

INVITATION FOR EXPRESSION OF INTEREST FOR ROHIT FERRO-TECH LIMITED

Background of the Corporate Debtor

Rohit Ferro-Tech Limited (“**the Corporate Debtor**”) is a public company incorporated on 7th April, 2000 under the authority of the Registrar of Companies, West Bengal having a Corporate Identification Number L27104WB2000PLC091629 and having its registered office at 35, Chittaranjan Avenue, Kolkata – 700012. It is engaged in business of manufacturing and dealing in ferro alloys, stainless steel and mild steel. The principal place of business of the corporate debtor is in Kolkata, Bengal and it also carries on its business from Jajpur, Odisha.

The Corporate Debtor is currently undergoing Corporate Insolvency Resolution Process (“**CIRP**”) in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) and other relevant rules and regulations notified thereunder, pursuant to an order dated 7th February, 2020 (being the insolvency commencement date) passed by the Hon’ble National Company Law Tribunal, Kolkata Bench (“**NCLT**”) wherein the Hon’ble NCLT has appointed Mr. Supriyo Kumar Chaudhuri as an Interim Resolution Professional (“**IRP**”). Subsequently, in the first meeting of Committee of Creditors (“**CoC**”), the CoC confirmed the appointment of Mr. Supriyo Kumar Chaudhuri as the Resolution Professional (“**RP**”) of the Corporate Debtor by way of e-voting.

Invitation for Expression of Interest to submit Resolution Plan

In accordance with the section 25(2)(h) of the Code read with Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**the CIRP Regulations**”), the RP hereby invites Expressions of Interest to submit Resolution Plan/(s) for the Corporate Debtor (“**EOI**”), from the interested and eligible prospective resolution applicants who fulfils such eligibility criteria, as approved by the CoC.

Submission of EOI

Any interested prospective resolution applicant who is eligible in accordance with the eligibility criteria as set out in “**Annexure -A**”, may submit EOI in the format as provided in “**Annexure B**” on or before 25th December, 2020. The EOI is required to be accompanied with the following:

- a. All the details / information of the Applicant along with supporting documents set out in “**Annexure C**” hereto.
- b. An undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A of the Code in the format as provided in “**Annexure D**” and relevant information and records to enable an assessment of ineligibility under Section 29A of the Code.

- c. An undertaking in the format as provided in “**Annexure E**” by the prospective resolution applicant inter alia, confirming that it meets the eligibility criteria mentioned in **Annexure A** above.
- d. A Confidentiality Undertaking by the prospective resolution applicant in the format provided in “**Annexure F**”.

The prospective resolution applicants shall submit the EoI along with the required documents in hard copy , along with a soft copy in a password protected pen drive by speed post or by hand delivery in sealed envelope to the Resolution Professional marked as “Private and Confidential”, and super scribed “Resolution Plan for Rohit Ferro-Tech Limited” to the following address by post or courier or deliver in person to:

Mr. Supriyo Kumar Chaudhuri
Resolution Professional for Rohit Ferro-Tech Limited
[BDO Restructuring Advisory LLP,
C/o BDO India LLP,
Floor 4, Duckback House,
41, Shakespeare Sarani,
Kolkata - 700017]

Additionally, a soft copy of the EOI along with above-mentioned documents should also be mailed to iprft@bdo.in . The RP may seek any clarification and additional information or document, in addition to material on record, from prospective resolution applicant for conducting due- diligence to ensure compliance with regard to eligibility in accordance with the applicable provisions of the Code.

It may be noted that any EOI received after 25th December, 2020 shall be rejected without any prejudice.

Notes and Other Terms and Conditions

- (1). The Invitation for EOI is not an offer or invitation for sale or the solicitation of an offer to buy, purchase or subscribe to any securities, if any, of Rohit Ferro-Tech Limited.
- (2). The RP / CoC reserves the right to cancel, amend or modify the invitation without assigning any reason and without incurring any liability of whatsoever nature. Any amendment or modification shall be posted on the website of the Corporate Debtor <https://www.rohitferrotech.com> . The prospective resolution applicants are requested to regularly visit the website for updates.

