

PROCESS MEMORANDUM

Date – January 12th, 2023

Invitation for bids for auction for the Corporate Debtor
GUJARAT METALLIC COAL & COKE LIMITED (in Liquidation)
under the provisions of Insolvency & Bankruptcy Code, 2016 and Regulations 32(a) to 32(d) of
the Liquidation Process Regulations

By an order of Hon'ble National Company Law Tribunal ("NCLT"), Kolkata Bench with effect from
November 03rd, 2021

Date of Public Announcement

January 12th 2023

Date of e-Auction: February 09th 2023

1. *This Sale Process Memorandum is issued to all Interested Bidders (defined hereinafter)*
2. *Terms and conditions, deadlines etc. for participating in the electronic auction (e-auction) are provided in this Sale Process Memorandum. This document is non-transferable.*
3. *Timelines, notifications, and other details for the e-Auction process are available on the website: <https://nbid.nesl.co.in/app/login> and/or can be obtained by a request email addressed to the Liquidator at Liquidation.gmcccl@gmail.com*
4. *Interested Bidders desirous to submit their bid have to submit bids at the e-Auction portal <https://nbid.nesl.co.in/app/login>*

Issued & signed by

Sanjay Kumar Poddar, Liquidator

Reg. No. IBBI/IPA-001/IP-P01802/2019-2020/12759

M/s. GUJARAT METALLIC COAL & COKE LIMITED (IN LIQUIDATION)

CIN: L24298WB1992PLC054815

Registered Office of the Company / Corporate Debtor:

155, Lenin Sarani, 4th Floor, Room No.402 Kolkata WB 700013 IN

Office Address of Liquidator:

2, Lalbazar Street, 2nd Floor

Room #201-203, Kolkata - 700001

Email liquidation.gmcccl@gmail.com

Contact No.: 9830047033/9874974377

DISCLAIMER

- This document is issued by Sanjay Kumar Poddar, the Liquidator for general information purposes, to provide general information only, without regard to specific objectives, suitability, financial situations, and the requirements of any particular person. The Liquidator endeavors to assign or transfer the assets and properties comprising the liquidation estate of the Company (including the Asset Lots, as defined hereinafter) in the manner specified under Regulation 37A (provided under Regulation 33) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 and other applicable rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be, and as per directions, if any, of the NCLT in respect of the liquidation process of the Company and in the manner specified in this Process Memorandum. Nothing herein or in materials relating to the Process Memorandum is intended to be construed as legal, financial, accounting, regulatory, or tax advice by the Liquidator or his professional advisors. This Process Memorandum is personal and specific to each Bidder. Neither this Process Memorandum nor anything contained herein shall form the basis of, or be relied upon in connection with any contract, agreement, undertaking, understanding, or any commitment whatsoever.*
- The information in this Process Memorandum and any information provided earlier or subsequently, whether verbally or in documentary or any other form by or on behalf of the Liquidator, which does not purport to be comprehensive, is provided by the Company and has not been independently verified by the Liquidator or his professional advisors. While this information has been prepared in good faith, no representation or warranty, expressed or implied, is or will be made and no responsibility or liability is or will be accepted by the Liquidator, his professional advisors, the Company, or by any of their respective officers, employees or agents in relation to the accuracy, fairness, authenticity or completeness of this Process Memorandum or any other written or oral information made available to any Bidder(s) or its advisers and any such liability is expressly disclaimed.*
- The Liquidator accepts no responsibility for the accuracy or otherwise for any statement contained in the Process Memorandum and any information provided earlier or subsequently and expressly disclaims any and all liability, which is based on the information and statements or any part thereof contained in / omitted from the Process Memorandum and any information provided earlier or subsequently. Cognizance should also be taken of the fact that the Liquidator does not give any representation, assurance, or warranty (express or implied) of the physical condition of Asset Lots and their suitability fitness merchantability for any sort of operation that the Bidder envisages. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability, and completeness of the assumptions, assessments, statements, and information provided in this Process Memorandum and any information provided earlier or subsequently and obtain independent advice from appropriate sources.*
- By acceptance of this Process Memorandum and submission of the Bid (defined hereinafter in the document), the Bidder(s) shall be deemed to have acknowledged that no representation and warranty, express or implied, has been made and that it has not relied upon any statement made or information provided by the Liquidator and/or his professional advisors. The submission of the Bid means and implies that the Bidder has read carefully and unconditionally and irrevocably agreed to and accepted all the terms and conditions stipulated herein. This document has not been filed, registered, or approved and will or may not be filed, registered, reviewed, or approved by any statutory or regulatory authority in India or any other jurisdiction.*

5. *This Process Memorandum and information contained herein or disclosed pursuant to the terms of this Process Memorandum or any part of it does not constitute or purport to constitute any advice or information in publicly accessible media and should not be printed, reproduced, transmitted, sold, distributed, or published by the recipient without prior written approval from the Liquidator.*
6. *Neither the Liquidator nor his professional advisors, affiliates, directors, employees, agents, representatives, or managers of the process shall be liable for any damages, whether direct or indirect, incidental, special, or consequential including loss of revenue or profits that may arise from or in connection with the use of this Process Memorandum, including for a Qualified Bidder not being selected as a Successful Bidder or on account of any decision taken by the Liquidator.*
7. *The Liquidator and / or the Company give no undertaking to provide the recipient with access to any additional information or to update this Process Memorandum or any additional information, or to correct any inaccuracies in it which may become apparent, and they reserve the right, without giving reasons, at any time and in any respect, to amend or terminate the procedures set herein or to terminate negotiations with any Bidder. The issue of this Process Memorandum shall not be deemed to be any form of commitment on the part of the Liquidator or the Company to proceed with any transaction.*
8. *In addition to the provisions set out in this Process Memorandum, the Bidder shall be responsible for fully satisfying the requirements of the IBC and related regulations as well as all laws in force that are or may be applicable to the Bidder or the assignment or transfer process and for obtaining requisite regulatory or other approvals, if any, that are or may be required under applicable law and nothing contained in this Process Memorandum shall be deemed to relieve, wholly or partially, directly or indirectly, the Bidder from compliance with the IBC and related regulations as well as any other law in force, and / or any instrument having the force of law as may be applicable and nothing in this Process Memorandum shall be construed as, or operate either, wholly or in part, as exempting a Bidder from complying with all such laws, as are or may be applicable.*
9. *By procuring a copy of this Process Memorandum, the recipient accepts the terms of this disclaimer notice, which forms an integral part of this Process Memorandum and all other terms and conditions of this Process Memorandum.*
10. *All expenses incurred towards movement/shifting of plant & machinery or any asset post the e-Auction process should be borne and paid by the Successful Bidder. The Liquidator and/or the Company shall not be held responsible/liable to pay any expenses towards such movement of plant & machinery or any asset sold in the e-Auction process.*
11. *In no circumstances shall the Bidder or its officers, employees, agents, and professional advisers make any contact, direct or indirect, by any mode whatsoever, with the management, employees, customers, agents, or suppliers of the Company until the Liquidator gives prior permission to do so in writing.*
12. *All the assets of the Company are to be sold on "As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse" basis. The proposed assignment or transfer of assets of the Company does not entail the transfer of any title except the title which the Company had on the assets as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect (latent or patent) or shortcoming in the moveable/immovable assets of the Company. Whilst it is not*

the intention to transfer any liabilities associated with the assignment or transfer of the assets of the company, the Bidder is advised to ascertain all statutory liabilities/taxes/demands/claims/maintenance fee/electricity/water charges, etc. and any other dues/claims, outstanding as on a date or yet to fall due in respect of the relevant asset.

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

14. This Process Memorandum is neither transferable nor assignable.

INDEX

IMPORTANT INFORMATION 5

ABOUT E-AUCTION 6

KEY DEFINITIONS 8

INTRODUCTION 10

THE COMPANY OVERVIEW 11

ASSETS TO BE AUCTIONED AND RESERVE PRICE 11

KEY TIMELINES..... 14

ELIGIBILITY 14

DOCUMENTS TO BE SUBMITTED TO BECOME A QUALIFIED BIDDER..... 17

PHYSICAL VERIFICATION 18

DUE DILIGENCE 18

EARNEST MONEY DEPOSIT 19

INVOCATION OF BANK GUARANTEE / FORFEITURE OF EARNEST MONEY 20

DECLARATION OF SUCCESSFUL BIDDER 21

ISSUANCE OF LETTER OF INTENT 21

COMPLETION OF ASSIGNMENT OR TRANSFER..... 22

FRAUDULENT AND CORRUPT PRACTICES 22

COSTS, EXPENSES AND TAX IMPLICATIONS 24

MODIFICATION IN TERMS AND CONDITIONS 24

GOVERNING LAW AND JURISDICTION 25

FORMAT A - EARNEST MONEY BANK GUARANTEE 26

ANNEXURE I - BID APPLICATION FORM 29

ANNEXURE II - DECLARATION BY INTERESTED BIDDERS 31

ANNEXURE III - AFFIDAVIT 33

ANNEXURE IV - BOARD RESOLUTIONS 35

ANNEXURE V - CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT 37

ANNEXURE VI - TECHNICAL TERMS & CONDITIONS OF E-AUCTION ASSIGNMENT OR TRANSFER.. 45

ANNEXURE VII - LETTER OF INTENT 46

ANNEXURE VIII - DESCRIPTION OF ASSET LOTS 48

I. IMPORTANT INFORMATION

1. This Process Memorandum has been issued with the intent to carry out assignment or transfer of the assets of GUJARAT METALLIC COAL & COKE LIMITED (in Liquidation) (the "**Company**") comprising the liquidation estate of the Company in the manner specified under Regulation 37A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 and other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be, and as per directions, if any, of the NCLT in respect of the liquidation process of the Company and in the manner specified in this Process Memorandum .
2. All information provided in this Process Memorandum should be read together with the provisions of the IBC and the Liquidation Process Regulations. In the event of a conflict between this Process Memorandum and the IBC or the Liquidation Process Regulations, the provisions of the IBC or the Liquidation Process Regulations, as the case may be, shall prevail.
3. This Process Memorandum is neither a prospectus nor an offer document nor a letter of offer for assignment or transfer of assets of the Company or an official confirmation of any transaction entered into by the Company nor an agreement by the Liquidator to the Bidders or any other person. The Process Memorandum purports to ascertain the interest of potential Bidders and does not create any kind of binding obligation on the part of the Liquidator, his professional advisors, or the Company to effectuate the assignment or transfer of the assets of the Company.
4. The Liquidator may in his absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment, or assumptions contained in this Process Memorandum .
5. The issue of this Process Memorandum does not imply that the Liquidator is bound to select a Qualified Bidder as a Successful Bidder for the assets of the Company and the Liquidator reserves the right to reject all or any of the Interested Bidders or bids without assigning any reason whatsoever.
6. A new version of the Process Memorandum or addendum to the earlier version of the Process Memorandum may be released prior to every round of auction, at the discretion of the Liquidator.
7. Each Bidder shall bear all its costs and charges associated with or relating to the preparation and submission of its bid and / or participation in the E-Auction, including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Liquidator or any other costs incurred in connection with or relating to its bid.
8. The term transfer or assignment wherever used in this document shall mean, transfer or assignment on "as is where is basis", "as is what is basis", "whatever there is basis and "no recourse basis" in accordance with the provisions of IBC, Liquidation Process Regulations and this Process Memorandum .

