
E - AUCTION PROCESS INFORMATION DOCUMENT

(SALE OF CORPORATE DEBTOR AS A GOING CONCERN)

Invitation for Bids for E-Auction Process for Sale of Assets of Divine Alloys and Power Co Limited –In Liquidation (Company/ Corporate Debtor) as a going concern under the provisions of the Insolvency and Bankruptcy Code, 2016 (“Code”) vide Order of the National Company Law Tribunal, Kolkata Bench (“NCLT”) dated 11th May, 2021.

Date of Public Announcement- 04th January, 2022

Date of E-Auction – 27th January, 2022

On Portal: <https://nclt.auctiontiger.net> ; and www.divinealloysandpower.in

Mr Rajesh Kumar Agrawal, Liquidator

IBBI Reg. No: IBBI/IPA-001/IP-P01023/2017-2018/11722

Dated- 03rd January, 2022

Divine Alloys and Power Co Limited - In Liquidation

Registered Office: *Block A, 139, Regent Estate, 176/14/139, Raipur Road,
Kolkata- 700 092, West Bengal*

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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 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: rajesh521@yahoo.com/ cirp.divine@gmail.com or may be downloaded from [the website of the Corporate Debtor i.e www.divinealloysandpower.in](http://www.divinealloysandpower.in) and also at the website of service provider i.e. <https://nclt.auctiontiger.net>.
- e) Bidders desirous to submit their Bid have to submit their bids on E-auction Portal <https://nclt.auctiontiger.net> after deposit of EMD and submission of required documents.
- 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

- i) This Document is personal and specific to each E- Auction Participant/ Bidder.
- ii) This “E-Auction Process Information Document” (Sale of Corporate Debtor as Going Concern) is issued by Mr. Rajesh Kumar Agrawal, the Liquidator of M/s **Divine Alloys and Power Co 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.
- iii) 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) 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) does not solicit any action based on the material contained herein.
- iv) 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.
- v) 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.
- vi) The information in this Document, is collected from many sources including the Corporate Debtor and has not been independently verified by the Liquidator.
- vii) 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.

- viii) 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.
- ix) 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.
- x) Neither the Liquidator, nor his professional advisors, 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.
- xi) 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.
- xii) 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 auction process applicant.
- xiii) 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.
- xiv) In addition to the provisions set out in this Document, the E-Auction Process 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 process 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 Process Applicant(s) from complying with all such laws, as are or may be applicable.

- xv) 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.
- xvi) 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.
- xvii) 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.
- xviii) 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 advisers, 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.

- xix) 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 "**no 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 date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the moveable/immovable 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 (“E-Auction”) 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 **M/s e-Procurement Technologies Limited -Auction Tiger** has been appointed as the E-Auction Service Provider. The process of sale/ transfer or inviting the bids for the sale of assets of various units of corporate debtor 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:

Particulars	Description
Type of Bid	E-Auction (Online Only)
Seller	M/s Divine Alloys and Power Co Limited- In Liquidation represented by the Liquidator Mr. Rajesh Kumar Agrawal
E-Auction Service Provider	M/s e-Procurement Technologies Limited -Auction Tiger
Website of E-Auction Service Provider and Liquidator	Website of E-Auction Service Provider: https://nclt.auctiontiger.net Website of Corporate Debtor- www.divinealloysandpower.in
Annexures and Formats	Annexure I – Format for Affidavit and Undertaking confirming eligibility under Section 29 A and Proviso to Section 35(1)(f) of IBC, 2016; Annexure II – Bid Application Form (to be filled in and signed and stamped by the Bidder(s) and uploaded); Annexure III – Declaration by the Bidder(s) (duly filled in and signed and stamped by the Bidder(s) and uploaded along with the Bid form); Annexure IV – Technical Terms and Conditions of E-Auction Sale; Annexure V: Confidentiality Undertaking;

	<p>Annexure VI- Board Resolution; Annexure VII – Letter of Intent; Annexure VIII- Format for Bank Guarantee for EMD; Annexure IX - Format for Bank Guarantee for EMD by Associate Company;</p>
Special Instructions	<p>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.</p>

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 appropriate Authority. As mandated by the Hon'ble NCLT, 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 The copy of title documents relating to the Properties shall be available for inspection, on request to be made to the Liquidator, at 1 Ganesh Chandra Avenue, 3rd Floor, Room No-301, Kolkata- 700 013 by contacting Mr. Rajesh Kumar Agrawal (9830201612) (Email: rajesh521@yahoo.com/cirp.divine@gmail.com).

1.14 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 the 1st Installment i.e 15% of the Final Consideration shall be deposited by the Successful Bidder(s) within 15 days from the date of issuance of LOI and 75% of the Final Consideration or Balance Consideration shall be deposited by the Successful Bidder(s) into the Liquidation Account, which shall be within 90 (Ninty) days from the issuance of the LoI (s) to the Successful Bidder(s).
- i. **“DAPCL” or “The Company” or “Corporate Debtor” M/s Divine Alloys and Power Co 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.
- n. **“Eligible Bidder(s)”** shall mean Bidder(s) 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.
- p. **“Final Order”** shall mean the final, non – appealable order passed the Adjudicating Authority (including in an appeal) pursuant to the application/appeal filed by the Liquidator before such Adjudicating Authority, whether approving or rejecting the sale under Liquidation of the corporate debtor as a going concern to the Successful Bidder.
- q. **“Final Approval Order”** shall mean order of any of the Adjudicating Authority (in original application to NCLT or in an appeal) approving the sale under Liquidation of the corporate debtor as a going concern to the Successful Bidder.
- r. **“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.

- s. **"IBC"** shall mean Insolvency and Bankruptcy Code, 2016 and the related rules and regulations issued thereunder, as amended from time to time;
- t. **"Liquidation Process Regulations"** shall mean, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 as amended from time to time;
- u. **"Liquidator"** shall mean an insolvency professional appointed as a liquidator of the Company in accordance with section 34 of the IBC;
- v. **"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.
- w. **"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;
- x. **"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.
- y. **"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.
- z. **"Representatives"** shall include partners, directors, officers, employees, affiliates, agents, consultants, advisors or such other representatives of the relevant Person expressly authorised by such Person pursuant to corporate authorisations, powers of attorney, or contract;
- aa. **"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;
- bb. **"Seller"** shall mean **M/s Divine Alloys and Power Co Limited in Liquidation** acting through the Liquidator;
- cc. **"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;
- dd. **"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.

