

PROCESS MEMORANDUM

Invitation for bids for e-Auction of business of Shirpur Power Private Limited - In Liquidation (hereinafter referred to as the “**Company**” or “**Corporate Debtor**” or “**SPPL**”) as a Going Concern under the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**the Code**”) read with Rules and Regulations made thereunder.

June 29, 2021

Issued by

Dushyant Dave

Liquidator

Shirpur Power Private Limited – In Liquidation

(A Company under Liquidation Process vide Hon’ble

NCLT, Ahmedabad Bench Order dated 10.03.2021)

IBBI Registration Number: IBBI/IPA-003/IP-N00061/2017-2018/10502

1101 Dalamal Towers, Nariman Point,

Mumbai – 400021 INDIA

Correspondence Email: liquidator.sppl@decoderesolvency.com

Coordinates of Liquidator Dushyant C Dave registered with IBBI are:

1101 Dalamal Towers, Nariman Point,

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*Dushyant Dave has been granted a certificate of registration to act as an Insolvency Professional by the Insolvency and Bankruptcy Board of India, having Registration No. IBBI/IPA-003/IP-N00061/2017-2018/10502. The Hon’ble National Company Law Tribunal, Ahmedabad Bench (hereinafter referred to as “**NCLT**”), has pronounced the Liquidation Order under the provisions of the Code in respect to Shirpur Power Private Limited vide its order dated March 10, 2021 (hereinafter referred to as “**Order**”) and appointed Mr. Dushyant Dave as the Liquidator of the Company.*

Currently, the affairs, business and property of Shirpur Power Private Limited – In Liquidation are being managed by Dushyant Dave, being the Liquidator of SPPL and supported by Decode Resolvency International Private Limited, an Insolvency Professional Entity, registered with the Insolvency and Bankruptcy Board of India having Registration No IBBI/IPE/0091.

Issued to All Interested Bidders / Bidders / Auction Process Applicant

Terms and conditions, deadlines, bid application form, undertaking and other documents required for participating in the electronic e-Auction are provided in this Process Memorandum. Process Memorandum is non-transferable and is available at www.sppl.decoderesolvency.com (“**Website**”)

Timelines, notifications, updates and other details for the e-Auction process are available on the **Website** as well as on the **Auction Portal** which can be accessed at: https://www.mstcindia.co.in/content/Forthcoming_e_Auctions_For_All_regions.aspx (“**Auction Portal**”)

Bidders desirous to submit their bid must submit bid(s) on Auction Portal.

The documents for the Bids shall be submitted at Liquidator’s Office by post or through electronic means.

Address: 1101 Dalamal Towers, Nariman Point, Mumbai – 400021 INDIA

Correspondence Email: liquidator.sppl@decoderesolvency.com

DISCLAIMER

This document is issued by Mr. Dushyant Dave, the Liquidator, Shirpur Power Private Limited- In Liquidation 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 purpose of this document is to set out the process for submitting auction bids for the sales of business of the Corporate Debtor in accordance with the provisions of the Code. This document is not a statutory document and it has not been approved or registered with any statutory authority or any other authority under any other jurisdiction. 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. This Process Memorandum is personal and specific to each Auction Process Applicant. 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. This Process Memorandum does not solicit any action based on the material contained herein.

The information in this Process Memorandum, which does not purport to be comprehensive, is provided by the Company and has not been independently verified by the Liquidator. 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, the Company or by any of its 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 interested party or its advisers and any such liability is expressly disclaimed. In so far as the information contained in this Process Memorandum includes current or historical information, the accuracy, adequacy, authenticity, correctness, fairness, and completeness of such information cannot be guaranteed. By accepting this Process Memorandum, the Auction Process Applicant shall be deemed to have acknowledged that it has not relied upon any representation and warranty made by the Liquidator. 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.

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. Distributing or taking / sending / dispatching / transmitting this Process Memorandum in certain foreign jurisdictions may be restricted by law, and Persons into whose possession this Process Memorandum comes should inform themselves about, and observe, any such restrictions. Neither the Liquidator, nor his professional advisors, affiliates, directors, employees, agents, representatives or managers of the process shall be liable for any damages, whether direct or indirect, 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 the Auction Process Applicant not being selected as a Successful Auction Process Applicant or on account of any decision taken by the Liquidator.

The Liquidator and / or the Company gives 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 Auction Process Applicant. 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.

In addition to the provisions set out in this Process Memorandum, the Auction Process Applicant shall be responsible for fully satisfying the requirements of the Code and related Regulations as well as all laws in force that are or may be applicable to the applicant or the sale process and for obtaining requisite pre or post 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 Auction Process Applicant from compliance with the Code 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 the Auction Process Applicant from complying with all such laws, as are or may be applicable.

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. Further, no Person, including the Auction Process Applicant shall be entitled under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise to claim for any loss, damage, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Process Memorandum or otherwise, including the accuracy, adequacy, authenticity, correctness, completeness or reliability of the information or opinions contained in this Process Memorandum and any assessment, assumption, statement or information contained therein or deemed to form part of this Process Memorandum, and the Liquidator, the Company, and their advisors, affiliates, directors, employees, agents, representatives or managers do not have any responsibility or liability for any such information or opinions and therefore, any liability or responsibility is hereby expressly disclaimed. All necessary arrangements with respect to the dismantling of erected & fabricated / movement / shifting of plant & machinery (ies) or any asset of the Company post the e-Auction process should be taken care of solely by the successful Auction applicant. All expenses incurred towards the dismantling of erected & fabricated / movement / shifting of plant & machinery (ies) or any asset of the Company post the e-Auction process should be borne solely by the successful Auction applicant. The Liquidator shall not be held responsible / liable under any circumstances to pay any expenses including but not limited, towards such movement of plant & machinery (ies) or any asset of the Company.

In no circumstances shall the Auction Process Applicant 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 permission to do so in writing.

The assets of the Company are proposed to be sold on "As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse" basis and the proposed sale of the Company on going concern basis does not entail transfer of any title, except the title which the Company had on its assets as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the moveable / immoveable assets of the Company.

The Auction Process Applicant shall bear all 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.

This Process Memorandum is not directly or indirectly transferable or assignable under any circumstances whatsoever.

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1. IMPORTANT INFORMATION

- 1.1 This Process Memorandum has been issued with the intent to carry out e-Auction (**E-Auction**) on the going concern basis in accordance with the provisions of the Code read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("**Liquidation Regulations**").
- 1.2 All information provided in this Process Memorandum should be read together with the provisions of the Code and the Liquidation Regulations. In the event of a conflict between this Process Memorandum and the Code or the Liquidation Regulations, the provisions of the Code or the Liquidation Process Regulations, as the case may be, shall prevail.
- 1.3 The information contained in this Process Memorandum or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of the Liquidator, is provided to Bidders on the terms and conditions set out in this Process Memorandum.
- 1.4 This Process Memorandum is neither an agreement nor an offer by the Liquidator to the interested Bidders or any other person. The purpose of this Process Memorandum is to provide interested Bidders with information that may be useful to them in making their bids pursuant to this Process Memorandum. The assumptions, assessments, statements and information contained in the Process Memorandum may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own due diligence, investigations and/or analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this Process Memorandum and obtain independent advice from appropriate sources.
- 1.5 Information provided in this Process Memorandum to the Bidders has been collated from several sources. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as complete. The Liquidator accepts no responsibility for the accuracy or otherwise for any statement contained in the Process Memorandum.
- 1.6 The Liquidator, makes no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Process Memorandum or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Process Memorandum and any assessment, assumption, statement or information contained therein or deemed to form part of this Process Memorandum or arising in any way from participation in this Auction process.
- 1.7 The Liquidator also accepts no liability of any nature howsoever caused arising from reliance of any Bidder upon the statements contained in this Process Memorandum.
- 1.8 The Liquidator may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assess mentor assumptions contained in this Process Memorandum.
- 1.9 The issue of this Process Memorandum does not imply that the Liquidator is bound to select a

Bidder or to appoint the Preferred Bidder as Successful Bidder for the assets of the Company and the Liquidator reserves the right to reject all or any of the Bidders or bids without assigning any reason whatsoever.

