

**E-AUCTION PROCESS INFORMATION DOCUMENT**  
**M/S MAHAKAL AGRO STORAGE AND PROCESSING UNIT PRIVATE LIMITED**

Invitation for Bids for E-Auction Process for Sale of Mahakal Agro Storage and Processing Unit Private Limited –In Liquidation (Company/ Corporate Debtor) as a Going Concern Basis under the provisions of the Insolvency and Bankruptcy Code, 2016 (“Code”) vide Order of the National Company Law Tribunal, Kolkata Bench (“NCLT”) dated 7<sup>th</sup> August, 2023.

Date and Time of E-Auction: 7<sup>th</sup> November, 2023 at 01.00 pm to 3.00 p.m

Issued by

**Mr. Rakesh Kumar Agarwal**

**Liquidator of Mahakal Agro Storage and Processing Unit Private Limited**

A company under liquidation process passed by an order of Hon’ble National Company Law Tribunal (NCLT) dated 7<sup>th</sup> August, 2023 under the provisions of Insolvency and Bankruptcy Code, 2016

IBBI Reg. No: Regn. IBBI/IPA-001/IP-P00443/2017-18/10786

Address: 20 N.S Road, Block-A, 1stFloor, Room No.-15 Kolkata-700001

Email: [mahakal.cirp@gmail.com](mailto:mahakal.cirp@gmail.com)

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*This e-auction process memorandum is issued to all the interested bidders by the Liquidator for and on behalf of Mahakal Agro Storage and Processing Unit Private Limited (in Liquidation). The document to be read together containing all the contents as mentioned in the Index attached herewith together with disclaimer, all the terms and conditions, forms, annexure and other contents of this process memorandum, sale notice and newspaper publication.*

*Mr. Rakesh Kumar Agarwal has been granted a certificate of registration to act as an Insolvency Resolution Professional by the Insolvency and Bankruptcy Board of India, bearing Registration No: IBBI/IPA-001/IP-P00443/2017-18/10786. The affairs, business and property of Mahakal Agro Storage and Processing Unit Private Limited are being managed by the Liquidator, Mr. Rakesh Kumar Agarwal, who is acting as such and without personal liability of whatsoever nature, pursuant to his appointment by Hon’ble NCLT, Kolkata vide its order dated 7<sup>th</sup> August, 2023 to discharge functions and exercise powers as a liquidator pursuant to the powers and duties under section 34 and 35 and other relevant provisions of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

**Notes:**

- a) This E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern) will be conducted in accordance with the Schedule I under Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- b) This E-Auction Process Information Document is issued only for the Interested Bidders for participating the liquidation process of the Corporate Debtor.
- c) Terms and Conditions, procedure and deadlines etc. for participating in the proposed E-Auction are provided in the "E-Auction Process Information Document".
- d) The timelines, notifications, updates and other details for the E-Auction Process can be sought by emailing on [mahakal.cirp@gmail.com](mailto:mahakal.cirp@gmail.com) or may be downloaded from the website of service provider i.e. <https://right2vote.in/eauction/>.
- e) Bidders desirous to submit their Bid have to submit their bids on E-auction Portal <https://right2vote.in/eauction/> after deposit of Refundable Participation Deposit, submission of required documents and Earnest Money Deposit.
- f) The term "Sale of the Company or Corporate Debtor on going concern basis" wherever used in this document shall mean, Sale of the Company on Going Concern basis in accordance with the provisions of IBC, Liquidation Process Regulations and this E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern).
- g) The entire process shall be subject to extant the Code, Regulations and approval of the Adjudicating Authority.

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**DISCLAIMER**

1. This Document is personal and specific to each E- Auction Participant/ Bidder.
2. This “E-Auction Process Information Document” (Sale of Corporate Debtor as Going Concern) is issued by Mr. Rakesh Kumar Agarwal, Liquidator of Mahakal Agro Storage and Processing Unit 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.
3. The purpose of this E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern) is to lay out the process for submitting the Bid by the prospective Bidders through E- Auction for participating in the process of Sale of Company on going concern basis in accordance with the provisions of E- Auction Process Information Document, IBC and Liquidation Process Regulations. Neither this E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern and sale of Asset on Standalone Basis) 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 E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern and sale of other asset) does not solicit any action based on the material contained herein.
4. This Document is not a statutory document and it has not been approved or registered with any regulatory or statutory authority of Government of India or any State Government. Nothing contained herein or in materials relating to this document is intended to be construed as legal, financial, accounting, regulatory or tax advice by the Liquidator.
5. Neither this Document 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 Document does not solicit any action based on the material contained herein.
6. The information in this Document, is collected from many sources and has not been independently verified by the Liquidator.
7. While the information in this document 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 Document or any other written or oral information made available to any interested party or its advisers and any such liability is expressly disclaimed.
8. In so far as the information contained in this Document includes current or historical information, the accuracy, adequacy, authenticity, correctness, fairness, and completeness of such information is not guaranteed by the Liquidator. By acceptance of this Document,

the E-Auction Participant(s) shall be deemed to have acknowledged that it has not relied upon any representation and warranty made by the Liquidator.

9. This document has not been filed, registered, reviewed or approved or recommended by any statutory or regulatory authority in India or by any stock exchange in India or by SEBI or any other jurisdiction.
10. Neither the Liquidator, nor his process/professional advisor, legal associates, affiliates, directors, employees, agents, representatives or managers or managers of the process shall be liable for any damages, whether direct or indirect, express or implied, incidental, special or consequential including loss of revenue or profits that may arise from or in connection with the use of this Document, including for the E-Auction Participant(s)/ Bidder not being selected as Successful Bidder(s) or on account of any decision taken by the Liquidator.
11. This Document and information contained herein or disclosed pursuant to the terms of this Document 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 Document in certain foreign jurisdictions may be restricted by law, and Persons into whose possession this Document comes should inform themselves about, and observe, any such restrictions.
12. The Liquidator and/or the Corporate Debtor give no undertaking to provide the recipient with access to any additional information or to update this Document 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 e-auction applicant.
13. The issue of this Document shall not be deemed to be any form of commitment on the part of the Liquidator or the Corporate Debtor to proceed with any transaction(s). It is to be noted that no information being provided in this E-Auction Process Information Document, claims to be comprehensive; independent due diligence of the intended users of this document or the bidders is highly recommended.
14. In addition to the provisions set out in this Document, the E-Auction applicant(s) shall be responsible for fully satisfying the requirements of Insolvency and Bankruptcy Code, 2016 and applicable Regulations and notifications as well as the related laws, and all laws in force that are or may be applicable to the applicant or the sale process and for obtaining requisite regulatory or other approvals, if any, that are or may be required under applicable law and nothing contained in this Document shall be deemed to relieve, wholly or partially, directly or indirectly, the auction applicant from compliance with the IBC and related Regulations as well as any other law for the time being in force, and/ or any instrument having the force

of law as may be applicable and nothing in this Document shall be construed as, or operate either, wholly or in part, as exempting the E- Auction Applicant(s) from complying with all such laws, as are or may be applicable.

15. By procuring a copy of this Document, the recipient accepts the terms of this disclaimer notice, which forms an integral part of this Document and all other terms and conditions of this Document. Further, no Person, including the E-Auction Participant(s) 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 Document or otherwise, including the accuracy, adequacy, authenticity, correctness, completeness or reliability of the information or opinions contained in this Document and any assessment, assumption, statement or information contained therein or deemed to form part of this Document, and the Liquidator, 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.
16. In no circumstances shall the E-Auction Participant(s) 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.
17. This E-Auction Process Information Document is neither an agreement nor an offer by the Liquidator to the Prospective Bidders or any other person. The objective of this E- Auction Process Information Document is to provide interested parties with information that may be useful to them in making their bids. It may be noted that the assumptions, assessments, statements and information contained in the E-Auction Process Information Document may not be complete, accurate, adequate or correct. Each Bidder, is therefore, advised to conduct its own due-diligence, investigations and analysis and should also check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this E-Auction Process Information Document and may get independent advice from appropriate sources.
18. The Bidders are prohibited from giving or offering any gift, bribe or inducement and any attempt to any such act on behalf of the Bidder towards the Liquidator, or any of his respective professional advisors, affiliates, or Representatives for showing any favour in relation to this document or the process set out herein, shall render the bidder to such liability and penalty\_as the Liquidator may deem proper, including but not limited to immediate disqualification and exclusion from the process contemplated hereunder.
19. The sale of the Company is proposed to be done **on "as is where is basis", "as is what is basis", "whatever there is basis" and "without recourse basis"** and the proposed sale of the Company on going concern basis does not entail transfer of any other title, except the

title which the Company had on its assets as on the 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.

***It is to be noted that by procuring a copy of this "E-Auction Process Information Document" (Sale of Corporate Debtor as a Going Concern), the recipient accepts the terms of this Disclaimer, which forms an integral part of this E- Auction Process Information Document.***

## **1. INFORMATION MUST BE READ BEFORE BIDDING**

- 1.1 This Document has been issued for the purpose of carrying out electronic auction (“EAuction”) of seeking bid for sale/ transfer of the assets of the corporate debtor, under IBC and Liquidation Process Regulations.
- 1.2 All information provided in this document should be read together with the provisions of the IBC and the Liquidation Process Regulations. In the event of a conflict between this document and IBC or Liquidation Process Regulations, the provisions of the IBC or the IBBI (Liquidation Process) Regulations, as the case may be, shall prevail.
- 1.3 The information contained in this document or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Liquidator, is provided based on the terms and conditions set out in this document.
- 1.4 This document is neither an agreement nor an offer by the Liquidator to the prospective Bidder(s) or any other person. The purpose of this document is to provide interested parties with information that may be useful to them in making their bids pursuant to issue of this document. The assumptions, assessments, statements and information contained in this document may not be complete, accurate, adequate or correct. Each Bidder(s) should conduct their own due diligence, analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained herein.
- 1.5 The information provided in this document to the Bidder(s) 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 herein.
- 1.6 The Liquidator, makes no representation or warranty and shall have no liability to any person, including any Bidder(s) 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 document or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the document and any assessment, assumption, statement or information contained therein or deemed to form part of this document or arising in any way from participation in the E-Auction process.
- 1.7 The Liquidator accepts no liability of any nature howsoever caused arising from reliance of any Bidder(s) upon the statements contained in this document.

- 1.8 The Liquidator may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this document.
- 1.9 The issue of this document does not imply that the Liquidator is bound to select a Bidder(s) as Successful Bidder(s) for the bid to acquire corporate debtor as a going concern and the Liquidator reserves the right to reject all or any of the Bidder(s) or bids without assigning any reason, whatsoever.
- 1.10 Each Bidder(s) 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 **Right2Vote InfoTech Pvt Ltd**, B406, Hill Side, Raheja Vihar, Chandivali, Mumbai – 400072 has been appointed as the E-Auction Service Provider. The process of sale corporate debtor as a going concern 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:

<b>Particulars</b>	<b>Description</b>
Type of Bid	E-Auction (Online Only)
Seller	<b>Mahakal Agro Storage and Processing Unit Private Limited (In Liquidation)</b> represented by the Liquidator Mr. Rakesh Kumar Agarwal.
E-Auction Service Provider	Right2Vote InfoTech Pvt Ltd
Website of E-Auction Service Provider	<a href="https://right2vote.in/login/">https://right2vote.in/login/</a>
Annexures and Formats	<b>Annexure I</b> – Expression of Interest; <b>Annexure II</b> - Format for Affidavit and Undertaking confirming eligibility under Section 29 A and Proviso to Section 35(1)(f) of IBC, 2016; <b>Annexure III</b> – Bid Application Form (to be filled in and signed and stamped by the Bidder(s)); <b>Annexure IV</b> – Declaration by the Bidder(s) (duly filled in and signed and stamped by the Bidder(s));

	<b>Annexure V</b> – Technical Terms and Conditions of E-Auction Sale; <b>Annexure VI</b> - Confidentiality Undertaking; <b>Annexure VII</b> - Board Resolution; <b>Annexure VIII</b> – Letter of Intent for sale of CD as Going Concern;
Special Instructions	Please note that this bidding is a serious matter and last minute bidding may lead to unnecessary lapses. Neither the E-Auction Service Provider nor the Liquidator will be responsible for any lapses on part of the Bidder(s) for any delay, network issue, punching the bid or any other nature of lapse etc.