II. ABOUT E-AUCTION

1. **The Services of M/s National E-Governance Services Limited) (“ E-Auction Service Provider” or “Agency”)** shall be used for conduct of Auction . The assignment or transfer on “as is where is basis”, “as is what is basis”, “whatever there is basis” and “no recourse basis” shall be undertaken by the Agency for and on behalf of the Liquidator through an E-Auction platform provided/referred on the website portal of the E-Auction Service Provider (“**Platform**”). Other details of the e-auction are as follows:

| # | Particulars | E-Auction |
|---|---|---|
| 1 | Liquidator | Sanjay Kumar Poddar |
| 2 | Website of E-Auction Service Provider | https://nbid.nesl.co.in/ |
| 3 | Address of E-Auction Service Provider | Regd. Office: Gresham Assurance House, 4th Floor, Sir PM Road, Fort Mumbai -400001 Administrative Office: Nos. 81-6-48/1-1, The Estate, 003 A, Ground Floor, 121, Dickenson Road, Bangalore- 560042 |
| 4 | Contact No. of E-Auction Service Provider | Mr. Neel Doshi Phone : +91 94040 00667 |
| 5 | Email ID of E-Auction Service Provider | Email - ipsupport@nesl.co.in |
| 6 | Annexures | <ol style="list-style-type: none"> 1. <u>Annexure I</u> -Bid Application Form 2. <u>Annexure II</u> – Declaration by the Interested Bidder 3. <u>Annexure III</u>– Notarized Affidavit certifying eligibility under Section 29A of IBC of the Interested Bidder 4. <u>Annexure IV</u> – Certified true copy of the resolution passed by the board of directors/partners/governing body of the Interested Bidder which is a legal entity or an association of persons, authorizing participation in the e- Auction and authorization of signatories 5. <u>Annexure V</u> – Format of Confidentiality and Non-Disclosure Agreement 6. <u>Annexure VI</u> – Technical Terms and Conditions of E-Auction Assignment or transfer <u>Annexure VII</u> – Format of Letter of Intent 8. <u>Annexure VIII</u> – Description of Assets under Assignment or transfer <p><i>For timelines regarding the submission of the documents, please refer to “Key Timelines” of this Process Memorandum .</i></p> |

| | | |
|---|----------------------|--|
| 7 | Special Instructions | This bidding is a serious matter and last- minute bidding may lead to lapses. Neither the E-Auction Service Provider nor the Liquidator will be responsible for any lapses on part of the Qualified Bidders. |
|---|----------------------|--|

1. All terms and conditions with respect to the assignment or transfer of the Asset Lots shall be governed by the directions of the Liquidator, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, National Company Law Tribunal (Kolkata Bench), National Company Law Appellate Tribunal (NCLAT), and in accordance with the provisions of other applicable laws. The Liquidator shall exercise all rights with respect to the assignment or transfer of the asset(s) and it would be open to the Liquidator to appoint such experts, professionals, or other persons, as the Liquidator might think necessary, so as to enable the assignment or transfer of the asset(s).
2. The Annexures to this Process Memorandum shall form an integral part hereof and this Process Memorandum shall always be read in conjunction with the Annexures hereto. In the event of any inconsistency between the terms contained in the Process Memorandum and that of the Annexures, the terms contained in the Process Memorandum shall prevail.
3. The assets are to be sold as a “assignment or transfer or standalone basis” on “As is where is basis”, “As is what is basis”, “Whatever there is basis” and “No recourse basis”. The proposed assignment or transfer of the asset as a assignment or transfer entails transfer of ownership and control of the asset in favor of the Successful Bidder and does not in any manner entail separate transfer of right, title and interest which the Company has on its assets and properties, in favor of the Successful Bidder. It is further clarified that any asset over which the Company does not have any right, title and interest as on the date of transfer, shall not be transferred as part of the Company’s assets and properties.
4. Further, the subject matter for which the assignment is being contemplated are those which, in opinion of the Liquidator, are not readily realisable due to number of reasons. The liquidator proposes to assign all rights, interests/outcome & obligations pertaining to such subject matter to the prospective process applicant/assignee. Subsequent to the assignment of the subject matter, the liquidator will be substituted in all litigations, proceedings etc. by the successful process applicant/assignee who will be solely responsible for all past, present and future costs, charges, continuation of litigation, expenses and the outcome of litigations, proceedings thereof.
5. Due to the inherent uncertainty surrounding its realization the transaction of assignment will be at solely at the risk & responsibility of the process applicant/assignee. The prospective process applicants are requested to exercise their wisdom before making any decision as once the offer of such process applicants is accepted, the liquidator will not be responsible for any shortcomings/shortfall/realisability or any other consequences arising out of the assignment of subject matter
6. The title documents relating to the Asset Lots shall be available in the Data Room. Cognizance should be taken of the fact that the Liquidator does not give any representation assurance or warranty (express or implied) of the physical condition of the assets and their suitability or fitness or merchantability for any sort of operation that the Bidder envisages. Please find appended the details of the underlying properties/assets in “**Annexure VIII**”.

III.**KEY DEFINITIONS**

1. **“Applicable Laws”** shall mean, all applicable laws, regulations, rules, guidelines, circulars, re-enactments, revisions, applications and adaptations thereto, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority, rules, regulations, orders, and interpretations of any governmental authority, court or statutory or other body applicable for such transactions;
2. **“Assets”** shall mean the assets of **GUJARAT METALLIC COAL & COKE LIMITED** (In Liquidation) as specified in this Process Memorandum .
3. **“Asset Lot”** shall mean Asset Lots (defined on Page 12);
4. **“Associate Company”**, in relation to another company, means a company in which the Bidder has a significant influence in terms of the Companies Act of 2013 and includes an Affiliate of the Bidder having such influence and includes a joint venture company.
5. **“Bid”** shall mean, any bid submitted by the Bidder(s) as required in terms of this Process Memorandum and in accordance with the provisions of IBC read together with the Liquidation Process Regulations and the Applicable Laws;
6. **“Bidder”** shall mean an Interested Bidder or an Eligible Bidder or a Qualified Bidder or a Successful Bidder, as the case may be and as the context requires
7. **“Bid Documents”** shall mean (i) Bid Application Form (*Annexure I*); (ii) Declaration by the Interested Bidder (*Annexure-II*); (iii) Notarized Affidavit certifying eligibility of an Interested Bidder under Section 29A of IBC (*Annexure-III*); (iv) Certified true copy of the resolution passed by the board of directors/partners/governing body of the Interested Bidder which is a legal entity or an association of persons, authorizing participation in the e-Auction and authorization of signatories (*Annexure-IV*) and (v) Duly executed Confidentiality and Non- Disclosure Agreement (*Annexure V*)
8. **“Bid Increment Amount”** shall mean the minimum amount over and above the last highest bid amount by which any participating Qualified Bidder will be required to increase the next bid on the Auction Portal;
9. **“Confidentiality and Non-Disclosure Agreement”** shall mean the confidentiality and non- disclosure agreement executed and submitted by an Interested Bidder to the Liquidator as part of the Bid Documents;
10. **“Control”** together with its grammatical variations, when used with respect to any Person shall mean the power to direct the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, shareholders’ agreements, voting agreements, by contract or otherwise; provided that, in any event: (i) the direct or indirect ownership of more than 25% (twenty-five per-cent) of the voting securities of a Person; or (ii) the right to appoint and/or remove the majority of the members of the board of directors or other governing body of a person, shall be deemed to constitute Control of such Person;
11. **“Data Room”** shall mean the electronic data room where the Liquidator will provide access to the underlying documents in relation to the Assets to the Eligible Bidders.
12. **“Declaration”** shall mean the Interested Bidder’s declaration as per **Annexure-II**;

13. "**Eligible Bidder(s)**" shall mean an Interested Bidder who is found to be eligible by the Liquidator in accordance with the eligibility conditions set forth in Page No. 14 of this Process Memorandum but has not yet submitted the requisite Earnest Money to the Liquidator and who is not yet accepted by the Liquidator as a Qualified Bidder;
14. "**IBC**" shall mean Insolvency and Bankruptcy Code, 2016 and the related rules, regulations, notifications, circulars, orders, and guidelines issued thereunder, as amended from time to time;
15. "**Interested Bidder**" shall mean Person or Persons who have submitted the Bid Documents as per the Process Memorandum and who is not yet accepted by the Liquidator as an Eligible Bidder;
16. "**Liquidator**" shall mean Sanjay Kumar Poddar (insolvency professional having registration number IBBI/IPA-001/IP-P01802/2019-2020/12759);
17. "**Liquidation Process Regulations**" shall mean, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 as amended from time to time;
18. "**NCLT**" shall mean the Hon'ble National Company Law Tribunal, Kolkata Bench;
19. "**Person**" shall mean an individual, a partnership firm, an association, a corporation, a limited company, a trust, a body corporate, bank or financial institution or any other body, whether incorporated or not;
20. "**Qualified Bidder**" shall mean an Eligible Bidder who has deposited the requisite Earnest Money Deposit at least 3 (three) days prior to the scheduled auction date and who the Liquidator has notified as a Qualified Bidder at least 1 (one) day prior to the scheduled auction date;
21. "**Process Memorandum** " shall mean this document including all the annexures hereto, for the purposes of setting out the process for submission of bids with respect to the Asset Lots and selection of Successful Bids in accordance with the provisions of the IBC and shall include all supplements, modifications, amendments, alterations or clarifications thereto issued in accordance with the terms hereof.
22. "**Successful Bidder**" shall mean the Qualified Bidder whose bid is approved and who is declared as such by the Liquidator at the end of the determined auction process;

Capitalized terms used herein but not defined otherwise shall have the meaning prescribed to them under the provisions of the IBC.

IV. INTRODUCTION

1. The liquidation process for the Company has been initiated under the provisions of the IBC by an order of the NCLT with effect from November 3, 2021. As per the said order, Mr. Sanjay Kumar Poddar has been appointed as the Liquidator.
2. The Auction Agency will provide User ID & Password to the Qualified Bidders to participate in the E-Auction Process at least 24 (Twenty-Four) Hours prior to the commencement of the E-Auction Process on the Auction Portal.
3. The E-Auction/bidding would be conducted exactly on the scheduled date and time by way of inter-se bidding amongst the Qualified Bidders. A Qualified Bidder may improve its offer in multiple of the amount mentioned under the column "*Bid Increment Amount*" against Asset Lots. The E-Auction portal will be open for a period of 24 hours or for such duration as decided by the Liquidator. In case a bid is placed within the last 15 minutes of the closing time of the E-Auction, the closing time will be automatically extended for 15 minutes.
4. The Bidders are encouraged to acquaint themselves with the provisions of the IBC and the Liquidation Process Regulations and any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be.

V. THE COMPANY OVERVIEW

Gujarat Metallic Coal & Coke Limited [CIN: L24298WB1992PLC054815] is a public company incorporated on 20th March 1992. It is classified as non-govt company and is registered at Registrar of Companies, Kolkata. The registered office of the Company is situated at 155, Lenin Sarani, 4th Floor, Room No.402, Kolkata -700013, India. The equity shares of the company are listed in the Bombay Stock Exchange Ltd (BSE)having Security Code-531881.Gujarat Metallic Coal & Coke Limited was involved in the business of trading in Coal &Coke activities. The Company has stopped its trading activity since 01.04.2017.

Basic Information

| | | | |
|--------------------------------------|--|----------------------------------|--|
| Date of Incorporation of the Company | March 20, 1992 | Date of last filed Balance Sheet | March 31, 2019 |
| CIN number | L24298WB1992PLC054815 | Paid Up Capital | INR 19,80,65,800.00 |
| Company Type | Listed Public Company | Profit After Tax | (-)13,34,60,687.35 |
| Company Sub-Category | Indian Non-Government Company | PAN No. | AACCA5707F |
| GSTIN | 19AACCA5707F3ZT | | |
| Company Status | Active Compliant (under Liquidation) | Industry | Business of Trading in Coal &Coke activities |
| Registered Office Address | 155, Lenin Sarani, 4th Floor, Room No.402 Kolkata WB 700013 IN | Factory Address | 155, Lenin Sarani, 4th Floor, Room No.402 Kolkata WB 700013 IN |

Present Status

Mr. Sanjay Kumar Poddar, an Insolvency and Bankruptcy Board of India's (IBBI's) Registered Insolvency Professional, holding IBBI Registration Number: IBBI/IPA-001/IP-P01802/2019-2020/12759 is appointed as the Liquidator of the Company. At present, no commercial production is taking place and the operating activities of are suspended.

VI. ASSETS TO BE AUCTIONED AND RESERVE PRICE

The Liquidator of GUJARAT METALLIC COAL & COKE LIMITED "In Liquidation" proposes assignment or transfer of the assets more fully described hereinafter on "As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse" basis. The assignment or transfer of the assets of the Company Debtor shall result in transfer of ownership and control over the assets of the Corporate Debtor.

Particulars of the Asset

The assets of the company include investment and holdings in an Australian propriety Company and domestic Indian Companies. The details of assets is briefly described in **Annexure VIII**. Other relevant details about the assets of the Corporate Debtor will be made available in the Data Room to the Eligible Bidders.