- ee. **“Transfer”** includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;
- ff. **“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:

- a. In pursuance of the application filed under section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “the Code”) by Financial Creditor” M/s Punjab National Bank”, against the Corporate Debtor M/s **Divine Alloys and Power Co Limited (DAPCL)**, (hereinafter referred as Corporate Debtor and/or Company) the Hon’ble National Company Law Tribunal, Kolkata Bench admitted the insolvency application and initiated Corporate Insolvency Resolution Process (CIRP) of M/s Divine Alloys and Power Co Limited (hereinafter referred to as “Corporate Debtor”) and appointed Mr Rajesh Kumar Agrawal as Interim Resolution Professional vide its Order dated 7th March, 2019 and subsequently, was appointed as Resolution Professional as approved by the Committee of Creditors in the CoC meeting. The RP had been vested with the responsibility to manage the affairs of the Company and to further perform all such duties and acts as prescribed under Section 17 read with 23(2) of IBC, 2016.
- b. The Committee of Creditors (CoC) approved the liquidation of Corporate Debtor M/s Divine Alloys and Power Co Limited with 100% value of votes. Accordingly, an application was filed by RP to Hon’ble NCLT under section 33 of the Code. The matter was heard several times and an opportunity was provided to the Resolution Applicant. The Final Supplementary affidavit was filed in support of the Liquidation Application. The order of 11th May, 2021 (which was received on 12.05.2021) for Liquidation of the Corporate Debtor was passed by Hon’ble NCLT Kolkata Bench and Mr Rajesh Kumar Agrawal was appointed to act as Liquidator of the Corporate Debtor to conduct the Liquidation Process of the Company in accordance with the provisions of IBC and Liquidation Process Regulations.
- c. 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. On and after the Commencement of Liquidation, the Liquidator in consultation with the stakeholder consultation committee (SCC) during the SCC meeting dated 14.07.2021 where the stakeholders confirmed for Sale of the Corporate Debtor as a going concern.
- d. 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.
- e. 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.

4. THE CORPORATE DEBTOR AND ITS ASSETS OVERVIEW

The Company is engaged in manufacturing of Billets and HR Strips & Sections with Integrated Steel Plant of 3,50,000 TPA of rolled products with the following facilities:

Sl No	Descriptions	Capacity
a)	Mini Blast Furnace	35M ³ -70 TPD
b)	Coal Washery	70 TPH
c)	Coke Oven Plant	1.50 Lakh TPA
d)	Sponge Iron (DRI)	200 TPD
e)	Captive Power Plant	10 MW
f)	Mini Blast Furnace	125M ³ -250 TPD
g)	Sinter Plant	300 TPD
h)	BOF Converter Plant	84500 TPA
i)	Induction Furnace	72 MT/Heat
j)	Concast Plant	1200 TPD
k)	Rolling Mill	3.50 Lakh TPA

The unit is located at Palgam, Kaushalgarh, Block Chandli, Dist: Saraikela -Jharkhand-832401. At present, the Registered Office of **DAPCL** is located at Block A, 139, Regent Estate, 176/14/139, Raipur Road, Kolkata- 700092, West Bengal.

It was incorporated on 2004 with the Registrar of Companies, Kolkata vide Certificate of Incorporation dated 6th September, 2004.

The Authorized Capital of DAPCL is Rs. 1,50,00,00,000/- and the paid-up Share Capital of the Company is Rs. 1,30,13,86,000.00/-.

The address for correspondence of corporate debtor is through its Liquidator Mr Rajesh Kumar Agrawal, 1 Ganesh Chandra Avenue, 3rd Floor, Room No- 301, Kolkata – 700 013 email: cirp.divine@gmail.com/ rajesh521@yahoo.com.

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 **M/s Divine Alloys and Power Co Limited- In Liquidation** shall be submitted along with Refundable Participation Deposit followed by the deposit of Earnest Money Deposit in the format as provided in “**Annexure - I**”.
- c. **Criteria:**
 - i. Minimum **Net Worth of Rs. 10 Crores (Rs. Ten Crores only)** as per the Audited Financial Statements of the latest Financial Year and if the audited financial statement of the latest year is not available, Net worth Certified should be certified by a Chartered Accountant in Practice.
 - ii. Refundable Participation Deposit of **Rs 10.00 Lakh (Rs. Ten Lakhs only)**.
 - iii. Applicant shall not be an insolvent Company / Individual/ Entity;
 - iv. 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;
 - v. 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 and other necessary documents required to assess the above criteria to the Liquidator.

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

- a. The E-Auction Process 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.
 - B. 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- VI**. KYC of the Person authorized/ Signing the documents.
 - C. Affidavit and Undertaking by the E-Auction Process 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- I” and the format for the Confidentiality Undertaking is attached vide Annexure V**.
 - D. An Eligible Bidder(s) will need to submit the duly filled, signed and stamped Bid Application Form attached vide **“Annexure -II”** and duly filled, signed, and stamped Declaration by Bidder(s) attached vide **“Annexure -III”**.
 - E. 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 Document.
- c. Please note that only the **Eligible Bidders** will gain access to 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 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. After verification of the eligible applicants, a pre bid meeting may be called by the Liquidator at its office to brief them about the corporate debtor. The applicants will be informed by email, if any such meeting is called and they may attend or depute the officials with the authorized letters on scheduled time, date and venue.
- g. 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

- a. 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.
- b. The Liquidator may coordinate to facilitate inspection / physical verification and site visit of the Properties and Assets of the corporate debtor preferably **on 20th January, 2022 to 23rd January, 2022**. The costs, travelling arrangement etc. of making any such inspection/ physical verification/ site visit shall be made/ borne by the eligible bidder and Liquidator shall not be responsible for any such costs/ travelling arrangement etc.
- c. 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.
- d. 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

- a. The Liquidator shall endeavor to provide necessary assistance for conduct of due diligence by eligible bidders. The information and documents shall be provided by the Liquidator in good faith and in confidential mode.
- b. The documents shall be open for inspection at the office of the 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 Earnest Money 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.
- c. The intending bidders, prior to submitting their bid, should make their independent inquiries regarding the title of the property, zone of the land, 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.
- d. For any assistance in carrying out the due diligence, the Liquidator Mr Rajesh Kumar Agrawal (9830201612) may be contacted.
- e. 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 (Divine Alloys and Power Co Limited- In Liquidation) 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 "**No 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 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 endeavour 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."