- 1.10 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.
- 1.11 MSTC Limited (“e-Auction Service Provider”) has been appointed as the E-Auction Service Provider. The sale of the Properties shall be undertaken by the E- Auction Service Provider for and on behalf of the Seller through an e-Auction platform provided on the website portal of the E-Auction Service Provider (“Platform”). Other details with respect to the e-Auction are as follows:

| | |
|-------------------------------|--|
| Type of Bid | e-Auction |
| Seller | Shirpur Power Private Limited – In Liquidation Through its Liquidator Mr. Dushyant Dave |
| Versioning | 4th eAuction |
| Assets | SPPL’s business as a going concern |
| Auction Details and Documents | <p>Auction Date: July 14, 2021 from 11:00AM to 4:00PM</p> <p>Documents and Annexures (access on the Website www.sppl.decoderesolvency.com)</p> <ol style="list-style-type: none"> 1. The Sale Notice 2. Forms to be filled to express interest contain the auction details and terms and conditions of the a-Auction process. Both are accessible at www.sppl.decoderesolvency.com. 3. Process Memorandum (this document) with Annexures: <p>Annexures in this Process Memorandum:</p> <ol style="list-style-type: none"> 1. Annexure 1 – Bid Application Form (to be duly filled in and signed by the Bidder and uploaded) 2. Annexure 2 – Bid Declaration Form (to be duly filled in and signed by the Bidder and uploaded along with the Bid form) 3. Annexure 3 – Copy of resolution passed by the board of directors of the Interested Bidder; 4. Annexure 4 - Terms and Conditions of e-Auction <p>Formats provided in this Process Memorandum:</p> <ol style="list-style-type: none"> 1. Format A: Earnest Money Deposit – Bank Guarantee 2. Format B: Earnest Money Deposit – by an Associate Company 3. Format C: Affidavit and Undertaking by Bidder 4. Format D: Performance Guarantee – Bank Guarantee 5. Format E: Confidentiality and Non - Disclosure Agreement |

| | |
|---|---|
| Website of E-Auction Service Provider “Auction Portal” | https://www.mstcindia.co.in/content/Forthcoming_e_Auctions_For_All_regions.aspx |
| E-Auction Service Provider | MSTC Limited |
| Special Instructions | This bidding is a serious matter dependent on various technical components 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 Bidders. |

The business/assets of the Company are proposed to be sold on a 'going concern' basis. Accordingly, all the assets are being sold along with the transfer of employees and workmen, as well as transfer of licenses, to the extent permissible under the Applicable Law. Post the transfer, the Successful Bidder shall be entitled to transfer/apply for transfer of all the licenses, approvals, concessions, and benefits as may be applicable to the Company. All current employees' related liabilities including Provident Fund, ESI and other retirement benefits shall be transferred to the account of the Successful Bidder including any liabilities accruing post auction date.

Please note, whilst the actual handover of the business/asset of the Company shall only happen post the receipt of the sale consideration, in its entirety, all the liabilities, whether contingent or not, shall be transferred to the account of the Successful Bidder from the Liquidation Commencement Date.

- 1.12 All terms and conditions with respect to the sale of the Assets shall be governed by the directions of the Liquidator, and in accordance with the provisions of applicable laws. As mandated by NCLT, the Liquidator shall exercise all rights with respect to sale of the assets and it would be open to the Liquidator to appoint such experts, professionals or other persons, as the Liquidator might think necessary, to facilitate the sale process.
- 1.13 This Process Memorandum is neither transferable nor assignable.
- 1.14 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.

2. DEFINITIONS

- 2.1 “**Adjudicating Authority**” or “**NCLT**” shall mean the Hon’ble Bench of the National Company Law Tribunal, Ahmedabad Bench;
- 2.2 “**Applicable Law(s)**” means, all applicable laws, codes, regulations, rules, guidelines, circulars, re-enactments, revisions, applications and adaptations thereto, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority,

rules, regulations, orders and interpretations of any governmental authority, court or statutory or other body applicable for such transactions including but not limited to the Code, Liquidation Regulations, Companies Act, 1956/ 2013 (as applicable), Competition Act, 2002, Income Tax Act, 1961, The Goods and Services Tax Act, 2017, Transfer of Property Act, 1882, Sale of Goods Act,1930, Foreign Exchange Management Act,1999, whether in effect as of the date of this Process Memorandum or thereafter and each as amended from time to time;

- 2.3 **“Asset” / “Business” / “Block”** means, single or many Block (s) proposed to be sold on a '*going concern*' basis. The assets of SPPL are being sold along with the transfer of employees and workmen who are engaged currently in the running of the unit, as well as transfer of licenses, to the extent permissible under the Applicable Law. Post the transfer, the Successful Bidder shall be entitled to transfer/apply for transfer of all the licenses, approvals, concessions, benefits as may be applicable to the unit. All employee and workmen related liabilities including Provident Fund, ESI and other retirement benefits shall be to the account of the Successful Bidder including any liabilities accruing post auction date.
- 2.4 **“Auction Process Applicant”, “Interested Bidder” or “Bidder”** mean, Person or Persons who submitted a bid as per the Process Memorandum; and shall include a Qualified Bidder or the Successful Bidder/ Successful Applicant, as the case may be, and as the context requires;
- 2.5 **“Bid”** means, any bid or offer along with other documents, submitted by the Bidder(s) as required in terms of the Public Advertisement and this Process Memorandum issued by the Liquidator and in accordance with the provisions of the Code read with the Liquidation Regulations as amended from time to time and the Applicable Law(s);
- 2.6 **“Bid Application Form”** shall mean the form as specified in **Annexure 1** of this Process Memorandum;
- 2.7 **“Bid Declaration Form”** shall mean a declaration by the Bidders in form as specified in **Annexure 2** of this Process Memorandum;
- 2.8 **“Company”** shall mean Shirpur Power Private Limited – in Liquidation, a company incorporated in India under the Companies Act, 1956, having its registered office at 903, Shilp Building, Opp. Navrangpura Telephone Exchange, Ahmedabad, Gujarat- 380009;
- 2.9 **“Confidential Information”** shall mean any and all information and other materials disclosed, furnished, communicated or supplied by the Company to any bidder, in written or electronic or verbal form, including without limitation, and shall be determined to include (without limitation) the following types of information of a similar nature: any commercial and/or financial information, improvement, know how, intellectual property, discoveries, ideas, concepts, papers, techniques, models, data, documentation, manuals, flow charts, research, process, procedures, functions and other information related to price lists and pricing policies and any other information which the Company identifies to be confidential at the time of disclosure to the relevant bidder, any shall include any information that is provided by the Liquidator or his representatives pursuant to the liquidation process or through the Confidential Undertaking;
- 2.10 **“Control”** shall mean a Person holding more than 26% (twenty six percent) of the voting share capital in a company or the ability to appoint majority of the directors on the board of another company or the ability of a company to director cause direction of the management and

policies of another company, whether by operation of law or by contract or otherwise;

- 2.11 **“Data Room”** shall mean the virtual data room maintained by the Liquidator, created for the Qualified Bidders to access information in relation to the Company;
- 2.12 **“E-Auction Process”/ “e-Auction”** shall mean the electronic auction process for sale of the assets of the Company conducted in accordance with the provisions of the Code, Liquidation Regulations, Applicable Law(s) and this Process Memorandum inviting Bid from the Bidders for consummating the sale of Company on going concern basis in accordance with the provisions of the Code and Liquidation Regulations;
- 2.13 **“Eligibility Criteria”** shall mean the legal criteria as specified in the Clause 5 of this Process Memorandum;
- 2.14 **“IBC” / “Code”** shall mean Insolvency and Bankruptcy Code, 2016 and the related rules and regulations issued there under, as amended from time to time.
- 2.15 **“Liquidation Regulations”** means, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 as amended from time to time;
- 2.16 **“Liquidator”** means Mr. Dushyant Dave, an insolvency professional registered with IBBI having registration number IBBI/IPA-003/IP-N00061/2017-2018/10502, appointed by NCLT, vide its order dated March 10, 2021 to manage, protect, sell and liquidate the property, assets, business and other affairs of the Company in accordance with the provisions of the Code read with Liquidation Regulations;
- 2.17 **“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;
- 2.18 **“Process Memorandum”** means this document including all the appendices, formats hereto, Data Room information/ documents, for the purposes of setting out the process for submission of a bid and selection of successful bid in accordance with the provisions of the Code and shall include all supplements, modifications, amendments, alterations or clarifications there to issue in accordance with the terms hereof.
- 2.19 **“Public Advertisement”** shall mean an announcement dated **June 29, 2021** in newspaper(s) Financial Express (English - All India Edition), Navshakti (Marathi Edition) and Financial Express (Gujrati Edition) inviting an expression of interest from the Bidders, who shall submit their Bid to participate in the liquidation process of the Company in accordance with the provisions of the Code and Liquidation Regulations;
- 2.20 **“Qualified Bidder(s)”** shall mean an Interested Bidder who has duly submitted the signed Bid Application Form and Bid Declaration Form along with the requisite Earnest Money to the Liquidator and who fulfills the eligibility criteria listed out in this Process Memorandum;
- 2.21 **“Reserve Price”** shall mean the minimum price at which bid will be accepted on the auction portal from the participating Qualified Bidder;
- 2.22 **“Site”** shall mean the location of all the immoveable and moveable properties including land

parcels, office premises, buildings, factories, project locations, plant and machinery and fabrication units, owned, leased or occupied by the Company, for the purposes of conducting business;

2.23 **“Site Visit”** shall mean a visit to the Site; and

2.24 **“Successful Bidder”** or **“Successful Auction Process Applicant”** means, the Qualified Bidder whose bid is approved and who is declared by the Liquidator at the end of the determined Auction phase

Capitalized terms used herein but not defined otherwise shall have meaning prescribed to them under the provisions of the Code and the rules and regulations there under.

3. INTRODUCTION

3.1 The Financial Creditors application to initiate the corporate insolvency resolution process (“CIRP”) initiated under Section 7 of the Code was admitted by the NCLT vide its order dated March 4, 2020 and Mr. Savan Godiawala having IBBI Registration number IBBI/IPA-001/IP-P00239/2017-18/10468 was appointed. However, within the permitted CIRP timeline, no resolution plan was received by the Committee of Creditors. Thus, the Resolution Professional on behalf of the Committee of Creditors made an application under Section 33 of the Code before the Hon’ble NCLT.

3.2 The NCLT admitted the application, initiating the liquidation process of the Corporate Debtor and appointed Mr. Dushyant Dave, as the Liquidator vide its Order dated March 10, 2021 which was made available to the Liquidator on March 11, 2021 post business hours. Accordingly, the Liquidator issued a public announcement on March 13, 2021 in Financial Express (English and Gujarati edition) and Navshakti inviting claims from the stakeholders/persons to whom the Corporate Debtor owed dues.