- (3) The RP / CoC reserves the right to withdraw the invitation for EOI and also reserves the right to disqualify any prospective resolution applicant, should it be so necessary at any stage, without assigning any reason.
- (4). No oral conversation or agreement with the RP or any official, agent, advisor or employee of the RP, or any member of the CoC shall affect or modify the terms of this invitation for EOI.
- (5). Neither any prospective resolution applicant nor any of representatives of such prospective resolution applicant shall have any claims whatsoever against the RP or any official, agent, advisor or employee of the RP, or any member of the CoC or any of their directors, officials, agents or employees arising out of or relating to this invitation for EOI.
- (6). All prospective resolution applicants must read, understand and comply with all requirements under the Code and the Regulations framed thereunder for resolution plans and all matters thereunder in relation to this invitation.
- (7). By submitting an EOI, each prospective resolution applicant shall be deemed to acknowledge that it has carefully read the entire invitation for EOI and has fully informed itself as to all existing conditions and limitations.
- (8). For any other further clarifications, kindly write to iprft@bdo.in and / or to the Resolution Professional at the following address:

Yours' Sincerely

**Sd/-
SUPRIYO KUMAR CHAUDHURI**

**Resolution Professional for ROHIT FERRO-TECH LIMITED
Regn. No. IBBI/IPA-001/IP-P00644/2017-18/11098
Email for correspondence: iprft@bdo.in
Regd Email: supriyochaudhuri@bdo.in,**

**Registered address with IBBI and correspondence address
BDO Restructuring Advisory LLP,
C/o BDO India LLP,
4th Floor, Duckback House,
41 Shakespeare Sarani, Kolkata, West Bengal ,700017**

ANNEXURE -A
[Eligibility Criteria]

Eligibility criteria as approved by the CoC of the prospective Resolution Applicants for submission of EOI to the RP.

1. **For Individual**- the consolidated Net Worth## as per the latest Balance Sheet** (not prior to 31st March, 2019) should be at least Rs. 50 crores.
2. **For firms/LLP's/Body Corporates** - the consolidated Net Worth* as per the latest audited financial statement (not prior to 31st March, 2019) should be at least Rs. 75 crores.
3. **For Financial Institutions/PE Funds/other financial investors** -- the consolidated Net Worth* as per the latest audited financial statement (not prior to 31st March, 2019) should be at least Rs. 300 crores.
4. **For an Asset Reconstruction Company (ARC) or a Non-Banking Financial Company (NBFC)**- if the ARC/NBFC is duly registered with the Reserve Bank of India.
5. **For consortium of investors** -
 - (a) **in case of a consortium of two or more individual** - the aggregate consolidated Net Worth as per the latest Balance Sheet** (not prior to 31st March, 2019) should be at least Rs. 75 crores.
 - (b) **for any other combination** - the aggregate consolidated Net Worth as per the latest Balance Sheet/ audited financial statement (not prior to 31st March, 2019), as may be applicable, should be the higher of the amount applicable to any of the parties to the consortium.

Net worth for an Individual shall mean excess of his Assets over his Liabilities as per his Balance Sheet. Assets mean aggregate of every asset having a monetary value that an individual owns while Liabilities represent the aggregate Debts an individual owes.

* Net Worth shall mean the aggregate of the Equity Share Capital/ Capital (for firms and LLPs) and Free Reserves and retained earnings excluding revaluation reserve and preliminary and other expenses to the extent not written off.