NCLT approval of Extension application

Since the Period of 90 days for sale of Corporate Debtor as Going Concern ended on 08.08.2021, therefore an application u/s 35 (1) (n) of the IBC, 2016 was filed by the Liquidator before the Hon'ble NCLT Bench on 07.08.2021 for consideration. Hon'ble NCLT vide its order dated 13.09.2021 allowed the extension of period of 90 days for sale of CD as Going Concern and also allowed the exclusion of 61 days. It is clarified that the sale of the Company on going concern basis under this E -Auction Process, is subject to receipt of the Final Approval Order from the Adjudicating Authority.

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 Document. On receipt of the Payment of the 1st Installment i.e 15% of the Final Consideration from the Successful Bidder within 15 days from the date of issuance of LOI, the Liquidator shall make an application to the Adjudicating Authority as per the timelines set out herein. The process of consummation of the sale of the Company as a going concern to the Successful Bidder as per the terms of this E-Auction Process Document shall commence from the date of the Final Approval Order from the Adjudicating Authority or the Whole consideration received whichever is later. The Liquidator shall not be responsible and liable, in any manner, in the event the Adjudicating Authority in its Final Order rejects the sale transaction contemplated hereunder. The liability and obligations of the Successful Bidder shall continue till the receipt of the Final Order or the Whole consideration received whichever is later and thereafter as per the terms of the Final Order and/or the Liquidation Process Regulations and/or this E-Auction Process Document and/or the LOI.

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. On and after the Commencement of Liquidation, the Liquidator in consultation with the stakeholder consultation committee (SCC) during the SCC meeting dated 14.07.2021 where the stakeholders confirmed for Sale of the Corporate Debtor as a going concern;

All the assets of the corporate debtor have been grouped together which shall be sold as a going concern under liquidation

Assets	Reserve Price	Amt in Rs.	
		EMD Money	Incremental Bid
Land and Building	Rs 64.80 Crore	Rs 6.48 Crore	Rs 50.00 Lakh
Plant & Machinery			
Other Fixed Assets i.e Stores & Consumables, Vehicles, Furniture & Fixtures and Office Equipment			
Current Assets i.e Short Term Loan & Advances and Other Current Assets			

All other liabilities pertaining to the Corporate Debtor being sold as going concern, subject to the approval of the Adjudicating Authority, 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 or the final order of Hon'ble NCLT approving sale of Corporate Debtor as a going concern whichever is later, 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 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:

1. The Bidder(s) cannot place a bid for the E-Auction at a value below the Reserve Price.
2. Order of bidding will be as follows: -
 - Window for E Auction sale will open as mentioned in the documents.
3. The Bidder(s) can bid for only after the required Earnest Money Deposit (EMD) specified has been deposited.
4. Further, the Bidders can increase their Bid by a minimum incremental amount as indicated against each Option in above table.
5. 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

- a. 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 Document.
- b. 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. After identification of Successful Bidder and the receipt of 1st Installment from the Bidder, the Liquidator shall have the right to approach the Adjudicating Authority for obtaining suitable directions on the implementation of such sale and any such directions shall be binding on the parties to sale as per E-Auction Process Document. In case the Hon'ble NCLT does not approve the sale of the Corporate Debtor as a going concern, the Liquidator reserves the right to appeal in the appropriate forum. The timeline for payment of the balance sale consideration shall commence from the date of issuance of LoI i.e 1st Installment of 15% of the Final Consideration shall be paid within 15 days from the date of issuance of LOI and the balance Consideration i.e 75% of the Final Consideration or the balance consideration shall be paid within 90 days from the issuance of LOI.
- c. 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 (including for any delay in getting the Final Approval Order) 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, 1st Installment and any other amounts paid by the Bidder shall be forfeited and the Bidder shall not be entitled to a refund the same.
- d. **Auction Process -**
 - (i) The Bidder/ Participates 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 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.
 - (v) The Successful Bidder shall deposit the 1st Installment, within 15 days from the date of issuance of LoI by the Liquidator.

(vi) The Liquidator will be filing an Application before the Hon'ble NCLT or other Adjudicating Authority for the purpose of seeking directions for implementing the sale under Liquidation of the corporate debtor as a going concern to the Successful Bidder. In case the Hon'ble NCLT does not approve the sale of the Corporate Debtor as a going concern, the Liquidator may approach the appropriate authority. The Successful Bidder shall continue to remain liable and obligated till the Final Order is received from the Adjudicating Authority and thereafter the Successful Bidder's liability and obligation shall continue as per the terms of this E-Auction Process Document and/or Liquidation Process Regulations and/or LOI and/or the Final Approval Order.

(vii) 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 Document and/or the Final Approval Order and/or as directed by the Liquidator.

In case, the Adjudicating Authority does not approve the sale as going concern under the Final Order, the money deposited shall be returned back to the Bidder without any interest, and auction shall be conducted again or as per directions provided by Adjudicating Authority.

(viii) Upon the payment of balance sale consideration or the final order 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.

- e. 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.