3.3 The Liquidator endeavors to sell the assets comprising the liquidation estate of the Company in the manner specified under Regulation 32 of the Liquidation Regulations, any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the Code or the Liquidation Regulations, as the case may be, and as per directions, if any, of the Adjudicating Authority in respect of the liquidation process of the Company and in the manner specified in this Process Memorandum.

3.4 The E-Auction would be conducted in accordance with the provisions under Regulation 33 of the Liquidation Regulations, and any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the Code or the Liquidation 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.

3.5 The Bidders are hereby being encouraged and advised to acquaint themselves with the provisions of the Code and the Liquidation Regulations and any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the Code or the Liquidation Regulations, as the case may be.

4. OVERVIEW OF THE COMPANY

Shirpur Power Private Limited (in Liquidation) incorporated on August 22, 2005 is registered at Registrar of Companies, Ahmedabad. SPPL is a green field thermal power plant of 300 MW (2 X 150 MW) capacity of thermal power at Nardana, District Dhule, State Maharashtra based on the blended coal from India and Indonesia. The Company is a 100% subsidiary of Zep Infratech Ltd. (formerly known as Zeppelin Mobile Systems India Ltd.).

5. ELIGIBILITY CRITERIA

5.1 Pursuant to Section 35 of the Code, an Auction Process Applicant shall not be eligible to submit a bid for purchase of assets of the Company if it fails to meet the eligibility criteria set out in Section 29 A of the Code (as amended from time to time).

5.2 As on date, as per Section 29 A, 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 wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);
- c. at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

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

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

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

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

d. has been convicted for any offence punishable with imprisonment –

- i. for two years or more under any Act specified under the Twelfth Schedule; or
- ii. for seven years or more under any law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years

from the date of his release from imprisonment:

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

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

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

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

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

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

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

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

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

Explanation. — 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 or completion of such transactions as may be prescribed], prior to the insolvency commencement date;

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

- i. a scheduled bank;*
- ii. any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with*

- the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;*
- iii. any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);*
- iv. an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- 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.*

5.3 DOCUMENTS TO BE SUBMITTED BY ELIGIBLE BIDDERS

An eligible bidder shall submit the duly filled and signed **Bid Application Form** attached vide **Annexure 1**, and the duly filled and signed **Bid Declaration Form** attached vide **Annexure 2**, with respect to auction along with:

1. A duly signed Board Resolution as per the format set out in 'Annexure 3';
2. Notarized affidavit and undertaking as per the format set out in 'Format C';
3. A duly signed confidentiality and non-disclosure agreement as per the format set out in 'Format E';
4. Latest Audited Financial Statement/ Income Tax Return, as the case may be;
5. Composition and ownership structure;
6. Proof of payment of EMD along with 'Format A', 'Format B' or 'Format D', as may be applicable;
7. KYC documents as mentioned below:
 - A. Individual Bidders or Bidders in the nature of Hindu undivided families ("HUFs") would be required to submit the following:
 - a. Copy of the valid passport or voter's ID or valid driving license or Aadhar card or photo identity card issued by Govt./ PSU; and
 - b. Copy of the permanent account number ("PAN") card and in case the copy of the PAN card is not available with the Bidder, an affidavit stating the reason for not holding a valid PAN card on a stamp paper of Rs. 100 (Rupees One Hundred only) in lieu of the PAN card shall be submitted.

It is clarified that in the case of an HUF, the Karta of the HUF would have to submit his own passport/ voter ID/ driving license/ Aadhar card/photo identity card issued by Govt. / PSU.

- B. Non-Resident Indian(s) would be required to submit the following documents:
 - a. their passport and residence visa copies duly attested by foreign offices or notary public or the Indian embassy; and
 - b. a copy of the PAN card and in case the copy of the PAN card is not available with the Bidder, an affidavit stating the reason for not holding a valid PAN card on a stamp paper of Rs. 100 (Rupees One Hundred only) in lieu of the PAN card shall be submitted.

- C. Proprietary concerns shall submit any two documents evidencing the identity and address proof of the proprietor and proprietorship concern.
 - a. The proprietor should also provide a copy of the permanent account number (“PAN”) card and
 - b. in case the copy of the PAN card is not available, an affidavit stating the reason for not holding a valid PAN card on a stamp paper of Rs. 100 (Rupees One Hundred only) in lieu of the PAN card shall be submitted.

- D. Partnership firms and limited liability partnerships shall be required to submit any two documents providing the identity and address proof of the partnership or limited liability partnership, as applicable, any 2 (two) documents evidencing the identity and address proof the partner authorized to act on behalf of the partnership or limited liability partnership, as the case may be, and the following documents:
 - a. Registration certificate or incorporation certificate, if any, as applicable;
 - b. Partnership deed or limited liability partnership agreement, as applicable;
 - c. An officially valid document in respect of the person holding a power of attorney to transact on behalf of the partnership or copy of the resolution passed by the partners of the limited liability partnership or other valid document evidencing authority of the designated partner to transact on behalf of the limited liability partnership; and
 - d. Copy of the permanent account number (“PAN”) card of the partnership firm/ limited liability partnership and in case the copy of the PAN card is not available, an affidavit stating the reason for not holding a valid PAN card on a stamp paper of Rs. 100 (Rupees One Hundred only) in lieu of the PAN card shall be submitted.

- E. Companies shall be required to submit any two documents evidencing the identity and address proof of the company and the following documents:
 - a. Certificate of incorporation;
 - b. A resolution from the shareholders/ Board of Directors granted to its managers, officers or employees to transact on its behalf with respect to the matters contemplated herein; and
 - c. Copy of the permanent account number (“PAN”) card of the company and in case the copy of the PAN card is not available, an affidavit stating the reason for not holding a valid PAN card on a stamp paper of Rs. 100 (Rupees One Hundred only) in lieu of the PAN card shall be submitted.

It is clarified that no power of attorney would be accepted, and the person authorized to act on behalf of a company must be so authorized only by means of a resolution of the board or shareholders of the company.

The Liquidator reserves the right to call for Original KYC documents listed above anytime during the auction period or after the auction period (in case of successful bidders). The Liquidator shall send an email for such request to such bidders, who in turn, shall produce the required original documents immediately on receipt of such email.

Additionally, at any stage of the auction process, the liquidator may ask for any documents from the prospective bidders to evaluate their eligibility. The liquidator shall disqualify the prospective bidder for non-submission of the requested documents.

6. SITE VISIT AND DISCUSSION MEETINGS

- 6.1 The assets mentioned in the Clause 8 can be inspected by the interested bidders at the site with prior appointment by contacting the Liquidator at liquidator.sppl@decoderesolvency.com. The inspection will not be allowed without prior appointment. The Interested Bidders would have to submit the documents mentioned under the "point 5 of Terms and Conditions of the e-Auction" (Annexure 4 of this Process Memorandum). The inspection of the assets put up for the Auction, for the interested bidders, would take place during the following timeperiod:

June 29, 2021 (Tuesday) to July 13, 2021 (Monday) -from 11:00 AM to 04:00 PM

- 6.2 Considering the present unprecedented scenario due to the outbreak of COVID 19, Liquidator has arranged for a virtual tour of the plant which can be viewed at: <https://youtu.be/4mqUEzTALJw>. However, the interested bidders, doing the site visit, are required to follow all the necessary guidelines issued by the relevant regulatory authorities.
- 6.3 If requested by the Auction Process Applicant, the Liquidator may arrange a discussion meeting at any time prior to the closure of the Auction process. The Liquidator reserves the right to not arrange a discussion meeting for any reason whatsoever, irrespective of the request of the Auction Process Applicant.
- 6.4 If requested by an Auction Process Applicant, the Liquidator may arrange a site visit for such applicant at any time prior to the closure of the Auction process. All the costs associated with such site visits shall be borne by the Auction Process Applicant who shall not be entitled to receive re-imbusement of any expenses incurred during the Sale Process. The details, terms and conditions with respect to the Site Visit shall be communicated to the relevant Auction Process Applicant in advance.
- 6.5 During the Site Visit, a Qualified Bidder shall not:
- (i) take any photographs of the Site or take any documents back with it; or
 - (ii) initiate any discussion regarding the Liquidation Process, with the personnel at Site, during the course of its Site Visit.

The Liquidator reserves the right to not arrange a site visit for any reason whatsoever, irrespective of the request of the Auction Process Applicant. Auction Process Applicant considering site visit shall be provided a prior notification of date and time 3 (three) days in advance by Liquidator.

7. DUE DILIGENCE

- 7.1 The Liquidator shall provide assistance to the extent possible, available and applicable for the conduct of due diligence by Bidders. Such assistance, information and documents provided by the Liquidator and his team shall be done in good faith and to the extent permissible under applicable law. The Bidders may note that the Liquidator does not make any statement regarding verification of the such information, data or documents shared and shall not accept any responsibility or liability, whatsoever, in respect of any statements, exceptions or omissions.
- 7.2 The assets of the Company are proposed to be sold on **"As is where is basis"**, **"As is what is basis"**, **"Whatever there is basis"** and **"No recourse"** basis and the proposed sale of assets of

the Company does not entail transfer of any title except the title which the Company had on its assets at the time of transfer. All statutory liabilities / taxes / demands / claims / maintenance fee / electricity / water charges, etc., outstanding as on date or yet to fall due in respect of the relevant asset should be ascertained by the Auction Process Applicant and would be borne by the Successful Bidder.