** latest Balance Sheet to be certified by a practising chartered accountant.

ANNEXURE -B
[Format for EOI]

[On the Letterhead of the Prospective Resolution Applicant]

Date: [●]

To,
Mr.
Resolution Professional
<Address>

Subject: Expression of Interest for Submitting Resolution Plan for Rohit Ferro-Tech Limited undergoing Corporate Insolvency Resolution Process (“CIRP”)

Dear Sir,

With reference to the advertisement in the {name of the newspaper / website} dated {date of advertisement} inviting Expression of Interest (“EOI”) for submission of resolution plans by the Resolution Professional (“RP”) as per the provisions of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) and rules and regulations made thereunder, we hereby submit our EOI for the submission of Resolution Plan for Rohit Ferro-Tech Limited (“**Corporate Debtor**”).

We confirm that we have understood the requirements and the terms and conditions for submission of this EOI for submission of Resolution Plan for the Corporate Debtor.

Further, we agree, acknowledge and confirm as follows:

- a. This EOI will be evaluated by the RP based on the information provided in this EOI and the annexures and other documents attached herewith to determine if we are eligible to receive a request or invitation for submission of a resolution plan in relation to the Corporate Debtor under the CIRP (“**Resolution Plan**”) and to submit a Resolution Plan;
- b. The RP reserves the right to determine, at his sole discretion, if we are eligible for the submission of the proposal and may reject the EOI submitted by us without assigning any reason and without any liability whatsoever;

The RP reserves the right to request for additional information, documentary proof and/or clarification from us for the purposes of the EOI and we shall promptly comply with such requirements. Failure to provide necessary information, documentary proof and/or clarifications to the satisfaction of the RP and / or CoC may lead to rejection of our submission pursuant to EOI;

- c. Any change in consortium or any material change affecting the consortium members' ability to perform in consortium shall be intimated within 3 (three) business days (means a day other than a Saturday or a Sunday) of such change to the RP. Allowing such change will be at the sole discretion of the RP, however any change to the lead member of the consortium will not be allowed. Further no change in the members of the consortium shall be allowed after the submission of the EOI by the consortium;
- d. Meeting the eligibility criteria set out in the detailed invitation for expression of interest to submit resolution plan(s) for Rohit Ferro-Tech Limited alone does not automatically entitle us to participate in the next stage of the resolution process;
- e. We are not ineligible in terms of provisions of Section 29A of the Code. We are enclosing herewith an undertaking in a form set out in "**Annexure D**" of the Invitation for EOI in connection with Section 29A of the Code.
- f. We are a 'fit and proper' person and not under any legal disability to submit EOI in respect of the Corporate Debtor under the applicable laws including listing agreements, stock exchange requirements and SEBI regulations and guidelines.

Along with our EOI, we have also enclosed the following information:

- i. Details / Information as listed in **Annexure C** of the Detailed Invitation;
- ii. Undertaking in the format set out in **Annexure D** of the Detailed Invitation;
- iii. Undertaking in the format set out in **Annexure E** of the Detailed Invitation;
- iv. Confidentiality Undertaking in the format set out in **Annexure F** of the Detailed Invitation; and Copies of Audited Financial Statements, Balance Sheet, RBI Registration certificate, if applicable, any other document as specified under the eligibility criteria.

We further undertake that the information furnished by us in this EOI and annexures hereto are true, correct, complete, and accurate. We understand you would be able to evaluate our preliminary proposal and eligibility based on the information provided herein in order to shortlist us for the above-mentioned proposal.

[I / We] represent and confirm that [I / we], and no other person acting jointly or in concert with [me / us] is disqualified under the provisions of Section 29A of the Code to submit a resolution plan as on the date of this EOI.