- f. On receipt of the entire sale consideration (plus applicable taxes and costs as determined by the Liquidator) from the Successful Bidder or the final order from the Hon'ble NCLT whichever is later, the Liquidator shall execute a sale certificate in favour of the Successful Bidder for transferring the Company as a going concern to the Successful Bidder. Additionally, the Liquidator, in his discretion, shall execute a power of attorney in favour of the Successful Bidder for certain limited purposes such as authorizing the Successful Bidder to transfer the licenses and permissions, other approvals of the Company in its name, etc.
- g. 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.
- h. 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.
- i. A Qualified Bidder, participating in the E-Auction Process, who has submitted its Bid for the Company, if declared as the Successful Bidder, shall have a right to acquire the Company through a special purpose vehicle (incorporated in India) ("SPV"). The Successful Bidder will be required to intimate the name and requisite details of the SPV (as may be required by the Liquidator), within 15 (fifteen) days from its declaration as the Successful Bidder by the Liquidator in writing. Accordingly, such acquiring SPV shall be bound by all the terms of the E- Auction Process Document (including all payment terms and the Bid Declaration Form submitted by the Qualified Bidder), as if they were the Qualified Bidder. The SPV will be required to be compliant with Section 29A of the Code and submit the "**Affidavit and Undertaking**" as set out in **Annexure I** of the E-Auction Process Document, simultaneously with the aforesaid intimation. The SPV shall also submit such necessary documents/undertakings/letters as may be required by the Liquidator within the timelines prescribed by him, at his discretion. Notwithstanding that the Successful Bidder proposes to acquire through SPV, the Successful Bidder shall at all times continue to remain liable for carrying out its obligations (including payment obligations) as per the terms of the E-Auction Process Document.

j. E -AUCTION DETAILS

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

A. E-Auction dates:

Date: 27th January, 2022

Time- 11:00 AM to 02:00 PM

- B.** In case, a bid is placed in the last 10 minutes of the closing time of the respective E-auction, the closing time will automatically get extended for another 10 minutes with a maximum of 2 extensions.
- C.** Last date for submission of BID documents along with the EMD, Eligibility Documents along with Refundable Participation Deposit as mentioned in the timelines.
- D.** For any technical support in bidding, please contact Mr Praveen Kumar Thevar. Email at- Praveen.thevar@auctiontiger.net, Phone no- 97227 78828/07968136854-55-51 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 10,00,000/- (Rs. Ten 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 a Pay order/ Demand Draft issued by any scheduled commercial bank in India payable at Ranchi and in favor of "Divine Alloys and Power Co Limited - In Liquidation" by way of RTGS/ NEFT in the bank account as below **by 18th January, 2022**

Name of the Company	Divine Alloys and Power Co Limited
Bank Name	Punjab National Bank
Branch Name	Mahavir Chowk Branch
IFSC Code	PUNB0109100 (5 th digit is numeric)
Account number	1091002100031899

- d. The Refundable Participation Deposit shall be remitted by the Bidder(s) from the bank account owned by the Bidder(s). In the event the EMD is remitted by any other Person, it must be accompanied by a letter.
- 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.
- h. The **Refundable Participation Deposit** may also be provided in the form of the cash which can be deposited by process applicant, by way of direct bank transfer to the bank account as notified by 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) for the relevant Option(s) or by way of a bank guarantee issued by any scheduled commercial bank in India (“Bank”) in favour of the Guarantee Beneficiary, i.e. **Divine Alloys and Power Co Limited - In Liquidation**, in the specified Annexure provided in this E-Auction Process Information Document.
- b It may be noted that the Bidder may request the Liquidator to permit the Bidder to submit the EMD through its Associate or Associate Company. Such payment of the EMD by an Associate or Associate Company of the Bidder shall be accompanied by a letter in the format set out in **Annexure- VIII & IX** (Earnest Money Deposit by an Associate / Associate Company). Such an Associate or Associate Company must also be a Qualified Bidder as per the requirements specified in this E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern).

Provided that, the Liquidator reserves the right to accept such a request at its sole discretion and upon such terms and conditions as it may deem fit, including but not limited to requiring such a party to submit any authorization documents or other necessary details/documents.

- c In the event that the Successful Bidder is implementing the sale transaction through an SPV, the SPV will be required to submit an undertaking/declaration to the Liquidator (in a form and manner as acceptable to the Liquidator) acknowledging and confirming inter alia that (i) the Liquidator shall be entitled to deal with the EMD as per the terms of the E-Auction Process Document; and (ii) they are aware of the terms of the E-Auction Process Document regarding forfeiture of the EMD; (iii) they shall be bound by the E-Auction Process Document as though they were the Qualified Bidder.

d. EARNEST MONEY DEPOSIT (INTEREST FREE)

- A. No interest will be paid to the E-Auction Participant(s)/ bidder(s) in relation to the amount deposited as Earnest Money.
- B. The Earnest Money Deposit shall be paid by way of a Pay order/ Demand Draft issued by any scheduled commercial bank in India payable at Ranchi and in favor of “**Divine Alloys and Power Co Limited - In Liquidation**” or in the form of Bank Guarantee as per the format specified herein or by way of RTGS/ NEFT in the bank account as below **by 25th January, 2022**.

Name of the Company	Divine Alloys and Power Co Limited
Bank Name	Punjab National Bank
Branch Name	Mahavir Chowk Branch
IFSC Code	PUNBQ109100
Account number	1091002100031899

- C. The details of any remittances in this regard shall be entered in the online 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). In the event the EMD is remitted by any other Person, it must be accompanied by a letter in the format set out in Format B (Earnest Money Deposit by an Associate / Associate Company).
- D. 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.
- E. Bidder(s) shall preserve the remittance document and shall produce the same in front of the Liquidator as and when demanded.
- F. All payment made by the Bidder(s) under the e-auction shall be intimated to the Liquidator.
- G. The Earnest Money Deposit may also be provided in the form of the cash which can be deposited by E-Auction process applicant, by way of direct bank transfer to the bank account as notified by the Liquidator. It should be noted that No interest will be paid to the auction process applicant in relation to such Earnest Money Deposit amount.
- H. In the event, the EMD is submitted in the form of bank guarantee, the bank guarantee shall be renewed periodically by the Bidder till the payment of entire sale consideration and other amounts payable under this E-auction Process Document or receipt of the Final Order accepting/rejecting the sale pursuant hereto (as the case may be). Every renewal shall be done at least 30 (thirty) days prior to the expiry of the existing bank guarantee and the said renewal shall be for a minimum period of 6 (six) months. The bank guarantee shall be payable at Ranchi. The bidder shall ensure that bank guarantee is stamped with adequate stamp duty as applicable in Ranchi.

e. Forfeiture of Refundable Participation Deposit / Earnest Money Deposit (Including the amount paid)/ Invocation of Bank Guarantee from the E-Auction Applicant/ Bidder.

The Guarantee Beneficiary shall have the right to invoke the bank guarantee for a period upto 30 (thirty) days from the last date of the submission of the Earnest Money Deposit, by issuance of a written demand to the Bank in the circumstances as set out in the Bank Guarantee.