POWER OF LIQUIDATOR FOR ASSIGNMENT

In view of the difficulties faced for realisation of some of the assets i.e subject matter of the corporate debtor which may not be readily convertible into cash and distributed among the stakeholders of the corporate debtor and/or may require an indefinite time for their realisation on account of peculiar nature of such assets or special circumstances, Regulation 37A has been inserted in IBBI (Liquidation Process) Regulations, 2016, which provides as under: -

37A. Assignment of not readily realisable assets.

(1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders' consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

Explanation. — For the purposes of this sub-regulation, "not readily realisable asset" means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code.]

Accordingly, in terms of Regulation 37A of the Liquidation Regulations the Liquidator is inviting offers for assignment of subject matter which are not readily realizable assets of M/s Gujarat Metallic Coal & Coke Limited- In Liquidation

Asset Lot 1 –

Investments in Happy Mining Pty Ltd,
Investments in Narottamka commodities Pvt Ltd,
Investments in Arvind International Limited

Asset Lot 2 – Rights of Claims arising from the application filed by the liquidator under Section 66,70, [] or such other avoidance transaction having a claim of INR []. The total amount claimed under this application is [].

Particulars of e-Auction:

| # | Particulars | Details |
|---|-------------|---------|
|---|-------------|---------|

| | | |
|----|--|--------------------------------|
| 1. | e-Auction Commencement Date | February 09 th 2023 |
| 2. | e-Auction Commencement Time (Proposed) | 11:00 Hrs. IST |
| 3. | e-Auction Closure Date | February 09 th 2023 |
| 4. | e-Auction Closure Time (Proposed) | 14:00 Hrs. IST |

KEY TIMELINES

| # | Event | Dates (on or before) |
|-----|---|---|
| 1. | Public Announcement of E-Auction | January 12 th 2023 |
| 2. | Submission of Bid Documents by Interested Bidders | January 27 th 2023 |
| 3. | Announcement of Eligible Bidders | January 28 th 2023 |
| 4. | Opening of the Data Room for Eligible Bidders | January 28 th 2023 |
| 5. | Due Diligence & Site Visits by Eligible Bidders (<i>Please refer "PHYSICAL or VIRTUAL VERIFICATION & SITE VISIT" on Page Error! Bookmark not defined. of this Process Memorandum</i>) | February 04 th 2023 |
| 6. | Deposit of Earnest Money by Eligible Bidders for participation in e-Auction Process | February 06 th 2023 |
| 7. | Agency to share User ID and Password to Qualified Bidders for participation in E-Auction Process | February 07 th 2023 |
| 8. | Auction Start Date & Time | February 09 th 2023 from 11:00 Hrs. IST |
| 9. | Auction End Date & Time | February 09 th 2023 Up to 17:00 Hrs. IST |
| 10. | Announcement of Successful Bidder | February 10 th 2023 |
| 11. | Letter of Intent (LoI) to be issued to the Successful Bidder | February 11 th 2023 |
| 12. | Unconditional acceptance of LoI | February 12 th 2023 |
| 13. | Return of Earnest Money to unsuccessful Qualified Bidder(s) (except the second-highest Qualified bidder) | February 12 th 2023 |
| 14. | Payment of the full amount of assignment or transfer consideration and any applicable GST (if any) by Successful Bidder | February 13 th 2023 [Subject to clause 12 of Schedule 1 of the Liquidation Regulations] |

Note: The Liquidator reserves the right to amend the key terms of the auction process including Reserve Price, Earnest Money Deposit, Bid Increment Amounts, and timelines at his sole discretion, to the extent permissible under the Applicable Laws. Any information about amendments/extension of any of the timelines will be available on the E-auction website and

communicated to the Qualified/ Successful Bidder.

VII. ELIGIBILITY

1. Interested Bidders who meet the eligibility criteria as set out in Section 29A of the IBC (as amended from time to time) shall qualify as Eligible Bidders and only Eligible Bidders (subject to becoming Qualified Bidders) can take part in the e-auction process.
2. An Interested Bidder shall not be eligible to qualify as an Eligible Bidder and submit a bid if it fails to meet the eligibility criteria as set out in Section 29A of the IBC (as amended from time to time).
3. An Eligible Bidder shall also not be eligible to qualify as a Qualified Bidder and submit a bid if it does not comply with the conditions prescribed in Clause VIII on Page 17 of this Process Memorandum .
4. A careful reading of Section 29A of the IBC states that a person shall not be eligible to submit a bid, 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;
 - 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 a 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 liquidation process of the corporate debtor:

Provided that the person shall be eligible to submit a bid if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of bid:

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 a 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 NCLT 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:
 - (iii) 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 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 NCLT 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 favor 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 – or 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: -

- (i) A scheduled bank;
- (ii) Any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulators of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organization 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 Securitization 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.

VIII. DOCUMENTS TO BE SUBMITTED TO BECOME A QUALIFIED BIDDER

1. To become an Eligible Bidder, an Interested Bidder, subject to fulfillment of other conditions as laid down hereunder, shall be required to submit:
 - (i) Duly signed and stamped Bid Application Form in the format set out under Annexure I, along with the KYC documents mentioned therein.
 - (ii) Duly signed, stamped and notarized Declaration in the format set out under Annexure-II.
 - (iii) Duly signed, stamped and notarized Affidavit certifying eligibility of Interested Bidder under Section 29A of IBC in the format set out under Annexure III
 - (iv) A certified true copy of the resolution (in the format set out under Annexure-IV) passed by the board of directors/ partners/ governing body of the Interested Bidder which is a legal entity or an association of persons, authorizing participation in the e-Auction Process and authorization of signatories.
 - (v) Duly executed, signed and stamped Confidentiality and Non-Disclosure Agreement in the format set out under Annexure V.
 - (vi) Ownership Structure and composition of the Interested Bidder.
 - (vii) Proof of identification, current address proof, PAN card, valid e-mail ID, landline, and

mobile phone number of the authorized signatories of the Interested Bidder.

2. Upon admission of an Interested Bidder as an Eligible Bidder by the Liquidator, an Eligible Bidder in order to become a Qualified Bidder, shall be required to submit a certified true copy of proof of Earnest Money Deposit OR copy of Bank Guarantee where the Earnest Money Deposit is provided by way of a Bank Guarantee in accordance with the terms and conditions contained in this Process Memorandum .
3. Further, it should be noted that at any stage of the E-Auction process, the Liquidator may ask for any documents from the Interested Bidders/Eligible Bidders / Qualified Bidders to evaluate their eligibility. The Liquidator, at his discretion, may disqualify an Interested Bidder/ Eligible Bidders / Qualified Bidder for non-submission of the requested documents or submitting false or misleading documents.
4. In case of the Board Resolution being provided by an Interested Bidder incorporated in India, the Board Resolution shall be notarized by a notified notary. Section 29A Affidavit (Annexure-III) and Declaration (Annexure-II) to be submitted by each Interested Bidder should be duly authenticated, notarized by a notary public. In addition to Section 29A Affidavit, an Interested Bidder can submit any additional documents it may feel necessary to establish its eligibility under Section 29A of the IBC.

IX. PHYSICAL VERIFICATION

1. Eligible Bidders may request the Liquidator to arrange for physical verification and site visits of the Assets of the Company. Upon receipt of such a request, the Liquidator may first arrange a discussion meeting at any time prior to the closure of the e-auction process.

X. DUE DILIGENCE

1. The Liquidator shall endeavor to provide necessary assistance, facilitating the conduct of due diligence by the Eligible Bidders. The information and documents shall be provided by the Liquidator in good faith. Eligible Bidders will be provided access to the Data Room.
2. Please note that Eligible Bidder(s) will gain access to Data Room, documentation, additional information required for due diligence. Further, if needed, the site visits or access to the Data Room, for the Eligible Bidders may be coordinated by the Liquidator (at his discretion).
3. Eligible Bidder(s) may note that the Liquidator would not have verified any of the information, data or documents shared and shall not accept any responsibility or liability, whatsoever, in respect of any statements or omissions contained in the shared data. The Qualified Bidders, prior to participation in e-Auction should make their independent inquiries searches, and diligence about the Assets at their own expenses and satisfy themselves.
4. All local taxes/maintenance fee/electricity/water charges/ annual lease rentals/ unearned income in case of leasehold properties, etc., if any outstanding as on a date or yet to fall due

in respect of the relevant asset should be ascertained by and would be borne by the Successful Bidder.

XI. EARNEST MONEY DEPOSIT

1. In order to become a Qualified Bidder and participate in the E-Auction Process, an Eligible Bidder shall deposit at least 3 (three) days prior to the E-Auction Date, Rs 1,00,000.00/- (Indian Rupees One Lacs Only) as earnest money ("**Earnest Money Deposit**" or "**EMD**").
2. The Earnest Money Deposit shall be provided by way of a Demand Draft issued by any scheduled commercial bank in India in favor of "**GUJARAT METALLIC COAL & COKE LIMITED - IN LIQUIDATION**". Earnest Money Deposit may also be provided by the Eligible Bidder(s) by way of direct bank transfer (RTGS / NEFT) to the bank account specified below. No interest will be paid to the Eligible Bidder(s) in relation to the amount deposited as Earnest Money Deposit.
3. Where the Earnest Money Deposit is provided by way of a Bank Guarantee, such Bank Guarantee shall be valid from the date of issuance for a period of no less than 6 (six) months with a claim period of a further period of 1 (one) year and the Bank guarantee shall be issued as per the format mentioned in Format A of this Process Memorandum (refer to Page 26) The Bank Guarantee shall be denominated in Indian Rupees and shall be issued by a Public / Private Sector Bank in India.
4. Eligible Bidders providing the non-interest-bearing Earnest Money Deposit by remittance of funds to the bank account of the Company should transfer funds through RTGS / NEFT to the account number which shall be communicated separately.
5. All payments made by the Eligible Bidder shall be intimated to the Liquidator at liquidation.qmcccl@gmail.com along with a scanned copy of the remittance challan and such intimations shall clearly indicate the following:
 - (i) Description of the Asset Lot the Eligible Bidder wants to bid for
 - (ii) Reserve Price
 - (iii) Earnest Money Deposit (in INR)
 - (iv) Mode of Earnest Money Deposit payment
 - (v) Payer's bank and account number
 - (vi) Instrument number and date
 - (vii) The validity of Bank guarantee (where applicable)

Eligible Bidders shall preserve the original remittance challan and produce the same in front of the Liquidator as and when demanded. No documents (including copies of remittance challans) shall be furnished to the Agency directly by an Eligible Bidder.

6. The details of the applicable and payable Earnest Money Deposit (*to be calculated on the basis of Asset Lot(s) for which an Interested Bidder is bidding*) shall be entered in the Bid

Form submitted by the Interested Bidder. The entire Earnest Money Deposit amount shall be remitted by an Eligible Bidder(s) from a single bank account only which should be owned by the Interested Bidder. In the event, the entire Earnest Money Deposit is remitted by an Associate Company of an Eligible Bidder, the same shall be duly notified to the Liquidator in writing (along with duly certified documents which goes on to establish that the remitter of funds is an Associate Company of the Eligible Bidder).

In the event, an Interested Bidder has expressed interest for participation in bidding of more than 1 (one) Asset Lot and the actual EMD made by such Interested Bidder upon qualifying as an Eligible Bidder, does not coincide with the quantum of the EMDs required to be deposited (calculated on the basis of EMDs assigned for Asset Lots), the Liquidator shall have the right to declare an Eligible Bidder as a Qualified Bidder only with respect to the Asset Lot, the EMD value of which matches the actual EMD made by an Eligible Bidder.

7. Subject to the first proviso below, the Earnest Money Deposit without interest shall be returned to unsuccessful Qualified Bidder(s) within 15 (Fifteen) days of the date of closure of the E-Auction process or cancellation of the E-Auction process, except that the Liquidator may retain the Earnest Money Deposit of the next highest Qualified Bidder for up to 30 (Thirty) days (or such further extended date as may be decided by the Liquidator) from the date of conclusion of the E-Auction (where a Successful Bidder has been identified) in order to consider that bid (at the discretion of the Liquidator) in the event the original Successful Bidder is disqualified or fails to adhere to the terms of the Lol.