All terms and conditions with respect to the bid for sale of the corporate debtor as a going concern shall be governed by the directions of the Liquidator, in accordance with the provisions of applicable laws & regulations and directions of Hon'ble NCLT/ NCLAT/Any other appropriate Authority. As mandated under the Act, Rules and Regulations, the Liquidator shall exercise all rights with respect to Sale of the Corporate Debtor as Going Concern and it would be open to the Liquidator to appoint such experts, professionals or other persons, as the Liquidator might think necessary, so as to enable the sale of assets/ Properties.

- 1.12 The Annexures to this Document shall form an integral part hereof and this Document shall always be read in conjunction with the Annexures hereto.
- 1.13 In case of any error or ambiguity in the process document or sale notice, it should be immediately brought to the notice of Liquidator by interested participant. In all such cases, decision of the Liquidator shall be final and binding on all parties.
- 1.14 Any process memorandum issued by the Liquidator in terms of any previous sale notice shall not be considered a process document for determining the terms and conditions for e-auction proposed to be conducted through this process document.
- 1.15 The Eligible Bidder shall get the access to Data Room for Inspection of Information and/ or Documents in relation to the Corporate Debtor.
- 1.16 This Document is neither transferable nor assignable.

## **2. DEFINITIONS**

- a. **“Adjudicating Authority”** will mean the Hon’ble National Company Law Tribunal, Kolkata Bench/ Hon’ble NCLT.
- b. **“Affidavit and Undertaking”** shall mean the affidavit and undertaking provided by the Bidder substantially in form and manner as annexed hereto;
- c. **“Applicable Laws”** shall mean all applicable laws, regulations, rules, guidelines, circulars, re-enactments, revisions, applications and adaptations thereto, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority, rules, regulations, orders and interpretations of any governmental authority, court or statutory or other body applicable for such transactions including but not limited to the IBBI, (Liquidation Process) Regulations, Companies Act, 1956 / 2013 (as applicable), Competition Act, 2002, Transfer of Properties Act, 1882, Sale of Goods Act, 1930, Foreign Exchange Management Act, 1999, whether in effect as of the date of this E Auction Process Information Document or thereafter and each as amended from time to time;
- d. **“Assets”** shall mean the assets of the Corporate Debtor or assets of the corporate debtor as specified in this E-Auction Process Information Document;
- e. **“Bid”** shall mean, any bid submitted by the Bidder(s) as required in terms of this E-Auction Process Information Document and in accordance with the provisions of IBC read together with the Liquidation Process Regulations and the Applicable Laws;
- f. **“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 direct or cause direction of the management and policies of another company, whether by operation of law or by contract or otherwise;
- g. **“CIRP”** shall mean Corporate Insolvency Resolution Process as per the Insolvency and Bankruptcy Code, 2016;
- h. **“Consideration Payment Date”** shall mean the date on which Balance Consideration along with Interest as per the applicable regulation, if any shall be deposited by the Successful Bidder(s) into the Liquidation Account, which shall be within 90 (Ninety) days from the issuance of the LoI (s) to the Successful Bidder(s);
- i. **“MASPUPL” or “The Company” or “Corporate Debtor”** shall mean M/s Mahakal Agro Storage and Processing Unit Private Limited –In Liquidation acting through the Liquidator.

- j. **E-Auction Process"/" E-Auction"** shall mean the electronic auction process for sale of the Corporate Debtor as going concern, conducted in accordance with the provisions of IBC, Liquidation Process Regulations, Applicable Law(s) and this E- Auction Process Information Document inviting Bid from the Bidders for consummating the sale of Company on Going Concern basis in accordance with the provisions of IBC and Liquidation Process Regulations.
- k. **"E-Auction Process Information Document" or "Document"** shall mean this document including all the appendices hereto, 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 IBC, provisions of the Liquidation Process Regulations and shall include all supplements, modifications, amendments, alterations or clarifications thereto issued in accordance with the terms hereof;
- l. **"E-Auction Participant(s)" or "Bidder(s)"** shall mean, Person or Persons who submitted a bid as per the E-Auction Process Information Document; and shall include a Qualified Bidder(s) or Eligible Bidder(s) or the Successful Bidder(s), as the case may be, and as the context requires;
- m. **"Earnest Money Deposit"** It is to be provided by the eligible bidder who will bid in the auction as mentioned in the E-Auction Notice as well as process Documents.
- n. **"Eligible Bidder(s)"** shall mean Participant who are eligible in terms of this E-Auction Process Information Document, provisions of IBC and provisions of the Liquidation Process Regulations and deposited the Refundable Participation Deposit as specified;
- o. **"EOI" or "Expression of Interest"** shall mean an intimation from the Bidder(s) to the Liquidator specifying their interest to be a part of the E-Auction process and provided by the Bidder substantially in form and manner as annexed hereto;
- p. **"Final Consideration"** shall mean the entire consideration proposed by a Successful Bidder(s) in the course of the E-Auction, and required to be paid by the Successful Bidder(s) on Consideration Payment Date to acquire the Corporate Debtor as a whole on a Going Concern Basis;
- q. **"IBC"** shall mean Insolvency and Bankruptcy Code, 2016 and the related rules and regulations issued thereunder, as amended from time to time;
- r. **"Liquidation Process Regulations"** shall mean, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 as amended from time to time;
- s. **"Liquidator"** shall mean an Insolvency Professional appointed as a Liquidator of the Company in accordance with section 34 of the IBC;

- t. **“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;
- u. **“Public Advertisement”** shall mean an announcement in newspaper(s) 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 IBC and Liquidation Process Regulations;
- v. **“Qualified Bidder(s)”** shall mean an Eligible Bidder(s) who furnishes Earnest Money Deposit and also the submit the Bid Documents as listed in the E-Auction Process Information Document;
- w. **“Refundable Participation Deposit”** This is the deposit which is refundable and need to be given by the bidders as per E-Auction Process Information Documents along with other documents whereby the eligibility will be seen;
- x. **“Representatives”** shall include partners, directors, officers, employees, affiliates, agents, consultants, advisors or such other representatives of the relevant Person expressly authorized by such Person pursuant to corporate authorizations, powers of attorney, or contract;
- y. **“Reserve Price”** shall mean the price arrived at for the Corporate Debtor for sell on Going Concern basis, pursuant to the provisions of the Liquidation Process Regulations and consultation with Stakeholder Consultation Committee;
- z. **“Seller”** shall mean M/s Mahakal Agro Storage and Processing Unit Private Limited –In Liquidation acting through the Liquidator;
- aa. **“Successful Bidder(s)” or “Successful E-Auction Participant(s)”** means, the Qualified Bidder(s) whose bid is/are approved and who is/are declared successful by the Liquidator after the e-auction;
- bb. **“Taxes”** means any taxes including any stamp duty, interest tax, excise duties, customs duties, value added tax, sales tax, local taxes, charges, cess, income tax, TDS, TCS, GST, CST, entry tax, octroi and any impost or surcharge of like nature (whether central, state or local) charged, levied or imposed by any governmental authority, as per the requirements of Applicable Laws;
- cc. **“Transfer”** includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;

dd. **“Transfer of Property”** means transfer of any property and includes a transfer of any interest in the property and creation of any charge upon such property or assignment of receivables, actionable claims or assets under litigation;

Capitalized terms used herein but not defined otherwise shall have meaning assigned to them under the provisions of the IBC and the rules and regulations framed thereunder.

### **3. INTRODUCTION**

- 3.1** The company was admitted under CIRP process by Hon'ble NCLT, Kolkata on 25<sup>th</sup> May, 2022 pursuant to the application CP(IB) No. 1285/KB/2019 filed by Indian Overseas Bank u/s 7 of the Insolvency and Bankruptcy Code, 2016. Mr. Anil Anchalia having registration number IBBI/IPA-001/IP-P00049/2017-2018/10123 has been appointed as the Interim Resolution Professional (IRP) in the matter. Thereafter in the first CoC meeting held on 23.06.2022, Mr. Anil Anchalia, IRP has been appointed as Resolution Professional (RP).
- 3.2** As per the opinion of the CoC, the Resolution Plans received during CIRP for the Corporate Debtor were far below the Liquidation Value and also the Resolution Applicants have no prior experience of running a cold storage. Hence, after overall assessment and considering the feasibility and viability, none of the Resolution Plan was approved by the CoC. In the 8<sup>th</sup> meeting of Committee of Creditors held on 01.02.2023, the Committee of Creditors has rejected both the Resolution plans with 100% voting rights and has decided to proceed with the Liquidation proceedings of the Corporate Debtor. Pursuant to above, Resolution Professional filed application under the provisions of Section 33 of the IBC, 2016 before Hon'ble NCLT, Kolkata seeking order of commencement of liquidation of the Corporate Debtor. Hon'ble NCLT, Kolkata Bench, vides its order dated 7<sup>th</sup> August, 2023 passed the order for liquidation of the Corporate Debtor and appointed Mr. Mr Rakesh Kumar Agarwal. as Liquidator.
- 3.3** Further, the CoC during the CIRP process, recommended the Sale of the Corporate Debtor as Going Concern under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations.
- 3.4** It is endeavor of the Liquidator to conduct the sale of the Corporate Debtor as Going Concern basis, as mentioned in the process documents, comprising the Liquidation Estate of the Corporate Debtor in the manner specified under Regulation 32 (e), 32A, 33 and Schedule I (provided under Regulation 33) of the IBBI (Liquidation Process) Regulations 2016 and other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be, and as per directions, if any, of the Hon'ble NCLT/ NCLAT in respect of the liquidation process of the Company and in the manner specified in this E-Auction Process Information Document.
- 3.5** The E-Auction Participant(s) are encouraged to make themselves acquainted with the provisions of the IBC and the Liquidation Process Regulations and any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be.

- 3.6** The E-Auction service provider will provide User ID & Password to the qualified bidders after due verification of requisite documents submitted by the Interested Bidders as stated herein to the satisfaction of the Liquidator.
- 3.7** The E-Auction / bidding would be conducted on the scheduled date & time as mentioned above by way of inter-se bidding amongst the Qualified Bidders. A Qualified Bidder may improve its offer in multiple of amount mentioned under the column "Bid Incremental Value". In case a bid is placed within the last 5 minutes of the closing time of the E-Auction, the closing time will be automatically extended for 5 minutes.

#### **4. THE CORPORATE DEBTOR AND ITS ASSETS OVERVIEW**

Mahakal Agro Storage and Processing Unit Private Limited (“MASPUPL”) is a Company incorporated on 04.04.2007, registered with Registrar of Companies – Kolkata and having registered office at 121, Netaji Subhas Road, 4th Floor, Room No. 40, Kolkata -700001, West Bengal. Mr. Manas Sarkar and Ms. Jayashree Sarkar are the directors of the Company. The Company is in the business of running a Cold Storage Unit at Bhandari Para, Jharmajhgram, P.O. Kranti, Block & P.S. – Malbazar, District: Jalpaiguri – 735218, West Bengal.