It is be 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 it fails to extend the validity of the Earnest Money Deposit through the bank guarantee or does not accept the issue of letter of intent;
- 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.
- If the Bidder is identified as the Successful bidder and it fails to extend the validity of the EMD through the bank guarantee or does not accept the Letter of Intent issued by the Liquidator;

f. 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 instalment payment only.

g. 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 invoke/ encash and forfeit Earnest Money Deposited by the Successful Bidder.

h. 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 by way demand draft or RTGS transfer of the unsuccessful bidders. 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) for asset (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 by Demand Draft or any other mode as prescribed, 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 Installment and 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 1st Installment, which would not be bearing any interest, has to be paid by the Bidder within 15 days from the date of issuance of LOI by the Liquidator.

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 signed Letter of Intent and the 1st Installment of Payment from the Successful Bidder, the Liquidator shall file an application before the Hon'ble NCLT for the purpose of seeking directions for implementing the sale under Liquidation of the corporate debtor as a going concern to the Successful Bidder. In case the Hon'ble NCLT does not approve the sale of the Corporate Debtor as a going concern, the liquidator may approach the appropriate authority.

The sale contemplated under this E-Auction Process document shall be consummated on receipt of the Final Approval Order from the Adjudicating Authority or the receipt of the whole consideration whichever is later.

Unless expressly indicated by the Liquidator, the Refundable Participation Deposit, EMD (if provided by way of cash transfer) and 1st Installment shall be set-off against or used as part of the consideration that the Successful Bidder proposes to offer as a sale consideration for the Company. In the event that the Successful Bidder/any entity on behalf of the successful Bidder has provided Earnest Money Deposit by way of Bank Guarantee (as per format provided herein), the EMD shall be released only and when the full payment of the entire sale consideration (plus applicable taxes as determined by the Liquidator) is made by the Successful Bidder to the Liquidator.

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 the Final Approval Order 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.

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. NON-RECEIPT OF APPROVAL FROM THE ADJUDICATING AUTHORITY

On receipt of the 1st Installment, the Liquidator shall have the right to file an application before the Hon'ble NCLT for approval of the sale of the Company as a going concern to the Successful Bidder pursuant to the terms of this E-Auction Process. In the event that the Hon'ble NCLT approves the said transaction, the same shall be construed as the Final Approval Order and the timelines for payment and other obligations of the Successful Bidder shall commence from the date of the receipt of the Final Approval Order from the NCLT.

In the event the NCLT does not approve the sale of the Company as a going concern to the Successful Bidder, the Liquidator shall have a right (but not an obligation) to file an appeal before the appropriate authority.

In the event, the Final Order is passed by the Adjudicating Authority rejecting the sale on going concern basis pursuant to this E-Auction Process Document and the same is not appealed by the Liquidator in the NCLAT or the Supreme Court (as the case may be), the Liquidator shall return/refund the Refundable Participation Deposit, EMD and 1st Installment payment made by the Successful Bidder within 60 days from the receipt of the Final Order. No interest shall be payable by the Liquidator on the said amounts to be refunded to the Successful Bidder.

It is clarified that the obligations and liabilities of the Successful Bidder shall continue till the Final Order (and thereafter as per the terms of the Final Approval Order and/or this E-auction Process Document/ and/or the LOI and /or the Liquidation Process Regulations) or whole consideration received whichever is later and the Successful Bidder shall not be entitled to withdraw/cancel/renege (or attempt to do the aforesaid) at any time after submission of the Bid for any reason whatsoever (including any delay to obtain the Final Approval Order). In the event the Successful Bidder withdraws/cancels/renege (or attempt to do the aforesaid), the Refundable Participation Deposit, EMD, 1st Installment and any other amounts paid till then shall be forfeited and the Successful Bidder shall not be entitled to a refund of the same, even if the Final Order is passed by the Adjudicating Authority rejects the sale on going concern basis pursuant to this E-Auction Process Document to the Successful Bidder.

15. FRAUDULENT AND CORRUPT PRACTICES

- a. 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.
- b. For the purposes of this Clause the following terms shall have the meaning hereinafter respectively assigned to them:
- c. **“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;
- d. **“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;
- e. **“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;

- f. **“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
- g. **“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.
- h. 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.

16. 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/ Asset(s) under the bid option.

17. 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.

18. 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).

19. TIMELINES

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

Sr. No.	Event	Timeline (Days)
1.	Public Announcement of E- Auction	04 th January, 2022
2	Opening of Auction Portal and E-Auction Process Information document made available on the websites as per Terms and Conditions	04 th January, 2022
3	Submission of KYC, Eligibility criteria documents and Refundable Participation Deposit	18 th January, 2022 on or before 06:00 PM
4	Access of Documents to the Eligible Bidder	20 th January, 2022
5	Site Visits and Discussion Meetings	20 th January, 2022 to 23 rd January, 2022
6.	Submission of Bid Details along with Earnest Money Deposit	25 th January, 2022 on or before 06:00 PM
7.	E-Auction Date and Time	27th January, 2022 Timing- 11:00 AM to 2:00 PM (Under the above cases, in case, a bid is placed in the last 10 minutes of the closing time of the E-auction, the closing time will automatically get extended for another 10 minutes for maximum of 2 extensions).
8.	Announcement of Successful Bidder	28 th January, 2022
9.	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.
10.	Unconditional acceptance of LOI by the Successful Bidder	Within 3 days from issuance of the LOI by the Liquidator.

11.	Payment of 1 st Installment by Successful Bidder(s)	15% of the Final consideration within 15 days of the issuance of LoI.
12	Payment of final balance consideration (plus applicable Taxes and interest as determined by the Liquidator) and other costs (as determined by the Liquidator) by Successful Bidder	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.
13.	Return of Earnest Money Deposit (EMD) for Unsuccessful Bidder(s)	Within 30 days from the declaration of successful bidder.
14	Filing of Application before the Hon'ble NCLT by the Liquidator	On receipt of 1 st Installment from the Successful Bidder.
15	Final Approval Order is passed by Adjudicating Authority	
16	Completion of sale	On receipt of final consideration or approval of Hon'ble NCLT whichever is later.

