

ABG SHIPYARD LIMITED

FIRST AMENDMENT TO EOI PROCESS DOCUMENT FOR PARTICIPATION IN THE
ELECTRONIC AUCTION SALE PROCESS FOR ASSETS OF ABG SHIPYARD
LIMITED DATED SEPTEMBER 17, 2019

(**FIRST AMENDMENT TO EOI PROCESS DOCUMENT**)

Date: September 20, 2019

**Issued by Mr. Sundaresh Bhat
Liquidator of ABG Shipyard Limited**

A company under liquidation process vide NCLT Ahmedabad bench order dated April 25,
2019 (received by the Liquidator on April 29, 2019)

IBBI Registration no. IBBI/IPA-001/IP-P00077/2017-18/10162

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Mr. Sundaresh Bhat 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-P00077/2017-18/10162. The affairs, business and property of ABG Shipyard Limited ('ABG') are being managed by the Liquidator, Sundaresh Bhat, who is acting as such and without personal liability of whatsoever nature, pursuant to his appointment by NCLT Ahmedabad Bench, vide its order dated April 25, 2019 (received by the liquidator on April 29, 2019) 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.

**FIRST AMENDMENT TO PROCESS DOCUMENT FOR SUBMISSION OF
EXPRESSION OF INTEREST FOR PARTICIPATION IN ELECTRONIC AUCTION
SALE PROCESS FOR ASSETS OF ABG SHIPYARD LIMITED DATED
SEPTEMBER 17, 2019**

In regard to the captioned subject, the Liquidator, Mr. Sundaresh Bhat has made the following amendments to the Process Document for submission of Expression of Interest for participation in Electronic Auction Sale Process for assets of ABG Shipyard Limited dated September 17, 2019 (**‘EOI Process Document’**):

I. Amendment to Clause 3. Last Date for submission of EOI

Clause 3.5 of EOI Process Document stands amended and substituted as follows:

3.5. The invitation is valid till the last date for submission of EOIs. In case no eligible EOI is received within the specified period, the auction process shall be deemed to have failed (as per the meaning of failed auction under IBC), without prejudice to the rights of the Liquidator to proceed with a second auction sale. The Liquidator shall not be liable to issue any notice in regard to the failed auction or otherwise be liable in any manner whatsoever.

II. Amendment to Clause 5. Terms and Conditions of EOI Process Document

The following clauses are added to Clause 5 of EOI Process Document:

5.23. In case a sole EOI Applicant is confirmed to participate in the Auction Process by the Liquidator, the said EOI Applicant, regardless of being the sole applicant qualified to participate in the Auction Process, will have to mandatorily undertake the further process set by the Liquidator to submit a bid as per terms and conditions thereof.

5.24. It is to be noted that the bidders cannot place a bid for the asset at a value below the reserve price even in case of a single bidder. In case the Bid is below the Reserve price the current bid process will be treated as “failed” and the bidder has no right whatsoever to claim / take refund of the participation fee, nor has he the right to claim for the assets bid for.

III. Annexure-A of EOI Process Document – Eligibility Criteria

Annexure-A is amended as follows:

- (i) The following clause being the first point under heading ‘Criteria:’ is substituted to read as set out below, all other contents of Annexure-A except those amended herein, remaining as it is without any modification:
 - Net worth of the Applicant shall be greater than INR 100 crores and for financial institutions/investors (AIF/fund/private equity etc.) funds deployable as at March 31, 2019 shall be greater than INR 1,000 crore.
- (ii) The following is added under heading ‘Criteria:’, all other contents of Annexure-A except those amended herein remaining as it is without any modification:
 - In case of EOI Applicant being a consortium, at least one member of the consortium must meet the eligibility criteria to be considered for qualification

and such member meeting eligibility criteria will be treated as the lead bidder and will be required to fulfil all the criteria and requirements under the Advertisement for EOI, EOI Process Document and its amendments.

IV. Amendment to Annexure-C

Clause 12 of Annexure-C shall be substituted to read as follows:

Details of consortium members and all details as per para 1 to 11 above in respect of each of the consortium members along with a consortium agreement.

V. Amendment to Annexure-D

Clause A of Annexure-D shall be substituted to read as follows:

A. Name and address:

Name of the EOI Applicant:

Address:

Telephone No:

Fax:

Email:

VI. Amendment to Annexure-F

Annexure-F shall be replaced and substituted as per the contents falling within 'Exhibit-1' hereunder. Kindly ensure that execution Annexure-F is carried out as per the revised format contained under 'Exhibit-1' hereunder.