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

8. ASSETS TO BE AUCTIONED AND RESERVE PRICE

| Block / Items | Description | Reserve Price (INR) | Earnest Money Deposit (INR) | Incremental Amount (INR) |
|---------------|---|-----------------------|-----------------------------|--------------------------|
| 1. | <p>Sale of Shirpur Power Private Limited – in Liquidation as a Going Concern:</p> <ul style="list-style-type: none"> • Thermal Power Plant 2x150 MW • Comprises a Coal handling unit, Boiler – Turbine - Generator system, Ash Handling unit, Feed and Circulation water systems, Transmission system and other ancillary systems like water Treatment Plant, Coal weighing systems, Diesel generators etc. <p>Further information on: www.sppl.decoderesolvency.com</p> | 4,33,16.59,500 | 4,33,16,595 | 43,31,660 |

Kindly note that the Bidders cannot place a bid for the block/items at a value below the reserve price.

The assets mentioned herein above are proposed to be sold on a 'going concern' basis. Accordingly, all the assets are being sold along with the transfer of all employees and workmen, as well as transfer of licenses, to the extent permissible under the Applicable Law. Post the transfer, the Successful Bidder shall be entitled to transfer/apply for transfer of all the licenses, approvals, concessions, and benefits as may be applicable to the Company. Any liabilities, current or long term, contingent or not, whether due or otherwise, post liquidation commencement date and all current employees related liabilities including Provident Fund, ESI and other retirement benefits shall be to the account of the Successful Bidder including any liabilities accruing post auction date. Cognizance should be taken of the fact that the liquidator does not give any assurance or warranty of the physical condition of assets and their suitability for any sort of operation that the Bidder envisages.

Further, the bidders can increase their Bid by a minimum incremental amount as mentioned in the last column of the above table.

9. EARNEST MONEY DEPOSIT

9.1 All Auction Process Applicants shall provide, along with or prior to the submission of their Auction bids, a sum of INR **4,33,16,595 (Indian Rupees Four Crores Thirty Three Lakhs Sixteen Thousand Five Hundred and Ninety Five Only)** as a non interest bearing Earnest Money Deposit, in favour of “**SHIRPUR POWER PRIVATE LIMITED IN LIQUIDATION**”, to be received in the Designated Bank Account, in one of the following forms:

- i. Bank Guarantee issued by any scheduled commercial bank in India (“**Bank**”) in favour of the Guarantee Beneficiary being the Shirpur Power Private Limited- In Liquidation, which shall be in accordance with **Format A (Earnest Money Deposit – Bank Guarantee)** of this Process Memorandum; or
- ii. Direct deposit by way of the real time gross settlement system into the Designated Bank Account maintained by Shirpur Power Private Limited - In Liquidation, the details of which are provided below; or
- iii. Demand Draft issued by any scheduled commercial bank in India in favour of SHIRPUR POWER PRIVATE LIMITED IN LIQUIDATION (“**Earnest Money Deposit**”)

9.2 The Bidder may request the Liquidator to permit the Bidder to submit the Earnest Money Deposit through its Associate Company. Such payment of the Earnest Money Deposit by an Associate Company of the Bidder shall be accompanied by a letter in the format as set out in **Format B (Earnest Money Deposit by an Associate Company)**. Such Associate Company must also be an Eligible Bidder as per the requirements specified in this Process Memorandum. Provided that, the Liquidator reserves the right to accept such a request at its sole discretion and upon such terms and conditions as it deems fit, including requiring such party to submit any authorization documents or other necessary details / documents.

9.3 The details of the Designated Bank Account are as under:

| | |
|-------------------------|---|
| Account Number | 40083874190 |
| Beneficiary Name | Shirpur Power Private Limited in Liquidation |
| Bank Name | State Bank of India |
| Branch | Dalamal House, Nariman Point |
| IFSC Code | SBIN0006945 |

9.4 The details of any remittances in this regard shall be submitted by the Bidder. The Bidder(s) shall remit the entire Earnest Money Deposit amount from a single bank account that belongs to the Bidder.

9.5 Bidders shall preserve the remittance challan and shall produce the same in front of the Liquidator as and when demanded. All payment made by the Bidder under the e-Auction shall be intimated to the Liquidator at liquidator.sppl@decoderesolvency.com with relevant proof and supporting documents.

9.6 After paying the EMD, the Bidder will have to get itself registered with the e-auction platform to get access to participate in the auction process. The cost associated with such registration shall be borne by the Bidder.

10. INVOCATION OF BANK GUARANTEE / FORFEITURE OF EARNEST MONEY DEPOSIT

The Liquidator shall have the right to invoke the bank guarantee / forfeit the Earnest Money Deposit by issuance of a written demand to the Bank in the circumstances set out in the Bank Guarantee.

The Earnest Money Deposit furnished can be forfeited at any time, upon the occurrence of any of the following events:

- a) if any of the conditions under this Process Memorandum are breached by the Bidder or in case the Bidder is found to have made any misrepresentation; or
- b) if the Bidder is found to be ineligible to submit the bid under Section 29 A of the Code (as amended from time to time) or is found to have made a false or misleading declaration of eligibility under Section 29 A of the Code (as amended from time to time); or
- c) if the Bidder is identified as the Successful bidder and it fails to extend the validity of the Earnest Money Deposit through the bank guarantee; or
- d) if the Successful Bidder fails to make the complete payment as per the terms specified in this Process Memorandum.

11. ADJUSTMENT OF EARNEST MONEY DEPOSIT OF THE SUCCESSFUL BIDDER

The Earnest Money Deposit shall be set-off against or used as part of the consideration that the Successful Bidder proposes to offer.

In case the Auction fails due to unforeseen circumstances and not due to any fault of an eligible bidder, then the Earnest Money Deposit paid by such eligible Bidder shall be returned (without interest) to such applicant within 15 (fifteen) days of the date of closure of Auction process.

For successful bidders, a mail confirmation will be given by the Liquidator for being successful bidder on or before **July 14, 2021**.

However, if a Bidder, who submits the bid and participates in E-Auction, but fails to give the highest bid for the asset in the E-Auction and does not emerge to be a Successful Bidder, then the Earnest Money Deposit paid by the bidder shall be returned (without interest) within fifteen (15) days of the date of closure of Auction process.

12. TRANSACTION DOCUMENTS

Within a period of fifteen (15) days from the receipt of the total sale consideration and other applicable charges by the Successful Bidder, the Liquidator will execute a sale certificate and / or conveyance document and / or transfer documents for the relevant asset / assets with the Successful Bidder.

Further, the Successful Bidder on the issuance of sale certificate would be solely responsible for the security of said assets and other expenses/charges related to such assets. Therefore, subsequent to the issuance of the sale certificate, the Successful Bidder would be required to take delivery of such assets and collect them from the site of the Corporate Debtor at the earliest and without any undue delay and in compliance with the process mentioned below under Clause 13 (Handover of Material).

13. PERFORMANCE GUARANTEE

The Successful Bidder shall execute and deposit a Performance Guarantee, equivalent to 20% of the final bid price as per the eAuction successful bid within 15 (fifteen) days of his announcement as

Successful Bidder. This Performance Guarantee shall be valid for a period of 180 (One Hundred Eighty) days ("**PG Validity Period**"). The Performance Guarantee shall be re-issued or extended by another 90 (ninety) days if any portion of the Sale Consideration remains to be paid at the end of 180 days. Such re-issuance or extension shall increase the PG Validity Period accordingly. The performance guarantee shall be issued in favour "SHIRPUR POWER PRIVATE LIMITED IN LIQUIDATION", to be received in the Designated Bank Account, in one of the following forms:

Bank Guarantee issued by any scheduled commercial bank in India ("Bank") in favour of the Guarantee Beneficiary being the Shirpur Power Private Limited- In Liquidation, which shall be in accordance with Format D (Performance Guarantee – Bank Guarantee) of this Process Memorandum; or

- I. Direct deposit by way of the real time gross settlement system into the Designated Bank Account maintained by Shirpur Power Private Limited- In Liquidation, the details of which are provided in Clause 9; or
- II. Demand Draft issued by any scheduled commercial bank in India in favour of SHIRPUR POWER PRIVATE LIMITED ("**Performance Guarantee**")

The non-submission of the Performance Guarantee by the Successful Bidder, shall result in the Liquidator cancelling the sale and forfeiting the EMD, unless otherwise determined by the Liquidator at his sole discretion and to the extent permissible under applicable law.

The Guarantee Beneficiary shall have the right to invoke the Performance Guarantee for a period of 30 (thirty) days from the last date of the PG Validity Period and, the Performance Guarantee can be invoked at any time, if, any of the conditions under this Process Memorandum are not met and/or breached.

14. PAYMENT OF BALANCE SALE CONSIDERATION

The Balance Sale Consideration shall be the remaining amounts due from the Successful Bid Amount after factoring the EMD, the Performance Guarantee and all applicable taxes. The Balance Sale Consideration shall be demanded by the Liquidator from the Auction Process Applicant at the same time as his declaration as the Successful Bidder. The Balance Sale Consideration shall be payable within thirty (30) days of the date of such demand. Any payments made after thirty (30) days from the date of such demand shall attract interest at the rate of 12%. Further, the sale shall stand cancelled if the payment is not received within ninety (90) days of such demand and the EMD and Performance Guarantee shall be forfeited/invoked as the case may be in accordance with the terms of the Process Memorandum.