Provided that, in the event, the Liquidator proposes to cancel the E-Auction process on the scheduled date or decides not to accept any of the bids submitted during the E-Auction process, and in both the instances, proposes to follow up the same with another E-Auction process, then if a Qualified Bidder indicates in writing its desire to receive a refund of its Earnest Money Deposit, then the Earnest Money Deposit shall be returned to the Qualified Bidder, within 7 (seven) days of giving notice requesting for the return of the Earnest Money Deposit. Provided further that, failure to participate in a round of E-Auction or requesting a refund of the Earnest Money Deposit shall not debar a Qualified Bidder from participating in any subsequent round(s) of E-Auction.

8. For a Successful Bidder, the Earnest Money Deposit shall be allowed to be set-off against or used as part of the consideration in the final payment only.

INVOCATION OF BANK GUARANTEE / FORFEITURE OF EARNEST MONEY DEPOSIT

1. The Earnest Money Deposit, paid by bank transfer or demand draft may be forfeited, or in the case of a Bank Guarantee may be invoked, at any time, upon the occurrence of any of the following events:
 - (i) if any of the conditions under this Process Memorandum are breached by the Qualified Bidder or in case the Qualified Bidder is found to have made any misrepresentation; or
 - (ii) if the Qualified Bidder or any person acting jointly or in concert with such Qualified Bidder is found to be ineligible to submit a bid under Section 29A of the IBC (as amended from time to time) or is found to have made a false or misleading declaration of eligibility under Section 29A of the IBC (as amended from time to time); or

- (iii) if the Successful Bidder does not accept the Letter of Intent issued by the Liquidator within the period and in the manner specified; or
- (iv) if the Successful Bidder fails to pay the balance assignment or transfer consideration (plus any applicable GST, if any) before the expiry of the period for payment of the same.

XII. DECLARATION OF SUCCESSFUL BIDDER

1. The Liquidator shall determine and at his sole discretion, declare at the end of the E-Auction, the Successful Bidder(s) for any Asset Lot(s). Determination of the Successful Bidder(s) shall be done on the basis of the highest bid received for each Asset Lot via the E-Auction, unless the Liquidator determines at his sole discretion that the highest bidder shall not be identified as the Successful Bidder. With respect to an Asset Lot, no Qualified Bidder shall quote below the Reserve Price during the e-Auction process.
2. Where the Earnest Money Deposit has been provided by means of remittance to the Company's bank account or by Demand Draft, such funds will be retained by the Liquidator as part payment of the consideration that the Successful Bidder has agreed to pay for the relevant Asset Lot(s).
3. The Liquidator is not bound to accept the highest offer and has the absolute right to accept or reject any or all offer(s) or adjourn/postpone/cancel the e-Auction or withdraw any Asset Lot(s) or portion thereof from the E-Auction proceedings at any stage without assigning any reason therefor.

XIII. ISSUANCE OF LETTER OF INTENT

1. The Liquidator shall, as soon as reasonably possible following the end of the E-Auction, but not more than 7 (seven) days from the end of E-Auction, issue to the Successful Bidder of an Asset Lot, a letter of intent ("**Lol**" / "**Letter of Intent**"), as per the format in **Annexure-VII**, inviting the Successful Bidder to provide balance assignment or transfer consideration (plus any applicable GST, if any) within 90 (ninety) days of the date of issuance of the Lol. However, in terms of Clause 12 of Schedule 1 of the liquidation Regulations any payment after 30 days from the date of demand shall attract interest @ 12% and the transaction has to be completed within 90 days. This Lol per se does not confirm the assignment or transfer of the Asset Lot in favor of the Successful Bidder. Confirmation of assignment or transfer is subject to the fulfillment of conditions stated hereunder, the approval of the Liquidator and compliance of Applicable Laws.
2. The Successful Bidder shall, within a period of 2 (two) days from the date of issuance of the Lol, unconditionally accept the Lol, and record such acceptance by providing the Liquidator with 1 (one) copy of the Lol with an endorsement stating that such Lol is, "*Accepted Unconditionally*", under the signature of the authorized Director / Authorized Signatory of the Successful Bidder.
3. Failure to accept the Letter of Intent within the time period specified may result in the disqualification of the Successful Bidder along with the cancellation of the Lol and forfeiture of the Earnest Money Deposit.
4. In case of disqualification of a Successful Bidder with respect to an Asset Lot, the Qualified Bidder who had submitted the next highest bid, may be asked to match the Successful Bidder's bid and be considered the new Successful Bidder. Should the latter be unwilling to match the bid submitted by the earlier Successful Bidder, the Liquidator, at his sole

discretion, may decide to carry out a fresh auction.

XIV. COMPLETION OF ASSIGNMENT OR TRANSFER

- a) The Successful Bidder shall be required to provide balance assignment or transfer consideration within 30 (Thirty) days of the date of issuance of the Lol in a single tranche payment. However, in terms of Clause 12 of Schedule 1 of the liquidation Regulations any payment after 30 days from the date of demand shall attract interest @ 12% and the transaction has to be completed within 90 days. Where the Successful Bidder has provided Earnest Money Deposit by remittance of cash to the bank account of the Company or Demand draft, the balance assignment or transfer consideration shall be an amount equal to the bid sum reduced by the Earnest Money Deposit already paid (plus any applicable GST, if any). Where the Successful Bidder has provided Earnest Money Deposit by way of Bank Guarantee, the balance assignment or transfer consideration shall be an amount equal to 100% of the bid sum (plus any applicable GST, if any).
- b) On payment of the full amount of assignment or transfer consideration and any applicable GST (if any), the assignment or transfer shall stand completed, and the Liquidator shall execute certificate(s) of assignment or transfer or assignment or transfer deed(s)/assignment deed and the Assets shall be delivered to the Successful Bidder. The certificate of assignment or transfer or assignment or transfer deed/assignment deed will be issued and /or transaction/assignment or transfer documents will be executed in the name of the Successful Bidder only and will not be issued in any other name(s). It is expressly stipulated that there are no implied obligations on the part of the Liquidator to do all acts, things, and deeds whatsoever for the completion of the assignment or transfer.
- c) Where the Successful Bidder has provided Earnest Money Deposit by way of Bank Guarantee and pending completion of the assignment or transfer, the Successful Bidder shall re-issue or extend such Bank Guarantee at least 15 (fifteen) days prior to the expiry of its valid period. Provided, however, upon completion of the assignment or transfer upon execution and registration of the assignment or transfer deed/ assignment deed, the Bank Guarantee shall be returned within 7 (seven) days therefrom.
- d) The assignment or transfer shall be subject to conditions prescribed under the IBC and provisions and regulations thereunder.
- e) Default in payment of the balance assignment or transfer consideration towards the purchase of an Asset Lot and any applicable GST, if any, by the Successful Bidder will result in disqualification of the Successful Bidder, including forfeiture of Earnest Money Deposit.
- f) The Successful Bidder(s) shall deposit the balance assignment or transfer consideration within 30 (Thirty) days from the date of such demand. Payments after 30 (thirty) days shall attract interest at the rate of 12% p.a. However, in terms of Clause 12 of Schedule 1 of the liquidation Regulations any payment after 30 days from the date of demand shall attract interest @ 12% and the transaction has to be completed within 90 days. The assignment or transfer of the Asset Lot to the Successful Bidder shall be cancelled if full payment is not received within 90(ninety) days.

XV. FRAUDULENT AND CORRUPT PRACTICES

The Bidders shall observe the highest standard of ethics prior to and during the E-Auction process and subsequently during the closure of the E-Auction process and declaration of Successful Bidder with respect to an Asset Lot. Notwithstanding anything to the contrary

contained in this Process Memorandum , or in the Lol, the Liquidator shall reject an auction bid and/or revoke the Lol, as the case may be, without being liable in any manner whatsoever to the Qualified / Successful Bidder, if the Liquidator, in his sole discretion, determines that the Qualified / Successful Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the E-Auction process or has, undertaken any action in respect of such process which results in the breach of any Applicable Law including the Prevention of Corruption Act, 1988. In such an event, the Liquidator may invoke the Earnest Money Deposit without prejudice to any other right or remedy that may be available to the Liquidator under this Process Memorandum or Applicable Law.

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

- (i) **“Coercive Practice”** shall mean impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the auction process;
- (ii) **“Conflict of Interest”** shall mean an event or circumstance, determined at the discretion of the Liquidator, where a Bidder is found to be in a position to have access to information about, or influence the bid of another Bidder pursuant to a relationship of such Bidder (excluding any commercial relationship pursuant to the ordinary course of business) with the other Bidder or Company, group companies of the Company, or affiliates of the Company, directly or indirectly, or by any other means including colluding with other Bidder(s), the Company, or group companies of the Company;
- (iii) **“Corrupt Practice”** shall mean (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the auction process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Liquidator or the Company, who is or has been associated or dealt in any manner, directly or indirectly with the auction process or arising there from, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Liquidator or the Company, shall be deemed to constitute influencing the actions of a person connected with the auction process); or (ii) engaging in any manner whatsoever, during the auction process or thereafter, any person in respect of any matter relating to the Company, who at any time has been or is a legal, financial or technical adviser of the Liquidator or the Company, in relation to any matter concerning the auction process;
- (iv) **“Fraudulent Practice”** shall mean a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the auction process;
- (v) **“Restrictive Practice”** shall mean forming a cartel or arriving at any understanding or arrangement among the Bidder(s) with the objective of restricting or manipulating a full and fair competition in the auction Process; and
- (vi) **“Undesirable Practice”** shall mean (i) establishing contact with any person connected with or employed or engaged by the Liquidator with the objective of canvassing, lobbying, or in any manner influencing or attempting to influence the auction process; or (ii) having a Conflict of Interest.

A Bidder shall not involve itself or any of his representatives in price manipulation of any kind directly or indirectly by communicating with other Bidders. A Bidder shall not divulge either his bid or any other details provided to him by the Liquidator or during the due diligence process in respect of the assets to any other party, other than to his professional advisors and financiers, who are in each case required in the course of their duties to receive and consider the same for the purpose of advising in relation to the transaction and who are bound by confidentiality obligations that are at least as stringent as the obligations that the Bidder is subject to.

XVI. COSTS, EXPENSES, AND TAX IMPLICATIONS

- a) The Bidder(s) shall be responsible for all the costs incurred by it on account of its participation in the E-Auction process, including any costs associated with participation in the discussion meeting (if any), site visit, etc. The Liquidator shall not be responsible in any way for such costs of any nature whatsoever, regardless of the conduct or outcome of the E-Auction process.
- b) All expenses incurred towards movement/shifting of plant & machinery or any Asset Lot (wherever applicable) post the E-Auction process should be borne by the Successful Bidder. The Liquidator shall not be held responsible/liable to pay any expenses towards such movement of plant & machinery or any Asset Lot sold in the E-Auction process. For the avoidance of doubt, it is hereby clarified that all the aforesaid costs shall be payable over and above the bid offered during the E-Auction process.
- c) The Bidders shall not be entitled to receive reimbursement of any expenses which may have been incurred in carrying out of the due diligence, a search of title to the Asset Lots and matters incidental thereto or for any purpose in connection with the E-Auction process.
- d) All taxes applicable (including stamp duty implications and registration charges) on purchase of an Asset Lot would be borne and paid by the Successful Bidder such as the following:
 - (i) the payment of all statutory/non - statutory dues, taxes, rates, assessments, charges, fees, etc. owed to anybody in respect of Asset(s) shall be the sole responsibility of Successful Bidders; and/or
 - (ii) cess or other applicable tax i.e., GST, TDS, etc.

For the avoidance of doubt, it is hereby clarified that all the aforesaid costs shall be payable over and above the bid offered during the E-Auction process.

- e) It is expressly stated that the Liquidator does not take or assume any responsibility for any dues, statutory or otherwise, of the Company, including such dues, if any, which may affect the transfer of the asset to the Successful Bidder and such dues, if any, will have to be borne/ paid by the Successful Bidder.
- f) The Eligible/ Qualified Bidder(s) shall be responsible for fully satisfying the requirements of the IBC and related Liquidation Process Regulations as well as all Applicable Laws that are relevant for the assignment or transfer process. The Successful Bidder shall be responsible for obtaining requisite regulatory or statutory or third-party approvals, no-objections, permission, or consents, if any, that are or may be required under Applicable Law.

XVII. MODIFICATION IN TERMS AND CONDITIONS

In the interest of the liquidation process of the Company, the Liquidator reserves the right to alter, modify, or relax any of the terms and conditions mentioned in this Process Memorandum . Any such alteration, modification or relaxation, to the terms and conditions contained in this document, shall be binding on all the Bidder.