**a. Cold Storage Unit at Jharmajhgram, Bhandari Para, P.O. Kranti, Dist- Jalpaiguri, Pin- 735218 and the security interest of which lies with Indian Overseas Bank:**

**i. LAND- 5.31 acres (approx.)**

- All that piece and parcel of land measuring total 3.20 acres (2.10 acres + 1.10 acres) situated within Pargana Changmari, Mouza- Kranti, P.S.- Mai, ADSR- Maynaguri, Dist: Jalpaiguri, appertaining to R.S. Khatian No. 5/7, 5/2 & 5/4, L.R. Khatian No.180 & 518 in sheet no. 02, comprising in part of R.S. Plot No. 620, L.R. Plot No. 948/2911 being deed No. 1392 together with the construction thereon and also the insulation work, other fixtures & fittings embedded or forming part of the land & building and hypothecation of all existing & future plant & machinery acquired and installed;
- All that piece and parcel of raiyati land ad-measuring 0.70 acres of land, situated within parganas Changmari, Mouza- Kranti, P.S.- Mai, ADSR- Maynaguri, Dist: Jalpaiguri, appertaining to R.S. Khatian No. 13/3, L.R. Khatian No. 592, Sheet No. 02, R.S. Plot No. 636/1739, R.S. Plot No. 636/1740 and R.S. Plot No. 636/1741, L.R.Plot No. 984, L.R. Plot No. 985 and L.R. Plot No. 986 being deed No. 1882;
- All that piece and parcel of Raiyati land ad-measuring about 0.35 acres of land, situated within Parganas- Changmari, Mouza- Kranti, P.S. Mai, ADSR- Maynaguri, District: Jalpaiguri, appertaining to R.S.Khatian No. 13/1, R.S.Khatian No. 13/2, R.S.Khatian No. 13/3, R.S. Khatian No. 13/4, R.S.Khatian No. 13/5, R.S.Khatian no. 13/6, L.R.Khatian No. 766 and L.R.Khatian No. 516, Sheet No. 02, R.S.Plot No. 636/1739, R.S.Plot No. 636/1740, R.S.Plot No. 636/1741, L.R.Plot No. 984, L.R.Plot No. 985 and L.R.Plot No. 986 being deed No. 1884;
- All that piece and parcel of Raiyati land ad-measuring about 0.35 acres of land, situated within Parganas- Changmari, Mouza- Kranti, P.S. Mai, ADSR- Maynaguri, District: Jalpaiguri, appertaining to R.S.Khatian No. 13/1, R.S.Khatian No. 13/2, R.S.Khatian No.13/3, R.S. Khatian No. 13/4, R.S.Khatian No. 13/5, R.S.Khatian no. 13/6, L.R.Khatian no. 941 and L.R.Khatian No. 134, L.R.Khatian No. 512, L.R.Khatian No.766, Sheet No.02, R.S.Plot No.636/1739, R.S.Plot No. 636/1740, R.S.Plot No.

636/1741, L.R.Plot No. 984, L.R.Plot No. 985 and L.R.Plot No. 986 being deed No. 1885;

- All that piece and parcel of land measuring 0.71 acres of land, situated within Parganas- Changmari, Mouza- Kranti, P.S. Mai, ADSR- Maynaguri, District: Jalpaiguri, appertaining to R.S.Khatian No. 13/5, L.R.Khatian no. 134, Sheet no. 02, R.S.Plot No. 636/1739, area 0.18 acres, R.S.Plot no. 636/1740, area 0.23 acres and R.S.Plot No. 636/1741, area 0.30 acres, L.R.Plot no.984, L.R.Plot no. 985, and L.R.Plot No. 986, measuring 0.71 acres of land being deed No. 99;

**ii. BUILDING**

Five Storied RCC Roofed Cold Store, Drying Shed, Electrical Room, Machine Room, Condensor-Room, Toilet Unit, Office Unit, Staff Quarter etc.

**BUILDING & STRUCTURE:**

1.	Type of Construction	R.C.C Framed
2.	No. of Floors	Five Storied
3.	Area	28,841 sq ft. each floor x 5=1,44,205 sq ft
4.	Year of Construction	2010-11

**iii. PLANT & MACHINERY**

Plant & Machinery consist of Ammonia Compressors, Cooling Machineries and Network, Power Equipments, Electrical Installation, D.G.Genset, Weigh Bridge, Lift, etc.

**b. Security Deposit with West Bengal State Electricity Distribution Co. Ltd.**

Security Deposit for supply of electricity held with WBSEDCL: Rs. 12,97,001/-

**c. Key Investment Highlights:**

- A running Potato Cold Storage Unit at Kranti near Jalpaiguri on premise of around 15.93 bighas of freehold land.
- The area of the Cold Storage Building is around 28,500 sq ft. and the drying shed is around 5,600 sq ft.
- The Cold Storage has three chambers. Each Chambers is having size of 14,712 m<sup>3</sup>. It has the capacity to store 3,00,000 bags of potatoes. Two Chambers are presently in working condition.

- The company has power supply connection for the potato cold storage unit with West Bengal State Electricity Distribution Co. Ltd. (WBSEDCL). The company is regular in payment of the electricity dues and there is no outstanding.
- Unique location with no competitive Cold Storage nearby.
- Located on highway and hence easy access.
- Locational Advantage - Nearest Airport: Bagdogra (~ 60 Km), Nearest Railway Station: Jalpaiguri (~ 30 Km), Gorumara National Park (~ 15 km), Nearest Police Stn.: Kranti Outpost (~ 3 Km).

**5. ELIGIBILITY CRITERIA**

- a. Only those Bidder(s) who meet the eligibility criteria specified below may be considered shortlisted by the Liquidator to participate in the E-Auction Process. Bidder(s) which do not meet the said eligibility criteria would be liable to be rejected by the Liquidator, without providing any reason or incurring any liability. The liquidator reserves the right to revise eligibility criteria at any time.
  
- b. Please note that any person submitting a bid under E-Auction Process for sale of Corporate Debtor as a Going Concern shall not be a person ineligible to be a resolution applicant in terms of the IBC including Section 29A and Proviso to Section 35(1) (f) of the Code. An affidavit confirming eligibility to submit a bid for Corporate Debtor shall be submitted along with Refundable Participation Deposit followed by the deposit of Earnest Money Deposit.
  
- c. **Criteria:**
  - Minimum Net Worth of Rs. 50 Lakhs (Rs. Fifty Lakhs only) as per the Audited Financial Statements of the latest Financial Year of the Company/Entity/Individual or Group of Companies/Entities/Individuals.
  - Net worth should be certified by a Chartered Accountant in Practice.
  - Refundable Participation Deposit of Rs 5.00 Lakh (Rs. Five Lakhs only) to be submitted alongwith eligibility documents.
  - Bidder shall not be eligible to submit a Bid in relation to the sale of the assets of the Company if it fails to meet the Eligibility Criteria as set out in Section 29A of the IBC (as amended from time to time)
  - Applicant shall not be an insolvent Company / Individual/ Entity or Group of Companies/Entities/Individuals.
  - Applicant should not have any negative track-record / history, i.e., Applicant should not have defaulted on any resolution plan/liquidation sale under IBC or any other restructuring mechanism should not have been debarred during the CIRP tenure and this includes affiliates;
  - The prospective applicants are prohibited from submitting more than one bid, directly or indirectly.
  - Prior to bidding, the bidder is required to provide the latest Financial Statements, proof of funds to substantiate bid amount and other necessary documents required to assess the above criteria to the Liquidator.
  - Any other criteria as liquidator may deem fit.

**6. DOCUMENTS REQUIRED TO BE SUBMITTED TO ASCERTAIN ELIGIBILITY OF THE BIDDER(S)**

- A.** The E-Auction Applicant(s) or the Bidder(s) would need to submit the following forms, documents, authorizations by the Bidder(s) as per the timeline prescribed in the E-Auction Process Information Document:
- a. Ownership Structure and Composition of the E-Auction Applicant(s) / Bidder(s), Proof of Identification, Current Address Proof, PAN card, Valid Email ID, Landline and Mobile Phone Number, Memorandum and Article of Associations, Certificate of Incorporation in case of company/ LLP, Audited Financial Statement of Three years, ITR Copy of Three Years.
  - b. An Eligible Bidder(s) will need to submit the duly filled, signed and stamped Bid Expression of Interest (EOI) attached vide **“Annexure -I”**.
  - c. Authorization to the Signatory (in case the Bidder(s) is the legal entity); In case the bidder is a company/ Legal Entity, the authorized signatory should be supported by the Resolution of the Board/ Legal Entity as provided in **Annexure- VII**. KYC of the Person authorized/ Signing the documents.
  - d. Affidavit and Undertaking by the E-Auction Applicant(s) (through Authorized Signatory in case the Bidder(s) is the legal entity) along with Refundable Participation Deposit. The format of Affidavit and Undertaking is attached vide **“Annexure- II”** and the format for the Confidentiality Undertaking is attached vide **Annexure VI**.
  - e. An Eligible Bidder(s) will need to submit the duly filled, signed and stamped Bid Application Form attached vide **“Annexure -III”** and duly filled, signed, and stamped Declaration by Bidder(s) attached vide **“Annexure -IV”**.
  - f. Documents evidencing source of funds of the Bidder(s) for making the payments in terms of its Financial Proposal, including:
    - 1. Firm commitment letter from banks/financial institutions; and/or
    - 2. Bankers’ certificate evidencing availability of funds; and/or
    - 3. Independent chartered accountant/statutory auditor certificate certifying quantum of investments held in the form of liquid assets; and/or
    - 4. any other document evidencing the source of funds to the satisfaction of the Liquidator.

The Bidders should note that for the purpose of demonstrating source of funds, no reliance may be placed on the financial strength of any entity that has on an earlier occasion, committed a default or breach in relation to a bid/tender process conducted by banks/financial institutions or under any corporate insolvency resolution process/liquidation process under the IB Code. Any such evidence shall be liable for rejection by the Liquidator

- B.** Upon verification of the eligibility of the Process Applicant(s) and also receipt of Refundable Participation Deposit, the eligible bidder shall be informed to proceed further with due diligence / site visit/ physical verification as per the terms of the E-Auction Process Information Document.
- C.** Please note that only the Eligible Bidders will gain access to Data Room, documentation, additional information required for due diligence. Further, if needed, the site visits for only the eligible bidders may also be coordinated by the Liquidator.
- D.** Interested Applicants can submit the eligibility documents immediately upon receipt of E-Auction Process Information Document.
- E.** Further, it should be noted that at any stage of the E-Auction process, the Liquidator may request the prospective Bidder(s) to submit additional documents to evaluate their eligibility.
- F.** The Supporting Documents should be submitted in a single sealed envelope and via email at the specified address or mail id of the Liquidator on or prior to the Document Submission Date.

## **7. PHYSICAL VERIFICATION AND SITE VISIT**

- Eligible Bidder(s) may request the Liquidator to arrange for physical verification and site visit of the properties of the corporate debtor. Upon receipt of written request from Eligible Bidder(s), the Liquidator may first arrange a discussion meeting at any time prior to the closure of the E-Auction process. The details with respect to the discussion meeting shall be communicated to the Eligible Bidder in advance. The Liquidator reserves the right to not arrange such a discussion meeting for any reason whatsoever, irrespective of the request of the Eligible Bidder.
- The Liquidator may coordinate to facilitate inspection / physical verification and site visit of the Properties and Assets of the corporate debtor preferably from 26.10.2023 to 02.11.2023 between 01:00 PM to 05:00 PM and the expenses / cost for site visit shall be made/ borne by the eligible bidder and Liquidator shall not be responsible for any such costs/ travelling arrangement etc.
- Each Eligible bidder may visit the site along with his team (consisting of reasonable no of persons) with prior intimation to the liquidator with the details of the persons. Ordinarily the visits would be limited to 2 visits within given timeframe. The properties can be inspected by the prospective Bidder(s) at the site with prior appointment contacting the liquidator in advance.
- During the Site Visit, Eligible 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.