- 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 1st Installment.

ANNEXURE- 1

**FORMAT FOR AFFIDAVIT AND UNDERTAKING CONFIRMING ELIGIBILITY UNDER SECTION 29A
AND / OR PROVISO TO SECTION 35(1) (f) OF IBC**

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

Date: [●]

Mr. Rajesh Kumar Agrawal

Liquidator of M/s **Divine Alloys and Power Co Limited – In Liquidation**

IBBI Reg. No: IBBI/IPA-001/IP-P01023/2017-2018/11722

1, Ganesh Chandra Avenue, 3rd Floor, Room No- 301, Kolkata- 700 013

Sub: 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. Rajesh Kumar Agrawal, the Liquidator of **Divine Alloys and Power Co 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;
 - a) Is not an un-discharged insolvent;
 - b) 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);
 - c) at the time of submission of the BID, doesn’t 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 BIDDER 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 not 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 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;
- f) Is not prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- g) 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 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 E-Auction Sale Process Applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

- h) Has not executed a guarantee in favor of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;
- i) subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
- j) does not have 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 E-Auction Sale 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 BIDDER 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 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 the min 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 for sale of Lot(s) of assets of the Company including after submission of Earnest Money Deposit (“EMD”) towards bid, then the Refundable Participation Deposit, and EMD would be forfeited and the same would be deposited in the account of **Divine Alloys and Power Co Ltd – in Liquidation**.
 7. I also further confirm and undertake that my 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, I do so, I confirm and undertake that my Refundable Participation Deposit /EMD deposited in this connection is liable to be forfeited.
 9. I shall submit my 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.

We confirm that the payment of the Refundable Participation Deposit of Rs. 10,00,000 (has been paid through demand draft number _____or 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 - II
BID APPLICATION FORM

Date:

Mr. Rajesh Kumar Agrawal
Liquidator of M/s **Divine Alloys and Power Co Limited – In Liquidation**
IBBI Reg. No: IBBI/IPA-001/IP-P01023/2017-2018/11722
1, Ganesh Chandra Avenue, 3rd Floor, Room No- 301, Kolkata- 700 013

Dear Sir,

I am desirous in participating in the E-Auction Under Option no _____ (please tick whichever is/are applicable) of **Divine Alloys and Power Co Limited – In Liquidation** forming part of Liquidation Estate formed by the Liquidator, appointed by the Hon'ble National Company Law Tribunal, Kolkata Bench vide order dated 11th May, 2021.

Details of Corporate Debtor:

Name	
Bank Account Number	
Bank Name	
Branch	
IFSC Code	

Details of Bidder(s)

Name of the Bidder	
Constitution of 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.

Place:

Date:

Signature

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

Terms and Conditions of the E-auction are as under:

In addition to the E-Auction Process Information Document, following terms and conditions apply:

1. E-Auction will be conducted on **“As is where is basis”, “As is what is basis”, “Whatever there is basis”, and “No recourse basis”** through approved service provider M/s e-Procurement Technologies Limited -Auction Tiger. The complete E-Auction Process Information Document containing Terms and Conditions of E- Auction, E- Auction Bid form, Eligibility Criteria, Declaration by Bidders, Description of Assets etc. are available on website <https://nclt.auctiontiger.net> Contact: Mr.Praveenkumar Thevar, Email : praveen.thevar@auctiontiger.net , Ph. No.: +91 9722778828 - 079 6813 6854/55/51 and also on www.divinealloysandpower.in. Interested bidders will have to search for the mentioned company using the Company’s name (**Divine Alloys and Power Co Limited- In Liquidation**).
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 **by 18th January, 2022 till 6:00 PM**. 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 **25th January, 2022 till 6.00 PM** either through Demand Draft/NEFT/RTGS in the Account of “Divine Alloys and Power Co Ltd in Liquidation”, drawn on any Scheduled Bank or in the form of Bank Guarantee as specified in the format

4. The Name of the intending Bidders eligible to participate in E-auction on the portal (<https://nclt.auctiontiger.net>) shall be identified by the Liquidator and the E-auction service provider will provide User ID and password by email to eligible bidders prior to the bidding. In case, they do not receive, they may contact the liquidator by sending email promptly.
5. 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.
6. In case bid is cancelled, the Refundable Participation Deposit / Earnest Money Deposit of the bidder shall be refunded.
7. 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.
8. 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 the table above.
9. 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.
10. 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.
11. E-auction date & Time: **27th January, 2022 from 11AM to 2:00 PM**
It will commence at 11.00 as per the details mentioned under clause 17 (with maximum of 2 extensions of 10 minutes each).
12. 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.

13. It should be the responsibility of the interested bidders to inspect and satisfy themselves about the property before submission of the bid.
14. 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.
15. 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 10 minutes of the closing time of the e-auction, the closing time will automatically get extended for 10 minutes for a maximum of 2 extensions.
16. The sale certificate will be issued and / or transaction / sale documents executed in the name of Successful Bidder(s) / Successful E-Auction Process Applicant(s) only and will not be issued in any other name(s).
17. The decision of Liquidator on declaration of successful bidder shall be final and binding on all the Bidders.
18. The Bidders are required to keep themselves updated for any revisions in the terms and conditions of E-Auction by regularly visiting the links and website addresses of the Company as mentioned in this E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern).

Date:

Place:

ANNEXURE - III
DECLARATION BY BIDDERS(S)

To,
Mr. Rajesh Kumar Agrawal
The Liquidator,
Divine Alloys and Power Co Limited- In Liquidation

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 / Earnest Money Deposit and 1st Installment Money.