XVIII. GOVERNING LAW AND JURISDICTION

This Process Memorandum and any information provided earlier or subsequently, the auction process and the other documents pursuant to the Process Memorandum shall be governed by the laws of India and any dispute arising out of or in relation to the Process Memorandum or the auction process shall be subject to the exclusive jurisdiction of NCLT, courts, and tribunals at Kolkata.

PLEASE FIND ATTACHED THE FORMATS FOR THE GUARANTEE – FOR THE ELIGIBLE BIDDER / BY AN ASSOCIATE COMPANY OF THE ELIGIBLE BIDDER ON BEHALF OF THE ELIGIBLE BIDDER

FORMAT A - EARNEST MONEY BANK GUARANTEE

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

To,

Mr. Sanjay Kumar Poddar

The liquidator for M/s. GUJARAT METALLIC COAL & COKE LIMITED

(in Liquidation)

2, Lalbazar Street, 2nd Floor

Room #201-203, Kolkata - 700001

Email : liquidation.gmcl@gmail.com / poddar.sanjay@gmail.com

WHEREAS

- A. [Insert the name of the Eligible Bidder] incorporated in [India]/ [insert name of the country where the guarantor 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] (“**Eligible Bidder**”) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR (Indian Rupees only) in accordance with the terms of the Process Memorandum dated [Insert Date] (“**Process Memorandum**”) issued by the Liquidator seeking submission of bids for Asset Lot owned by GUJARAT METALLIC COAL & COKE LIMITED - In Liquidation.
- B. This bank guarantee is required to be issued in favor of the Liquidator, M/S. GUJARAT METALLIC COAL & COKE LIMITED (in Liquidation), pursuant to the terms of the Process Memorandum .
- C. We, [insert name of the bank] having our registered office at [insert address] (“**Bank**”) at the request of the Eligible Bidder do hereby undertake to pay to the Liquidator at Kolkata an amount not exceeding INR [.] (Indian Rupees [.] only) to secure the obligations of the Eligible Bidder under the Process Memorandum on demand from the Liquidator on terms and conditions herein contained.
- i. Now, therefore, the Bank hereby issues in favor of the Liquidator, M/s. GUJARAT METALLIC COAL & COKE LIMITED (in Liquidation) this irrevocable and unconditional payment bank guarantee (“**Guarantee**”) on behalf of the [Insert the name of the Eligible Bidder] for an amount of INR [.] (Indian Rupees [.] only).
- ii. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Liquidator, M/s. GUJARAT METALLIC COAL & COKE LIMITED (in Liquidation) without any demur, reservation, caveat, protest, or recourse, immediately on receipt of first written demand made by the Liquidator, a sum not exceeding the aggregate amount of INR [.] (Indian Rupees [.] only).
- iii. This Guarantee shall be valid and binding on the Bank up to and including [Insert date of validity of the Earnest Money] and shall in no event be terminable by notice or any change in the constitution of the Bank or the Liquidator, 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.

- iv. The Bank hereby expressly agrees that the demand made on it under this Guarantee shall be conclusive evidence of that such payment is due and the Bank shall not require any proof in addition to the written demand from the Liquidator, made in any format, raised at the above-mentioned address of the Bank, in order to make the said payment to the Liquidator, M/s. GUJARAT METALLIC COAL & COKE LIMITED (in Liquidation).
- v. The Bank shall make payment hereunder notwithstanding any objection by [*Insert the name of the Eligible Bidder*] and/or any other person or any dispute (s) raised by the [*Insert the name of the Eligible Bidder*] in any suit or proceeding pending before any court or tribunal relating thereto and the Bank's liability under this present being absolute unconditional and unequivocal. The Bank shall not require the Liquidator 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.
- vi. 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.
- vii. 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.
- viii. This Guarantee shall be a primary obligation of the Bank and accordingly the Liquidator shall not be obliged before enforcing this Guarantee to take any action in any court or arbitral proceedings against the Eligible Bidder, to make any claim against or any demand on the Eligible Bidder or to give any notice to the Eligible Bidder or to exercise, levy or enforce any distress, diligence or another process against the Eligible Bidder. The Bank waives any such right to that extent.
- ix. The Bank further unconditionally agrees with the Liquidator that the Liquidator 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 Memorandum ;
 - (ii) Extend and/or postpone the time of performance of the obligations of the Eligible Bidder under the Process Memorandum ; or
 - (iii) Forbear or enforce any rights exercisable by the Liquidator against the Eligible Bidder under the terms of the Process Memorandum and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Liquidator or any indulgence by the Liquidator to the Eligible Bidder or other things 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.

- x. The Bank hereby agrees and acknowledges that the Liquidator shall have a right to invoke this Guarantee either in part or in full, as it may deem fit.
- xi. Our liability under this Guarantee is restricted to INR [.] (Indian Rupees [.] only) and it shall remain in force until [Insert Earnest Money Validity Date], with an additional claim period of 1 (one) year thereafter.

IN WITNESS WHEREOF the Bank, through its authorized officer, has set its hand and stamp on this [insert date] day of [insert month], 2021 at [insert city]

[Signature

Block]

Witness:

[Witness Details and Signature Block]

Note: The Stamp paper should be in the name of the Bank.

ANNEXURE I - BID APPLICATION FORM

(Please fill up separate Bid application forms for each Asset Lot)

Date:

Mr. Sanjay Kumar Poddar

The liquidator for M/s. GUJARAT METALLIC COAL & COKE LIMITED (in Liquidation)

2, Lalbazar Street, 2nd Floor

Room #201-203, Kolkata - 700001

Email: liquidation.gmcl@gmail.com / poddar.sanjay@gmail.com

Dear Sir,

We are desirous of participating in the E-Auction of Asset Lot owned by GUJARAT METALLIC COAL & COKE LIMITED - In Liquidation forming part of Liquidation Estate formed by the Liquidator, appointed by the Hon'ble National Company Law Tribunal, Kolkata Bench vide order dated February 07, 2020.

We also understand that upon selection as an Eligible Bidder, we shall be required to make the Earnest Money Deposit, details of which are set forth hereafter in order to become a Qualified Bidder and participate in the E-Auction through the Platform

Details of Interested Bidder:

| | |
|-----------------------------------|--|
| Name of Interested Bidder | |
| Constitution of Interested Bidder | |
| Contact Number | |
| E-Mail ID | |
| PAN | |
| Address | |

Details of Earnest Money Deposit to be made:

| | |
|---------------------------------------|--|
| Description of Asset Lot | |
| Reserve price | |
| Earnest Money Deposit to be made | |
| Mode of Earnest Money Deposit payment | |

Bank Details of the Interested Bidder:

| | |
|----------------|--|
| Name | |
| Account Number | |

| | |
|--------|--|
| Bank | |
| Branch | |
| IFSC | |

KYC documents being provided:

- a) Duly certified copy of the certificate of incorporation or registration;
- b) Duly certified copy of memorandum and articles of association or partnership deed In case of registered partnership firms or limited liability partnership), etc.;
- c) The last available audited balance sheet;
- d) Permanent Account Number; and
- e) GSTIN;

I/We/M/s. also enclose copies of the required KYC documents. We request you to kindly verify the same and allow us to kindly participate in the due diligence and/or site visits and/or further discussions with respect to Asset Lot owned by GUJARAT METALLIC COAL & COKE LIMITED - In Liquidation.

Signature

Place:

Date:

ANNEXURE II - DECLARATION BY INTERESTED BIDDERS

(To be notarized)

To

Mr. Sanjay Kumar Poddar

The liquidator for M/s. GUJARAT METALLIC COAL & COKE LIMITED (in Liquidation)

2, Lalbazar Street, 2nd Floor

Room #201-203, Kolkata - 700001

Email: liquidation.gmcl@gmail.com / poddar.sanjay@gmail.com

Dear Sir,

1. I/We, (insert name and address of the Interested Bidder) aforesaid do hereby state that I/We have read the entire terms and conditions for the assignment or transfer of assets as specified and have understood them fully. I/We, hereby unconditionally agree to confirm with and to be bound by the said terms and conditions and agree to take part in the e-auction process.
2. I/We declare that the Earnest Money Deposit shall be duly made by me/us as against my/our bid, failing which I/We will not be allowed to participate in the e-Auction Process.
3. I/We further understand and agree that if any of the statement/information revealed by me/us is found to be incorrect and/or untrue, the bid submitted by me/us is liable to be canceled and in such case, the Earnest Money Deposit and/or any monies paid by me/us is liable to be forfeited by the Liquidator and the Liquidator will be at liberty to annul the offer made to me/us at any point of time.
4. I/We also agree that after my/our offer given in my/our bid for purchase of Asset Lot and/or owned by GUJARAT METALLIC COAL & COKE LIMITED - In Liquidation forming part of Liquidation Estate is accepted by the Liquidator and if, I/We, fail to accept or act upon the terms and conditions of the assignment or transfer or am/are not able to complete the transaction within the time limit specified for any reason whatsoever and/or fail to make payment of final assignment or transfer consideration and any applicable GST, if any, within the specified timeline and/or fail to fulfil any/all the terms and conditions of the auction (including the Lol), except as otherwise permitted in the Process Memorandum dated [Insert dates] issued by the Liquidator seeking submission of bids for Asset Lot and/or owned by GUJARAT METALLIC COAL & COKE LIMITED - In Liquidation ("**Process Memorandum**"), the Earnest Money Deposit and other monies paid by me/us thereafter, are liable to be forfeited (and if such EMD has been made by way of bank guarantee, the Liquidator shall have the unfettered right to invoke the said bank guarantee and retain the proceeds thereto).
5. I/We also understand that the Earnest Money Deposit shall be retained by the Liquidator and returned only in accordance with the timelines and circumstances specified in the Process Memorandum. I/We, state that I/We, have fully understood the terms and conditions therein and agree to be bound by the same.
6. I/We confirm that our participation in the e-auction process, submission of bid or acquisition of Asset Lot and/or owned by GUJARAT METALLIC COAL & COKE LIMITED - In Liquidation forming part of Liquidation Estate pursuant to the provisions of the Process Memorandum will not conflict with, or result in a breach of, or constitute a default under

(i)our constitutional documents; or (ii) any applicable laws applicable to me/us; or (iii) any authorization or approval of any government agency or body applicable to me/us; or (iv) any judgment, order, injunction, decree, or ruling of any court or governmental authority, domestic or foreign binding on me/us; or (v) any agreement to which I am / we are a party or by which I am / we are bound.

7. I/We confirm that upon qualification as a Successful Bidder with respect to the Asset Lot and/or, all local taxes/maintenance fee/electricity/water charges/ annual lease rentals/ unearned income in case of leasehold properties, etc., if any outstanding as on a date or yet to fall due in respect of the relevant Asset Lot would be ascertained by me/us and would be borne by me/us without any recourse to the Liquidator.
8. That the Liquidator reserves the right to request for additional information or clarification from me/us in relation to my/our proposal and I/we shall promptly comply with such requirements. Failure to satisfy the queries of the Liquidator within the given timelines may lead to the rejection of my/our proposal.
9. That submission of my/our proposal alone does not automatically entitle me/us to participate in the next stage of the bid process. The decision taken by the Liquidator with respect to the selection of the Successful Bidder and communicated to me/us shall be binding on me/us. We acknowledge that the Liquidator reserve the right to determine at his sole discretion, whether or not I/we qualify for the submission of the proposal and may reject my/our proposal without assigning any reason whatsoever.
10. Subject to the provisions contained in the Process Memorandum , I/We also undertake to abide by the additional conditions if announced during the e-auction including any announcement(s) on correction of and/or additions or deletions to the time of auction portal and assets being offered for assignment or transfer.
11. I/We confirm that the Liquidator and his professional advisors along with employees/agents/advisors, shall not be liable and responsible in any manner whatsoever for my/our failure to access and bid on the e-auction portal due to any unforeseen circumstances, etc. before or during the auction event.
12. I/We hereby confirm that I/we are not ineligible to purchase the Company under Section 29A of the Insolvency and Bankruptcy Code, 2016.