## **8. DUE DILIGENCE**

- The Liquidator shall endeavor to provide necessary assistance for conduct of due diligence by eligible bidders by providing available information's/ documents. The information and documents shall be provided by the Liquidator in good faith and in confidential mode.
- The documents shall be open for inspection on the Virtual Data Room or physical as has been arranged by liquidator. Inspection of documents shall be allowed on signing the Confidentiality Agreement and only for the eligible bidders who submit their documents along with the Refundable Deposit and are found eligible as per the criteria mentioned in this document. The Bidder(s) may note that the Liquidator does not guarantee the correctness of any of the information, data or documents shared and shall not be responsible or liable, whatsoever, in any circumstances, in respect of any statements or omissions contained in the shared data.
- The intending bidders, prior to submitting their bid, should make their independent inquiries regarding the title of the property, dues of local taxes, electricity and water charges, development charges, maintenance charges, if any, and other applicable approvals/ renewals etc. and inspect the property at their own expenses and satisfy themselves fully before making the bid.
- For any assistance in carrying out the due diligence, the Liquidator Mr. Rakesh Kumar Agrawal may be contacted at [mahakal.cirp@gmail.com](mailto:mahakal.cirp@gmail.com).
- The Liquidator reserves the right not to respond to any query or provide any clarification, at their sole discretion, and no extension of time and date referred to in this E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern) shall be granted on the basis of not having received response to clarifications sought from the Liquidator. Nothing in this Clause shall be considered or read as compelling or requiring the Liquidator to respond to any query or to provide any clarification to the queries raised by a bidder. The Liquidator will not be held responsible for any delay in response or non-response to clarifications raised by the Bidder

## **9. ASSETS TO BE AUCTIONED AND RESERVE PRICE**

The corporate debtor assets details are provided in the Process Documents.

The sale of Corporate Debtor as going concern as proposed to be along with available licenses, permits, approvals and registrations to the extent they are transferable under the applicable law on **“As is where is basis”, “As is what is basis”, “Whatever there is basis” and “Without recourse basis”**. The proposed E-Auction sale of Corporate Debtor as a going concern does not entail transfer of any other title except the title which the Corporate Debtor had on its assets as on date of transfer.

The Liquidator under this E-Auction Process Information Document, proposes sale of Company on going concern basis in accordance with Regulation 32 (e) and Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016 is reproduced herein:

### **32A. Sale as a going concern**

- (1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximize the value of the corporate debtor, he shall endeavor to first sell under the said clauses.*
- (2) For the purpose of sale under sub-regulation (1), the group of assets and liabilities of the corporate debtor, as identified by the committee of creditors under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall be sold as a going concern.*
- (3) Where the committee of creditors has not identified the assets and liabilities under sub-regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidator shall identify and group the assets and liabilities to be sold as a going concern, in consultation with the consultation committee.*
- (4) If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32.*

The procedure for the E-auction Process and the declaration of the Successful Bidder shall be as per the terms of the E-Auction Process Information Document. The liability and obligations of the Successful Bidder shall continue till the receipt of the Whole consideration received.

Further, the CoC recommended the Sale of the Corporate Debtor as Going Concern under sub regulation (2) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations.

<b>Details of Assets</b>	<b>Reserve Price (Rs.)</b>	<b>Initial Earnest Money Deposit (Rs.)</b>	<b>Incremental Value</b>
Sale of Corporate Debtor going concern (Under Regulation 32(e) of IBBI (Liquidation Process) Regulations, 2016 along with all assets including Securities & Financial Assets (Excluding cash/ Bank balance over and above Rs. 73, 828)	6,00,00,000	60,00,000	Rs. 5 Lakhs (Rupees Five Lakhs Only)

All other liabilities pertaining to the Corporate Debtor being sold as going concern shall be settled, paid and extinguished as per Section 53 of IBC, 2016.

On receipt of the entire sale consideration (plus applicable taxes and costs as determined by the Liquidator) i.e. within 90 days from the date of issue of LOI, the Liquidator (in his discretion) shall issue a power of attorney in favour of the Successful Bidder for certain limited purposes such as authorizing the Successful Bidder to facilitate transfer of licenses and permissions, other approvals and works of the Company in its name, etc.

The Liquidator shall not be responsible in any manner for assisting/coordinating/obtaining any transfers/renewals/permissions/approvals whether of any documents/license and permissions/approvals/insurance policies/ either in the name of the Corporate Debtor or the Successful Bidder and the sole responsibility for the same shall vest with the Successful Bidder.

It is clarified that apart from the sale certificate and the power of attorney, the Liquidator shall not be required to execute any other document in favour of the Successful Bidder for carrying out and effectuating the sale as per the E-Auction Process.

The Successful Bidder agrees and acknowledges that it shall be solely responsible for carrying out necessary actions and obtaining necessary approvals in order to effectuate fully the purposes, terms and conditions of the sale of the Company as a going concern to it, including but not limited to, obtaining or renewing any license, consent, certificate,

permit or other authorization, including procuring all necessary approvals from Persons governmental and statutory authorities, if any, as may be required.

**Excluded Assets:**

- Any existing personal guarantees issued by the promoters/ any other group companies of the Corporate Debtor or any other security of third party shall not form part of the liquidation sale as going concern under the E-Auction.
- The Excluded Assets do not form a part of Liquidation Estate of the Company and hence will not be a part of the sale process as per the E-Auction herein contemplated. In the event there are any further Excluded Assets, the Liquidator shall update the same.

**Notes:**

- The Bidder(s) cannot place a bid for the E-Auction at a value below the Reserve Price.
- Order of bidding will be as follows:
  - o Window for E Auction sale will open as mentioned in the documents.
  - o The Bidder(s) can bid for only after the required Earnest Money Deposit (EMD) specified has been deposited.
  - o Further, the Bidders can increase their Bid by a minimum incremental amount as indicated in above table.
- Cognizance should be taken of the fact that the liquidator does not give any assurance or warranty of the physical condition of assets of Assets and their suitability for any sort of operation that the bidder envisages

## **10. MODE OF SALE AND AUCTION PROCESS**

- The liquidator proposes to conduct the sale of Company on a going concern basis as contemplated under Regulation 32(e) of the Liquidation Process Regulations, 2016 through E-Auction Process Information Document.
- The Successful Bidder shall be required to complete the sale of Company on going concern basis in accordance with the provisions of IBC and Liquidation Process Regulations, 2016. The timeline for payment of the balance sale consideration shall commence from the date of issuance of LoI i.e. the balance Consideration shall be paid within 90 days from the issuance of LOI along with Interest as per the applicable regulation.
- It is clarified that from the date of submission of the Bid, the Qualified Bidders shall not be entitled to withdraw, cancel or renegotiate the Bid under any circumstances or for any reason and by participating in this e-auction process, the Qualified Bidders specifically waive any such right to withdraw, cancel or renegotiate the Bid under all applicable law. In the event the Qualified Bidder makes any attempt to withdraw/cancel the Bid, renegotiate or does not complete payment of the sale consideration as per the timelines set out herein, the Refundable Participation Deposit, EMD and any other amounts paid by the Bidder shall be forfeited and the Bidder shall not be entitled to a refund the same.
- **E-Auction Process –**
  - (i) The Bidder/ Participants shall fulfill the eligibility criteria along with proof of Payment of Refundable Participation Deposit.
  - (ii) The Qualified Bidders will deposit earnest money to participate in the e auction process.
  - (iii) Thereafter, the E- Auction will take place as scheduled.
  - (iv) Declaration of the Successful Bidder by the Liquidator.
  - (v) The Liquidator shall issue the LOI to the Successful Bidder which is required to be signed and accepted unconditionally by the Successful Bidder and returned to the Liquidator in 3 (Three) working days duly executed, the terms of which shall be binding on the Successful Bidder.

- (vi) The Successful Bidder shall be required to deposit the balance sale consideration (plus applicable Taxes as determined by the Liquidator) within 90 days from the date of issuance of LOI. In accordance with Paragraph 1(12) of Schedule I of the Liquidation Process Regulations, for payments made after thirty (30) days from the date of issuance of LOI, interest at the rate of 12% p.a. shall be payable on the balance sale consideration for the period after the said 30th day till the date of payment. Further, the LOI issued by the Liquidator shall be cancelled at the Liquidators' discretion if the payment is not received within the timelines specified in the Liquidation Process Regulations and/or this E-auction Process Information Document.
- (vii) Upon the payment of balance sale consideration or any approval, if any, from the Hon'ble NCLT whichever is later, the sale of the Company on a going concern basis shall stand completed and the Liquidator shall execute a certificate of sale or sale deed to consummate the sale transaction as contemplated under this E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern) and the Liquidation Process Regulations.
- It is clarified that any necessary approvals, consents, reliefs that may be required to be obtained by the Successful Bidder with respect to sale of the Company as a going concern as contemplated in this E-Auction Process Information Document have to be obtained by the Successful Bidder without any deviation from the time frame for payment of balance sale consideration as stipulated hereunder. The Liquidator shall not be obligated to relax any obligation of the Successful Bidder due to any failure to obtain such necessary approvals, consents, reliefs that may be required by the Successful Bidder to consummate the transaction within the timelines set out hereunder.
  - The Qualified Bidders, participating in the E-Auction Process, will have to Bid for an amount not less than the Reserve Price for acquiring the assets of the Company. A Qualified Bidder may improve its offer, multiple times during the E-auction process.
  - The access to the details of the assets of the Company will be provided only to Qualified Bidder, subject to submission of the requisite forms, documents and authorizations; Affidavit and Undertaking; executing a Confidentiality Undertaking as stated in the Process Document.

- **E -AUCTION DETAILS**

Given below are the details pertaining to the proposed E-Auction:

- i. E-Auction dates: Date: 7<sup>th</sup> November, 2023 Time- 01.00 pm to 3.00 p.m.
- ii. In case, a bid is placed in the last 5 minutes of the closing time of the respective E-auction, the closing time will automatically get extended for another 5 minutes with unlimited extensions.
- iii. Last date for submission of BID documents along with the EMD, Eligibility Documents along with Refundable Participation Deposit as mentioned in the timelines.
- iv. For any technical support in bidding, please contact Mr. Neeraj Gutgutia at +91-99205 91306, E-mail: [neeraj@right2vote.in](mailto:neeraj@right2vote.in) with intimation to the liquidator.

**11. REFUNDABLE PARTICIPATION DEPOSIT ALONG WITH EOI**

- a. All E-Auction Participant(s)/ bidder(s) along with Expression of Interest (EOI) shall deposit the Refundable Participation Deposit of Rs 5,00,000/- (Rs. Five Lakhs only).
- b. No interest will be paid to the E-Auction Participant(s)/ bidder(s) in relation to the amount deposited by way of Refundable Participation Deposit.
- c. The Refundable Participation Deposit shall be paid by way of RTGS/ NEFT in the Bank account as below:

<b>Name of the Company</b>	Mahakal Agro Storage and Processing Unit Private Limited –In Liquidation
<b>Bank Name</b>	Indian Overseas Bank
<b>Branch Name</b>	Jalpaiguri (0511), West Bengal
<b>IFSC Code</b>	IOBA0000511
<b>Account number</b>	051102000001771

- d. The Refundable Participation Deposit shall be remitted by the Bidder(s) from the bank account owned by the Bidder(s).
- e. The Refundable Participation Deposit, as applicable, shall be refunded only in the account of the bidder from where the money was remitted/ transferred.
- f. Bidder(s) shall preserve the remittance document and shall produce the same in front of the Liquidator as and when demanded.
- g. All payment made by the Bidder(s) under the e-auction shall be intimated to the Liquidator.