15. DEFAULT BY SUCCESSFUL BIDDER AND IT'S CONSEQUENCES

In the event that the Successful Bidder withdraws his Auction application, the Guarantee Beneficiary shall have the right to invoke / encash the Performance Guarantee as well as the Earnest Money Deposit furnished by the Successful Bidder. The amount received pursuant to the invocation / encashment of the Performance Guarantee and the Earnest Money Deposit, shall be kept in Shirpur Power Private Limited – in Liquidation account. If the Successful Bidder does not furnish the Performance Guarantee within the timelines stipulated, the Guarantee Beneficiary shall have the right to invoke the Earnest Money Deposit submitted by the Successful Bidder as well as reject the bid submitted by it.

16. HANDOVER OF MATERIAL

All necessary arrangements with respect to the dismantling / loading / unloading / of erected & fabricated / movement / shifting / of plant & machinery (ies) or any asset of the Company post the e-Auction process should be taken care solely by the Successful Bidder. On submission of performance guarantee, the successful bidder may request the liquidator to deploy its manpower and equipment to dismantle/ de-fabricate/ cut/ gather/ arrange or perform any such activity that seems deemed fit for material movement inside the premise of the Corporate Debtor. **However, handover of the assets shall commence only after the full sale consideration is received by the liquidator from the successful bidder.**

The Successful Bidder shall inform about the arrangement which he / she has to move the assets from the plant by writing an email to liquidator.sppl@decoderesolvency.com. While handing over the assets following steps shall be followed:

- I. The Successful Bidder shall inform the start date and the tentative period required of taking possession of the assets.
- II. The Successful Bidder shall provide details of personnel, agencies and other information along with identification documents to verify that entry is granted to the authorized personnel.
- III. The liquidator shall issue the Dispatch Report and Tax Invoice to the Successful Bidder after the completion of the above-mentioned steps.

17. DECLARATION OF SUCCESSFUL BIDDER

The declaration of the Successful Bidder for the asset block shall be done by the Liquidator on **July 14, 2021**. Determination of the Successful Bidder shall be done on the basis of highest bid received for the asset block by the Liquidator via the Auction portal process. In case of any dispute / discrepancy, the liquidator shall assess the Auction applications and declare the Successful Bidder (s) offering maximum value for the Auctioned assets. This right of selecting and declaring the Successful Bidder(s) shall solely rest with the Liquidator at all times.

18. FRAUDULENT AND CORRUPT PRACTICES

The Auction Process Applicant shall observe the highest standard of ethics during the Auction process and subsequently during the closure of the Auction process and declaration of Successful Bidder. Notwithstanding anything to the contrary, contained in this Process Memorandum, the Liquidator shall reject an Auction bid without being liable in any manner whatsoever to the Auction Process Applicant, if the Liquidator, at his discretion, determines that the Auction Process Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the 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 or such amendment thereto. In such an event, the Guarantee Beneficiary may invoke the Earnest Money Deposit or Performance Guarantee, without prejudice to any other right or remedy that may be available to the Liquidator / Guarantee Beneficiary under this Process Memorandum or Applicable Law.

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

“coercive practice” shall mean impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Auction process;

“corrupt practice” shall mean(i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the 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 there of, at anytime 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 anytime 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;

“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;

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

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

The Bidder shall not involve himself or any of his representatives in price manipulation of any kind directly or indirectly by communicating with other Bidders.

The Bidder shall not divulge either his bid or any other details provided to him by the Liquidator or during the due diligence process in respect of the asset to any other party. Prior to conduct of due diligence / site visits, the Liquidator may require the Bidder to execute confidentiality agreement with the Company / Liquidator.

19. COSTS, EXPENSES AND TAX IMPLICATIONS

The Auction Process Applicant shall be responsible for all the costs incurred by it on account of its participation in the Auction Process, including any costs associated with participation in the discussion Meeting (if any), Site Visit, etc. The Liquidator shall not be responsible in any way for such costs, regardless of the conduct or outcome of the Auction Process.

For purpose of abundant clarity, it is hereby clarified that the Auction Process Applicant is expected to make its own arrangements including accommodation for the discussion Meeting (if organized) or Site Visit and all costs and expenses incurred in that relation shall be borne by the Auction Process Applicant.

All necessary arrangements with respect to the dismantling / loading / unloading / of erected & fabricated / movement / shifting / of plant & machinery (ies) or any asset of the Company post the e-Auction process should be taken care of solely by the Successful Bidder. The Liquidator shall not

be held responsible / liable under any circumstances to pay any expenses towards such movement of plant & machinery (ies) or any asset of the Company.

The Auction Process Applicant shall not be titled to receive re-imburement of any expenses which may have been incurred carrying out of due diligence, search of title to the assets and matters incidental thereto or for any purpose in connection with the Auction process plan.

All taxes applicable (including stamp duty implications and registration charges) on sale of assets would be solely borne by the Successful Bidder, which inter alia includes but not limited to the following:

- i. The sale attracts stamp duty, registration charges etc. as per relevant laws;
- ii. The Successful Bidder shall bear all the necessary expenses like applicable stamp duties / additional duty / transfer charges, fees, etc. for transfer of property (ies) in his / her name;
- iii. The payment of all statutory / non-statutory dues, taxes, rates, assessments, charges, fees, etc. owed by SPPL / Company to anybody in respect of the Property (ies) shall be sole responsibility of Successful Bidders;
- iv. Successful Bidder has to bear the cess or other applicable tax, i.e., Excise, VAT, GST, TDS, etc.
- v. The successful bidder will also be responsible for evaluating completeness of applicability of taxes in India at the time of closure, and will be responsible for paying all such taxes

It is expressly stated that the Liquidator does not take or assume any responsibility for any dues, statutory or otherwise, of the Company, including such dues, if any, which may affect transfer of the assets/ Company in the name of the Successful Bidder and such dues, if any, will have to be borne / paid by the Successful Bidder.

The Auction Process Applicant shall be responsible for fully satisfying the requirements of the Code and related Regulations as well as all Applicable Laws that relevant for the sale 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 for purchasing the relevant assets.

20. GOVERNING LAW AND JURISDICTION

This Process Memorandum, 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 the Adjudicating Authority, courts and tribunals at Ahmedabad, India.

21. PROCESS FLOW & TIMELINE

The following timetable shall apply to the process memorandum. The timetable may be amended by the Liquidator through issuance of an addendum to the process memorandum.

| Sr. No. | Event | Timeline (days) |
|----------------|---|------------------------|
| 1. | Public Announcement of Auction | June 29, 2021 |
| 2. | Opening of Auction Portal and this Process Memorandum would be made available on the websites as per Terms and Conditions | June 29, 2021 |

| | | |
|-----|---|---|
| 3. | Submission of Bid Forms, , KYC Declaration and other applicable forms | June 29, 2021 to July 13, 2021 |
| 4. | For Interested Bidders requesting for Site Visit: Submission of KYC Declaration and Declaration Forms as per the "Point 5 of Terms and Conditions of the e-Auction" | June 29, 2021 to July 13, 2021 |
| 5. | Preliminary Due Diligence by Bidders with Site Visits and Request for Preliminary Information | June 29, 2021 to July 13, 2021 |
| 6. | Discussion Meeting (Only for eligible bidders' post submission of the bid forms and declaration forms as per point 3) | Commencing after submission of documents requested in Point. 3 until July 13, 2021 |
| 7. | Deadline for EMD submission | July 13, 2021 |
| 8. | Auction Date: Bidding on E-Auction Portal | July 14, 2021 at 11:00 AM to 4.00 PM |
| 9. | Announcement of Successful Bidder and demand for payment of full sale consideration | On or before July 14, 2021 |
| 10. | Deposit of Performance Guarantee (As per Clause 13) | On or before July 29, 2021 |
| 11. | Refund of Earnest Money Deposit to unsuccessful bidders (As per Clause 11) | On or before July 29, 2021 |
| 12. | Payment of balance sale consideration by successful bidder | Within sixty (60) days from date of demand as mentioned in Item 8 above |
| 13. | Executing sale documents | Within fifteen (15) days from receipt of balance sale consideration as per Item 12 above |

Note: The timeline for payment of balance sale consideration may be extended at the sole discretion of Liquidator, to the extent permissible under the applicable laws and regulations.

FORMAT A
EARNEST MONEY DEPOSIT – BANK GUARANTEE

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

To,
Dushyant Dave
Liquidator
Shirpur Power Private Limited- In Liquidation

WHEREAS

- A. [Insert name of the Bidder] incorporated in [India] / [insert name of country where guarantor is incorporated] under the [Companies Act, [1956 / 2013]] / [insert name of legislation under which the entity is incorporated] with corporate identity number [●], whose registered office is at [insert address] ("**Bidder**") is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR _____ in accordance with the terms of the process memorandum dated _____, 20__ ("**Process Memorandum**") issued by the Liquidator seeking submission of bids for assets of Shirpur Power Private Limited– In Liquidation.
- B. This bank guarantee is required to be issued in favour of the Beneficiary, 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 Bidder do here by undertake to pay to the Beneficiary at Ahmedabad an amount not exceeding INR _____ to secure the obligations of the Bidder under the Process Memorandum on demand from the Beneficiary on terms and conditions herein contained.
1. Now therefore, the Bank hereby issues in favour of the Beneficiary this irrevocable and unconditional payment bank guarantee ("**Guarantee**") on behalf of the [Insert name of the Bidder] for an amount.
 2. The Bank for the purpose here of unconditionally and irrevocably undertakes to pay to the Beneficiary without any demur, reservation, caveat, protestor recourse, immediately on receipt of first written demand made by the Beneficiary, a sum not exceeding the aggregate amount of INR _____.
 3. 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 Beneficiary, by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.
 4. The Bank hereby expressly agrees that the demand made on it under this Guarantee shall be conclusive evidence of that such payment is due and the Bank shall not require any proof in addition to the written demand from Beneficiary, made in any format, raised at the above mentioned address of the Bank, in order to make the said

payment to the Beneficiary.