Yours Sincerely,

On behalf of

[Insert the name of the entity submitting the EOI]

{Signature of the Authorised Signatory}

{Name of the Authorised Signatory}

{Designation}

{Company Seal / Stamp}

Note:

- a. In case of Consortium Applicant, the EOI shall be signed by each member.*
- b. The person signing the EOI and other supporting documents should be an authorised signatory supported by necessary board resolutions / authorization letter / power of attorney.*

ANNEXURE -C

[Supporting documents to be enclosed with EOI]

[Note: In case of consortium, the details set out below are to be provided for each of the members]

For all prospective resolution applicants:

a. Name and Address:

- i. Name of the Person/Firm/Company/Organisation:
- ii. Address:
- iii. Telephone No:
- iv. Fax:
- v. Email:
- vi. PAN and CIN:

- b. Profile of the prospective resolution applicants including subsidiary (wholly owned subsidiary, partly owned subsidiary (if any), step down subsidiary), associates, affiliates, joint ventures, promoter and promoter group and key managerial personnel.
- c. Rationale for bidding for the Corporate Debtor.
- d. Copies of certificate of incorporation / registration and constitutional documents (including memorandum and articles of association or equivalent document).
- e. Copy of PAN card or equivalent document in case of overseas entities.
- f. Audited financial statements for immediately preceding 3 (three) years of the prospective resolution applicant as per eligibility criteria.
- g. Please note that the prospective resolution applicant shall provide all relevant documents evidencing that he/the entity meets the eligibility criteria.

Copies of Audited Financial Statements, not earlier than 31.03.2019 and two immediately preceding financial years, duly certified by the Statutory Auditors of the prospective resolution applicant submitting the EOI (for prospective resolution applicants incorporated in India) or equivalent Audited Financial Statements for the said periods in currencies like US\$, GBP, Euro, AUD, ZAR or Japanese Yen, but not in other currencies, duly certified by their Statutory Auditors (for prospective resolution applicants incorporated outside India) are required to be submitted. In case the prospective Resolution Applicant is an individual, his Balance Sheets for the aforesaid financial years certified by a practising Chartered Accountant are required to be submitted.

- h. Computation of Net Worth, in case the prospective resolution applicant is a strategic investor; and the same and Assets Under Management, in case the prospective resolution applicant is a financial investor is required to be submitted;

Note: For a prospective resolution applicant which is a Financial Investor - Relevant statement of committed funds available for investment/deployment in Indian companies or Indian assets with Names, Addresses, and copies of PAN, last three Income Tax Assessment Orders and latest Balance Sheets, not earlier than 31.03.2020 certified by a practising Chartered Accountant , are required for each of the parties committing such funds.

- i. Contact Person
 - a. Name:
 - b. Designation:
 - c. Telephone No:
 - d. Email:
- j. Names & DIN of Directors including Independent Directors
- k. Names of key lenders, if any, to the Individual, Company or its affiliates
- l. History if any, of the Individual, Company or affiliates of the Company being declared a 'wilful defaulter', 'non-cooperative borrower', 'non-impaired asset' or 'non-performing asset'.
- m. Any other relevant details which would be useful for the resolution professional to be aware of in respect of the EOI including but not limited to their eligibility/disqualification pursuant to conditions prescribed under Section 29A of the Code.
- n. Any other relevant details which would be useful for the resolution professional to evaluate the EOI and help to shortlist for the next stage in the process.

ANNEXURE -D

[Format of undertaking confirming no disqualification under section 29A of the Code]

[To be on non-judicial stamp paper of Rs. 100 for West Bengal. The stamp duty will depend on the state of execution of the undertaking. In case the undertaking is executed outside India, such undertaking is required to be apostilled / consularized (as may be applicable) and stamped at the place of receipt of the undertaking within India before submission to RP.]

To,
Mr. Supriyo Kumar Chaudhuri
Resolution Professional
C/o, BDO Restructuring Advisory LLP,
BDO INDIA LLP,
Floor 4, Duckback House,
41, Shakespeare Sarani, Kolkata - 700 017

Dear Sir,

Sub: **Resolution Applicant's undertaking under the Insolvency and Bankruptcy Code, 2016 ("the Code") and the rules and regulations prescribed thereunder confirming no disqualification under Section 29A of the Code.**

We refer to the advertisement inviting expression of interest dated [*date of the advertisement*] ("**Expression of Interest**") in relation to the corporate insolvency resolution process of Rohit Ferro-Tech Limited ("**Corporate Debtor**"). In furtherance of the Expression of Interest, [I/ We], [*Insert name*], the prospective resolution applicant ("**Prospective Resolution Applicant**") hereby confirm that we are not ineligible under Section 29A of the Code.