## **12. EARNEST MONEY DEPOSIT**

- a. All E-Auction Participant(s)/ bidder(s), along with or prior to the submission of their Bids, shall deposit Interest free Earnest Money Deposit (EMD).

### **b. EARNEST MONEY DEPOSIT (INTEREST FREE)**

- i. No interest will be paid to the E-Auction Participant(s)/ bidder(s) in relation to the amount deposited as Earnest Money.
- ii. The Earnest Money Deposit shall be paid by way of RTGS/ NEFT in the bank account as below by 04.11.2023 till 04:00 PM:

<b>Name of the Company</b>	Mahakal Agro Storage and Processing Unit Private Limited –In Liquidation
<b>Bank Name</b>	Indian Overseas Bank
<b>Branch Name</b>	Jalpaiguri (0511), West Bengal
<b>IFSC Code</b>	IOBA0000511
<b>Account number</b>	051102000001771

- iii. The details of any remittances in this regard shall be entered in the form submitted by the Bidder(s). The entire Earnest Money Deposit amount shall be remitted by the Bidder(s) from one bank account owned by the Bidder(s).
- iv. The refunds of Earnest Money Deposit, as applicable, shall be refunded only in the account of the bidder from where the money was remitted/ transferred.
- v. Bidder(s) shall preserve the remittance document and shall produce the same in front of the Liquidator as and when demanded.
- vi. All payment made by the Bidder(s) under the e-auction shall be intimated to the Liquidator.
- vii. It should be noted that No interest will be paid to the e-auction applicant in relation to such Earnest Money Deposit amount.

### **c. Forfeiture of Refundable Participation Deposit / Earnest Money Deposit**

It is being noted that the Entire Amount paid by the bidder including the Earnest Money Deposit and Refundable Participation Deposit may be forfeited at any time, upon the occurrence of any of the following events:

- If any of the conditions under this Document are breached by the E-Auction Participant(s) or in case the E-Auction Participant(s) is / are found to have made any misrepresentation or fraud; or
  - existence of any collusion between the relevant Bidder, or between the Bidder and the Company's related parties, or any creditors of the Company and the Bidder.
  - If the E-Auction Participant(s) is / are found to be ineligible to submit the bid under Section 29A and or Proviso to Section 35(1) (f) of the IBC (as amended from time to time) or is / are found to have made a false or misleading declaration of eligibility under Section 29A and or Proviso to Section 35(1) (f) of the IBC (as amended from time to time); or
  - If the E-Auction Participant(s) is / are identified as the Successful Bidder(s) and it fails to pay balance sale consideration as per terms of the sale or does not accept the issue of letter of intent; or
  - If the E-Auction Participant(s) withdraws from the bidding process (either before or after allocation of login and Password to submit bid on portal) after depositing required eligibility documents along with the Refundable Participation Deposit and bidding documents along with the deposit of EMD for the proposed bid or does not bid in the E- Auction portal; or
- d. **Set Off of Refundable Participation Deposit and Earnest Money Deposit of the Successful Bidder** - The Refundable Participation Deposit and Earnest Money Deposit shall be allowed to be set-off against or used as part of the consideration that the successful bidder proposes to pay in the final payment only.
- e. **Default by Successful Bidder and its Results** - In the event of the successful Bidder withdrawing his/her E-Auction Application, the Liquidator shall have the right to forfeit Earnest Money Deposited by the Successful Bidder.
- f. **Return of Refundable Participation Deposit and Earnest Money Deposit of unsuccessful bidders** - The Refundable Participation Deposit and Earnest Money Deposit of unsuccessful bidders will be returned within 30 days from the declaration of the Successful Bidder. Similarly, if the bid is cancelled for any reason, the Refundable Participation Deposit and EMD shall be refunded within 30 days from the close of the E Auction date.

### **13. DECLARATION OF SUCCESSFUL BIDDER(S)**

- a. The Liquidator shall determine and at his sole discretion (which discretion shall not be used arbitrarily), declare at the end of the E-Auction, the Successful Bidder(s). Determination of the Successful Bidder(s) shall be done on the basis of highest bid (not below the reserve price) received via the E-Auction, unless the Liquidator determines, (with reasons to be recorded) acting reasonably, that the highest bidder shall not be identified as the Successful Bidder.
- b. Where the Refundable Participation Deposit and Earnest Money Deposit has been provided by means of a remittance to the designated bank account or any other mode, such funds will be retained by the Liquidator as part payment of the consideration that the Successful Bidder has agreed to pay for his bid option.
- c. The Liquidator is not bound to accept the highest offer and has the absolute right to accept or reject any or all offer(s) or adjourn / postpone / cancel the e-Auction or withdraw any asset or portion thereof from the E-Auction proceedings at any stage without assigning any reason there for.
- d. Issuance of Letter of Intent - The Liquidator shall, as soon as reasonably possible following the date of declaration of Successful Bidder, but not more than 3 days (excluding Holidays, if any), issue to the Successful Bidder a Letter of Intent ("LoI"/ "Letter of Intent"), inviting the Successful Bidder to provide balance sale consideration (plus any applicable GST, if any, on 100% of the bid sum) within 90 (ninety) days (with applicable interest as mentioned elsewhere) from the date of issuance of LoI. This LoI per se does not confirm sale in favor of the Successful Bidder. Confirmation of sale is subject to the fulfilment of terms and conditions of E-Auction Sale and approval of the Liquidator.
- e. The Successful Bidder shall, within a period of 3 (Three) days from the date of issuance of the LoI, unconditionally accept the LoI, and record such acceptance by providing the Liquidator with 1 (one) copy of the LoI with an endorsement stating that such LoI is, "Accepted Unconditionally", under the signature of the authorized Director / Authorized Signatory of the Successful Bidder.
- f. Failure to accept the LoI within the time period specified may result in the disqualification of the Successful Bidder along with cancellation of the LoI and forfeiture of the Earnest Money Deposit and Refundable Participation Deposit.
- g. **Payment of Sales Consideration** –The Successful Bidder(s) shall deposit the balance sale consideration within 90 (ninety) days from the date of issuance of LoI. Provided

that the payments after 30 (thirty) days shall attract interest at the rate of 12% p.a. provided further that the sale shall be cancelled if full payment is not received within 90 (ninety) days.

- h. Completion of Sale** - Upon receipt of the balance sale consideration (plus applicable Taxes as determined by the Liquidator) and other costs as determined by the Liquidator from the Successful Bidder within 90 days or Approval, if any, from the Adjudicating Authority whichever is later, the sale of the Company on a going concern basis shall stand completed and the Liquidator shall execute a certificate of sale or sale deed to consummate the sale transaction as contemplated under this E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern) and the Liquidation Process Regulations.

The Certificate of sale will be issued and /or transaction / sale documents will be executed in the name of the Successful Bidder only and will not be issued in any other name(s). It is expressly stipulated that there are no implied obligations on the part of the Liquidator to do all acts, things and deeds whatsoever for the completion of the sale.

The Liquidator shall handover the possession of the Company on sale of CD as Going Concern at the time of issuing sale certificate. In case successful bidder fails to accept the possession, the liquidator shall not be responsible for safety and security of the assets situated at the Project Site and no claim in this regard shall lie against the liquidator.

Default in payment of the balance sale consideration and any applicable GST, if any, on 100% of the bid sum by the Successful Bidder will result in disqualification of the Successful Bidder including forfeiture of Earnest Money Deposit and Refundable Participation Deposit. The bid option may be put to re-auction or sold to the next highest Qualified Bidder and the defaulting Successful Bidder shall have no claim/right in respect of such bid option.

#### **14. FRAUDULENT AND CORRUPT PRACTICES**

- The E-Auction Participant(s) shall observe the highest standard of ethics during the E-Auction Process and subsequently during the closure of the E-Auction Process and declaration of Successful Bidder(s). Notwithstanding anything to the contrary, contained in this Document, or in the Letter of Intent, the Liquidator shall reject an auction bid, revoke the Letter of Intent, as the case may be, without being liable in any manner whatsoever to the E-Auction Participant(s), if the Liquidator, at his discretion, determines that the E-Auction Participant(s) has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the E-Auction Process or has, undertaken any action in respect of such process which results in the breach of any Applicable Law including the Prevention of Corruption Act, 1988. In such an event, the Liquidator may invoke/ Forfeit the Earnest Money Deposit, without prejudice to any other right or remedy that may be available under this Document or Applicable Law.
- For the purposes of this Clause the following terms shall have the meaning hereinafter 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 thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Liquidator or the Company, shall be deemed to constitute influencing the actions of a person connected with the auction Process); or (ii) engaging in any manner whatsoever, during the auction Process or thereafter, any person in respect of any matter relating to the Company, who at any time has been or is a legal, financial or technical adviser of the Liquidator or the Company, in relation to any matter concerning the auction process;
  - **“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 E-Auction Participant(s) 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(s) shall not involve himself or any of his representatives in price manipulation of any kind directly or indirectly by communicating with other Bidder(s). The Bidder(s) 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(s) to execute confidentiality agreement with the Company/ Liquidator.

## **15. COSTS, EXPENSES AND TAX IMPLICATIONS**

- a. The Auction Participant(s) shall be responsible for all the costs incurred by it on account of its participation in the E-Auction Process, including any costs associated with participation in the discussion Meeting (if any), Site Visit, due diligence etc. The Liquidator shall not be responsible in any way for such costs, regardless of the conduct or outcome of the E-Auction Process.
- b. For purpose of abundant clarity, it is hereby clarified that the E-Auction Participant(s) is / are 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 E-Auction Participant(s).
- c. All expenses incurred towards movement / shifting of equipment(s) or any asset of the Company post the E-Auction Sale Process shall be borne by the Buyer. The Liquidator shall not be held responsible / liable to pay any expenses towards such movement of any of asset(s) of the corporate debtor.
- d. The E-Auction Participant(s) shall not be entitled to receive re-imbusement of any expenses which may have been incurred on account of carrying out due diligence, search of title to the assets and matters incidental thereto or for any purpose in connection with the E-Auction Sale Process plan.
- e. The Successful Bidder shall bear all the necessary expenses like applicable stamp duties/ additional stamp duty/ registration charges, transfer charges, sub-division charges, notified area charges, conversion charges, government dues, unpaid dues, premium, fees, etc. for transfer of property(ies) in name of the Successful Bidder(s).
- f. It is to be noted that all Taxes applicable whether income tax, any other direct and / or indirect Taxes and / or duties and / or penalties and / or interest (including stamp duty implications and registration charges) on sale of Company as going concern basis or in relation to the Company in the future, on and after implementation of the sale transaction herein; as the case may be in accordance with the provisions of IBC and Liquidation Process Regulations, would be borne by the Successful Bidder over and above the sale consideration payable. Some of the costs and charges for the sale transaction may include inter-alia the GST, TDS etc
- g. The payment of all statutory / non-statutory dues, taxes, rates, assessments, charges, fees, etc. or in respect of the property(ies)/ asset(s) shall be the sole responsibility of the successful bidder.

- h.** The E-Auction Participant(s) shall be responsible for fully satisfying the requirements of the IBC and related Regulations as well as all Applicable Laws that is relevant for the sale process. The Buyer 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 acquiring the corporate debtor.

## **16. GOVERNING LAW AND JURISDICTION**

This E-Auction Process Information Document, the E-Auction Process and the other documents pursuant to the E-Auction Process Information Document shall be governed by the laws of India and any dispute arising out of or in relation to the E-Auction Process Information Document or the E- Auction Process shall be subject to the exclusive jurisdiction of the Adjudicating Authority, courts and Tribunals at Kolkata, India.