5. The Bank shall make payment hereunder notwithstanding any objection by [Insert name of the Bidder] and / or any other person or any dispute(s) raised by the [insert name of the Bidder] in any suit or proceeding pending before any court or tribunal relating thereto and the Bank's liability under this present being absolute and unequivocal. The Bank shall not require the Beneficiary to justify the invocation of this Guarantee, nor shall the Bank have any recourse against the procurer(s) in respect of any payment made hereunder.
6. This Guarantee shall be interpreted in accordance with the laws of India and the courts and tribunals at Ahmedabad shall have exclusive jurisdiction. The Bank represents that this Guarantee has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Bank in the manner provided herein.
7. This Guarantee shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Bank.
8. This Guarantee shall be a primary obligation of the Bank and accordingly the Beneficiary shall not be obliged before enforcing this Guarantee to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder or to exercise, levy or enforce any distress, diligence or other process against the Bidder. The Bank waives any such right to that extent.
9. The Bank further unconditionally agrees with the Beneficiary that the Beneficiary shall be at liberty, without Bank's consent and without affecting in any manner the Bank's obligations under this Guarantee, from time to time:
 - (i) Vary and / or modify any of the terms of the Process Memorandum;
 - (ii) Extend and / or postpone the time of performance of the obligations of the Bidder under the Process Memorandum; or
 - (iii) For bear or enforce any rights exercisable by the Beneficiary against the 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 Beneficiary or any indulgence by the Beneficiary to the Bidder or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under the Guarantee.

10. The Bank here by agrees and acknowledges that the Beneficiary shall have a right to invoke this Guarantee either in part or in full, as it may deem fit.
11. Our liability under this Guarantee is restricted to INR _____ and it shall remain in force until [Insert Earnest Money Deposit Validity Date], with an additional

claim period of 30 (thirty) days thereafter.

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

In witness where of the Bank, through its authorized officer, has set its hand and stamp on this day of at

Witness:

1.

Signature

Name and Address.

2.

Designation with Bank Stamp

Name and Address

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

For:

..... [Insert Name of the Bank]

Banker's Stamp and Full Address:

Dated thisday of.....20.....

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

FORMAT B
EARNEST MONEY DEPOSIT BY AN ASSOCIATE
COMPANY

(On the letterhead of an Associate Company)

Date:

To,
Dushyant Dave Liquidator
Shirpur Power Private Limited– In Liquidation
1101 Dalamal Towers, Nariman Point
Mumbai - 400021 INDIA

[Copy to:]
[Insert name of the Bidder with address]

Dear Sir,

Sub: Payment of the amounts of Earnest Money Deposit on behalf of the Bidder in relation to the Auction of assets of Shirpur Power Private Limited– In Liquidation.

In light of the bid for assets of Shirpur Power Private Limited– In Liquidation submitted by [Insert name of the Bidder with address] in accordance with and subject to the provisions of the process memorandum dated ____, 20__ in relation to the captioned transaction ("**Process Memorandum**"), issued by the Liquidator, [Insert name and address of the Associate Company and address of the head office] hereby declares and confirms it is [an / the] [Insert relationship of the Associate Company with the Bidder] of the Bidder ("**Associate Company**"), and the payment of the Earnest Money Deposit amount vide [Insert mode of payment] ("**Payment**") is on behalf of the Bidder. The Associate Company acknowledges that such amounts paid as Earnest Money Deposit shall be subject to the terms of the Process Memorandum and hereby waives any right to claim any refund or adjustment of the amounts of such Payment in accordance with the terms of the Process Memorandum.

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

Capitalised terms used but not defined in this letter shall have the meanings ascribed to such terms in the Process Memorandum.

Thank you.
Yours sincerely,

.....

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

ACKNOWLEDGMENT

We here by acknowledge and confirm the statements set out above by the Associate Company.
Yours sincerely,

.....

[Signature and name of the Authorised Officer of the Bidder] Rubberstamp / seal of the Bidder

FORMAT C
AFFIDAVIT AND UNDERTAKING BY BIDDER

Date:

To,
Dushyant Dave Liquidator
Shirpur Power Private Limited– In Liquidation
1101 Dalamal Towers, Nariman Point
Mumbai - 400021 INDIA

Sub: Disclosure and Undertaking on eligibility under Section 35 read with section 29 A of the Insolvency and Bankruptcy Code, 2016.

Dear Sir,

- A. I hereby submit this declaration under Section 35 read with Section 29 A of the Insolvency and Bankruptcy Code, 2016 (“Code”) as inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018 and any amendments made thereafter:

I have understood the provisions of section 29 A of the Code. I confirm that neither [Insert name of the Bidder] nor any person acting jointly with [Insert name of the Bidder] or any person who is a promoter or in the management or control of____[Insert name of the Bidder] or any person acting jointly with_____ [Insert name of the Bidder]:

- a. is an undischarged insolvent;
- b. is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);
- c. at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor
- 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:
- e. is disqualified to act as a director under the Companies Act, 2013 (18 of 2013):
- f. is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- g. has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code
- h. has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under 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).

I therefore, confirm that_____ [Insert name of the Bidder] is eligible under Section 29 A of the Insolvency and Bankruptcy Code, 2016, to submit it’s Bid for Shirpur Power Private Limited- In Liquidation.

- B. I undertake on behalf of _____ [Insert name of the Bidder], that during the Liquidation Process, no person who would be considered as Connected Person and is not eligible to submit a bid under section 29 A of Insolvency and Bankruptcy Code, 2016 shall be engaged in the management and control of corporate debtor.
- C. I declare and undertake that in case _____ [Insert name of the Bidder] becomes ineligible at any stage during the Liquidation Process, it would inform the Liquidator forthwith on becoming ineligible.
- D. I also undertake that in case _____ [Insert name of the Bidder] becomes ineligible at any time after submission of the Earnest Money Deposit, then the Earnest Money Deposit would be forfeited and the same would be deposited in the account of Shirpur Power Private Limited- In Liquidation.
- E. I also further undertake that my winning bid Amount will remain binding unless rejected by the Liquidator.
- F. I confirm that the said declaration and disclosure is true and correct.
- G. I am duly authorised to submit this declaration by virtue of my KYC Documents/ Board Resolution

(DEPONENT)

VERIFICATION

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

(DEPONENT)

FORMAT D
PERFORMANCE GUARANTEE – BANK
GUARANTEE

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

To,
Dushyant Dave
Liquidator
Shirpur Power Private Limited- In Liquidation

WHEREAS

- A. [Insert name of the Bidder] incorporated in [India] / [insert name of country where guarantor is incorporated] under the [Companies Act, [1956 / 2013]] / [insert name of legislation under which the entity is incorporated] with corporate identity number [●], whose registered office is at [insert address] ("**Bidder**") is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR _____, subsequent to declaring him as Successful Bidder in accordance with the terms of the process memorandum dated _____. 20__ ("**Process Memorandum**") issued by the Liquidator.
- B. This bank guarantee is required to be issued in favour of the Beneficiary, 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 Bidder do hereby undertake to pay to the Beneficiary at Ahmedabad an amount not exceeding INR _____ to secure the obligations of the Bidder under the Process Memorandum on demand from the Beneficiary on terms and conditions herein contained.
1. Now therefore, the Bank hereby issues in favour of the Beneficiary this irrevocable and unconditional payment bank guarantee ("**Guarantee**") on behalf of the [Insert name of the Bidder] for an amount.
 2. The Bank for the purpose here of unconditionally and irrevocably undertakes to pay to the Beneficiary without any demur, reservation, caveat, protestor recourse, immediately on receipt of first written demand made by the Beneficiary, a sum not exceeding the aggregate amount of INR _____.
 3. This Guarantee shall be valid and binding on the Bank up to and including [Insert date of validity of the Performance Guarantee] and shall in no event be terminable by notice or any change in the constitution of the Bank or the Beneficiary, by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.
 4. The Bank hereby expressly agrees that the demand made on it under this Guarantee shall be conclusive evidence of that such payment is due and the Bank shall not

require any proof in addition to the written demand from Beneficiary, made in any format, raised at the above mentioned address of the Bank, in order to make the said payment to the Beneficiary.

5. The Bank shall make payment hereunder notwithstanding any objection by [Insert name of the Bidder] and / or any other person or any dispute(s) raised by the [insert name of the Bidder] in any suit or proceeding pending before any court or tribunal relating thereto and the Bank's liability under this present being absolute and unequivocal. The Bank shall not require the Beneficiary to justify the invocation of this Guarantee, nor shall the Bank have any recourse against the procurer(s) in respect of any payment made hereunder.
6. This Guarantee shall be interpreted in accordance with the laws of India and the courts and tribunals at Ahmedabad shall have exclusive jurisdiction. The Bank represents that this Guarantee has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Bank in the manner provided herein.
7. This Guarantee shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Bank.
8. This Guarantee shall be a primary obligation of the Bank and accordingly the Beneficiary shall not be obliged before enforcing this Guarantee to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder or to exercise, levy or enforce any distress, diligence or other process against the Bidder. The Bank waives any such right to that extent.
9. The Bank further unconditionally agrees with the Beneficiary that the Beneficiary shall be at liberty, without Bank's consent and without affecting in any manner the Bank's obligations under this Guarantee, from time to time:
 - (i) Vary and / or modify any of the terms of the Process Memorandum;
 - (ii) Extend and / or postpone the time of performance of the obligations of the Bidder under the Process Memorandum; or
 - (iii) For bear or enforce any rights exercisable by the Beneficiary against the 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 Beneficiary or any indulgence by the Beneficiary to the Bidder or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under the Guarantee.