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 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 (i) submit the duly executed copy of the LOI to the Liquidator as per the terms of the E-Auction Process Document; (ii) make the payment of the 1st Installment (plus applicable taxes) within 15 days of the issuance of LOI.
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 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 Document in the event the sale is being consummated through an SPV and I/we undertake that in the event of any default by the SPV, we shall fulfil our obligations within the timelines specified hereunder and no extension shall be provided by the Liquidator.
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:

Address:

Email ID:

Mobile:

ANNEXURE - IV

TECHNICAL TERMS & CONDITIONS OF E-AUCTION SALE PROCESS

1. Intending bidders shall have a valid e-mail ID, valid PAN Card and KYC document to register with the E- Auction Service Provider.
2. Intending bidders must register with the e-auction service provider.
3. Only upon verification of the Online Form and confirmation of remittance of Earnest Money Deposit will the Eligible Bidders be declared and thereafter, permitted to access the Platform for bidding for a particular Property/Asset.
4. The Bidder shall be solely responsible for all consequences arising out of the bid submitted by him (including any wrongful bidding) and no complaint/ representation will be entertained in this regard by the Agency/ the Seller. Hence, Bidders are cautioned to be careful to check the bid amount and alter/ rectify their bid if required before confirming the bid submitted.
5. Bidders should not disclose their User ID as well as password and other material information relating to the bidding to anyone to safeguard its secrecy.
6. Bidders are advised to change the password immediately on receipt thereof.
7. The Affidavit and declaration as per the format set out in **Annexure I and Annexure III** must be executed in accordance with applicable law and it must be issued in accordance with the constitutional documents of the Bidder, if applicable, after obtaining all corporate approvals as may be required. The extract of constitutional documents and certified copies of the corporate approvals must be enclosed with the declaration. In case of Bidder being an individual, the declaration must be personally signed by the Bidder. In case the Bidder is not an individual, the declaration must be signed by a who is duly authorized to sign the same.
8. All the aforementioned documents are required to be uploaded on the portal and the original physical copies thereof shall be provided by the Successful Bidder to the Seller in accordance with the E-Auction Process Information Document.
9. All bids placed are legally valid bids and are to be considered as bids from the Bidder himself. Once the bid is placed, the Bidder cannot reduce or withdraw the bid for whatever reason. If done so, the Earnest Money Deposit amount shall be forfeited.
10. The highest bid on the auction shall supersede all the previous bids of the respective Bidders. The Bidder with the highest offer/ bid does not get any right to demand for acceptance of his bid.

11. After the conclusion of the e-auction for each Asset, the Successful Bidder shall be informed through a message generated automatically by the portal, of the outcome of the E-Auction. A separate Intimation shall also be sent to the Successful Bidder. Date of sending the e-mail will be considered as the date of receipt of the Intimation i.e. Date of Intimation.
12. Bidders may encounter certain unforeseen problems such as time lag, heavy traffic, and system/ power failure at the Bidder's end. To avoid losing out on bidding because of above-mentioned reasons, it is advised not to wait for the last moment.
13. The conditions of Forfeiture of Refundable Participation Deposit / EMD as defined in the E-Auction Process Information Document shall apply to all the bidders.

ANNEXURE V - CONFIDENTIALITY UNDERTAKING

(on stamp paper)

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. Rajesh Kumar Agrawal, an Insolvency Professional having registration no. IBBI/IPA-001/IP/P-01023/2017-2018/11722 .

WHEREAS M/s Divine Alloys and Power Co Limited, a company registered under Companies, Act, 1956 (hereafter referred as the "**Company**") is undergoing liquidation vide NCLT Kolkata Bench ("**NCLT**") order dated 11th May, 2021, published on 13th May, 2021 at NCLT website. Vide the said NCLT Order Mr. Rajesh Kumar Agrawal, a registered insolvency professional with Insolvency and Bankruptcy Board of India (IBBI) having registration number IBBI/IPA-001/IP/P-01023/2017-2018/11722 has been appointed as liquidator to manage, protect, sell and liquidate the property, assets, business and other affairs of M/s Divine Alloys and Power Co 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 memorandum and information contained accessed through the Data Room which shall mean the virtual data room maintained by the Liquidator, created for the Qualified Bidders to access 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)E-Auction Process Information Document (Sale of Corporate Debtor as a Going Concern) (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 endeavours to secure that no person acting on its behalf divulges or discloses or uses any part of the Confidential Information, including but not limited to the financial position of the 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:

a) 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

b) 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

c) 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)/ Information Memorandum 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 wilful 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 Delhi shall have exclusive jurisdiction over matters arising out of or relating to this Confidentiality Undertaking.

10. Capitalised 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) Authorised Signatory
Date:
Place:

ANNEXURE VI: 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 process document dated [●] (“**Process Document**”), issued by Liquidator of Divine Alloys and Power Co Limited (“DAPCL), in relation to submission of bids for sale of Corporate Debtor as a whole on a going concern basis and set(s) of assets collectively, 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 DAPCL 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 - VII

LETTER OF INTENT

To,

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

Attn. [?]

Re: E-Auction sale of Corporate Debtor as a Going Concern of **Divine Alloys and Power Co Limited (In Liquidation)** conducted on.....

_____.

Dear Sir/ Ma'am,

1. With reference to the above, successful bid was submitted by yourself_____ (“Successful Bidder”) in relation to E-auction sale of Asset (Asset) of **Divine Alloys and Power Co Limited (In Liquidation)** (“Company”) auctioned on.
2. You are requested to confirm your acceptance of this Letter of Intent (Loi) within 2 (two) days of the date of issuance hereof with an endorsement stating that this Loi is, “Accepted Unconditionally”, under the signature of the authorized director / authorized signatory. Within 15 days from the date of Issuance of Loi, you shall pay the 1st Installment i.e 15 % of the Final Consideration and within 90 (ninety) days from the date of issuance of Loi, 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, demand as set out in the schedule to this Loi. Please note that, failure to accept this Loi within the time period specified may result in your disqualification as the Successful Bidder along with cancellation of this Loi and forfeiture of the Refundable Participation Deposit / Earnest Money deposited and 1st Installment, in relation to the captioned transaction issued by the Liquidator (“E-Auction Process Information Document”).
3. The Liquidator agrees that simultaneously upon full payment of Sale Consideration and any applicable GST, if any, or the Final order of Hon’ble NCLT 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 “**no recourse**” basis of the specified Asset, 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.
4. This Loi 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 Loi 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 LoI.

5. In the event you are found to have made any misrepresentation, wrongful disclosure or misleading declaration of eligibility, this LoI may be revoked and on account of such revocation you shall have no right under this LoI.
6. Any contravention of the terms of this LoI, including non- acceptance of the contents hereof within the stipulated time period, shall lead to cancellation of this LoI, unless otherwise provided in the E-Auction Process Information Document.
7. 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.
8. This LoI shall be governed by, and construed in accordance with, the laws of India and the National Company Law Tribunal, Kolkata Bench shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with this LoI.
9. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the E-Auction Process Information Document.