## **17. AMENDMENT TO THE PROCESS DOCUMENT**

The Liquidator may, for any reason whatsoever and without assigning any reason, or incurring any liability, amend, modify or supplement this Process Document by an amendment. Any amendment(s) shall be uploaded on the website of the Corporate Debtor. Bidders are requested to check website of the Corporate Debtor on a regular basis. The Acceptance of the Process Document shall be deemed to be an acknowledgement by the Bidder(s) that any such amendment pursuant to the clause shall be binding on the Bidder(s)

## 18. TIMELINES

a. Given below is the Timeline for the E-Auction Sale Process:

<b>ACTIVITY</b>	<b>Last date (in calendar days)</b>
Public Announcement of E-Auction	<b>09.10.2023</b>
Opening of Auction Portal and this E-Auction Process Information Document made available on the websites as per Terms and Conditions	<b>11.10.2023</b>
Last date for Submission of EOI, KYC, Eligibility criteria documents and Refundable Participation Deposit	<b>25.10.2023</b>
Access of Documents to the Eligible Bidder	<b>From 26.10.2023</b>
Site visit and discussion meeting	From 26.10.2023 to 02.11.2023 between 01:00 PM to 05:00 PM
EMD Submission	By 04.11.2023 till 04:00 PM
<b>E-Auction Date</b>	<b>07.11.2023</b>
Announcement of Successful Bidder	<b>09.11.2023</b>
Issuance of Email/Letter of Intent (LOI) to be issued to the Successful Bidder	Within 3 days (excluding Holidays if any) following the date of announcement of successful bidder.
Unconditional acceptance of LOI by the Successful Bidder	Within 3 days from issuance of the LOI by the Liquidator
Return of Refundable Participation Deposit and EMD for unsuccessful bidders	Within 30 days from the declaration of successful bidder.
Payment of balance consideration amount by the Successful Bidders	The Successful Bidder(s) shall deposit the entire sale consideration within 90 (ninety) days from the date of issuance of LoI. Provided that the payments after 30 (thirty) days shall attract interest at the rate of 12% p.a. Provided further that the sale shall be cancelled if full payment is not received within 90 (ninety) days.
Issue of Sale Certificate and Handover of Possession and Completion of sale	Within 7 days on receipt of final and balance consideration.

- b. The Liquidator reserves the right to amend the key terms of the E-Auction Process Information Document including reserve price, earnest money deposit, bid increment amounts and timelines at his sole discretion, to the extent permissible under the applicable laws and regulations.
  
- c. Any information about amendments / extension of any of the timelines will be available on the E-Auction website and/or communicated to Eligible Bidder(s). If at any stage, during/ after the process of Liquidation, for whatever reasons, any orders/ instructions/ guidance is passed by Hon'ble NCLT /NCLAT to intervene the Liquidation process, the same shall be binding on all the bidders without having any claim of damages whatsoever. please note that access to documentation, additional information and site visits will be granted only to the eligible bidders

However, as per the Paragraph 12 of Schedule I of IBBI (Liquidation Process) Regulations, 2016, —On the close of the auction, the highest bidder shall be invited to provide balance sale consideration within ninety days of the date of issuance of LoI. Provided that payments made after thirty days shall attract interest at the rate of 12%. Provided further that the sale shall be cancelled if the payment is not received within ninety days.

**Note** – The timeline for payment of final sale consideration may be extended at the sole discretion of Liquidator, to the extent permissible under the applicable laws and regulations. In case the final sale consideration is not paid within the timeline, the Liquidator shall forfeit Refundable Participation Deposit, EMD and any other payments.

**ANNEXURE- I**

***[On the Letterhead of the Bidder submitting the EOI]***

**EXPRESSION OF INTEREST**

Date: .....

To,

**Rakesh Kumar Agarwal, Liquidator**

**Mahakal Agro Storage and Processing Unit Private Limited –In Liquidation**

Reg No: IBBI/IPA-001/IP-P00443/2017-18/10786

20 N.S Road, Block-A, 1stFloor, Room No.-15 Kolkata-700001

Email for correspondence: [mahakal.cirp@gmail.com](mailto:mahakal.cirp@gmail.com)

**Subject: Expressions of Interest (“EOI”) – For purchase of Mahakal Agro Storage and Processing Unit Private Limited –In Liquidation as a going concern under Liquidation Process and under the applicable provisions of the Insolvency and Bankruptcy Code, 2016 (IBC)**

Dear Sir,

In response to the advertisement in News Paper on 9<sup>th</sup> October, 2023 inviting expressions of interest as captioned above “E-Auction Sale Notice”, whereby submit an EOI for the purchase of Mahakal Agro Storage and Processing Unit Private Limited –In Liquidation as a going concern through e-auction sale process, on **“AS IS WHERE IS”, “AS IS WHAT IS”, “WHATEVER IT IS”, “WHATEVER THERE IS” and “WITHOUT RECOURSE BASIS”**.

We have also set out the other annexures required in the format prescribed in the E-Auction Process Information Document.

We undertake that the information furnished by us in this EOI and with other documents is true, correct, complete and accurate. We undertake that we have read the terms and conditions for liquidation as mentioned in the E-Auction Process Information Document and unconditionally agree to the same.

Further, we agree and acknowledge that:

- (a) the EOI will be evaluated based on the information provided in the Annexures to determine whether we qualify to participate as a bidder in the aforesaid e-auction;
- (b) the Liquidator reserve the right to determine at his sole discretion, whether or not we qualify for the submission of the proposal and may reject the EOI submitted by us without assigning any reason whatsoever;
- (c) The Liquidator reserve the right to request for additional information or clarification from us for the purposes of the EOI and we shall promptly comply with such requirements.

Failure to satisfy the queries of the Liquidator within the given timelines may lead to rejection of our submission pursuant to EOI.

- (d) Submission of this EOI alone does not automatically entitle us to participate in the next stage of the bid process.
- (e) The bidder is not an ineligible person in terms of the provisions of Section 35 (l) (f) read with section 29A of the IBC and also, the bidder is not under any legal disability under the applicable laws.

Sincerely yours,

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

Signature:

Name of Signatory:

Designation:

Company Seal/Stamp:

**Note:**

1. The person signing the EOI and other supporting documents should be an authorized signatory supported by necessary board resolutions/authorization letter.
2. In case of Consortium Bidder, the EOI shall be signed by the nominated lead.

**ANNEXURE- II**

**FORMAT FOR AFFIDAVIT AND UNDERTAKING CONFIRMING ELIGIBILITY UNDER SECTION 29 A  
AND PROVISIO TO SECTION 35(1)(F) OF IBC, 2016**

(to be executed on Rs.100 stamp paper and notarized)

Date: .....

To,

**Rakesh Kumar Agarwal, Liquidator**

**Mahakal Agro Storage and Processing Unit Private Limited –In Liquidation**

Reg No: IBBI/IPA-001/IP-P00443/2017-18/10786

20 N.S Road, Block-A, 1stFloor, Room No.-15 Kolkata-700001

Email for correspondence: [mahakal.cirp@gmail.com](mailto:mahakal.cirp@gmail.com)

**Subject: Affidavit and Undertaking by [●] on eligibility of [●] under Section 29A and/ or proviso to section 35 (1)(f) of the Insolvency and Bankruptcy Code, 2016.**

Dear Sir,

I [Insert name of the authorized person of the Bidder Applicant], son of/ daughter of [●], aged about [●] years, currently residing at [Address to be inserted] and having Aadhaar / Passport number [●], an authorized officer of [name of the BIDDER Applicant] having [registered] office at [ ] (“BIDDER Applicant”), a term which also includes any person acting jointly with the BIDDER Applicant), on behalf of the BIDDER Applicant, do solemnly affirm and state to Mr. Rakesh Kumar Agrawal, the Liquidator of **Mahakal Agro Storage and Processing Unit Private Limited – In Liquidation** (“Company/Corporate Debtor”) as follows:

1. That the BIDDER Applicant or any person acting jointly with the BIDDER Applicant or in concert with BIDDER Applicant or any person who is a ‘connected person’(as defined under the Insolvency and Bankruptcy Code, 2016 (“Code”), Is eligible to be a resolution applicant as per its meaning under the Code. We have understood the provisions of section 29A of the Code. We confirm that neither I/Limited nor any person acting jointly with me/ Limited or any person who is a promoter or in the management or control of me/us/Limited or any person acting jointly with me/Limited:

(a) is an undischarged insolvent;

(b) is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of1949);

- (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, prior to the insolvency commencement date.

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

- (d) has been convicted for any offence punishable with imprisonment—

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

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

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

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

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

- (f)** is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- (g)** has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

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

- (h)** has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;
- (i)** is subject to any disability, corresponding to clauses(a)to(h), under any law in a jurisdiction outside India; or
- (j)** has a connected person not eligible under clauses (a) to (i).

Explanation I.—for the purposes of this clause, the expression "connected person" means—

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares 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:

—

- (a) a scheduled bank;
  - (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding;
  - (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);
  - (d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
  - (e) an Alternate Investment Fund registered with Securities and Exchange Board of India;
  - (f) such categories of persons as may be notified by the Central Government.
- 2.** That the BIDDER Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.
- 3.** That in the event any of the above statements are found to be untrue, incomplete or incorrect, then the BIDDER Applicant unconditionally agrees to indemnify and hold harmless

the Liquidator against any losses, claims or damages incurred by the Liquidator on account of such ineligibility of the BIDDER Applicant.

4. That the list of the connected persons of the BIDDER Applicant set out in hereto is exhaustive and complete in all respects and the names of all the connected persons of the BIDDER Applicant have been set out thereunder without any omission whatsoever.
5. I declare and undertake that in case [name of BIDDER Applicant or the person acting jointly with it or any of the connected person(s)] becomes ineligible at any stage during the Liquidation Process; it would inform the Liquidator forthwith on becoming ineligible.
6. I also undertake that in case [name of BIDDER Applicant or the person acting jointly with it or any of the connected person(s)] becomes ineligible at any time during the auction/bid process of the Company including after submission of Earnest Money Deposit (“EMD”) towards bid, then the Refundable Participation Deposit, and EMD would be forfeited.
7. I also further confirm and undertake that our bid Amount will remain binding unless rejected by the Liquidator.
8. I also confirm that I shall not withdraw from the bidding process (either before or after allocation of login and Password to submit bid on portal) after depositing required eligibility documents along with the Refundable Participation Deposit and deposit of EMD for the proposed bid or does not bid in the E-Auction portal and in case, we do so, we confirm and undertake that our Refundable Participation Deposit /EMD deposited in this connection is liable to be forfeited.
9. I shall submit our bid from the Login and Password to be provided by the Liquidator or E Auction Facilitator and in case I do not bid, my Refundable Participation Deposit /EMD shall be liable for forfeiture without any further recourse.
10. I confirm to abide by the terms and conditions of the Bid, as described in the Bid Document, more particularly for the forfeiture clause of the Refundable Participation Deposit /EMD.
11. I confirm that the said declaration and disclosure is true and correct, and I agree to compensate the Liquidator for any cost incurred in relation to ascertaining the veracity of this declaration.
12. I am duly authorized to submit this declaration by virtue of [●]. The said document is true, valid and genuine to the best of my knowledge, information and belief.

I confirm that the payment of the Refundable Participation Deposit of Rs. 5,00,000 (has been paid through NEFT / RTGS having UTR no..... through (Bank name).

(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)

**ANNEXURE- III**

**BID APPLICATION FORM**

Date: .....

