its loss and damage arising on account of the breach or default by the other Party.
- (e) Except as may be otherwise provided in this Agreement, or breach by either party will result in the other party being responsible to reimburse the non-defaulting party for all costs incurred directly as a result of the breach of this Agreement, and shall be subject to such damages as may be allowed by law including all attorneys' fees and costs of enforcing this Agreement. However, the provision of clause 7(e) shall survive the termination of the agreement.
- (f) Subject to the foregoing provisions of this Section 6, if the Receiving Party or any of its Representatives is in default or breach of its obligations under this Agreement, the Receiving Party shall indemnify the Disclosing Party from and against any direct cost, loss, expense, liability, claim or damage which the Disclosing Party incurs or suffers as a result of any such default

or breach. Notwithstanding the forgoing, in no event, shall the Receiving Party be liable for any consequential, punitive, special, exemplary or other similar damages.

7. Other Covenants and Agreements.

- (a) The Parties irrevocably undertake not to circumvent, avoid, bypass or obviate each other, directly or indirectly and agree on customer and partner protection for all mutual named customers and partners. By signing this agreement, the parties commit to each other not to contact the partners and customers of the other party or to start any business activity, directly or via third parties, without previous written consent.
- (b) The Parties shall not disclose any contact revealed by either Party to any third Parties, and shall not enter into direct and/or indirect offers, negotiations and/or transaction with such contacts revealed by the other Party who made the contact(s) available.
- (c) In the event of circumvention by any of the undersigned Parties, whether direct and/or indirect, the circumvented Party shall be entitled to a legal monetary compensation equal to the maximum service it should realize from such a transaction, plus any and all expenses, including any and all legal fees incurred in lieu of the recovery of such compensation
- (d) Nothing in this Agreement nor the disclosure of Confidential Information to the Receiving Party creates any agency, partnership, joint venture, and representative or employment relationship between the Parties.
- (e) The obligations of the Parties under this Agreement continue and are binding for 3years.

8. Acknowledgements of Receiving Party.

Each Party acknowledges and agrees that, notwithstanding any other provisions of this Agreement, all contacts by one Party and its Representatives with the other Party regarding the Confidential Information shall be made through each Party's authorized representative, and one Party and its Representatives shall not contact any other employee of the other Party unless expressly authorized.

9. Miscellaneous.

- (a) Any notice, consent, direction or other communication (each a "Notice") given regarding the matters contemplated by this Agreement must be express and in writing, sent by personal delivery, courier or facsimile (but not by electronic mail) and addressed to:

Receiving Party Name:
Address:
Attention:
Designation:
Telephone/Mobile No:
Email Id:

Disclosing Party Name:

DC Industrial Plant Services Private Limited (in Liquidation)
Address: 6A, South Block, Park Plaza 71, Park Street Kolkata WB
700016, India
Attention: Mr. Ram Ratan Modi
Designation: Liquidator, DC Industrial Plant Services Private Limited (in
Liquidation)
Telephone/Mobile No: 9330333042
Email Id:liquidator.dcindustrial@gmail.com

A Notice is deemed to be delivered and received (1) if sent by personal delivery or service courier, on the date of delivery, or (2) if sent by facsimile, on the day following the date of confirmation of transmission by the originating facsimile, or (3) if sent by e-mail, on the day the e mail was sent.

- (b) Except as otherwise expressly provided in this Agreement, each Party will pay for its own fees, costs and expenses incurred in connection with this Agreement. The fees, costs and expenses referred to in this are those that are incurred in connection with the negotiation, preparation, execution and performance of this Agreement, including the fees, costs and expenses of counsel, financial advisors, bankers, lenders and accountants.
- (c) No waiver of any provision of this Agreement constitutes a waiver of any other provision (whether or not similar). No waiver is binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement is not a waiver of that right. A single or partial exercise of any right does not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.
- (d) This Agreement constitutes the entire agreement between the Parties relating to its subject matter and supersedes all prior agreements, understandings, negotiations and discussions between the Parties, whether oral or written.
- (e) This Agreement may only be amended, supplemented, or otherwise modified by express written agreement signed by the Parties.

- (f) Neither this Agreement, nor any of the rights or obligations under this Agreement, are assignable or transferable by a Party without the express prior written consent of the other Party.
- (g) If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect. This clause has no effect if the severance alters the basic nature of this Agreement.
- (h) This Agreement and any dispute, controversy or claim arising out of, relating to, or in any way connected with this Agreement (including, without limitation, the existence, validity, performance, breach or termination thereof) shall be governed by the laws of India. Any such dispute, controversy or claim shall be fully and finally resolved by binding arbitration in accordance with the Rules of Arbitration of the **Disclosing Party**. The seat of such arbitration shall be in New Delhi, India. The language of such arbitration shall be English. The disputes shall be heard by three (3) arbitrators. Within thirty (30) days of the respondent's receipt of notice of arbitration, the Disclosing Party, on the one hand, and the Receiving Party, on the other hand, shall each select an arbitrator, and within fifteen (15) days of selection of the second arbitrator, the two arbitrators shall select the third arbitrator, who shall act as the Chair. Each arbitrator must be independent and disinterested, and must not be affiliated in any way with any of the Parties.
- (i) This Agreement may be executed in any number of counterparts and all counterparts taken together constitute one and the same instrument. Receipt of an originally executed counterpart signature page by facsimile or an electronic reproduction of an originally executed counterpart signature page by electronic mail is effective execution and delivery of this Agreement. Any Party sending a counterpart by facsimile or electronic mail will also deliver the original signed counterpart to the other Party; however, failure to do so will not invalidate this Agreement.