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

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

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

In witness where of the Bank, through its authorized officer, has set its hand and stamp on this day of at

Witness:

1.

Signature

Name and Address:

2.

Designation with Bank Stamp

Name and Address

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

For:

..... [Insert Name of the Bank]

Banker's Stamp and Full Address:

Dated thisday of.....20....

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

Format E

CONFIDENTIALITY AND NON - DISCLOSURE AGREEMENT

[To be executed on stamp paper of Rs. 200 by the Applicant. Please insert the notice details and the Applicant's name and description in the array of parties before execution.]

This **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** (hereinafter referred as "**Agreement**") is made on this [] day of , 2021 (hereinafter referred as "**Effective Date**")

Amongst

Shirpur Power Private Limited, a company incorporated under the provisions of the Companies Act, 1956, and an existing company under the Companies Act, 2013, and having its registered office at 903, Shilp Building, Opp. Navrangpura Telephone Exchange, Ahmedabad, Gujarat- 380009, currently under liquidation process in terms of the applicable provisions of the Insolvency and Bankruptcy Code, 2016 acting through **Mr. Dushyant Dave, the Liquidator** appointed for the Company under the order of the National Company Law Tribunal, Ahmedabad Bench dated March 10, 2021 (hereinafter referred to as "**Corporate Debtor**", 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

[Insert name of Prospective Applicant], [a company incorporated under the Companies Act, 1956 and existing under Companies Act, 2013/ a company to be incorporated under Companies Act, 2013/ a body corporate or corporation] [**Note to Applicant: Please retain/insert appropriate description**] having its registered office at _____ (hereinafter referred to as the "**Applicant**", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors), of the **SECOND PART**

(Corporate Debtor shall hereinafter be referred to as the "**Disclosing Party**", Corporate Debtor and the Applicant shall hereinafter individually be referred to as "**Party**" and collectively as the "**Parties**").

WHEREAS:

CORPORATE DEBTOR has proposed to construct and operate a 300 MW (2x150 MW) Solid Fuel based Thermal Power Plant at Nardana, in the District of Dhule, Maharashtra. Pursuant to the order dated March 10, 2021 ("**Order**") of the Hon'ble National Company Law Tribunal, Ahmedabad bench ("**NCLT**"), CORPORATE DEBTOR is placed into liquidation process under the Insolvency and Bankruptcy Code, 2016 ("**Code**"). Pursuant to the said Order, Mr. Dushyant Dave, an insolvency professional (bearing IP Registration number IBBI/IPA-003/IP-N00061/2017-2018/10502) has been appointed as the Liquidator in respect of the Company. In accordance with section 23 (2) read with section 17(1)(b) of the Code, the powers of the board of directors of CORPORATE DEBTOR are vested with the Liquidator.

The Liquidator has prepared an information memorandum in relation to CORPORATE DEBTOR detailing the list of assets and liabilities and other relevant information in respect of CORPORATE DEBTOR

(“Information Memorandum”) The Applicant has submitted its expression of interest for participating in the sale process for CORPORATE DEBTOR.

To enable the Applicant to bid for acquisition of the CORPORATE DEBTOR, the Corporate Debtor 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 Applicant, including such information as is specified in the Information Memorandum.

The Applicant 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, CORPORATE DEBTOR and the Applicant 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 Disclosing Party (including by any officers, and/or advisors including, without limitation, duly authorized attorneys, accountants, legal advisors and financial advisors of a 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, the Company 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, analyses, 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.

1.2 “Disclosing Party” shall have the meaning scribed to it in the Title clause above..

1.3 “Receiving Party” shall mean the Applicant, receiving confidential information from the Disclosing Party or from any person acting on behalf of the Disclosing Party.

In relation to the Receiving Party, its “**Representative**” shall means 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; (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.

2. USE OF CONFIDENTIAL INFORMATION

2.1 **The Confidential Information** divulged by (or on behalf of) 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; (ii) in accordance with applicable law; and (iii) as required under the Insolvency and Bankruptcy Code, 2016. 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 or 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 insider trading 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 its Representatives 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 acknowledges that it is aware and that its Representatives have been advised that applicable securities laws prohibit any person having unpublished price sensitive information about a company from dealing with the securities of that company and the Receiving Party agrees to abide by and cause its Representatives to abide by the terms of such securities laws, including without limitation, the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 as may be replaced, amended or supplemented from time to time and other applicable laws in relation to insider trading and the acquisition of securities and shall indemnify and hold the Disclosing Party and its Representatives, officers, directors, employees, agents and affiliates harmless against any consequences arising from any such violation by the Receiving Party, its Representatives or their affiliates.

2.5 The Receiving Party understands and acknowledges that pursuant to the order of the Ahmedabad bench of the NCLT dated March 10, 2021, the NCLT had ordered liquidation of the Company and appointed the Liquidator. None of the Disclosing Party or 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 the Company. Further, none of the Disclosing Party or 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.

- 2.6 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.
- 2.7 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.
- 2.8 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 the Company.
- 2.9 If the Receiving Party decides to not 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.
- 2.10 **The** Receiving Party shall not publish any news release or make any announcements or denial or confirmation in any medium concerning this Agreement in any manner nor advertise or publish the same in any medium; and
- 2.11 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.
- 2.12 **The** Receiving Party shall protect any intellectual property of CORPORATE DEBTOR which it may have access to which is provided or made available to by the Disclosing Party.
- 2.13 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 Section 29(2) of the Code and the rules and regulations prescribed thereunder.

3. EXCEPTIONS

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

- a. at the time of its disclosure, is in 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
- b. was known to the receiving Party, as evidenced by written 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 of confidentiality to the Disclosing Party or any other party with respect to such information; and
- c. 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

4.1 It is agreed that without the prior written 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 or negotiations are taking place concerning a possible Transaction between the Parties, or (c) any terms, conditions or other facts with respect to any such possible Transaction, including the status thereof.

4.2 The Parties agree that unless and until a definitive agreement(s) regarding a Transaction between the Parties has been executed, neither Party will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement except for the matters specifically agreed to herein. The Parties further acknowledge and agree that each Party reserves the right, in its sole discretion, to reject any and all proposals made by the other Party or any of its Representatives with regard to a Transaction between the Parties and to terminate discussions and negotiations at any time.

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 CORPORATE DEBTOR as authorized by 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 set forth below:

Notice Details for CORPORATE DEBTOR :

Mr. Dushyant Dave Liquidator

Shirpur Power Private Limited– In Liquidation
1101 Dalamal Towers, Nariman Point
Mumbai - 400021 INDIA
liquidator.sppl@decoderesolvency.com

Notice Details for Applicant:

[to be inserted by the Applicant]

6. COMPELLED DISCLOSURE

6.1 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 opinion of the counsel of the Receiving 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 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

7.1 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

8.1 Within fifteen (15) days of completion of the Transaction, or upon termination of the negotiations in relation to 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 termination of this Agreement.

9. INJUNCTIVE RELIEF

9.1 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 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

This Agreement shall remain valid and binding on the Parties until 24 months from the Effective Date of this Agreement or such earlier date as may be mutually agreed by Parties in writing. Upon expiry of this Agreement, the confidentiality obligations of the Parties herein shall cease, provided that payment obligations if any that may arise under this Agreement (including under the indemnity Clause 10 above) shall survive the termination of this Agreement.

13. GOVERNING LAW

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

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 of Ahmedabad.

The Parties agree that Clause 13 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

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 understandings, 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.

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

If any term or 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.

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.

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.

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.

IN WITNESS WHEREOF, this Agreement has been executed by, CORPORATE DEBTOR and the Applicant on the date mentioned hereinabove as follows:

Signed and Delivered

**For CORPORATE DEBTOR,
the Liquidator**

Signed and Delivered

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 comply with the requirements of the Code.
- (4) We and our Representatives will protect the intellectual property rights of the Company in relation all Confidential Information.
- (5) We acknowledge that we are aware that applicable securities laws prohibit any person having unpublished price sensitive information about a company from dealing with the securities of that company and we agree to abide by and cause our Representatives to abide by the terms of such securities laws, including without limitation, the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.
- (6) 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.
- (7) We and our Representatives will comply with all the terms and conditions of the Agreement.

By:

Name:

Title:

Company:

**Annexure 1
BID APPLICATION FORM**

Date:

To
Dushyant Dave
Liquidator
Shirpur Power Private Limited- In Liquidation

Dear Sir,

I am desirous in participating in the E-Auction announced by you in the newspaper publication dated _____, 20__.