To,

**Rakesh Kumar Agarwal, Liquidator  
Mahakal Agro Storage and Processing Unit Private Limited –In Liquidation**

Reg No: IBBI/IPA-001/IP-P00443/2017-18/10786

20 N.S Road, Block-A, 1stFloor, Room No.-15 Kolkata-700001

Email for correspondence: [mahakal.cirp@gmail.com](mailto:mahakal.cirp@gmail.com)

Dear Sir,

I am desirous in participating in the E-Auction of **Mahakal Agro Storage and Processing Unit Private Limited –In Liquidation**, sale as going concern, forming part of Liquidation Estate formed by the Liquidator, appointed by the Hon'ble National Company Law Tribunal, Kolkata Bench vide order dated 7<sup>th</sup> August, 2023.

Details of Bidder(s)

Name of the Bidder	
Constitution of Bidder	
Business Profile of the Bidder	
Contact No. (Mobile & landline)	
Email ID	
PAN No.	

Details of EMD Deposited

EMD Amount required	
EMD Amount Deposited	

I/ We/M/s. 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.

Signature

(Seal/ Rubber Stamp in case of company / firm)

Place:

Date:

**ANNEXURE- IV**

**DECLARATION BY BIDDER**

(to be executed on Rs.100 stamp paper and notarized)

Date: .....

To,

**Rakesh Kumar Agarwal, Liquidator**

**Mahakal Agro Storage and Processing Unit Private Limited –In Liquidation**

Reg No: IBBI/IPA-001/IP-P00443/2017-18/10786

20 N.S Road, Block-A, 1stFloor, Room No.-15 Kolkata-700001

Email for correspondence: [mahakal.cirp@gmail.com](mailto:mahakal.cirp@gmail.com)

Sir,

1. I / We do hereby state that I/We have read the entire terms and conditions for sale of the Company as Going Concern as specified in the E-Auction Process Information Document dated 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, understand and acknowledge that the E-Auction is being held on “AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS” and will be conducted “Online”.
3. I/ We declare that the Refundable Participation Deposit / 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 in the online form is true and correct.
4. 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 Refundable Participation Deposit , Earnest Money Deposit and / or any monies paid by me/us is liable to be forfeited by the Seller and that the Seller will be at liberty to annul the offer made to me/us at any point of time.
5. I/ We also agree that after my/ our offer given in my/our bid for purchase of company as a whole on going concern basis (comprising all assets and 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 fulfil any/all the terms and conditions of the auction and offer

letter, the Refundable Participation Deposit , 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 liquidator, to the extent permissible under the applicable laws and regulations. In case final sale consideration is not paid within stipulated timeline, the liquidator shall forfeit Refundable Participation Deposit and Earnest Money Deposit.

6. I/ We understand that the Refundable Participation Deposit / Earnest Money Deposit of all Bidders shall be retained by the Liquidator and returned only after the conclusion of the e-auction process as per the timelines mentioned. I/We, state that I/We have fully understood the terms and conditions therein and agree to be bound by the same.
7. I/we confirm that if we are declared as the Successful Bidder, we shall submit the duly executed copy of the LOI to the Liquidator as per the terms of the E-Auction Process Information Document.
8. I/ We confirm that our participation in the e-auction process, submission of bid or acquisition of the company/ Assets pursuant to the provisions of the E-Auction Process Information Document 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.
9. 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.
10. I/ We also undertake to abide by the additional conditions if announced during the e-auction including any announcement (s) on correction of and/ or additions or deletions to the time of auction portal and Assets being offered for sale.
11. I/We confirm that the Seller and/or his professional advisors, affiliates, directors, employees, agents, representatives or managers of the process, shall not be liable and responsible in any manner whatsoever for my/our failure to access and bid on the e-auction portal due to any unforeseen circumstances etc. before or during the auction event.
12. I/We hereby confirm that I/We shall bear the applicable stamp duties/ additional stamp duty / transfer charges, fee, taxes, Good and Services Tax, license and approvals transfer fees etc. and also all the statutory/ non statutory dues, taxes, rates assessment charges fees etc. owing to anybody.

13. I/We hereby confirm that we shall be solely responsible for obtaining and carrying out necessary actions and obtaining necessary approvals in order to effectuate fully the purposes, terms and conditions of the sale of the Company as a going concern as per the terms of this E-Auction Process Information Document, including but not limited to, obtaining or renewing any license, consent, certificate, permit or other authorization, including procuring all necessary approvals from Persons, governmental and statutory authorities, if any, as may be required. The Liquidator shall in no way be held responsible nor shall there be any reduction in the Bid price/sale consideration as per the e-auction in case the of failure or delays on the part of the Successful Bidder to obtain the said approvals, licenses and permissions in its name or complete any other actions as the Successful Bidder may require.
  
14. I/We hereby confirm that we shall be primarily liable in respect of our payment and other obligations under the E-Auction Process Information Document.
  
15. I/We hereby confirm that I/we are eligible to purchase the assets of the Company under Section 29A and/ or proviso to Section 35(1) (f) of the Insolvency and Bankruptcy Code, 2016 (as amended from time to time).
  
16. The capitalized terms not defined in this Bid Declaration Form and phrase “sale of the Company” shall have the same meaning as ascribed to it in the E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern).

(Signature)

Name:

Designation:

Address:

Email ID:

Mobile:

**ANNEXURE- V**

**TECHNICAL TERMS & CONDITIONS OF E-AUCTION SALE PROCESS**

E-Auction will be conducted on “AS IS WHERE IS”, “AS IS WHAT IS”, “WHATEVER IT IS”, “WHATEVER THERE IS” and “WITHOUT RECOURSE BASIS” through approved service provider Right2Vote InfoTech Pvt Ltd. E-Auction Process information Document containing e-auction bid application form, Declaration, General Terms and condition of online auction sale are available on website <https://right2vote.in/eauction/>, Contact: (Mr. Neeraj Gutgutia at +91- 99205 91306, E-mail: [neeraj@right2vote.in](mailto:neeraj@right2vote.in), [contact@Right2vote.in](mailto:contact@Right2vote.in)).

**1. Instruction for E-Auction:**

- i. **START AND END TIME:** The E-Auction period will begin on Tuesday, 7<sup>th</sup> November, 2023 Between: 1.00 p.m to 3.00 p.m. It would be auto-extended by 5 minutes each time bid is received in last five minutes without any limit.

During this period, the bidders are being provided the platform to bid electronically. The e-auction module shall be disabled by Right2Vote for bidding thereafter.

- ii. **WEBSITE LINK:** The participating bidders should log on to the e-auction website <https://right2vote.in/login/> during the auction period.
- iii. **USER ID:** Enter your Email ID. **Your Email ID is your user ID.** Kindly ensure you use the same Email ID as notified to the Liquidator for eAuction.

You will also receive an INVITE email from Right2Vote on this email ID and the mail will have the link, user ID and other details mentioned. Do not try to log in with mobile number if you have received the invite on the email.

- iv. **PASSWORD:** Press GET OTP. OTP (One Time Password) would be **delivered on your Email.** The OTP is the password. Once you enter the OTP and press Sign In, you would be logged in.
- v. **eAUCTION PAGE:** Once logged in, you would be directed to MY POLL INVITE page. Here you would see the E-Auction from the Corporate Debtor listed. Click on the poll and you would be taken to Auction page.
- vi. **BIDDING:** On the Auction page, you will see the details of the item under auction. You will also see a box where you have to enter the bid amount.

Enter only numerical value in the box. Base value / previous highest bid value would be mentioned on the screen. Also, minimum acceptable increment would be mentioned on the screen. In case you bid lower than the previous bid, your bid would be rejected.

- vii. **CONFIRMATION:** After selecting the option, click on "SUBMIT". You would be asked to reconfirm. Recheck and confirm. Once you confirm, you would receive a "THANK YOU" message on the screen. This is a confirmation that your bid has been recorded.
  - viii. **CONTACT US:** In case you have any queries or issues regarding E-Auction, write an email to [contact@Right2vote.in](mailto:contact@Right2vote.in), [neeraj@right2vote.in](mailto:neeraj@right2vote.in).
2. The Prospective Bidders should submit the evidence for Refundable Deposit like UTR number along with the Request Letter for participation in E-auction, self- attested copies of (i) Proof of identity (KYC) viz. Voter ID card/ Driving License/ Passport etc., (ii) Current Address-Proof for communication, (iii) PAN card of Bidder, (iv) Valid Email ID, (v) contact number (Mobile/Landline) (v) Copy of MOA & AOA of the bidder etc., to the office of Liquidator. Scanned copies of the original of these documents can also be submitted to the Email ID of Liquidator.
  3. The intending bidders are required to deposit Earnest Money Deposit (EMD) amount by 4<sup>th</sup> November, 2023 till 4.00 PM through NEFT/RTGS in the Account of "Mahakal Agro Storage and Processing Unit Private Limited – In Liquidation".
  4. The Refundable Participation Deposit and EMD (Interest Free) of the Successful Bidder shall be allowed to be set-off against or used as part of the sale consideration in the final payment only and the Refundable Participation Deposit / EMD of unsuccessful bidders shall be refunded with 30 (thirty) days.
  5. In case bid is cancelled, the Refundable Participation Deposit / Earnest Money Deposit of the bidder shall be refunded without any interest or any charges
  6. The Successful Bidder shall bear the applicable stamp duties/transfer charge, fees etc. and all the statutory / non- statutory dues, taxes, rates, assessment charges, fees etc. in respect of the property put on auction. The sale certificate/agreement will be issued in the name of the successful bidder only and will not be issued in any other name.
  7. The Eligible Bidders, participating in the E-Auction, will have to bid for at least the Reserve Price, and increase their bid by a minimum incremental amount as mentioned in this E-Auction Process Information Document.

8. The Liquidator 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 proceeding at any stage without assigning any reason thereof.
9. The sale shall be subject to provisions of Insolvency and Bankruptcy Code, 2016 and Regulations made there under and any order, directions passed by Hon'ble NCLT/NCLAT.
10. 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 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 details of assets and properties owned by the corporate debtor under sale 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.
11. It should be the responsibility of the interested bidders to inspect and satisfy themselves about the Corporate Debtor before submission of the bid 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.
12. The e-Auction/ bidding of would be conducted exactly on the schedule Date & Time as mentioned by way of inter-se bidding amongst the bidders. The bidder may improve their offer in multiple of amount mentioned under the column "Bid Increment Amount" against bid. 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 for unlimited.
13. The sale certificate will be issued and / or transaction / sale documents executed in the name of Successful Bidder(s) / Successful E-Auction Applicant(s) only and will not be issued in any other name(s).
14. The decision of Liquidator on declaration of successful bidder shall be final and binding on all the Bidders.
15. The Bidders are required to keep themselves updated for any revisions in the terms and conditions of E-Auction by regularly visiting the links as mentioned in this E-Auction Process Information Document(Sale of Corporate Debtor as a Going Concern).

Date:

Place:

**ANNEXURE- VI**

**CONFIDENTIALITY UNDERTAKING**

(to be executed on Rs.100 stamp paper and notarized)

This Confidentiality Undertaking has been signed by **(Name of potential Bidders)** having its office at .....acting through Mr. (Name of person authorised by potential Bidder(s)), the authorized signatory/authorized representative (“Bidder”), which expression shall, unless repugnant to the context, be deemed to include its successors, assigns or legal representative) in favour of Mr. Rakesh Kumar Agrawal, an Insolvency Professional having registration no. IBBI/IPA-001/IP-P00443/2017-18/10786.