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

Yours faithfully,

Liquidator
Divine Alloys and Power Co Limited- In Liquidation

Unconditionally agreed and accepted by: For

Authorized Signatory _____

FORMAT - VIII
EARNEST MONEY DEPOSIT – BANK GUARANTEE

(To be on non-Adjudicating stamp paper of appropriate stamp duty value relevant to place of execution, purchased in the name of the Guarantor Bank)

To

Mr. Rajesh Kumar Agrawal
Liquidator – Divine Alloys and Power Co Limited,
1, Ganesh Chandra Avenue
3rd Floor, Room No 301, Kolkata - 700013

and

Punjab National Bank,

(“PNB”, together with the “Liquidator”, the “Beneficiary”)

WHEREAS

[Insert name of the Bidder] incorporated in [India] / [insert name of country where guarantor is incorporated] under the [Companies Act, [1956/2013]] / [insert name of legislation under which the entity is incorporated] with corporate identity number [●], whose registered office is at [insert address] (“Bidder”) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to Rs. (Indian Rupees only) in accordance with the terms of the E-Auction Process Information Document dated [●] (“E-Auction Process Information Document”) issued by the Liquidator seeking submission of bids for assets of Divine Alloys and Power Co Limited.

This bank guarantee is required to be issued in favour of the Beneficiary, as per the terms of the E-Auction Process Information Document.

We, [insert name of the bank] having our registered office at [insert address (“Bank”) at the request of the Bidder, do hereby undertake to pay to the Beneficiary at [Ranchi] an amount not exceeding Rs. XXXXX (Indian Rupees XXXXX only) to secure the obligations of the Bidder under the E- Auction Process Information Document on demand from the Beneficiary on terms and conditions herein contained.

Now therefore, the Bank hereby issues in favour of the Beneficiary this irrevocable and unconditional payment bank guarantee (“Guarantee”) on behalf of the [Insert name of the Bidder] for an amount.

The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Beneficiary without any demur, reservation,

caveat, protest or recourse, immediately on receipt of first written demand made by the Beneficiary, a sum not exceeding the aggregate amount of Rs. XXXXX (Indian Rupees XXXXX).

This Guarantee shall be valid and binding on the Bank up to and including [Insert date of validity of the Earnest Money Deposit] and shall in no event be terminable by notice or any change in the constitution of the Bank or the Beneficiary, by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

The Bank hereby expressly agrees that the demand made on it under this Guarantee shall be conclusive evidence of that such payment is due and the Bank shall not require any other proof, in addition to the written demand from Beneficiary, made in any format, raised at the above mentioned address of the Bank, in order to make the said payment to the Beneficiary.

The Bank shall make payment hereunder notwithstanding any objection by [Insert name of the Bidder] and / or any other person or any dispute(s) raised by the [insert name of the Bidder] in any suit or proceeding pending before any court or tribunal relating thereto and the Bank's liability under this present being absolute and unequivocal. The Bank shall not require the Beneficiary to justify the invocation of this Guarantee, nor shall the Bank have any recourse against the procurer(s) in respect of any payment made hereunder.

This Guarantee shall be interpreted in accordance with the laws of India and the courts and tribunals at Kolkata shall have exclusive jurisdiction. The Bank represents that this Guarantee has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Bank in the manner provided herein.

This Guarantee shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Bank.

This Guarantee shall be a primary obligation of the Bank and accordingly the Beneficiary shall not be obliged before enforcing this Guarantee to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder or to exercise, levy or enforce any distress, diligence or other process against the Bidder. The Bank waives any such right to that extent.

The Bank further unconditionally agrees with the Beneficiary that the Beneficiary shall be at liberty, without Bank's consent and without affecting in any manner the Bank's obligations under this Guarantee, from time to time:

Vary and/or modify any of the terms of the E-Auction Process Information Document;
Extend and/or postpone the time of performance of the obligations of the Bidder under the E-Auction Process Information Document; or

Forbear or enforce any rights exercisable by the Beneficiary against the Bidder under the terms of the E-Auction Process Information Document.

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Beneficiary or any indulgence by the Beneficiary to the Bidder or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under the Guarantee.

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

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

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

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

Witness:

1. Signature Name and Address. Name:

..... Designation with Bank Stamp Name and Address

Attorney as per power of attorney No

For:

..... [Insert Name of the Bank] Banker's Stamp and Full Address:

Dated thisday of 20.....

Notes:

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

FORMAT - IX

EARNEST MONEY DEPOSIT AMOUNT PAYMENT BY AN ASSOCIATE COMPANY

To
Mr. Rajesh Kumar Agrawal
Liquidator – Divine Alloys and Power Co Limited,
1, Ganesh Chandra Avenue
3rd Floor, Room No 301, Kolkata - 700013 (“Liquidator”)

[Copy to:]

[Insert name of the Bidder with address] Dear Sir,

Sub: Payment of the amounts of Earnest Money Deposit on behalf of the Bidder in relation to the auction of assets of Divine Alloys and Power Co Limited.

In light of the bid for assets of Divine Alloys and Power Co Limited submitted by [Insert name of the Bidder with address] in accordance with and subject to the provisions of the E- Auction Process Information Document dated [•] in relation to the captioned transaction (“E-Auction Process Information Document”), issued by the Liquidator,

[Insert name and address of the Associate Company and address of the head office] hereby declares and confirms it is [an / the] [Insert relationship of the Associate Company with the Bidder] of the Bidder (“Associate Company”), and the payment of the Earnest Money Deposit amount vide [Insert mode of payment] (“Payment”) is on behalf of the Bidder. The Associate Company acknowledges that such amounts paid as Earnest Money Deposit shall be subject to the terms of the Process Memorandum and hereby waives any right to claim any refund or adjustment of the amounts of such Payment except in accordance with the terms of the E-Auction Process Information Document.

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

Capitalized terms used but not defined in this letter shall have the meanings ascribed to such terms in the E-Auction Process Information Document.

Thanking you, Yours sincerely,

.....

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

ACKNOWLEDGMENT

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

.....

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