Without prejudice to the generality of the foregoing, we hereby unconditionally certify and confirm as follows:

1. [I/ We] am/are not disqualified from submitting a resolution plan in respect of the Corporate Debtor under the Code and the Rules and Regulations framed thereunder, as amended from time to time;
2. [I/ We] hereby state, submit and declare that neither the Prospective Resolution Applicant nor any other person acting jointly or in concert with us:
 - (a) is an undischarged 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 EOI/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 elapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the Corporate Debtor;

[Note:

- i. *A 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. If that is the case, please provide details of the NPAs proof of payment of all overdue amounts prior to submission of the resolution plan.*
- ii. *This clause shall not apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.*
- iii. *For the purposes of this clause,*
 - *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 or completion of such transaction as maybe prescribed, prior to the insolvency commencement date; and*
 - *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 nonperforming asset and such account was acquired pursuant to a prior resolution plan approved under the 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 the 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 of the Code; or
 - ii. for seven years or more under any law for the time being in force;

[Note: This clause shall not apply:

- i. *to a person after the expiry of a period of two years from the date of his release from imprisonment: or*
- ii. *in relation to a connected person referred to in clause(iii) of the definition of connected person.]*

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

- (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 the Code;
- (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 the 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) above, under any law in a jurisdiction outside India; or
- (j) has a connected person not eligible under clauses (a) to (i) above.

Unless a contrary intention appears, the terms used herein shall have the meaning assigned to such terms under the Code. Additionally, the following terms used herein shall have the following meaning:

- (a) "**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: (a) nothing in clause (iii) of this definition shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor; and (b) 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 or completion of such transactions as maybe prescribed, prior to the insolvency commencement date.

- (b) "**financial entity**" means 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:
 - i. a scheduled bank;
 - ii. 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;

- iii. 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);
- iv. 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);
- v. an Alternate Investment Fund registered with Securities and Exchange Board of India;
- vi. such categories of persons as may be notified by the Central Government.

Yours Sincerely,

On behalf of

[Insert the name of the entity submitting the EOI]

Name of Signatory:

Designation:

Company Seal/Stamp

Note:

In case of Consortium Applicant, the EOI shall be signed by each member, one of whom shall be designated as the Lead Applicant by way of duly executed notarised document.

The person signing the EOI and other supporting documents should be an authorised signatory supported by necessary board resolutions / authorization letter / power of attorney.

ANNEXURE -E
[Format of Undertaking]

[To be on non-judicial stamp paper of Rs. 100 for West Bengal. The stamp duty will depend on the state of execution of the undertaking. In case the undertaking is executed outside India, such undertaking is required to be apostilled / consularized (as may be applicable) and stamped at the place of receipt of the undertaking within India before submission to RP.]

Prospective Resolution Applicant's Undertaking

To,
Mr. Supriyo Kumar Chaudhuri
Resolution Professional
C/o, BDO Restructuring Advisory LLP,
BDO INDIA LLP,
Floor 4, Duckback House,
41, Shakespeare Sarani, Kolkata – 700 017

Dear Sir,

Sub: Prospective Resolution Applicant's undertaking in relation to the Expression of Interest in the corporate insolvency resolution process of for Rohit Ferro-Tech Limited ("Company").