Signature

(Name & Address)

E-Mail

Mob. No

ANNEXURE III - AFFIDAVIT

[To be notarized and stamped with adequate value as per the stamp laws prevailing in the Indian state of execution of this Affidavit]

I, [insert the name of the authorized signatory of the Interested Bidder], aged about [●] years, being the authorized signatory of [insert name of the Interested Bidder/member of consortium] having its registered office at [insert address] [("**Interested Bidder**")], do hereby solemnly affirm and the state as under:

1. That I am duly authorized and competent to make and affirm the instant affidavit for and on behalf of the Interested Bidder in terms of the [resolution of its board of directors/ power of attorney to provide other necessary details of such authorization]. The said document is true, valid, and genuine to the best of my knowledge, information, and belief.
2. I acknowledge that Interested Bidder is aware of that, in terms of proviso to sub-section (f) of Section 35(1) of Insolvency and Bankruptcy Code, 2016 ("**IBC**"), read with Section 29A of IBC, certain persons/category of persons have been specified as ineligible for the purposes of participation in an auction to acquire/purchase Asset Lot and/or owned by GUJARAT METALLIC COAL & COKE LIMITED - In Liquidation forming part of Liquidation Estate formed by the Liquidator.
3. On behalf of the Interested Bidder, I confirm, that it is eligible to participate in the auction process ("**Bid**") for M/s. GUJARAT METALLIC COAL & COKE LIMITED (in Liquidation) ("**Company**") in accordance with IBC and related rules and regulations issued thereunder, and any other applicable law.
4. Neither [insert name of the Interested Bidder] nor any person acting jointly with [insert name of Interested Bidder] or any person who is a promoter or in the management or control of [insert name of Interested Bidder] or any person acting jointly with [insert name of Interested Bidder] is a person who would have been ineligible under Section 29A of the IBC to be a resolution applicant.
5. On behalf of the Interested Bidder, I acknowledge that the Liquidator reserves the right to verify the authenticity of the information and/or the documents submitted by it pursuant to the communication and the Liquidator may request, at his own discretion, for any additional information or documents, as may be required by the Liquidator, for the purposes of verifying the information so submitted by us. On behalf of the Interested Bidder, I unconditionally and irrevocably undertake, that we shall provide all data, documents, and information as may be required to verify the statements made under this Affidavit.
6. On behalf of the Interested Bidder, I confirm that the information and/or documents submitted by us to the Liquidator in accordance with the past communications are true, correct, accurate, and complete in all respects and we have not provided any information, data, or statement which is inaccurate or misleading in any manner. I further confirm that in the event the Liquidator determines that we have made any misrepresentation, concealed material information, made a wrong statement, or submitted information which is misleading in nature, the Liquidator shall have the right to take any action as he deems fits in accordance with the applicable law, including pursuant to IBC and related rules and regulations.
7. On behalf of the Interested Bidder, I undertake that if during the interim period i.e. on and

from the date of this Affidavit until the date of completion of the assignment or transfer of assets in terms of the auction process, it becomes ineligible to become a resolution applicant under applicable law, including under Section 29A of IBC, it shall immediately and in no event later than two days of such ineligibility, disclose to the Liquidator of its ineligibility in writing with reasons for the same (“**Disclosure**”). I agree, acknowledge, and confirm on behalf of the Interested Bidder, that upon being informed of such Disclosure, the Liquidator shall have the right to reject the bid submitted by it and shall have the right to undertake any action as it deems fit in accordance with the Assets Process Memorandum, including forfeiture of Earnest Money Deposit submitted by it (as defined in the Assets Process Memorandum).

8. I state that the contents of paragraph nos. 1 to 7 herein above, are true to my knowledge.

Solemnly affirmed by the said [Insert the name of the authorized signatory] at [insert place] on this day of [insert date].

Identified by Me DEPONENT

Advocate Before Me,

Notary

Notes:

1. Please note that in case of the Interested Bidder being an unlimited liability partnership firm under the Indian Partnership Act, 1932, the affidavit is required to be furnished separately by each partner of the partnership firm.
2. Please note that in case of the Interested Bidder being a limited liability partnership (“**LLP**”) incorporated under the Limited Liability Partnership Act, 2008, the affidavit will be provided by the ‘designated partners’ of the LLP on behalf of the LLP and also by each partner of the LLP for itself, acting in its capacity as a partner of the LLP.
3. Please note that in case of the Interested Bidder being a Trust, the affidavit will be provided by the Authorized Trustee(s) of the Trust along with certified copies of the enabling resolution duly passed at the meeting of the Board of Trustees and the trust deed.

ANNEXURE IV - BOARD RESOLUTIONS

(On the letterhead of the Interested bidder)

(To be appropriately modified depending on the constitution of the Interested Bidder)

CERTIFIED TRUE COPY OF RESOLUTION PASSED BY THE BOARD OF DIRECTORS ("BOARD") OF [Insert the name of the Interested bidder] ("COMPANY") IN THE MEETING HELD ON [Insert Date], AT [Insert Time] AT [Insert Place]

WHEREAS pursuant to the public announcement dated [●] and subsequent to the Process Memorandum dated [●] ("SPM"), issued by the Liquidator on behalf of M/s. GUJARAT METALLIC COAL & COKE LIMITED (in Liquidation), in relation to the acquisition of the assets of M/s. GUJARAT METALLIC COAL & COKE LIMITED (in Liquidation), the Company is desirous of participating in the auction process.

In view of the above, the Board has resolved as follows:

"RESOLVED THAT any of the directors of the Company, be and is hereby authorized to take all the steps required to be taken by the Company for participating and bidding in the auction process in accordance with the terms of the SPM, including the following:

- a) participating in the auction process for purchase of Asset Lot and/or owned by GUJARAT METALLIC COAL & COKE LIMITED - In Liquidation forming part of Liquidation Estate formed by the Liquidator and submit and sign other requisite documents, in accordance with the terms of the SPM;
- b) execute all other agreements, deeds, writings, and LOI as may be required in relation to the auction process, including any amendments or modifications as may be suggested by the Liquidator;
- c) to generally do or cause to be done all such acts, matters, deeds, and things as may be necessary or desirable in connection with or incidental or for the purpose of implementation and giving effect to the above resolutions for and on behalf of the Company, and to comply with all other requirements in this regard."

"RESOLVED FURTHER THAT a certified copy of the foregoing resolution be furnished as may be required, under the signature of [the Company Secretary / any two of the Directors of the Company]."

//Certified to be true copy//

For the Company

Director(s) / Company Secretary

Notes:

- 1) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.

- 2) In case of the Board Resolution being provided by a company incorporated in India, the Board Resolution shall be notarized by a notified notary. In the event the Board resolution is from a company incorporated outside India, the same shall be duly notarized in the jurisdiction of incorporation of the company.
- 3) This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, a reference to the Companies Act 2013 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such a case, the foreign entity shall submit an opinion issued by the legal counsel of such foreign entity, stating that the board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.
- 4) The Board Resolution is to be certified by the Company Secretary / Directors, in accordance with applicable law and the constitutional documents of the Company.

ANNEXURE V - CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

(to be executed on stamp paper of INR 500/- by the Interested Bidder.)

This **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** (hereinafter referred to as "**Agreement**") is made on this [.] day of [.] , 2022 (hereinafter referred to as "**Effective Date**"), amongst:

1. **GUJARAT METALLIC COAL & COKE LIMITED (In Liquidation)**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 155, Lenin Sarani, 4th Floor, Room No 402 Kolkata WB 700013, acting through **Sanjay Kumar Poddar, the Liquidator** appointed for GUJARAT METALLIC COAL & COKE LIMITED under the order of the National Company Law Tribunal, Kolkata Bench dated November 3rd, 2021 (hereinafter referred to as "**GMCCCL**" or "**Company**" or "**Disclosing Party**" which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors and assigns), of the **FIRST PART**;

AND

2. [Insert name of Interested Bidder], [a company incorporated under the provisions of the Companies Act, 1956 and validly existing under the provisions of the Companies Act, 2013 / a company incorporated under the provisions of the Companies Act, 2013] [*please retain / insert appropriate description*] having its registered office at [*insert registered office address*] (hereinafter referred to as the "**Receiving Party**", which shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors), of the **SECOND PART**.

(GMCCCL and the Receiving Party shall hereinafter individually be referred to as "**Party**" and collectively as the "**Parties**").

WHEREAS:

- A. GMCCCL is *inter alia* engaged in the was involved in the business of trading in Coal & Coke activities. The Hon'ble National Company Law Tribunal, Kolkata Bench ("**NCLT**") vide its order dated November 3rd, 2021 ("**Order**"), has directed the liquidation of GMCCCL under the provisions of the Insolvency and Bankruptcy Code, 2016, as amended ("**IBC**") and appointed Sanjay Kumar Poddar, an insolvency professional having IP Registration number: **IBBI/IPA-001/IP-P01802/2019-2020/12759** as the liquidator ("**Liquidator**") of GMCCCL.
- B. The Liquidator has floated a Process Memorandum dated [] in relation to the assignment or transfer of assets of GMCCCL in one or more lots ("**Process Memorandum**") by way of e-auction process in accordance with the Regulation 32, 33, and Schedule I (provided under Regulation 33) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 ("**Liquidation Process Regulations**") and other applicable rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be, and as per directions, if any, of the NCLT in respect of the liquidation process of the Company and in the manner specified in the Process Memorandum .
- C. The Receiving Party is interested to participate in the participating in the E-Auction for purchase of assets of GMCCCL ("**Transaction**") and for the purposes of Due Diligence of the Assets of GMCCCL (subject to the Receiving Party being eligible in terms of the Process Memorandum) and to enable the Receiving Party to bid and to evaluate the Transaction, GMCCCL may (including through any officers, and/or advisors including, without

limitation, duly authorized attorneys, accountants, legal advisors and financial advisors), from time to time, disclose certain “*Confidential Information*” (*hereinafter defined*) to the Receiving Party, including but not limited to, such information as is specified in the Process Memorandum .

- D. The Receiving Party agrees to enter into this Agreement to, *inter alia*, keep confidential all Confidential Information that may be disclosed to it and/or its Representatives (*hereinafter defined*), in the manner set out hereinafter.

NOW, THEREFORE, in consideration for the mutual promises and covenants hereunder, the Company and the Receiving Party agree as follows:

1. DEFINITIONS

- 1.1. “**Confidential Information**” means any and all information disclosed or submitted to the Receiving Party by or on behalf of the Disclosing Party (including by any officers, and/or any advisors including without limitation, duly constituted attorneys, accountants, legal advisors, process advisors and financial advisors of the Disclosing Party) in written, representational, electronic, verbal or other form and includes (i) all data, materials, prices, debts, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, human resource information and any other information; (ii) all technical, commercial, operational, financial, accounting, legal and administrative information, and any notes, analyses, compilations, studies, forecasts, interpretations, memoranda, summaries, reports and other materials which contain, reflect or are based upon, in whole or in part, any of such information; (iii) information about the Transaction, or the terms or conditions or any other facts relating thereto, including, without limitation, the status thereof, that discussions or negotiations are occurring or have occurred, the existence of this Agreement; (iv) information and details regarding the terms, conditions and structure of, and other facts relating to, GMCCCL and/or the Transaction, including the status thereof, whether oral, on paper or computer disk or in electronic format; whether prepared by the Disclosing Party, its advisors or other third party on behalf of the Disclosing Party; and/or (v) all reports, analysis, studies, compilations, interpretations or other documents or materials (whether on paper or computer disk or in electronic format) prepared by the Receiving Party or its Representatives which contain, refer to, reflect, enhance, modify, improve, quote or are based upon, in whole or in part, the information mentioned in (i), (ii), (iii) and/or (iv) which is provided to the Receiving Party and/or its Representatives in connection with the Transaction; and/or (vi) any documents / records relating to the examination, clarification, evaluation, negotiations or discussions of a bid submitted by any other interested bidder, including minutes of meetings of the stakeholders consultation committee, reports prepared by the Liquidator or any other information of a similar nature.
- 1.2. “**Disclosing Party**” shall have the meaning ascribed to it in the title clause hereinabove.
- 1.3. “**Receiving Party**” shall mean the Interested Bidder, receiving confidential information from the Disclosing Party or from any person acting on behalf of the Disclosing Party.
- 1.4. In relation to the Receiving Party, its “**Representative**” shall mean any agent, officer, employee, director, legal or financial advisor, affiliate, investor, counsel, potential financing source who (i) needs to know such information for the sole purpose of the Transaction; (ii) who agrees to keep such information confidential in accordance with the provisions of this Agreement and the IBC, the Liquidation Process Regulations and the Applicable Laws; (iii)

who is provided with a copy of this Agreement; (iv) who agrees to be bound by the terms contained in this Agreement to the same extent as if it was a party hereto; and (vi) who has confirmed that it has no conflict with the Disclosing Party, and the term “Representatives” shall be construed accordingly. In relation to any Disclosing Party, its “Representative” shall mean any agent, officer, employee, director, consultant, legal or financial advisor, authorized attorney, accountant and/or any other person duly authorized in this regard.