Details of the Corporate Debtor

| | |
|------------------|--|
| Account Number | 40083874190 |
| Beneficiary Name | Shirpur Power Private Limited in Liquidation |
| Bank Name | State Bank of India |
| Branch | Dalamal House, Nariman Point |
| IFSC Code | SBIN0006945 |

Details of Bidder / Bid Price Offered

| | |
|------------------------|--|
| Name of the Bidder | |
| Constitution of Bidder | |
| Contact No. | |
| Email ID | |
| PAN No. | |
| Address | |
| Bank Account No. | |
| Beneficiary Name | |
| Bank Name | |
| IFSC Code | |
| Branch | |

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

Date:
Place:

Signature
(Seal in case of Company / Firm)

Annexure 2
Bid Declaration Form

Date:

To
Dushyant Dave
Liquidator
Shirpur Power Private Limited- In Liquidation

Sir,

1. I / We, the Bidder(s) aforesaid do hereby state that, I / We have read the entire terms and conditions for the sale of property (ies) 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 and the deposit towards purchase-price have been made by me / us as against my / our bid and that the particulars of remittance and all other information given by me / us are true and correct.
3. I / We further understand and agree that if any of the statement / information revealed by me / us is found to be incorrect and / or untrue, the bid submitted by me / us is liable to be cancelled and in such case, the Earnest Money Deposit and / or any monies paid by me / us is liable to be forfeited by the Seller ("Liquidator") and the Seller will be at liberty to annul the offer made to me / us at any point of time.
4. I / We also agree that after my / our offer given in my / our bid for purchase of property (ies) is accepted by the Seller and if, I / We, fail to accept or act upon the terms and conditions of the sale or am / are not able to complete the transaction within the time limit specified for any reason whatsoever and / or fail to fulfill any / all the terms and conditions of the Auction and offer letter, the Earnest Money Deposit and other monies paid by me/us along with the online form and thereafter, are liable to be forfeited. The timeline for payment of final sale consideration may be extended by sole discretion of the Liquidator, to the extent permissible under the applicable laws and regulations. In case final sale consideration is not paid within timeline, the liquidator shall forfeit Earnest Money Deposit and / or Performance Guarantee.
5. I / We understand that the Earnest Money Deposit of all Bidders shall be retained by the Liquidator and returned only after the successful conclusion of the sale of property(ies). 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 the property (ies) 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; or (iii) any authorization or approval of any government agency or body; 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. The decision taken by the Liquidator with respect to the selection of the Successful Bidder and communicated to us shall be binding on me / us.
8. 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 property (ies) being offered for sale.
9. I / We confirm that the Seller and his employees, 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.
10. I / We hereby confirm that I / we are eligible to purchase the assets of the Company under Section 29 A of the Insolvency and Bankruptcy Code, 2016.

(Signature)

Name:

Address:

Email Id:

Mobile:

Annexure 3

(On the letter head of the Interested bidder)

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

WHEREAS pursuant to the E- Auction Sale Notice dated [●] ("EOI"), and subsequent to the E -Auction Process Memorandum dated [●] ("EAPM"), issued by the Liquidator on behalf of Shirpur Power Private Limited (in liquidation) in relation to the acquisition of the Company as a going concern, the Company intends to participate 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 E Auction Process Memorandum, including the following:

- a. participating in the auction process and submit and sign other requisite documents, in accordance with the terms of the Process Memorandum dated _____
- b. execute all other agreements, deeds, writings 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 For the Company

Director(s) / Company Secretary

Notes:

- a. The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
- b. In case of the Board resolution is from a company incorporated outside India, the same shall be duly notarized in the jurisdiction of incorporation of the company.
- c. 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, reference to Companies Act 2013 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such 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.
- d. 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 4
Terms and Conditions of the e-Auction are as under:

In addition to the Process Memorandum, following terms and condition apply:

1. e-Auction is being held on **“AS IS WHERE IS”, “AS IS WHAT IS” and “WHATEVER THERE IS BASIS WITHOUT RECOURSE”** and will be conducted “Online”. The Auction will be conducted through the approved service provider via the web portal [e-Auctions | MSTC Limited \(mstcindia.co.in\)](http://e-Auctions | MSTC Limited (mstcindia.co.in)). (“Auction Portal”).
2. The Complete Process Memorandum containing E-Auction bid form, Declaration by bidders, General terms and conditions of online Auction sales are available on the **Website (SPPL - Home (shirpurpower.com))** as well as on the **Auction Portal**. Interested bidders can register, bid and receive confirmation of their bid online. Interested bidders also further agree to adhere to the Auction Portal’s Terms of Use.
3. The Bidders should make their own Independent inquiries regarding the encumbrances, title of assets put on Auction and claims / rights / dues / affecting the assets, and should conduct their own due diligence prior to submitting their bid. The e-Auction advertisement does not constitute and will not be deemed to constitute any commitment or any representation of the Liquidator. The asset is being sold with all the existing and future encumbrances / claims / dues / demands whether known or unknown to the Liquidator. Liquidator shall not be responsible in any of way for any third party claims / rights / dues.
4. The Bidders should submit the evidence for Earnest Money Deposit like UTR number along with the Request Letter for participation in E-Auction and the following self-attested documents on or before the due date as indicated in this Process Memorandum:
 - i. Proof of identification (KYC) viz. Voter ID card / Driving License / Passport etc.;
 - ii. Current Address- Proof for communication;
 - iii. PAN card of Bidder;
 - iv. Valid e-mail ID;
 - v. Contact number (Mobile / Landline) of the bidder;
 - vi. Notarized Affidavit and Undertaking as per Format C;
 - vii. Board Resolution, in case of Company and Address Proof;
 - viii. Bid Application Form as per Annexure 1;
 - ix. Declaration by Bidder as per Annexure 2;
 - x. Format C: Affidavit and Undertaking by Bidder;
 - xi. Format E: Confidentiality and Non - Disclosure Agreement;
 - xii. Format A / Format B/ Format D: As applicable;
 - xiii. Latest Audited Financial Statement / Income Tax Return, as the case may be;
 - xiv. Composition and Ownership Structure.
5. Further to Clause 6, the Interested Bidders, willing to visit the site before submitting the Bid Application would need to submit the following Documents:
 - i. Proof of identification (KYC) viz. Voter ID card / Driving License / Passport etc.
 - ii. Current Address- Proof for communication
 - iii. PAN card of Bidder
 - iv. Valid e-mail ID
 - v. contact number (Mobile / Landline) of the bidder
 - vi. Affidavit and Undertaking as per Format C

- vii. Board Resolution, in case of Company and Address Proof
 - viii. Format E: Confidentiality and Non - Disclosure Agreement
6. Scanned copies of the original of these documents can also be submitted to e-mail ID of Liquidator.
 7. Name of Eligible Bidders will be identified and conveyed by Liquidator to participate in online e-Auction after due verification of KYC of the Eligible Bidders.
 8. It should be the responsibility of the interested bidders to inspect and satisfy themselves about the property before submission of the bid.
 9. Liquidator has right to demand documents from bidder for the process and in case the documents are not provided, the liquidator may disqualify the bid.
 10. After paying the EMD, the Bidder will have to get itself registered with the e-auction platform to get access to participate in the auction process. The cost associated with such registration shall be borne by the Bidder.
 11. The Bidder may improve their offer in multiple of amount mentioned under the column "Bid Increment Amount" against each property. In case bid is placed in the last 5 minutes of the closing time of the e-Auction, the closing time will automatically get extended for 5 minutes.
 12. The Earnest Money Deposit of the successful bidder shall be retained towards part sale consideration and the Earnest Money Deposit of unsuccessful bidders shall be refunded within 30 working days. The Earnest Money Deposit shall not bear any interest. Default in deposit of amount by the successful bidder would entail forfeiture of the whole money, already deposited and property shall be put to re-Auction and the defaulting bidder shall have no claim / right in respect of property / amount.
 13. The purchaser / successful bidder shall bear the applicable stamp duties / additional stamp duty/ transfer charges, fee, Taxes, GST, VAT, TDS, Excise, etc. and also all the statutory / non statutory dues, taxes, rates assessment charges fees, etc. owing to anybody.
 14. 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 property or portion thereof from the Auction proceedings at any stage without assigning any reason thereof.
 15. The sale certificate will be issued and / or transaction / sale documents executed in the name of purchaser(s) / applicant(s) / successful bidder only and will not be issued in any other name(s).
 16. The sale shall be subject to conditions prescribed under the Insolvency & Bankruptcy Code, 2016 and provisions and regulations thereunder and other applicable laws and regulations.
 17. The decision of Liquidator on declaration of successful bidder shall be final and binding on all the Bidders.
 18. Technical Terms and Conditions:

- i. The Bidder shall be solely responsible for all consequences arising out of the bid submitted by him (including any wrongful bidding) and no complaint / representation will be entertained in this regard by the Auction Portal or the Liquidator. Hence, Bidders are cautioned to be careful to check the bid amount and alter / rectify their bid if required before confirming the bid submitted.
- ii. 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. Bidders are advised to change the password immediately on receipt thereof.
- iii. All the aforementioned documents are required to be uploaded on the portal and the original physical copies thereof shall be provided by the Successful Bidder to the Liquidator in accordance with the guidelines and timelines in the Process Memorandum.
- iv. All bids placed are legally valid bids and are to be considered as bids from the Bidder himself. Once the bid is placed, the Bidder cannot reduce or withdraw the bid for whatever reason.

Sincerely,

Dushyant Dave

Liquidator

For and on behalf of Shirpur Power Private Limited- In Liquidation
(IP Registration No: IBBI/IPA-003/IP-N00061/2017-2018/10502)

Registered Address: 1101 Dalamal Towers, Nariman Point, Mumbai – 400021, INDIA

Registered Email: dushyant.dave@decoderesolvency.com

Correspondence Email: liquidator.sppl@decoderesolvency.com

Date: June 29, 2021

Place: Mumbai