1. We, [Insert name of the Prospective Resolution Applicant] ("**Prospective Resolution Applicant**"), refer to the advertisement inviting expressions of interest dated [*date of the advertisement*], 2020 ("**EOI**") and the EOI submitted by us in relation to the captioned matter.
2. We hereby undertake, agree, acknowledge and confirm that:
 - a) the Prospective Resolution Applicant meets the criteria specified by the Resolution Professional with the approval of the Committee of Creditors of the Company under clause (h) of sub-section (2) of section 25 of the Insolvency and Bankruptcy Code, 2016 ("**the Code**"). Relevant documents, information and records as proof of our meeting the said criteria are enclosed in pages to....._____;
 - b) the Prospective Resolution Applicant does not suffer from any ineligibility under section 29A of the Code (to the extent applicable), relevant information and records to enable an assessment of our ineligibility are enclosed in pages to;
 - c) the Prospective Resolution Applicant shall intimate the RP forthwith if he/it becomes ineligible at any time during the corporate insolvency resolution process.

- d) all the information and records provided in expression of interest are true and correct and discovery of any false information or record at any time will render the Prospective Resolution Applicant ineligible to submit resolution plan and attract penal action under the Code; and
 - e) the Prospective Resolution Applicant shall maintain confidentiality of the information and shall not use such information to cause any undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29 of the Code.
3. We further undertake and confirm that the EOI submitted by us is unconditional and that the said EOI has been submitted having understood that the Resolution Professional shall conduct due diligence in respect of the prospective resolution applicant's compliances under sections 25(2)(h), 29A and other applicable provisions of the Code and the Rules and Regulations framed thereunder and any other applicable statutory provision

Yours Sincerely,

On behalf of [Insert the name of the entity submitting the EOI]

Name of Signatory:

Designation:

Company Seal/Stamp

Note:

- (a) In case of Consortium applicant this undertaking shall be signed by each member, one of whom shall be designated as the Lead Applicant by way of duly executed notarised document.*
- (b) The person signing this undertaking and other supporting document should be an authorised signatory supported by necessary board resolutions/ authorization letter/ power of attorney.*

ANNEXURE -F
[Confidentiality Undertaking]

[To be on non-judicial stamp paper of Rs. 100 for West Bengal. The stamp duty will depend on the state of execution of the undertaking. In case the undertaking is executed outside India, such undertaking is required to be apostilled / consularized (as may be applicable) and stamped at the place of receipt of the undertaking within India before submission to RP.]

Undertaking under Section 29 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) and Regulation 36(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) to maintain confidentiality

This Confidential Undertaking, executed this _____, day of _____, 2020, by _____, Prospective Resolution Applicant, having its office/registered office at _____, acting through Mr. _____, it's authorized signatory/Director/Partner (which expression shall, unless repugnant to the context, include its successors, administrators, assigns and legal representatives) in favour of Mr. Supriyo Kumar Chaudhuri, Insolvency Professional having Registration No. - IBBI / IPA-001/ IP-P00644 /2017-18 / 11098.

WHEREAS:

- A. Pursuant to the advertisement published by the RP in (/●/), the RP had invited expressions of interest (“EOI”) from prospective resolution applicants for the purpose of submission of resolution plans for the Corporate Debtor in accordance with the provisions of the Code. The Prospective Resolution Applicant, has accordingly, submitted its EOI to the RP on [●], 2020.

As per the provisions of the Code and the CIRP Regulations, in the event that the Prospective Resolution Applicant is mentioned in the final list of prospective resolution applicants issued by the RP, the Prospective Resolution Applicant shall have the right to submit a resolution plan for the Corporate Debtor to the RP. For the purpose of preparation and submission of the resolution plan for the Corporate Debtor (“Purpose”), the RP is required to provide the Prospective Resolution Applicant with access to the relevant information in that respect, provided that the Prospective Resolution Applicant provides an undertaking to the Resolution Professional confirming non-disclosure of such information.

- B. Subject to our furnishing an unconditional Confidentiality Undertaking, the RP will be sharing certain Confidential Information (*as defined in Clause 1 below*) with the Prospective Resolution Applicant. The Prospective Resolution Applicant has agreed to provide the instant undertaking in accordance with the provisions of IBC,2016 and

CIRP Regulations to the Resolution Professional of the Corporate Debtor on the terms and conditions provided herein below.