Terms and conditions not defined herein shall have the meanings ascribed to them in the Process Memorandum . This Agreement shall constitute an integral part of the Bid Documents.

2. USE OF CONFIDENTIAL INFORMATION

- 2.1. The Confidential Information divulged by the Disclosing Party to the Receiving Party and/or its Representatives will be received and treated by the Receiving Party and/or its Representatives as – (i) strictly confidential; and (ii) in accordance with Applicable Law. The Receiving Party and its Representatives shall not, without the prior written consent of the Disclosing Party or as expressly permitted herein, disclose, disseminate, reproduce, quote, share with, refer to, use or make available to any other person, or use or permit others to disclose of use, the Confidential Information in any manner whatsoever other than for the sole purpose as described in Clause 2.2 below. Without prejudice to the above, the Receiving Party and its Representatives shall comply with all provisions of law applicable to confidential information and insider trading.
- 2.2. Notwithstanding the provisions of Clause 2.1 above, the Receiving Party may disclose the Confidential Information received under this Agreement to its Representatives (as defined in Clause 1.4 above) in accordance with Applicable Laws in relation to confidentiality and on a strict “need-to-know” basis and *solely* for the purpose of enabling assessment and evaluation of the Transaction (“**Purpose**”).
- 2.3. The Receiving Party and the Representative shall exercise the same standard of care in respect of the security and safekeeping of the Confidential Information disclosed hereunder as the Receiving Party and its Representatives exercise in respect of its own confidential information.
- 2.4. The Receiving Party understands and acknowledges that pursuant to the order of the NCLT dated November 3,2021, the NCLT commenced the liquidation of GMCCCL and appointed Sanjay Kumar Poddar as the Liquidator of GMCCCL. None of the Disclosing Party nor the Liquidator makes any representation or warranty or inducement, expressed or implied, now or in the future, as to the accuracy, correctness, completeness, fairness or relevance of the Confidential Information. Neither the Receiving Party nor any of its Representatives shall be entitled to rely on the accuracy, correctness, completeness, fairness or relevance of the Confidential Information, whether for the purpose of formulation of the Transaction and/or otherwise in relation to GMCCCL. Further, none of the Disclosing Party nor the Liquidator shall, now or in future, have any liability to the Receiving Party or any other person resulting from Receiving Party’s or its Representative’s use of the Confidential Information.
- 2.5. The Receiving Party shall indemnify and hold harmless the Disclosing Party against all direct losses, damages and liabilities including but not limited to all legal fees and expenses on a solicitor and client basis arising from or connected with any unauthorized disclosure, use or misuse of the Confidential Information whether by itself or its Representatives. The Receiving Party further agrees and undertakes, at its sole cost and expense, to take any and

all reasonable measures (including but not limited to court proceedings) to restrain any person to whom it has disclosed Confidential Information, directly or indirectly, from disclosing or using the Confidential Information in violation of this Agreement.

- 2.6. The Receiving Party acknowledges that it shall be responsible for any breach of this Agreement by the Receiving Party and/or any of its Representatives, employees or employees of its Representatives.
- 2.7. The Receiving Party shall not, without prior written consent of the Disclosing Party, engage any advisor, whether professional, legal or otherwise, who are already engaged by the Disclosing Party in relation to the liquidation process of GMCCL.
- 2.8. If the Receiving Party decides not to proceed with the Transaction, it will promptly notify the Liquidator in writing of that decision. The Receiving Party shall immediately, upon the earlier of (a) the conclusion of the Transaction; or (b) termination of this Agreement as per Clause 12 below; or (c) a notification by the Disclosing Party, for any reason or for no reason, surrender and return to the relevant Disclosing Party, all Confidential Information in its possession, or destroy the same in accordance with the directives of the Disclosing Party.
- 2.9. The Receiving Party shall not publish any news release or make any announcements or deny or confirm in any medium concerning this Agreement in any manner nor advertise or publish the same in any medium.
- 2.10. The Receiving Party shall promptly notify the Disclosing Party of any Confidential Information which has been lost or disclosed or used by any unauthorized third party provided that such notification shall not relieve the Receiving Party from any liability arising from its breach of this Agreement.
- 2.11. The Receiving Party shall protect any intellectual property of GMCCL which it may have access to which is provided or made available to by the Disclosing Party.
- 2.12. The Receiving Party shall not utilize the Confidential Information to avail any undue gain or undue loss to itself or any other person and shall comply with the provisions of the IBC and the rules and regulations prescribed thereunder.

3. EXCEPTIONS

The Receiving Party's obligations hereunder shall not apply to Confidential Information which:

- 3.1. at the time of its disclosure, is in the public domain or which after disclosure becomes part of public domain through no fault or wrongful act of the Receiving Party or its Representatives; or
- 3.2. was known to the Receiving Party, as evidenced by documentation, prior to its disclosure in connection with the Transaction provided that the source of such information was not known by the Receiving Party or any of its Representatives, after reasonable inquiry and investigation, to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation or confidentiality to the Disclosing Party or any other party with respect to such information; or
- 3.3. is or has been developed independently by the Receiving Party without reference to or reliance on the Disclosing Party's Confidential Information.

4. NON-DISCLOSURE OF TRANSACTION

It is agreed that without the prior consent of the Disclosing Party, the Receiving Party shall not disclose and shall ensure that its Representatives do not disclose to any person or entity (a) that the Confidential Information has been made available to it or its Representatives, (b) that discussions are taking place concerning possible transactions between the Parties, or (c) any terms conditions or other facts with respect to any such possible transaction, including the status thereof.

5. NOTICE

5.1. The Receiving Party further agrees that all communications (both written and oral) regarding the Confidential Information and/or the Transaction, requests for additional information, and discussions or questions regarding procedures related to the Transaction, will be sent only to GMCCCL through the Liquidator, and not directly to any of the Company's affiliates or any of their respective directors, officers or employees.

5.2. All notices, statements or other communication required or permitted to be given or made under this Agreement shall be in writing in the English language and delivered by hand, or through a reputed international courier company or through speed post to the address set forth below, or by sending it by email (with delivery of a notification with return receipt requested) to the email address as set forth below:

Notice Details of GMCCCL (Liquidator):

Sanjay Kumar Poddar, Liquidator (GUJARAT METALLIC COAL & COKE LIMITED)

Address: 2, Lalbazar Street, 2nd Floor

Room #201-203, Kolkata - 700001

Email : liquidation.gmcccl@gmail.com / poddar.sanjay@gmail.com

Notice Details of Receiving Party:

[to be inserted by the Receiving Party]

6. COMPELLED DISCLOSURE

In the event that the Receiving Party or any of its Representatives are required by Applicable Law, regulation or any competent judicial, supervisory or regulatory body to disclose any of the Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, however in the written opinion of the counsel of the Receiving Party (which shall be furnished to the Disclosing Party), the Receiving Party or its Representatives are nonetheless, in the absence of such order or waiver, compelled to disclose such Confidential Information, then the Receiving Party may disclose only such portion of the Confidential Information which, in the opinion of its counsel, the Receiving Party is compelled to disclose. The Receiving Party will not oppose any action by the Disclosing Party to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information. The Receiving Party and its Representatives will reasonably cooperate with the Disclosing Party in their efforts to obtain a protective order or other appropriate remedy that the Disclosing Party elects to seek to obtain, in their sole discretion.

7. OWNERSHIP OF MATERIALS / NO WARRANTY

Ownership of the Confidential Information, including all intellectual property rights and related rights in the Confidential Information or arising out of the use of the Confidential Information shall at all times remain with the Disclosing Party, in perpetuity and throughout the world. All improvements, derivatives, enhancements, modifications and recommendations to the Confidential Information will also belong exclusively to the Disclosing Party, and the Receiving Party agrees to specifically convey and assign, and hereby do convey and assign to the Disclosing Party all right, title and interest in and to the same in perpetuity and throughout the world. The Receiving Party covenants and agrees to sign any papers and do all acts necessary to secure for the Disclosing Party and/or its successors or assigns, any and all rights, titles and interest in any such improvements, derivatives, enhancements, modifications and recommendations, including rights to any patent and copyright in any jurisdictions, during the term of this Agreement, or any time thereafter.

8. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION

Within 15 (fifteen) days of completion of the Transaction, or being so requested in writing by the Disclosing Party, the Receiving Party shall promptly return or destroy the Confidential Information including all copies, or reproductions or other media containing such Confidential Information, save for such copies as may be required to be retained by law or for compliance with corporate governance requirements and internal policies and copies of electronically exchanged Confidential Information made as a matter of routine information technology backup. The Receiving Party shall provide a written certificate to the Disclosing Party regarding the destruction within 20 (twenty) days thereafter. Any Confidential Information that is not returned or destroyed shall remain subject to the confidentiality obligations set forth in this Agreement. Notwithstanding the return or destruction of the Confidential Information, the Receiving Party will continue to be bound by its obligations of confidentiality and other obligations hereunder, which shall survive the termination of this Agreement.

9. INJUNCTIVE RELIEF

The Receiving Party acknowledges that the Confidential Information is valuable to the Disclosing Party and that damages (including, without limitation, all legal fees and expenses on a solicitor and client basis) may not be a sufficient remedy for any breach of its obligations under this Agreement and the Receiving Party further acknowledges and agrees that the remedies of a specific performance or injunctive relief (as appropriate) without the necessity of posting bond, guarantees or other securities, are appropriate remedies for any breach or threatened breach of its obligations under this Agreement, in addition to and without prejudice to any other remedies available to the Disclosing Party at law or in equity.

10. INDEMNITY

The Receiving Party hereby agrees to indemnify and hold each of the Disclosing Party and their Representatives harmless, from and against all claims, demands, liabilities, losses, damages, costs and/or expenses (including all legal costs and expenses) suffered or incurred by such other Party or their Representatives due to a breach by the Receiving Party or its Representatives of the provisions of this Agreement.

11. NO LICENSE

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. The Receiving Party and its Representatives shall not use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

12. TERM AND TERMINATION

This Agreement shall remain valid and binding on the Parties until 2 (two) years from the Effective Date or such earlier date as may be mutually agreed by the Parties in writing. Upon expiry of this Agreement, the confidentiality obligations of the Parties shall cease, provided that payment obligations if any that may arise under this Agreement (including under the Clause 10 above) shall survive the termination of this Agreement.

13. GOVERNING LAW

13.1. This Agreement shall be governed by and construed in accordance with the laws of India.

13.2. With respect to any action, suit or proceeding relating to this Agreement, the Receiving Party agrees to submit to the non-exclusive jurisdiction of the courts or tribunals of Kolkata.

13.3. The Parties agree that Clause 13.2 is for the benefit of the Disclosing Party only, and the Disclosing Party shall not be prevented from taking any action, suit or proceeding relating to this Agreement in any other court or tribunal of competent jurisdiction, if and to the extent permitted under Applicable Laws.

14. MISCELLANEOUS

14.1. This Agreement constitutes the entire agreement amongst the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and undertakings, whether written or oral, except obligations imposed by law which shall be deemed a part of this Agreement. This Agreement may not be amended except in writing signed by all the Parties hereto. No failure or delay by any Party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or preclude any other or further exercise of any rights hereunder. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. Nothing in this Agreement shall be implied except as required under statute.

14.2. This Agreement may not be amended or terminated except pursuant to a written agreement duly executed between the Parties.

14.3. If any term of provision of this Agreement is determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the Parties contemplate that the court making such determination shall reduce such extent, duration, scope or other provision and enforce such term or provision in its reduced form for all purposes contemplated by this Agreement.

14.4. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. The Disclosing Party reserves the right to assign all of its rights, powers and privileges under this Agreement (including, without limitation, the right to enforce all of the terms of this Agreement) to any person who enters into the Transaction contemplated by this Agreement. The Receiving Party shall not assign this Agreement.