WHEREAS M/s Mahakal Agro Storage and Processing Unit Private Limited (In Liquidation), a company registered under Companies, Act, 1956 (thereafter referred as the “Company”) is undergoing liquidation vide NCLT Kolkata Bench (“NCLT”) order dated 7<sup>th</sup> August, 2023. Vide the said NCLT Order Mr. Rakesh Kumar Agrawal, a registered insolvency professional with Insolvency and Bankruptcy Board of India (IBBI) having registration number IBBI/IPA-001/IP-P00443/2017-18/10786 has been appointed as liquidator to manage, protect, sell and liquidate the property, assets, business and other affairs of Mahakal Agro Storage and Processing Unit Private Limited (In Liquidation as Going Concern) (“Liquidator”).

WHEREAS the Liquidator has invited prospective Bidders for the purpose of submission of Bid through E-Auction Process in respect of sale of the Company in accordance with the provisions of E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern) and provisions of Insolvency and Bankruptcy Code, 2016 (“IBC”) read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“Liquidation Process Regulations”).

WHEREAS the Liquidator is required to share certain data, documents in relation to the Company for facilitating the prospective Bidder(s) in their due diligence after receiving an undertaking from each of the potential Bidder(s) to the effect that such member shall maintain confidentiality of the information received from the data room and during the course of due diligence and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under IBC and Liquidation Process Regulations.

THEREFORE, the Bidder (s) hereby declare(s) and undertake(s) as follows:

1. The Bidder(s) shall not divulge any part of the information in relation to the Company or any other data shared by the Liquidator, through oral or written communication or through any

mode to anyone and the same shall constitute "Confidential Information". Any information or documents generated or derived by the recipients of Confidential Information that contains, reflects or is derived from any Confidential Information shall also be deemed as Confidential Information.

2. The Bidder (s) further unconditionally and irrevocably undertake and declare that
  - a) the Confidential Information shall be kept secret and confidential by the Bidder (s) and shall be used solely in accordance with the terms of the IBC;
  - b) the Bidder(s) shall not use the Confidential Information to cause any undue gain or undue loss to itself, the Company, Liquidator or any other person;
  - c) the Bidder(s) shall comply with all provisions of Applicable Law(s) for the time being in force relating to confidentiality and insider trading;
  - d) the Bidder (s) shall protect any intellectual property of the Company which it may have access to;
  - e) the Confidential Information may only be disclosed to and shared with any employees or its advisors by the Bidder(s), in accordance with Applicable Law(s), including in relation to confidentiality and insider trading, and terms of this Confidentiality Undertaking on a strict need-to-know basis and only to the extent necessary for and in relation to the liquidation process of the Company, provided that the Bidder binds such employees and third parties, by way of an undertaking/ agreements, to terms at least as restrictive as those stated in this Confidentiality Undertaking.
  - f) the Bidder(s) shall ensure that all Confidential Information is kept safe and secured at all times and is protected from unauthorised access, use, dissemination, copying, any theft or leakage;
  - g) the Bidder(s) shall immediately destroy and permanently erase all Confidential Information upon the completion of sale of the Company as provided under E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern) and the Liquidation Process Regulations;
  - h) the Bidder(s) shall take all necessary steps to safeguard the privacy and confidentiality of the information received through the access of the Data Room and shall use its best endeavors to secure that no person acting on its behalf divulges or discloses or uses any part of the Confidential Information, including but not limited to the financial position of

the Company, all information related to disputes by or against the Company and other matter pertaining to the Company; and

- i) the Bidder(s) shall be responsible for any breach of obligations under this confidentiality undertaking (including any breach of confidentiality obligations by any employee or advisor or agent or director of the Bidder) and shall indemnify the Liquidator for any loss, damages, expenses and costs incurred by the Liquidator due to such breach of such obligations by the Bidder (s) or any person acting on its behalf.

3. Notwithstanding anything to the contrary contained herein, the following information shall however not be construed as Confidential Information:

- information which, at the time of disclosure to the Bidder(s) was already in the public domain without violation of any provisions of Applicable Law(s); or
- information which, after disclosure to the Bidder(s) becomes publicly available and accessible without violation of Applicable Law(s) or a breach of this Confidentiality Undertaking; or
- information which was, lawfully and without any breach of this Confidentiality Undertaking, in the possession of the Bidder (s) prior to its disclosure, as evidenced by the records of the Bidder(s)

4. The Bidder(s) hereby expressly agrees and acknowledges that the Liquidator makes no representation, warranty or inducement, whether express or implied, as to the accuracy, completeness, authenticity or adequacy of the information (including but not limited to the Confidential Information) provided to the Bidder(s) in the E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern) and Information in the Data Room. The Bidder(s) further agrees and acknowledges that the Liquidator shall not be liable to the Bidder(s) for any damage arising in any way out of the use of the Confidential Information and further that the Bidder(s) shall not have any claim against the Liquidator or the Company in relation to any information provided.

5. The terms of this Confidentiality Undertaking may be modified or waived only by a separate instrument in writing signed by the Bidder(s) and the Liquidator that expressly modifies or waives any such term.

6. Damages may not be an adequate remedy for a breach of this Confidentiality Undertaking and either party may be entitled to the remedies of injunction, specific performance and other equitable relief for a threatened or actual breach of this Confidentiality Undertaking.

7. Nothing in this Confidentiality Undertaking shall have the effect of limiting or restricting the liability of the Bidder(s) arising as a result of its fraud or willful default as defined under Applicable Law(s).
8. The undersigned hereby represents and warrants that it has the requisite power and authority to execute, deliver and perform its obligations under this Confidentiality Undertaking.
9. This Confidentiality Undertaking and any dispute, claim or obligation arising out of or about it shall be governed by and construed in accordance with Indian laws and the courts and tribunal of Kolkata shall have exclusive jurisdiction over matters arising out of or relating to this Confidentiality Undertaking.
10. Capitalized terms not defined under this Confidentiality Undertaking shall have the same meaning as provided in the E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern).

I further declare that I, the undersigned have full knowledge of the contents provided in this undertaking and have absolute authority to sign this undertaking on behalf of [insert the name of the Bidder (s)].

Signed on behalf of

(Name of Bidder(s))

by Mr. (Name and Designation)

Authorized Signatory

Date:

Place

**ANNEXURE- VII**

**BOARD RESOLUTIONS**

(On the letter head of the Bidder)

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

**WHEREAS** pursuant to the E-Auction Process Information Document dated [●] ("Process Document"), issued by Liquidator of Mahakal Agro Storage and Processing Unit Private Limited (In Liquidation), in relation to submission of bids for sale of Corporate Debtor as a whole on a going concern basis, the Company, being the Bidder, is desirous of submitting a Bid for the Company in accordance with the requirements of the Process Document.

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

**"RESOLVED THAT** [insert], of the Company, be and is hereby authorized to take all the steps required to be taken by the Company for the submission of the Bid in accordance with the terms of the Process Document, including the following:

- (a) submit the Bid(s) and other requisite documents, in accordance with the terms of the Process Document;
- (b) execute all other agreements, deeds, writings and powers of attorney as may be required in relation to the Process Document, including any amendments or modifications as may be suggested by the Liquidator of Corporate Debtor to any of such executed agreements, documents or other writings and in general to do all such acts, deeds and all things as may be required or considered necessary under or in respect of the Process Document;
- (c) submit necessary clarifications or information in relation to the Bid(s), as may be required in accordance with the Process Document;
- (d) operate the account created by the Bidder on the web portal of the e-auction agency engaged by the Liquidator for the submission of Financial Proposal as per the terms of the Process Document;
- (e) pay such amounts and consideration, in the manner as may be agreed with the Liquidator, in accordance with the procedure set out under the Process Document in furtherance of or under the Financial Proposal; and
- (f) 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** in addition to the foregoing resolution, [insert name of Managing Director] of the Company be and is hereby authorized to execute a power of attorney in favour of [insert] appointing the aforesaid [insert name], to exercise all or any of the powers set out under this resolution”

**“RESOLVED FURTHER THAT** a certified copy of the foregoing resolution be furnished as may be required, under the signature of [insert].”

Certified to be true

**For the Company**

**ANNEXURE- VIII  
LETTER OF INTENT**

Date:

To,

[name to be inserted] [address to be inserted]

Attn. [name to be inserted]

**Re: E-Auction sale of Corporate Debtor as a Going Concern of Mahakal Agro Storage and Processing Unit Private Limited (In Liquidation) conducted on..... .**

Dear Sir/ Ma'am,

1. With reference to the above, successful bid was submitted by yourself ("Successful Bidder") amounted to Rs..... in relation to E-Auction sale of Mahakal Agro Storage and Processing Unit Private Limited (In Liquidation) as going concern in accordance with the provision of Regulation 32 (e) read with Regulation 32A and 33 (1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) regulations 2016 through auctioned on .....
2. Pursuant to the E-auction Process Information Document, the Liquidator is pleased to issue this Letter of Intent for sale of of Mahakal Agro Storage and Processing Unit Private Limited (In Liquidation) as a going concern to .....
3. You are requested to confirm your acceptance of this Letter of Intent (LOI) within 3 (Three) days of the date of issuance hereof with an endorsement stating that this Lol is, "Accepted Unconditionally", under the signature of the authorized director / authorized signatory. Within 90 (ninety) days from the date of issuance of Lol, you shall pay the balance amount of Rs..... as the sale consideration towards purchase of Corporate Debtor ("Sale Consideration") plus any applicable GST, if any, on 100% of the Sale Consideration. The payment after thirty days shall attract interest @12% per annum. Please note that, failure to accept this Lol within the time period specified may result in your disqualification as the Successful Bidder along with cancellation of this Lol and forfeiture of the Refundable Participation Deposit and Earnest Money deposited in relation to the captioned transaction issued by the Liquidator ("E-Auction Process Information Document").
4. The Liquidator agrees that simultaneously upon full payment of Sale Consideration and any applicable GST, if any, or the order of Hon'ble NCLT, if any, whichever is later, the Liquidator shall execute a Sale Certificate in your favor for conveyancing on "as is where is", "as is what is", "whatever there is" and "without recourse" basis, without any representations and warranties on the part of the Liquidator for any encumbrances / statutory liabilities etc. in relation to Asset owned by the corporate debtor.

5. This Lol is not a sale confirmation letter and is issued without prejudice to other terms and conditions of the E-Auction Process Information Document. The issuance of this Lol shall not be deemed to be conveying any right, title or interest in the Company or in any manner granting any right against the Liquidator, or their representatives and advisors, except to the extent any right has been created under this Lol.
6. In the event you are found to have made any misrepresentation, wrongful disclosure or misleading declaration of eligibility, this Lol may be revoked and on account of such revocation you shall have no right under this Lol.
7. Any contravention of the terms of this LOI, including non- acceptance of the contents hereof within the stipulated time period, shall lead to cancellation of this Lol, unless otherwise provided in the E-Auction Process Information Document.
8. You shall keep the contents of this LOI confidential, save and except where any disclosure is required under applicable laws or a disclosure is required for securing financing or to your professional advisors and financiers, who are in each case required in the course of their duties to receive and consider the same for the purpose of advising you in relation to the transaction.
9. This Lol shall be governed by, and construed in accordance with, the laws of India and the National Company Law Tribunal, Kolkata Bench shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with this Lol.
10. This Letter of Intent shall be valid only if Successful Bidder makes complete payment of the dues related to the purchase of the said assets, failing which this Letter of Intent shall become invalid for non-payment of the dues.
11. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the E-Auction Process Information Document. You are requested to unconditionally accept this Lol by countersigning this Lol and returning the same to me.

Yours faithfully,

Rakesh Kumar Agarwal, Liquidator,  
Mahakal Agro Storage and Processing Unit Private Limited (In Liquidation)

Unconditionally agreed and accepted by:

For

Authorized Signatory

*(Please note that the liquidator reserves the right to revise/modify/amend the above Letter of Intent format at any time before signing.)*