Receiving Party

**Disclosing
Party**

By
:

By:

ANNEXURE - B

FORMAT FOR EXPRESSION OF INTEREST FOR PURCHASE OF DC INDUSTRIAL SERVICES PRIVATE LIMITED, INLIQUIDATION

Date: _____

To,

Mr. Ram Ratan Modi, Liquidator

(Appointed by the NCLT, Kolkata for DC Industrial Services Private Limited, In Liquidation)

Subject: Expression of Interest (“EOI”) by prospective bidder (“Bidder”) for DC Industrial Services Private Limited (“DCIPSPL”) under Liquidation in terms of Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.

Dear Sir,

In response to your public advertisement in [*Insert the names of the newspaper and/or website*] on [*Insert date of the advertisement*] inviting EoIs for purchase of DCIPSPL, we hereby submit our EOI.

We have attached necessary information requested in the format for EoI published on the website of DCISPL at www.dcips.com/ and at www.resurgentrp.com. The information furnished by us in this EoI is true, correct and accurate to the best of our knowledge.

We understand that, Mr. Ram Ratan Modi, Liquidator of DCIPSPL reserves his right to decide whether or not to qualify our proposal without disclosing the reason whatsoever and that bids submitted for DCIPSPL shall be subject to approval/consultation of NCLT/ Stakeholder’s Consultation Committee, in terms of the relevant provisions of the Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016.

Sincerely yours,

On behalf of (Insert name of the entity submitting the EOL)

Signature:

Name of signatory:

Designation:

Company stamp

DETAILS OF THE BIDDER/LEAD MEMBER OF THE CONSORTIUM

1.1 **Name and details of the Bidder**

Name:

Address:

Telephone No:

Fax:

Email:

1.2 Date of incorporation/establishment of Bidder:

1.3 Core area of expertise of the Bidder:

1.4 Contact Person:

Name:

Designation:

Mob./Tel. No:

Email:

1.5 PAN No.:

1.6 GST No.:

1.7 Details of Bank Account of the Bidder in which moneys related to EMD are to be returned as per Clause 5 (applicable only in case of electronic transfer):

LIST OF SUPPORTING DOCUMENTS TO BE ATTACHED WITH EOI

- (a) Profile of the Bidder/Lead Member containing experience of the Bidder in the relevant sector.
- (b) Legal Documents: Copies of certificate of incorporation/registration and constitutional documents of the Bidder.
- (c) For Net Worth: Statutory Auditor's Certificate declaring net worth of the Bidder/each member of consortium as on March 31, 2019.
- (d) Balance Sheets (Standalone and/or Consolidated, wherever applicable) for last 3 Financial Years.
- (e) Board Resolution/Power of Attorney authorising the signing and submission of EoI and related documents (in favour of Lead Member by each member in case of Consortium).
- (f) A notarized affidavit from authorised signatory of the Bidder/each member of the Consortium stating that it:
 - is eligible to bid for the Corporate Debtor under the provisions of the Insolvency and Bankruptcy Code, 2016.
 - is a 'fit and proper' person and not under any legal disability to be purchaser of Corporate Debtor under the applicable laws.
 - has not been declared as a "wilful defaulter', non-cooperative borrower', 'non-impaired asset' or 'non- performing asset'.

**FORMAT OF EARNEST MONEY DEPOSIT IN THE FORM OF BANK
GUARANTEE**

To

Mr. Ram Ratan Modi
Liquidator for DC Industrial Plant Services Private Limited
Name of the Account: DC Industrial Plant Services Private Limited (In
Liquidation)
Name of the Bank: Canara Bank
Branch details: Lower Circular Road, Kolkata - 700020
Account No.: 0153201100644
IFSC Code: CNRB0000153

WHEREAS:

A. *[Insert name of the Bidder]* incorporated in *[India]* / *[insert name of country where bidder is incorporated]* under the *[Companies Act,1956/2013]* / *[insert name of legislation under which the entity is incorporated]* with corporate identity number *[●]*, whose registered office is at *[insert address]* (**'Bidder'**) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to Rs. 10,00,000 (Indian Rupees Ten Lakhs only) in accordance with the terms of the Process Document and Expression of Interest dated *[●]* (**"Process Document"**) issued by the Liquidator seeking submission of Expression of Interest (EoI) for purchase of group assets and liabilities of DC Industrial Plant Services Private Limited, in Liquidation.

B. This bank guarantee is required to be issued in favor of the Beneficiary, as per the terms of the Process 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 without demur to the Beneficiary at *[Kolkata]* on demand, the guaranteed amount, 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"**) for an amount not exceeding Rs. 10,00,000 (Indian Rupees Ten Lakhs only) on behalf of the *[Insert name of the Bidder]*.

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 Rs. 10,00,000 (Indian Rupees Ten Lakhs only).

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 other 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 Kolkata 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 and the [*name of the Bidder*].

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 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, to:

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

under the terms of the Process 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 act 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 Rs. 10,00,000 (Indian Rupees Ten Lakhs only) and it shall remain in force until [*Insert Earnest Money Validity Date*], with an additional claim period of 30 (thirty) days thereafter.

Signed and Delivered by

Bank

By the hand of Mr./Ms, its..... and authorized official.

(Signature of the Authorized Signatory)

(Official Seal)