Capitalised terms used but not defined in this First Amendment to EOI Process Document shall have the meaning ascribed to such terms in the EOI Process Document.

All the other terms and conditions of the EOI Process Document (as amended from time to time) shall continue to apply and in each instance in which provisions of this First Amendment to EOI Process Document contradict or are inconsistent with the provisions of the EOI Process Document, the provisions of this First Amendment to EOI Process Document shall prevail, and the provisions of the EOI Process Document that are in contradiction, or are inconsistent with this First Amendment to EOI Process Document shall be deemed to be amended in accordance with this notice without any further action being necessary.

EXHIBIT-1

“ANNEXURE-F”

FORMAT FOR AFFIDAVIT CONFIRMING ELIGIBILITY UNDER SECTION 29A OF IBC

<<to be executed on Rs.100 stamp paper and notarized>>

Date: [●]

Mr. Sundaresh Bhat
Liquidator of ABG Shipyard Limited
IBBI Registration no. IBBI/IPA-001/IP-P00077/2017-18/10162

BDO Restructuring Advisory LLP
Level 9, The Ruby, North West Wing,
Senapati Bapat Road,
Dadar (W),
Mumbai 400028, INDIA
Email: LQABG@bdo.in ; sundareshbhat@bdo.in

Sub: Affidavit and Undertaking by [●] on eligibility of [●] under Section 29A of the Insolvency and Bankruptcy Code, 2016.

Dear Sir,

I [Insert name of the authorized person of the EOI Applicant], son of/ daughter of [●], aged about [●] years, currently residing at [Address to be inserted] and having Aadhaar / Passport number [●], an authorised officer of [name of the EOI Applicant] having [registered] office at [_____] (“EOI Applicant”, a term which also includes any person acting jointly with the EOI Applicant), on behalf of the EOI Applicant, do solemnly affirm and state to Mr. Sundaresh Bhat, the Liquidator of M/s. ABG Shipyard Limited (“**Company/Corporate Debtor**”) as follow:

1. That the EOI Applicant or any person acting jointly with the EOI Applicant or in concert with EOI Applicant or any person who is a ‘connected person’ (as defined under the Insolvency and Bankruptcy Code, 2016 (“**Code**”)), listed herein as ‘**Annexure A**’:
 - a) Is eligible to be a resolution applicant as per its meaning under the Code;
 - b) Is not an un-discharged insolvent;
 - c) Is not a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);
 - d) at the time of submission of the EOI and the bid, does not have 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 liquidation process of the corporate debtor:

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

Provided further that nothing in this clause shall apply to EOI 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 bidder 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 bidder for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under the Code.

- e) Has not been convicted for any offence punishable with imprisonment
 - (i) for two years or more under any Act specified under the Twelfth Schedule of the Code;
or
 - (ii) for seven years or more under any law for the time being in force: 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*;

- f) is not 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*;
- g) Is not prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- h) Has not been a promoter or in the management control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under the Code; 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 bidder pursuant to a resolution plan approved under the Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such E-Auction Process Applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;
- i) Has not 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;
- j) subject to any disability, corresponding to clauses (b) to (i), under any law in a jurisdiction outside India;
or
- k) does not have a connected person not eligible under clauses (a) to (j)

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 e-auction process applicant;
or
- II. Any person who shall be the promoter or in management or control of the assets of the Company pursuant to sale thereof as part of the liquidation process of the Company; 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 this *Explanation I* shall apply to EOI Applicant where such applicant is a financial entity and is not a related party of the corporate debtor,

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

Explanation II—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 Organisation 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 Securitisation 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 EOI 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 EOI 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 EOI Applicant.
 4. That the list of the connected persons of the EOI Applicant set out in Annexure-A hereto is exhaustive and complete in all respects and the names of all the connected persons of the EOI Applicant have been set out thereunder without any omission whatsoever
 5. I declare and undertake that in case [insert name of EOI 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 [insert name of EOI 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 for sale of assets of the Company including after submission of Earnest Money Deposit (“EMD”) towards bid, then the EMD would be forfeited and the same would be deposited in the account of ABG Shipyard Limited – in liquidation.
 7. I also further undertake that my bid Amount will remain binding unless rejected by the Liquidator.
 8. 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.
 9. 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.

(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)