- 14.5. Any breach of provisions of this Agreement by any Party hereto shall not affect the other Party's non-disclosure and non-use obligations under this Agreement.
- 14.6. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.
- 14.7. Capitalized terms used herein shall have the meaning given to the term in the Process Memorandum .

IN WITNESS WHEREOF, this Agreement has been executed by, GMCCCL and the Receiving Party on the date mentioned hereinabove as follows

Accepted and agreed by **Receiving Party** as of the date first written above:

- (1) We confirm that we and our Representatives will keep all Confidential Information confidential.
- (2) We confirm that we and our Representatives shall not use any Confidential Information to cause an undue gain or undue loss to the Disclosing Party or any other person.
- (3) We and our Representatives will protect the intellectual property rights of the Company in relation to all Confidential Information.
- (4) We and our Representatives will not share any Confidential Information with any third party including any Representatives, without first ensuring that our obligations under this Agreement are complied with.
- (5) We and our Representatives will comply with all the terms and conditions of this Agreement and all Applicable Laws including without limitation to, the IBC and the regulations made thereunder.

By:

Name:

Title:

Company:

ANNEXURE VI - TECHNICAL TERMS & CONDITIONS OF E-AUCTION ASSIGNMENT OR TRANSFER

- 1) The Qualified Bidders shall have a valid e-mail ID, valid PAN Card, and KYC document to register with the E-Auction Service Provider and they are solely responsible for proper registration as may necessary on their portal. Details of the E-auction provider will be provided to the Bidders in due course.
- 2) Only upon verification of the Bid Form and Declaration and confirmation of remittance of Earnest Money Deposit will the Qualified Bidders be declared and thereafter, permitted to access the Platform for bidding for the asset.
- 3) The Qualified Bidder shall be solely responsible for all consequences arising out of the bid submitted by him/her (including any wrongful bidding) and no complaint/ representation will be entertained in this regard by the Agency/ the Liquidator. Hence, Qualified Bidders are cautioned to be careful to check the bid amount and alter/rectify their bid if required before confirming the bid submitted.
- 4) Qualified Bidders should not disclose their User ID as well as password and other material information relating to the bidding to anyone to safeguard its secrecy.
- 5) Qualified Bidders are advised to change the password immediately on receipt thereof.
- 6) The declaration as per the format set out in Annexure-II must be executed in accordance with applicable law and it must be issued in accordance with the constitutional documents of the Qualified Bidder, if applicable, after obtaining all corporate approvals as may be required. The extract of constitutional documents and certified copies of the corporate approvals must be enclosed with the declaration. In the case of Qualified Bidder being an individual, the declaration must be personally signed by the Qualified Bidder. In case the Qualified Bidder is not an individual, the declaration must be signed by a person who is a director or in full-time employment of the Qualified Bidder and duly authorized to sign the same.
- 7) Scanned copies of all the aforementioned documents are required to be submitted to the Liquidator in .pdf format, followed by the submission of original physical copies.
- 8) All bids placed are legally valid bids and are to be considered as bids from the Qualified Bidder himself/herself. It is pertinent to mention that if a Qualified Bidder places multiple bids with respect to an Asset Lot, the last bid shall be considered to be the final bid of the Qualified Bidder.
- 9) The Qualified Bidder shall have to bid for the entire asset and cannot bid for individual assets within an asset lot except where stated otherwise.
- 10) The highest bid on the auction shall supersede all the previous bids of the respective Qualified Bidders. The Qualified Bidder with the highest offer/ bid does not get any right to demand acceptance of his bid.
- 11) Qualified Bidders may encounter certain unforeseen problems such as time lag, heavy traffic, and system/power failure at the Qualified Bidder's end. To avoid losing out on bidding because of the above- mentioned reasons, it is advised not to wait for the last moment. In any event, if one or more of the Qualified Bidders are unable to log onto the auction portal or unable to place their Bid with the stipulated time or form etc. due to technical reasons or otherwise, the Auction process will continue as per the agreed time and Liquidator is not expected or obligated to suspend or re-run the process.

ANNEXURE VII - LETTER OF INTENT

To,
[name to be inserted]
[address to be inserted]

Attn. [_____]

Re: Auction assignment or transfer of Asset Lot [_] (insert description of the asset) of
GUJARAT METALLICCOAL & COKE LIMITED (In Liquidation) conducted on [_]

Dear Sir/ Ma'am,

1. With reference to the above, you have submitted a successful bid ("**Successful Bidder**") in relation to the E-auction assignment or transfer of Asset Lot [] of GUJARAT METALLIC COAL & COKE LIMITED (In Liquidation) ("**Company**") auctioned on [].
2. You are requested to confirm your acceptance of this LOI within 2 (two) days of the date of issuance hereof with an endorsement stating that this LOI is, "*Accepted Unconditionally*", under the signature of the authorized director / authorized signatory. Within 15 (fifteen) days from the date of issuance of this LOI, you shall pay an aggregate amount of INR [____] as the assignment or transfer consideration towards the purchase of assets comprised in Asset Lot [] ("*Assignment or transfer Consideration*") plus any applicable taxes, if any, and as set out in the schedule to this LOI. Please note that failure to accept this LOI within the time period specified may result in your disqualification as the Successful Bidder along with the cancellation of this LOI and forfeiture of the Earnest Money Deposit, in relation to the captioned transaction issued by the Liquidator.
3. The Liquidator agrees that simultaneously upon full payment of Assignment or transfer Consideration and any applicable tax, if any, the Liquidator shall execute a certificate of assignment or transfer/deed of assignment or transfer or assignment in your favor for conveyancing on "as is where is", "as is what is", "whatever there is" and "no recourse" basis of the specified Asset Lot, without any representations and warranties, express or implied, on the part of the Liquidator.
4. This LOI is not a assignment or transfer confirmation letter and is issued without prejudice to other terms and conditions of the E-Auction Process Memorandum . The issuance of this LOI shall not be deemed to be conveying any right, title, or interest in the specified Asset Lot or in any manner granting any right against the Liquidator, or their representatives and advisors, except to the extent any right has been created under this LOI.
5. In the event you are found to have made any misrepresentation, wrongful disclosure, or misleading declaration of eligibility, this LOI may be revoked and on account of such revocation, you shall have no right under this LOI.
6. Any contravention of the terms of this LOI, including non- acceptance of the contents hereof within the stipulated time period, shall lead to cancellation of this LOI, and the consequences provided in the E-Auction Process Memorandum shall apply.
7. You shall keep the contents of this LOI confidential, save and except where any disclosure is required under applicable laws or disclosure is required for securing financing or to your professional advisors and financiers, who are in each case required in the course of their duties to receive and consider the same for the purpose of advising you in relation to the transaction.

8. This LOI shall be governed by, and construed in accordance with, the laws of India and the National Company Law Tribunal, Kolkata Bench shall have exclusive jurisdiction over all disputes arising under, pursuant to, and/ or in connection with this LOI.
9. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Process Memorandum .

You are requested to unconditionally accept this LOI by countersigning this LOI and returning the same to me.

Yours faithfully,

Liquidator

Unconditionally agreed and accepted by:

For [Name of the Successful Bidder]

Authorized Signatory

ANNEXURE VIII - DESCRIPTION OF ASSET LOTS

Gujarat Metallic Coal & coke Limited is a renowned name in the Chemical Industry, with considerable presence in eastern India. The company is having integrated trading facilities for Chemicals.

Gujarat Metallic Coal & Coke Limited (formerly known as Arvind Chemicals Limited) owns a flat at Plot No. A-3, Flat No. 202, 2nd Floor Royal Enclave, Mahatma Gandhi Nagar, Ajmer Road, Chokdi Haveli Saher, Jaipur. Total area of the property is 783.46 sq. ft.

The company has Investments in Equity shares of the following entities: -

Annexure IV

(Details of Assets - Background)

Investments in Happy Mining Pty LTD

This is the Investment in one of the subsidiary companies of the CD which was wholly owned at the time of the commencement of the Corporate Insolvency Resolution Process but later on the shareholding was diluted to 44% as the erstwhile management issued the share capital without informing the Erstwhile Resolution Professional. An application under Section 66 and Section 70 has already been filed by the erstwhile Resolution professional and being pursued by the liquidator. However, the matter is yet to attain any finality and thus the matter is sub-judice. Secondly as per the last available Audited Financial statement of Happy Mining Pty Limited, there are hardly any tangible assets based on which the value can be derived on the shareholding of the CD. Further, Since the shares of the company are privately held and is not a public listed entity, it is difficult to sell the shares of the subsidiary company as there are no ready buyer for this. Further the mining license for which the Happy Mining Pty LTD was incorporated could not be retrieved despite taking necessary steps by the liquidator.

Under these circumstances, in view of the liquidator, this asset of the CD might not be sold on a standalone basis as the same does not have the open market where buyers place their value for the shares as done in case of listed entity. Secondly since the other shareholders are the same as promoter group and erstwhile management, many of the potential buyers have indicated that this might result in legal complexity and challenges due to which they are not interested in this asset on standalone basis.

B. Investment: Narottamka Commodities Private Limited (B)

This is the similar asset as that of Block A. However, the difference is the Investments are made in the company located in India and the company is not a subsidiary of the CD. Again, the Investments were made in the private treaty and these Investments are not publicly traded due to which any potential buyer is unable to ascertain its true value. Further as it is privately held, these Investments cannot be liquidated easily. Hence, selling this Investments on Standalone basis will again may not fetch its true value and stakeholder's value shall not get maximized unless it is easily liquidated. Hence selling this asset under any of the specified mode may not be advisable..

Given the nature of assets, it makes no sense on the part of the liquidator to make publication on the interval of every fifteen days as per the amended Regulation as it is only adding to the expense of the liquidation and hence it was decided not to make next publication until SCC decides otherwise. Accordingly, the liquidator has not proceeded for publication after the sixth public announcement and the same was approved by the SCC –

“Resolved that the publication for sale of the Company under slump sale basis shall not be made after the sixth publication until the SCC decides otherwise”

C. Investments in Arvind International Ltd

This is another Investment made by the Company in “Arvind International Ltd”, which a listed company. However, from the public domain, it can be easily seen that the shares, although listed, is not getting traded after 2015. Hence this investment cannot be liquidated. Hence the chances of recovery from this asset can be considered as very remote.

Asset Lot 2 :

A. Assignment of all Rights and Interests, including Rights of Litigation, for Application for Avoidance of Preferential Transaction, filed before Hon’ble NCLT under Section 66 and Section 43 of IBC, 2016 for recovery from Ex-Directors of Gujarat Metallic Coal & Coke Limited

A detailed list of pending matters is stated below for reference:

| Sl. No. | Applicati on u/s | Application No. | Particula rs | Applica nt | Respon dent | Prayers |
|---------|------------------------|-------------------------|-------------------------------------|------------|--|---|
| I | Section 66 & 67 of IBC | I.A (IB)NO.762/ KB/2020 | Happy Mining-Fraudulent Transaction | RP | Director s of the CD | <p>a.) Necessary directions upon the upon the Respondent directors, jointly and severally to contribute the said sum of Rs. 59.79 crores to the Corporate Debtor</p> <p>b.) Necessary directions for appointment of government investigating authority to investigate in the purported investment of Rs. 59.79 crores in Happy Mining Pty Ltd.</p> <p>c.) Necessary Order and/or Orders holding the Respondent Directors of the Corporate Debtor and the Promoters of the Corporate Debtor responsible for fraudulent trading and wrongful trading under Section 66 and Section 67 of IBC, 2016.</p> <p>d.) Such further and/or other order or orders as this Hon'ble Court may deem fit and proper</p> |
| II | Section 43 & 66 of IBC | I.A (IB)NO.715/ KB/2020 | Forensic Auditor observations | RP | Director s of the CD & Satellite Mercan tile Pvt. Ltd. | <p>a.) Necessary directions upon the upon the Respondent nos. 1 to 3 directors to jointly and severally to contribute or repay a sum of Rs. 13.31 crores to the Company in terms of Section 66 and other relevant sections of the Code</p> <p>b.) Necessary directions upon the upon the Respondent no. 4 to contribute or repay a sum of Rs.</p> |

| | | | | | | |
|--|--|--|--|--|--|--|
| | | | | | | <p>3.19 crores to the Company in terms of Section 44 and other relevant sections of the Code</p> <p>c.) Such further and/or other order or orders as this Hon'ble Court may deem fit and proper.</p> |
|--|--|--|--|--|--|--|

End of Document