THE PROSPECTIVE RESOLUTION APPLICANT HEREBY DECLARES AND UNDERTAKES AS FOLLOWS: -

1. The Prospective Resolution Applicant declares and undertakes that it will not disclose and/or divulge any information disclosed to it, including any financial information of the Corporate Debtor and any information contained in the Information Memorandum or information provided in relation thereto in connection with the CIRP of the Corporate Debtor, by the Resolution Professional and/or any other person acting on behalf and/or under the instructions of the Resolution Professional. Such information may have been provided by the Resolution Professional in the manner described hereinabove through oral, written communication, photocopies, virtual data room or any other mode and all such information shall constitute "**Confidential Information**". Any information, documents or material that maybe derived and/or generated by the recipient of Confidential Information shall also constitute as Confidential Information.
2. The Prospective Resolution Applicant further unconditionally and irrevocably undertakes and declares that: -
 - a) the Confidential Information shall be kept confidential and shall be used solely in accordance with the terms of the IBC;
 - b) the Confidential Information shall not be used to cause any undue gain or undue loss to itself, or any other person;
 - c) it shall comply with all provisions of law for the time being in force relating to confidentiality and insider trading in relation to such Confidential Information;
 - d) it shall protect any intellectual property of the Corporate Debtor which it may have access to;
 - e) it shall ensure that all Confidential Information is kept safe and secured at all times and is protected from unauthorised access, use, dissemination, copying, theft or leakage; and
 - f) it shall take all necessary steps to safeguard the privacy and confidentiality of the information in the Information Memorandum and shall use its best endeavours 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 in the Information Memorandum.
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 Prospective Resolution Applicant was already in the public domain without violation of any provisions of applicable laws;
 - b) information which, after disclosure to the Prospective Resolution Applicant becomes publicly available without any breach of this confidentiality undertaking or violation of applicable laws;
 - c) information which was, lawfully and without any breach of this confidentiality undertaking, in the possession of Prospective Resolution Applicant prior to its disclosure, as evidenced by the records of the Prospective Resolution Applicant;
 - d) information that is received by the Prospective 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 Prospective 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 or the guidelines of the regulatory/administrative authority or the stock exchange.
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 Prospective Resolution Applicant, including Confidential Information, and the Prospective 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 Confidential Information or information provided in the Information Memorandum and/or in relation thereto.
 5. The Prospective Resolution Applicant agrees that the Resolution Professional 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 Prospective Resolution Applicant in the Information Memorandum. The Prospective Resolution Applicant further agrees that, the Resolution Professional shall not be liable to the Prospective Resolution Applicant for any damages arising in any manner whatsoever out of the use of the Confidential Information and Prospective Resolution Applicant shall not have any claim against the Resolution Professional or the Corporate Debtor in relation to any information provided in the Information Memorandum.
 6. Nothing in this confidentiality undertaking shall have the effect of limiting or restricting any liability arising as a result of fraud or wilful default.
 7. Damages may not be an adequate remedy for a breach of this confidentiality undertaking and the Resolution Professional shall be entitled to the remedies of injunction, specific performance and other equitable relief for a threatened or actual breach of this confidentiality undertaking.

8. The Prospective 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.
9. The Prospective Resolution Applicant hereby agrees to indemnify the Resolution Professional for any loss / damages and costs suffered and/or incurred by the Resolution Professional due to any breach of terms and/or obligations by it or any person acting on its behalf.
10. The terms and obligations of this confidentiality undertaking may be modified or waived only by a separate instrument in writing signed by the Prospective Resolution Applicant and the Resolution Professional, that expressly modifies or waives such terms and obligations.
11. 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 Kolkata shall have exclusive jurisdiction over matters arising out of or relating to this confidentiality undertaking.

On behalf of the firm/company/organization:

Signature:

Name of signatory:

Designation:

Company Seal/stamp

Place:

Date: