

## ASSET SALE PROCESS MEMORANDUM

Invitation for bids for auction of assets of *Concast Steel & Power Limited* “in liquidation” under the provisions of Insolvency and Bankruptcy Code, 2016 by an order of Honorable National Company Law Tribunal (“NCLT”), Kolkata Bench with effect from 26-09-2018.

Date of Process Note: {13<sup>th</sup> August,2020}

Issued by -

Kshitiz Chhawchharia

Liquidator

IBBI Reg. No: IBBI/IPA-001/IPP00358/2017-2018/10616

Concast Steel & Power Limited (In liquidation)

21, Hemant Basu Sarani

Kolkata - 700001

West Bengal, India

[LQ.concast@in.gt.com](mailto:LQ.concast@in.gt.com)

Mr. Kshitiz Chhawchharia has been granted a certificate of registration to act as an Insolvency Professional by the Insolvency and Bankruptcy Board of India, his Registration No. is IBBI Reg. No: IBBI/IPA-001/IPP00358/2017-2018/10616. Concast Steel & Power Limited (“**Company**”) has been ordered to be liquidated by the Hon’ble NCLT, Kolkata Bench and Mr. Kshitiz Chhawchharia has been appointed as the Liquidator of the Company. The affairs, business and property of the Company are being managed by the Liquidator, who acts as an agent of the Company only and without any personal liability.

IP registration details as under:

Regd. no. with IBBI: IBBI/IPA-001/IPP00358/2017-2018/10616

8A & 8B Satyam Towers

3 Alipore Road

Kolkata, 700027, India

[kshitiz@bccoindia.com](mailto:kshitiz@bccoindia.com)

Issued to All Interested Bidders (*defined herein after in the document*)

Terms and conditions, deadlines etc. for participating in the electronic auction are provided in this Asset Sale Process Memorandum. This document is non-transferable.

Timelines, notifications, and other details for the e-auction process are available on the website of the company - <http://www.concastispat.com/nclt.html>.

Interested Bidders desirous to submit their bid have to submit Bids on E-Auction Portal - [<https://ncltauction.auctiontiger.net>]

## DISCLAIMER

*This document is issued by Mr. Kshitiz Chhavanbbaria, the Liquidator for general information purposes, to provide general information only, without regard to specific objectives, suitability, financial situations and the requirements of any particular person. The purpose of this document is to set out the process for submitting auction bids for the asset-lots of Concast Steel & Power Limited (in liquidation) (the “Company”) in accordance with the Insolvency and Bankruptcy Code, 2016 (“IBC”). Nothing herein or in materials relating to the Asset Sale Process Memorandum is intended to be construed as legal, financial, accounting, regulatory or tax advice by the Liquidator or his professional advisors. This Asset Sale Process Memorandum is personal and specific to each auction process participant. Neither this Asset Sale Process Memorandum nor anything contained herein shall form the basis of, or be relied upon in connection with any contract, agreement, undertaking, understanding or any commitment whatsoever.*

*The information in this Asset Sale Process Memorandum and any information provided earlier or subsequently, whether verbally or in documentary or any other form by or on behalf of the Liquidator, which does not purport to be comprehensive, is provided by the Company and has not been independently verified by the Liquidator or his professional advisors. While this information has been prepared in good faith, no representation or warranty, expressed or implied, is or will be made and no responsibility or liability is or will be accepted by the Liquidator, his professional advisors, the Company or by any of their respective officers, employees or agents in relation to the accuracy, fairness, authenticity or completeness of this Asset Sale Process Memorandum or any other written or oral information made available to any Interested Bidder(s) or its advisers and any such liability is expressly disclaimed.*

*In so far as the information contained in this Asset Sale Process Memorandum and any information provided earlier or subsequently includes current or historical information, the accuracy, adequacy, authenticity, correctness, fairness, and completeness of such information cannot be guaranteed. The information provided to the Interested Bidder(s) may contain statements describing documents and agreements in summary form and such summaries are qualified in their entirety with reference to such documents and agreements. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as complete. Some of the facts mentioned herein and any information provided earlier or subsequently may be contested by parties in litigation; the Liquidator does not in any manner affirm/ deny or indicate any of the Liquidator's views on these contested matters.*

*The Liquidator accepts no responsibility for the accuracy or otherwise for any statement contained in the Asset Sale Process Memorandum and any information provided earlier or subsequently and expressly disclaims any and all liability, which is based on the information and statements or any part thereof contained in / omitted from the Asset Sale Process Memorandum and any information provided earlier or subsequently. Cognizance should also be taken of the fact that the Liquidator does not give any assurance or warranty of the physical condition of assets and their suitability for any sort of operation that the Interested Bidder envisages. Each Interested Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information provided in this Asset Sale Process Memorandum and any information provided earlier or subsequently and obtain independent advice from appropriate sources.*

*By acceptance of this Asset Sale Process Memorandum and submission of the Bid (defined herein after in the document), the Interested Bidder(s) shall be deemed to have acknowledged that it has not relied upon any representation and warranty made by the Liquidator and / or his professional advisors. The submission of the Bid means and implies that the Interested Bidder has read carefully and unconditionally and irrevocably agreed to and accepted all the terms and conditions laid herein. This document has not been filed, registered or approved and will or may not be filed, registered, reviewed or approved by any statutory or regulatory authority in India or any other jurisdiction.*

*The Liquidator has no responsibility towards the authenticity of the trademark/ brand used in relation to the products of the Company. Interested Bidder(s) is / are advised to conduct their own legal diligence towards continuing with the same name in the hands of the Successful Bidder (defined herein after in the document). The Liquidator does not constitute advice and should not be held responsible for any sort of claim on use of such trademark / brand by any constitution / party (including related*

party(ies)). The Liquidator hereby excludes any warranty, express or implied by any party on such trademark / brand name. No responsibility is taken by the Liquidator regarding any implications on the future usage of such trademark / brand name.

This Asset Sale Process Memorandum and information contained herein or disclosed pursuant to the terms of this Asset Sale Process Memorandum or any part of it does not constitute or purport to constitute any advice or information in publicly accessible media and should not be printed, reproduced, transmitted, sold, distributed, or published by the recipient without prior written approval from the Liquidator. Distributing or taking / sending / dispatching / transmitting this Asset Sale Process Memorandum in certain foreign jurisdictions may be restricted by law, and Persons in whose possession this Asset Sale Process Memorandum comes should inform themselves about, and observe, any such restrictions.

Neither the Liquidator, nor his professional advisors, affiliates, directors, employees, agents, representatives or managers of the process shall be liable for any damages, whether direct or indirect, incidental, special or consequential including loss of revenue or profits that may arise from or in connection with the use of this Asset Sale Process Memorandum, including for the Interested Bidder not being selected as a Successful Bidder or on account of any decision taken by the Liquidator.

The Liquidator and / or the Company give no undertaking to provide the recipient with access to any additional information or to update this Asset Sale Process Memorandum or any additional information, or to correct any inaccuracies in it which may become apparent, and they reserve the right, without giving reasons, at any time and in any respect, to amend or terminate the procedures set herein or to terminate negotiations with any Interested Bidder. The issue of this Asset Sale Process Memorandum shall not be deemed to be any form of commitment on the part of the Liquidator or the Company to proceed with any transaction.

In addition to the provisions set out in this Asset Sale Process Memorandum, the Interested Bidder shall be responsible for fully satisfying the requirements of the IBC and related Regulations as well as all laws in force that are or may be applicable to the Interested Bidder 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 Asset Sale Process Memorandum shall be deemed to relieve, wholly or partially, directly or indirectly, the Interested Bidder from compliance with the IBC and related Regulations as well as any other law in force, and / or any instrument having the force of law as may be applicable and nothing in this Asset Sale Process Memorandum shall be construed as, or operate either, wholly or in part, as exempting the Interested Bidder from complying with all such laws, as are or may be applicable.

By procuring a copy of this Asset Sale Process Memorandum, the recipient accepts the terms of this disclaimer notice, which forms an integral part of this Asset Sale Process Memorandum and all other terms and conditions of this Asset Sale Process Memorandum. Further, no Person, including the Interested Bidder 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 Asset Sale Process Memorandum or otherwise, including the accuracy, adequacy, authenticity, correctness, completeness or reliability of the information or opinions contained in this Asset Sale Process Memorandum or any other information and any assessment, assumption, statement or information contained therein or deemed to form part of this Asset Sale Process Memorandum, and the Liquidator, his professional advisors, the Company, and their affiliates, directors, employees, agents, representatives or managers do not have any responsibility or liability for any such information or opinions and therefore, any liability or responsibility is hereby expressly disclaimed.

All expenses incurred towards movement / shifting of plant & machinery or any asset post the e-auction process should be borne and paid by the Successful Bidder. The Liquidator shall not be held responsible / liable to pay any expenses towards such movement of plant & machinery or any asset sold in the auction process.

In no circumstances shall the Interested Bidder or its officers, employees, agents and professional advisers make any contact, direct or indirect, by any mode whatsoever, with the management, employees, customers, agents or suppliers of the Company until the Liquidator gives prior permission to do so in writing.

*All the assets / asset lots of the Company are to be sold on “As is where is basis”, “As is what is basis”, “Whatever there is basis” and “No recourse” basis. The proposed sale of assets / asset lots of the Company does not entail transfer of any title except the title which the Company had on the assets as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the moveable / immoveable assets of the Company. However, if any asset that should have been transferred to the Successful Bidder, is found in the possession of the Company, the Liquidator shall take all reasonable efforts to promptly transfer such asset to the Successful Bidder, post completion of the sale. Whilst it is not the intention to transfer any liabilities associated with the Asset Lot(s) as part of the Asset, the Interested Bidders is advised to ascertain all statutory liabilities / taxes / demands / claims / maintenance fee / electricity / water charges etc., outstanding as on date or yet to fall due in respect of the relevant asset.*

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

*This Asset Sale Process Memorandum is neither transferable nor assignable.*

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## 1. KEY HIGHLIGHTS OF THE ASSET SALE PROCESS

<b>Version control:</b>	<i>Version # CSPL/Assetlot-8/1.1 Final dated 13<sup>th</sup> August,2020</i>
<b>Corporate Debtor:</b>	Concast Steel & Power Limited (In liquidation)
<b>Asset lot # :</b>	Asset Lot-8(Jharsuguda Lot)
<b>Asset lot - brief description:</b>	Vehicles (11 nos)- Lying at Jharsuguda <i>Details of assets are available in the Asset Sale memorandums available on the Company's website listed at (<a href="http://concastspat.com/nclt.html">http://concastspat.com/nclt.html</a>) and shall also be uploaded on the E-auction portal</i>
<b>Auction commencement date &amp; time (proposed):</b>	3 <sup>rd</sup> September,2020 01:01 PM
<b>Auction closure date &amp; time:</b>	4 <sup>th</sup> September,2020 01:00 Noon
<b>Reserve price:</b>	The Liquidator has determined and fixed the Reserve Price in accordance with IBBI (Liquidation Process) Regulations, 2016 and the details shall be available post the successful completion of the auction process.
<b>Floor Price:</b>	INR 12 Lacs
<b>Refundable Earnest Money Deposit:</b> (as per terms stated in clause 6)	INR 2.2 lacs
<b>Minimum bid increment amount:</b>	INR 1 lacs

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## 1.1. KEY TIMELINES

#	Event	Para Ref	Timeline (days)	Dates (on or before)
1	<b>Proposed Auction Date &amp; time</b>		T	03-09-2020
2	<b>Auction End date &amp; time</b>	-	T+1	04-09-2020
3	Request to Liquidator to permit submission of Earnest Money by the Interested Bidder through its Associate Company.	Para 6.3	T-6	27-08-2020
4	Submit Bid form to Liquidator and provide Earnest Money in prescribed form	Para 2.8 & 6.1	T-4	29-08-2020
5	Letter of Intent (LoI) to be issued to the Successful Bidder	Para 9	T+1+15	19-09-2020
6	Unconditional acceptance of LoI	Para 9.2	T+18	21-09-2020
7	Payment of full sale consideration to the Liquidator's bank account plus any applicable GST, if any, on 100% of the bid sum	Para 10.1	T+1+30	04-10-2020
8	Return of Earnest Money to unsuccessful Qualified Bidder(s) (except second highest Qualified bidder)	Para 6.8	T+8	11-09-2020
9	Return of Earnest Money to second highest Qualified bidder	Para 6.8	T+46	19-10-2020

**Note:** The Liquidator reserves the right to amend the key terms of the auction process including reserve price, earnest money deposit, bid increment amounts and timelines at his sole discretion, to the extent permissible under the applicable laws and regulations. Any information about amendments /extension of any of the timelines will be available on the E-auction website and communicated to the Qualified/ Successful Bidder.



## 2. IMPORTANT INFORMATION

- 2.1. This Asset Sale Process Memorandum has been issued with the intent to carry out e-auction (**E-Auction**) of assets of Concast Steel & Power Limited (in liquidation) (the “**Company**”) under the provisions of the Insolvency and Bankruptcy Code, 2016 (**IBC**) and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Process Regulations**).
- 2.2. All information provided in this Asset Sale Process Memorandum should be read together with the provisions of the IBC and the Liquidation Process Regulations. In the event of a conflict between this Asset Sale Process Memorandum and the IBC or the Liquidation Process Regulations, the provisions of the IBC or the Liquidation Process Regulations, as the case may be, shall prevail.
- 2.3. The information contained in this Asset Sale Process Memorandum or previously or subsequently provided to Interested Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Liquidator has been collated from several sources, is provided to Interested Bidder(s) on the terms and conditions set out in this Asset Sale Process Memorandum.
- 2.4. This Asset Sale Process Memorandum is neither a prospectus, nor an offer document nor a letter of offer for sale of assets of the Company or an official confirmation of any transaction entered into by the Company nor an agreement by the Liquidator to the Interested Bidders or any other person. The Asset Sale Process Memorandum purports to ascertain interest of potential applicants and does not create any kind of binding obligation on the part of the Liquidator, his professional advisors or the Company to effectuate the sale of the assets of the Company.
- 2.5. 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 Asset Sale Process Memorandum.
- 2.6. The issue of this Asset Sale Process Memorandum does not imply that the Liquidator is bound to select an Interested Bidder as Successful Bidder for the assets of the Company and the Liquidator reserves the right to reject all or any of the Interested Bidders or bids without assigning any reason whatsoever.
- 2.7. A new version of the Asset Sale Process Memorandum or addendum to the earlier version of the Asset Sale Process Memorandum may be released prior to every round of auction, at the discretion of the Liquidator.
- 2.8. Each Interested Bidder shall bear all its costs and charges associated with or relating to the preparation and submission of its bid and /or participation in the e-auction, including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Liquidator or any other costs incurred in connection with or relating to its bid.
- 2.9. E-Procurement Technologies Limited (“E-Auction Service Provider”) has been appointed as the E-Auction Service Provider. The sale of the asset(s) shall be undertaken by the E-Auction Service Provider for and on behalf of the Liquidator 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	E-Auction
Liquidator	Kshitiz Chhawchharia (Liquidator for Concast Steel & Power Limited)
Website of E-Auction service provider	<a href="https://ncltauction.auctiontiger.net">https://ncltauction.auctiontiger.net</a>
E-Auction Service Provider	E-Procurement Technologies Limited, A-801, Wall Street - II, Opp. Orient Club, Near Gujarat College, Ellisbridge, Ahmedabad - 380006 Contact person — Mr. Pushpit Maru Email id - <a href="mailto:Pushpit@auctiontiger.net">Pushpit@auctiontiger.net</a> Mobile No. - +91 63518 96834
Annexures	<ol style="list-style-type: none"> <li>1. <b>Annexure I</b> – Bid Application Form (to be duly filled in and signed by the Interested Bidder and submitted at least four (4) days prior to the date of auction)</li> <li>2. <b>Annexure II</b> – Declaration by the Interested Bidder (to be duly filled in and signed by the Interested Bidder and submitted along with the Bid Application Form at least four (4) days prior to the date of auction)</li> </ol>

	<p><b>3. Annexure III – Notarised Affidavit certifying eligibility under Section 29A of IBC</b></p> <p><b>4. Annexure IV – Certified true copy of resolution passed by the board of directors of the Interested Bidder.</b></p> <p><b>5. Annexure V – Technical Terms and Conditions of E-Auction sale</b></p>
Special Instructions	This bidding is a serious matter and last minute bidding may lead to lapses. Neither the E-Auction Service Provider nor the Liquidator will be responsible for any lapses on part of the Qualified Bidders.

- 2.10. All terms and conditions with respect to the sale of the asset(s) shall be governed by the directions of the Liquidator, National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and in accordance with the provisions of applicable laws. As mandated by the NCLT, the Liquidator shall exercise all rights with respect to sale of the asset(s) and it would be open to the Liquidator to appoint such experts, professionals or other persons, as the Liquidator might think necessary, in consultation with NCLT, so as to enable the sale of the asset(s).
- 2.11. The Annexures to this Asset Sale Process Memorandum shall form an integral part hereof and this Asset Sale Process Memorandum shall always be read in conjunction with the Annexures hereto. In the event of any inconsistency between the terms contained in the Asset Sale Process Memorandum and that of the Annexures, the terms contained in the Annexures shall prevail.
- 2.12. The title documents relating to the asset(s), to the extent available, shall be provided on request to be made to the Liquidator at [lq.concast@in.gt.com](mailto:lq.concast@in.gt.com).

### 3. DEFINITIONS

“**Adjudicating Authority**” or “**NCLT**” shall mean the Hon’ble National Company Law Tribunal, Kolkata Bench;

“**Affiliate**” in relation to a Person,

- (a) being a corporate entity, or limited liability partnership shall mean any entity or Person, which Controls, or is Controlled by, or is under the common Control as such Person;
- (b) being an individual shall mean any relative (as defined under the Companies Act, 2013) of such individual or any other Person which is Controlled by such individual;
- (c) being a partnership firm, shall mean the partners of such partnership firm or the relatives (as defined under the Companies Act, 2013) of such partners (if any individual) or any other Person which is Controlled by such firm or the partners;

“**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 IBC, Liquidation Process Regulations, Companies Act, 2013, Competition Act, 2002, Transfer of Property Act, 1882, Sale of Goods Act, 1930, Foreign Exchange Management Act, 1999, whether in effect as of the date of this Asset Sale Process Memorandum or thereafter and each as amended from time to time;

“**Asset Sale Process Memorandum**” 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 and shall include all supplements, modifications, amendments, alterations or clarifications thereto issued in accordance with the terms hereof.

“**Associate Company**”, in relation to another company, means a company in which the Bidder has a significant influence in terms of the Companies Act of 2013, and includes an Affiliate of the Bidder having such influence and includes a joint venture company.

“**Bid**” shall mean any bid submitted by the Qualified Bidders as required in terms of this Asset Sale Process Memorandum and in accordance with the provisions of IBC read together with the Liquidation Process Regulations and the Applicable Laws;

“**Bid Form**” shall mean the bid form required to be submitted by an Interested Bidder, as per Annexure I;

“**Bid Increment amount**” shall mean the minimum amount over and above the last highest bid amount by which any participating Qualified Bidder will be required to increase the next bid on the auction portal

“**Control**” together with its grammatical variations, when used with respect to any Person shall mean the power to direct the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, shareholders’ agreements, voting agreements, by contract or otherwise; provided that, in any event: (i) the direct or indirect ownership of more than 25% (twenty five per-cent) of the voting securities of a Person; or (ii) the right to appoint and/or remove the majority of the members of the board of directors or other governing body of a Person, shall be deemed to constitute Control of such Person;

“**Declaration**” shall mean the Interested Bidder’s declaration as per Annexure II;

“**Floor Price**” shall mean the minimum price at which a bid will be accepted on the auction portal from a participating Qualified bidder;

“**IBC**” shall mean Insolvency and Bankruptcy Code, 2016 and the related rules and regulations issued thereunder, as amended from time to time;

“**Interested Bidder**” shall mean any person or persons who have submitted the Expression of Interest (“**EoI**”) along with the requisite documents and completed the eligibility check formalities to the satisfaction of the Liquidator but has not yet submitted the signed Bid Form and the signed Declaration along with the requisite Earnest Money to the Liquidator and who is not yet accepted by the Liquidator as a Qualified Bidder;

“**Liquidator**” shall mean an insolvency professional appointed as a liquidator in accordance with section 34 of the IBC;

“**Liquidation Process Regulations**” shall mean, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 as amended from time to time;

“**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;

“**Qualified Bidder**” shall mean an Interested Bidder who has duly submitted the signed Bid Form and the signed Declaration along with the requisite Earnest Money to the Liquidator and who the Liquidator has notified as accepted by the Liquidator as a Qualified Bidder at least two days prior to the scheduled auction date;

“**Reserve Price**” shall mean the minimum price fixed by the Liquidator for the concerned Asset Lot, which a Qualified Bidder would have to match or bid in excess, to become eligible for being considered as a Successful Bidder;

“**Successful Bidder**” shall mean the Qualified Bidder whose bid is, equal to or in excess of the Reserve Price, is approved and who is declared as such by the Liquidator at the end of the determined auction process;

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

provisions of the IBC and the rules and regulations thereunder.

#### 4. INTRODUCTION

- 4.1. The liquidation process for the Company has been initiated under the provisions of the IBC and the Liquidation Process Regulations by an order of the NCLT with effect from 26-09-2018. As per the said order, Mr. Kshitiz Chhawchharia has been appointed as the Liquidator.
- 4.2. The Liquidator intends to sell the assets comprising the liquidation estate of the Company, in its capacity as a liquidator, by E-Auction conducted in the manner specified in Schedule I as provided under Regulation 33 of the Liquidation Process Regulations, 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, and as per directions, if any, of the NCLT or NCLAT in respect of the liquidation process of the Company and in the manner specified in this Asset Sale Process Memorandum..
- 4.3. The Liquidator will provide User ID & Password after due verification of requisite documents submitted by the Interested Bidders as stated herein to the satisfaction of the Liquidator.
- 4.4. The E-Auction / bidding of above assets would be conducted exactly on the scheduled date & time as mentioned against each asset lot by way of *inter-se* bidding amongst the Qualified Bidders. A Qualified Bidder would have to bid over the Floor Price indicated for its bid to be considered and may improve its offer in multiple of amount mentioned under the column "Bid Increment Amount" against each asset lot(s). The Qualified Bidders may note that, only if the bid amount exceeds the Reserve Price fixed by the Liquidator, that such bids would qualify for being considered as Successful Bidder and where the highest bid is lower than the Reserve Price fixed, the auction shall be deemed to be unsuccessful.
- 4.5. The Reserve Price shall not be disclosed to the Qualified Bidder prior to the successful conclusion of the E-Auction, although the same shall be disclosed to the E-Auction service Provider prior to start of E-Auction process and will be incorporated in the Auction platform, such that if a bid is in excess of the Reserve Price, the Qualified Bidder becomes qualified to be considered for Successful Bidder.
- 4.6. The E-Auction portal will be open for a period of 24 hours. In case a bid is placed within the last 15 minutes of the closing time of the E-Auction, the closing time will be automatically extended for 15 minutes.
- 4.7. The Qualified Bidders are encouraged to acquaint themselves with the provisions of the IBC and the Liquidation Process Regulations and any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be.

#### 5. DOCUMENTS TO BE SUBMITTED TO BECOME A QUALIFIED BIDDER

- 5.1. To become a Qualified Bidder, an Interested Bidder, subject to fulfilment of other conditions as laid down hereunder, shall be required to submit the duly completed and signed **Bid Form** and the duly completed and signed **Declaration**, per Asset Lot, for which the Interested Bidder intends to bid

#### 6. EARNEST MONEY

- 6.1. In order to become a Qualified Bidder and participate in the E-Auction process, an Interested Bidder is, *inter alia*, required to provide as interest free earnest money ("**Earnest Money**"), at least 4 (four) days prior to the E-Auction date, an amount as specified in Clause 1 (Key Highlights) of this document, either by remittance of funds to the bank account of the Company as per the details given below or by way of a demand draft or a bank guarantee issued by any scheduled commercial bank in India ("**Bank**") in favour of the "Concast Steel & Power Limited (In liquidation)", payable at Kolkata, in the Format A (*Earnest Money – Bank Guarantee*) provided in this Asset Sale Process Memorandum.
- 6.2. Where the Earnest Money is provided by way of a Bank Guarantee, such Bank Guarantee shall be valid from the date of issuance for a period of no less than 60 (sixty) days with a claim period of a further period of 1 (one) year.

- 6.3. The Interested Bidder may request the Liquidator in writing to permit the Interested Bidder to submit the Earnest Money through its Associate Company. Such request should be made at least six (6) days prior to E-Auction date along with detailed information about the Associate Company, its relationship with the Interested Bidder and an unconditional undertaking (and affidavit) to confirm it is not ineligible pursuant to Section 29A of IBC. Such payment or provision of the Earnest Money by an Associate Company of the Interested Bidder shall be accompanied by a letter in the format as set out in Format B (Earnest Money by an Associate Company). Provided that, the Liquidator reserves the right to accept such a request at its sole discretion and upon such terms and conditions as it deems fit, including requiring such party to submit any additional details /documents.
- 6.4. The Interested Bidder(s) may give offers either for one or more than one asset lot(s). In case an Interested Bidder bids for more than one asset lot, the Interested Bidder will be required to submit separate Earnest Money for each asset lot. It is clarified that separate remittances, Demand drafts or Bank Guarantees will be required for each asset lot for which the Interested Bidder wants to participate.
- 6.5. Interested Bidders providing the non - interest bearing Earnest Money by remittance of funds to the bank account of the Company should transfer funds through RTGS / NEFT to the account number provided as:

Account Number	409001069816
Beneficiary Name	Concast Steel & Power Limited (In liquidation)
Bank Name	RBL Bank
Branch	Gariahat, Kolkata
IFSC Code	RATN0000196

- 6.6. All payments made by the Interested Bidder shall be intimated to the Liquidator at [lq.concast@in.gt.com](mailto:lq.concast@in.gt.com) and [kshitz@bccoindia.com](mailto:kshitz@bccoindia.com) along with a scanned copy of the remittance challan. Interested Bidders shall preserve the original remittance challan and produce the same in front of the Liquidator as and when demanded.
- 6.7. The details of any remittances in this regard shall be entered in the Bid Form submitted by the Interested Bidder. The entire Earnest Money amount shall be remitted by the Interested Bidder (s) from one bank account only and to be owned by the Interested Bidder (or an Associate Company).
- 6.8. Subject to the first proviso below, the Earnest Money without interest shall be returned to unsuccessful Qualified Bidder(s) within 7 (seven) days of the date of closure of the E-Auction process or cancellation of the E-Auction process, except that the Liquidator may retain the Earnest Money of the next highest Qualified Bidder for up to 45 (Forty five) days from the date of conclusion of the E-Auction (where a Successful Bidder has been identified) in order to consider that bid (at the discretion of the liquidator) in the event the original Successful Bidder is disqualified or fails to adhere to the terms of the LoI.

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

Provided further that, failure to participate in a round of E-Auction or requesting refund of the Earnest Money shall not debar a Qualified Bidder from participating in any subsequent round(s) of E-Auction.

- 6.9. The Earnest Money without interest shall also be returned to a Qualified Bidder, within 7 (seven) days of a demand being raised by such Qualified Bidder on the basis of any of the following grounds:
- Any increase in the minimum Floor price and increment value;
  - Any increase in EMD amount by more than 10% of the immediately previous specified EMD;



- Any reduction on the timelines within which the balance sale proceed is required to be paid;
- Change in eligibility requirement post the submission of the Earnest Money, such that the Interested Bidder becomes ineligible. However, imposition of additional compliance requirements (such as requirement of providing additional undertakings) shall not be considered as change in eligibility norm;
- Postponement of the date of the scheduled auction beyond 30 (thirty) days, except on account of any direction from Adjudicating Authority;
- If any asset lot or portion thereof is withdrawn from the E-Auction process; or
- Reduction in the value of assets by 15% (Fifteen per cent) of the liquidation value due to occurrence of a fire, natural calamity, or any similar force majeure event or any act of god, which happened prior to execution of the Certificate of sale or Sale deed, as the case may be.

## **7. INVOCATION OF BANK GUARANTEE/FORFEITURE OF EARNEST MONEY**

7.1. The Earnest Money, paid by bank transfer or demand draft may be forfeited, or in the case of a Bank Guarantee may be invoked, at any time, upon the occurrence of any of the following events:

- if any of the conditions under this Asset Sale Process Memorandum are breached by the Qualified Bidder or in case the Qualified Bidder is found to have made any misrepresentation; or
- if the Qualified Bidder or any person acting jointly or in concert with such Qualified Bidder is found to be ineligible to submit a bid under Section 29A of the IBC (as amended from time to time) or is found to have made a false or misleading declaration of eligibility under Section 29A of the IBC (as amended from time to time); or
- if the Successful Bidder does not accept the Letter of Intent issued by the Liquidator within the period and in the manner specified.
- if the Successful bidder fails to pay the balance sale consideration (plus any applicable GST, if any, on 100% of the bid sum) before the expiry of the period for payment of the same for reasons other than specified in Clause 7.9 of this Asset Sale Process Memorandum.

## **8. DECLARATION OF SUCCESSFUL BIDDER**

8.1. 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 any asset lot(s). Determination of the Successful Bidder(s) shall be done on the basis of highest bid received for each asset lot via the E-Auction, provided such bid is in excess of the Reserve Price fixed by the Liquidator, unless the Liquidator determines, acting reasonably, that the highest bidder shall not be identified as the Successful Bidder. It is clarified that, if the highest bid received is lesser than the Reserve Price determined and fixed by the Liquidator for the particular round of E-Auction, such round of E-Auction shall be deemed to be unsuccessful and the Qualified Bidder who has submitted the highest bid shall not have any right to be identified as the Successful Bidder merely because its bid was the highest or was in excess of the Floor Price.

8.2. Where the Earnest Money has been provided by means of a remittance to the Company's bank account or by Demand Draft, such funds will be retained by the Liquidator as part payment of the consideration that the Successful Bidder has agreed to pay for the relevant asset lot(s).

8.3. Where the Earnest Money has been provided by means of a Bank Guarantee such Bank Guarantee shall be retained by the Liquidator as Earnest Money until such time as the Successful Bidder has paid the total consideration due for the relevant asset lot(s) and shall be automatically returned within 7 (seven) days of execution and registration of the Sale Deed.

8.4. The Liquidator is not bound to accept the highest offer and has the absolute right to accept or reject any or all offer(s) or adjourn / postpone / cancel the e-Auction or withdraw any asset lot or portion thereof from the E-Auction proceedings at any stage without assigning any reason there for. The same shall be true even where the highest offer is in excess of the Reserve Price determined and fixed by the Liquidator for the particular round of E-Auction.

## 9. ISSUANCE OF LETTER OF INTENT

- 9.1. The Liquidator shall, as soon as reasonably possible following the end of the E-Auction, but not more than 15 days from the end of E-Auction, issue to the Successful Bidder a letter of intent (“**LoI**”/ “**Letter of Intent**”), as per the format in Format C, inviting the Successful Bidder to provide balance sale consideration (plus any applicable GST, if any, on 100% of the bid sum) within 15 (fifteen) days of the date of issuance of the LoI, unless a higher period is allowed under the applicable law, whether pursuant to direction from the Adjudicating Authority, or otherwise. This LoI *per se* does not confirm sale in favor of the Successful Bidder. Confirmation of sale is subject to the fulfilment of conditions stated hereunder and the approval of the Liquidator.
- 9.2. The Successful Bidder shall, within a period of 2 (two) 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.
- 9.3. 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.
- 9.4. Simultaneously with the conclusion of the Auction Process, the Successful Bidder shall have the option of deploying additional security personnel, not exceeding Six (6) in number, at its sole cost and expenses, in the premises where the purchased assets are situated. Provided that, in the event the Liquidator requires removal of any person from the security team, the Successful Bidder shall be obligated to replace such personnel without any undue delay. The right to appoint such security personnel shall stand terminated in the event the Successful Bidder fails to sign the LoI or pay the balance sale consideration (plus any applicable GST, if any, on 100% of the bid sum) within the specified term, except for reasons specified in Clause 6.9 herein above.
- 9.5. In case of disqualification of a Successful Bidder, the Qualified Bidder who had submitted the next highest bid, may be asked to match the Successful Bidder's bid and be considered the new Successful Bidder. Should the latter be unwilling to match the bid submitted by the earlier Successful Bidder, the Liquidator, at his sole discretion, may decide to carry out a fresh auction, withdraw the Asset Lot(s) from the auction or sell the Asset Lot to the next highest Qualified bidder at its bid amount.

## 10. COMPLETION OF SALE

- 10.1. Except for reasons specified in Clause 6.9 of this Asset Sale Process Memorandum, the Successful Bidder shall be required to provide balance sale consideration within the period specified in Clause 10.1 of this Asset Sale Process Memorandum in a single tranche payment. Where the Successful Bidder has provided Earnest Money by remittance of cash to the bank account of the Company specified in Clause 6.5 of this Asset Sale Process Memorandum or Demand draft, the balance sale consideration shall be an amount equal to the bid sum as reduced by the Earnest Money already paid (plus any applicable GST, if any, on 100% of the bid sum). Where the Successful Bidder has provided Earnest Money by way of Bank Guarantee, the balance sale consideration shall be an amount equal to 100% of the bid sum (plus any applicable GST, if any, on 100% of the bid sum).
- 10.2. Where the Successful Bidder has provided Earnest Money by way of Bank Guarantee and pending completion of sale, the Successful Bidder shall re-issue or extend such Bank Guarantee at least 7 (seven) days prior to the expiry of its valid period. Provided however, upon completion of sale, the Bank Guarantee shall be automatically returned within 7 (seven) days of execution and registration of the Sale Deed.
- 10.3. On payment of the full amount of sale consideration and any applicable GST (if any), the sale shall stand completed, and the Liquidator shall execute Certificate of sale or Sale deed (Format D) and the assets shall be delivered to the Successful Bidder in the manner specified in the terms of sale. The Certificate of sale or



Sale deed 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.

10.4. The sale shall be subject to conditions prescribed under the IBC and provisions and regulations thereunder.

10.5. 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, unless such default in payment is pursuant to any event stipulated under Clause 6.9 of this Asset Sale Process Memorandum. The asset lot(s) 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 asset lot.

## 11. FRAUDULENT AND CORRUPT PRACTICES

11.1. The Interested / Qualified Bidder shall observe the highest standard of ethics prior to and during the E-Auction process and subsequently during the closure of the E-Auction process and declaration of Successful Bidder. Notwithstanding anything to the contrary contained in this Asset Sale Process Memorandum, or in the Letter of Intent, the Liquidator shall reject an auction bid and/or revoke the Letter of Intent, as the case may be, without being liable in any manner whatsoever to the Qualified / Successful Bidder, if the Liquidator, in his sole discretion, determines that the Qualified / Successful Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the E-Auction process or has, undertaken any action in respect of such process which results in the breach of any Applicable Law including the Prevention of Corruption Act, 1988. In such an event, the Liquidator may invoke the Earnest Money without prejudice to any other right or remedy that may be available to the Liquidator under this Asset Sale Process Memorandum or Applicable Law.

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

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

“**Conflict of Interest**” shall mean an event or circumstance, determined at the discretion of the Liquidator, where a Qualified/ Successful Bidder is found to be in a position to have access to information about, or influence the bid of another Qualified Bidder pursuant to a relationship of such Qualified/ Successful Bidder (excluding any commercial relationship pursuant to the ordinary course of business) with the other Qualified Bidder or Company, group companies of the Company, or affiliates of the Company, directly or indirectly, or by any other means including colluding with other Qualified Bidder(s), the Company, or group companies of the Company;

“**corrupt practice**” shall mean (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the auction process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Liquidator or the Company, who is or has been associated or dealt in any manner, directly or indirectly with the auction process or arising there from, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Liquidator or the Company, shall be deemed to constitute influencing the actions of a person connected with the auction process); or (ii) engaging in any manner whatsoever, during the auction process or thereafter, any person in respect of any matter relating to the Company, who at any time has been or is a legal, financial or technical adviser of the Liquidator or the Company, in relation to any matter concerning the auction process;

“**fraudulent practice**” shall mean a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the auction process;

“**restrictive practice**” shall mean forming a cartel or arriving at any understanding or arrangement among the Interested / Qualified Bidder(s) with the objective of restricting or manipulating a full and fair competition in the auction Process; and

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

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

11.4. The Qualified Bidder shall not divulge either his bid or any other details provided to him by the Liquidator or during the due diligence process in respect of the assets to any other party, other than to his professional advisors and financiers, who are in each case required in the course of their duties to receive and consider the same for the purpose of advising in relation to the transaction and who are bound by confidentiality obligations that are at least as stringent as the obligations that the Qualified Bidder is subject to.

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

12.1. The Interested/ Qualified Bidder(s) shall be responsible for all the costs incurred by it on account of its participation in the E-Auction process, including any costs associated with participation in the discussion meeting (if any), site visit, etc. The Liquidator shall not be responsible in any way for such costs, regardless of the conduct or outcome of the E-Auction process.

12.2. All expenses incurred towards movement / shifting of any assets purchased post the E-Auction process should be borne by the Successful Bidder. The Liquidator shall not be held responsible / liable to pay any expenses towards such movement of any assets sold in the E-Auction process. For the avoidance of doubt, it is hereby clarified that, all the aforesaid costs shall be payable over and above the bid offered during the E-Auction process.

12.3. The Interested / Qualified / Successful Bidder(s) shall not be entitled to receive re-imburement of any expenses which may have been incurred in carrying out of the due diligence, search of title to the assets and matters incidental thereto or for any purpose in connection with the E-Auction process.

12.4. All taxes applicable (including stamp duty implications and registration charges) on sale of Asset Lots would be borne and paid by the Successful Bidder such as the following:

- all the necessary expenses like applicable stamp duties / additional stamp duty / transfer charges, registration fees, etc. for transfer of Asset Lot(s) in his / her / entity name;
- the payment of all statutory / non - statutory dues, taxes, rates, assessments, charges, fees, etc. owed to anybody in respect of Asset Lot(s) shall be sole responsibility of successful bidders; and/or
- cess or other applicable tax i.e. GST, TDS etc.

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

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

12.6. The Qualified Bidder(s) shall be responsible for fully satisfying the requirements of the IBC and related Liquidation Process Regulations as well as all Applicable Laws that are relevant for the sale process. The Successful Bidder shall be responsible for obtaining requisite regulatory or statutory or third-party approvals, no-objections, permission or consents, if any, that are or may be required under Applicable Law for purchasing the relevant asset lots.

### **13. MODIFICATION IN TERMS AND CONDITIONS**

13.1. In the interest of the liquidation process of the Company, the Liquidator reserves the right to alter, modify or relax any of the terms and conditions mentioned in this Asset Sale Process Memorandum. Any such alteration, modification or relaxation, to the terms and conditions contained in this document, subject to provisions contained in Clause 6.9 of the Asset Sale Process Memorandum, shall be binding on all the Interested/ Qualified Bidders.

### **14. GOVERNING LAW AND JURISDICTION**

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

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

**FORMAT A**

**EARNEST MONEY – BANK GUARANTEE**

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

To

**Mr. Kshitiz Chhawchharia**

Liquidator-Concast Steel & Power Limited (In Liquidation)

C/O B. Chhawchharia & Co

8A & B, Satyam Tower

3, Alipore Road, Kolkata - 700027

Email: kshitiz@bccoindia.com

**(“Liquidator”)**

WHEREAS

- A. *[Insert name of the Interested 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]* (**“Interested Bidder”**) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR (Indian Rupees only) in accordance with the terms of the Asset Sale Process Memorandum dated *[13 August 2020]* (**“Asset Sale Process Memorandum”**) issued by the Liquidator seeking submission of bids for assets of Concast Steel & Power Limited (in liquidation).
- B. This bank guarantee is required to be issued in favour of the Liquidator – Concast Steel & Power Limited (in liquidation), pursuant to the terms of the Asset Sale Process Memorandum.
- C. We, *[insert name of the bank]* having our registered office at *[insert address]* (**“Bank”**) at the request of the Interested Bidder do hereby undertake to pay to the Liquidator at Kolkata an amount not exceeding INR XXXXX (Indian Rupees XXXXX only) to secure the obligations of the Interested Bidder under the Asset Sale Process Memorandum on demand from the Liquidator on terms and conditions herein contained.
1. Now therefore, the Bank hereby issues in favour of the Liquidator – Concast Steel & Power Limited (in liquidation) this irrevocable and unconditional payment bank guarantee (**“Guarantee”**) on behalf of the *[Insert name of the Interested Bidder]* for an amount of INR XXXXX (Indian Rupees XXXXX).
  2. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Liquidator – Concast Steel & Power Limited (in liquidation) without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand made by the Liquidator, a sum not exceeding the aggregate amount of INR XXXXX (Indian Rupees XXXXX).

3. This Guarantee shall be valid and binding on the Bank up to and including [*Insert date of validity of the Earnest Money*] and shall in no event be terminable by notice or any change in the constitution of the Bank or the Liquidator, by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.
4. The Bank hereby expressly agrees that the demand made on it under this Guarantee shall be conclusive evidence of that such payment is due and the Bank shall not require any proof in addition to the written demand from the Liquidator, made in any format, raised at the above mentioned address of the Bank, in order to make the said payment to the Liquidator – Concast Steel & Power Limited – (in liquidation).
5. The Bank shall make payment hereunder notwithstanding any objection by [*Insert name of the Interested Bidder*] and / or any other person or any dispute (s) raised by the [*insert name of the Interested 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 Liquidator to justify the invocation of this Guarantee, nor shall the Bank have any recourse against the procurer(s) in respect of any payment made hereunder.
6. 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.
7. This Guarantee shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Bank.
8. This Guarantee shall be a primary obligation of the Bank and accordingly the Liquidator shall not be obliged before enforcing this Guarantee to take any action in any court or arbitral proceedings against the Interested Bidder, to make any claim against or any demand on the Interested Bidder or to give any notice to the Interested Bidder or to exercise, levy or enforce any distress, diligence or other process against the Interested Bidder. The Bank waives any such right to that extent.
9. The Bank further unconditionally agrees with the Liquidator that the Liquidator shall be at liberty, without Bank's consent and without affecting in any manner the Bank's obligations under this Guarantee, from time to time to:
  - (i) Vary and/or modify any of the terms of the Asset Sale Process Memorandum;
  - (ii) Extend and/or postpone the time of performance of the obligations of the Bidder under the Asset Sale Process Memorandum; or
  - (iii) Forbear or enforce any rights exercisable by the Liquidator against the Interested Bidder under the terms of the Asset Sale Process Memorandum

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

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

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

Witness:

- |  |                             |
|--|-----------------------------|
| 1. ....                                    | Signature                   |
| Name and Address.                          | Name:                       |
| 2. ....                                    | Designation with Bank Stamp |
| Name and Address                           |                             |
| Attorney as per power of attorney No ..... |                             |

For:

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

Banker's Stamp and Full Address:

Dated this ..... day of ..... 2020.

Notes:

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

**FORMAT B**

**EARNEST MONEY AMOUNT PAYMENT BY AN ASSOCIATE COMPANY**

To

**Mr. Kshitiz Chhawchharia**

Liquidator-Concast Steel & Power Limited (In Liquidation)

C/O B. Chhawchharia & Co

8A & B, Satyam Tower

3, Alipore Road, Kolkata - 700027

Email: kshitiz@bccoindia.com

(“**Liquidator**”)

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

Dear Sir,

**Sub:** Payment of the amounts of Earnest Money on behalf of the Interested Bidder in relation to the auction of assets of Concast Steel & Power Limited (in liquidation).

In light of the bid for assets of Concast Steel & Power Limited –(in liquidation) submitted by [Insert name of the Interested Bidder with address] in accordance with and subject to the provisions of the Asset Sale Process Memorandum dated [13 August 2020] in relation to the captioned transaction (“**Asset Sale Process Memorandum**”), issued by the Liquidator,

[Insert name and address of the Associate Company and address of the head office] hereby declares and confirms it is [an/the] [Insert relationship of the Associate Company with the Interested Bidder] of the Interested Bidder (“**Associate Company**”), and the payment of the Earnest Money amount vide [Insert mode of payment] (“**Payment**”) is on behalf of the Interested Bidder. The Associate Company acknowledges that such amounts paid as Earnest Money shall be subject to the terms of the Asset Sale 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 Asset Sale Process Memorandum.

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

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

Thank you.

Yours sincerely,

.....

[Signature and name of the Authorised Officer of the Associate Company]

Rubber stamp/seal of the Associate Company

ACKNOWLEDGMENT

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

.....

*[Signature and name of the Authorised Officer of the Interested Bidder]*

Rubber stamp/seal of the Interested Bidder



## FORMAT C

### LETTER OF INTENT

To,

[*name to be inserted*]

[*address to be inserted*]

Attn. [●]

**Re:** Auction sale of Asset Lot number [●] (*insert description of asset*) of Concast Steel & Power 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 Lot number [13 August 2020] (*insert description of asset*) of Concast Steel & Power Limited (In Liquidation) (“**Company**”) auctioned on \_\_\_\_\_.
2. You are requested to confirm your acceptance of this LoI within 2 (two) days of the date of issuance hereof with an endorsement stating that this LoI is, “Accepted Unconditionally”, under the signature of the authorised director / authorised signatory. Within 15 (fifteen) days from the date of issuance of this LoI, you shall pay an aggregate amount of INR \_\_\_\_\_ as the sale consideration towards purchase of only the right, title and interest that the Company has over the Asset Lot number [] (*insert description of asset*) (“**Sale Consideration**”) plus any applicable GST, if any, on 100% of the Sale Consideration, and as set out in the schedule to this LoI. Please note that, failure to accept this LoI within the time period specified may result in your disqualification as the Successful Bidder along with cancellation of this LoI and forfeiture of the Earnest Money deposited, unless the failure to accept the LoI is for reasons stipulated in Clause 6.9 of the Asset Sale Process Memorandum dated [] in relation to the captioned transaction issued by the Liquidator (“**Asset Sale Process Memorandum**”).
3. The Liquidator agrees that simultaneously upon payment of Sale Consideration and any applicable GST, if any, the Liquidator shall execute a deed of sale in your favour in accordance with the timelines specified and manner prescribed under the Asset Sale Process Memorandum for conveyancing on “as is where is”, “*as is what is*”, “*whatever there is*” and “no recourse” basis of the specified Asset Lot, without any representations and warranties on the part of the Liquidator for any encumbrances / statutory liabilities etc. in relation to Asset Lot number [] (*insert description of asset*).
4. This LoI is not a sale confirmation letter and is issued without prejudice to other terms and conditions of the tender / bid document / auction/ Asset Sale Process Memorandum. 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 Asset Sale Process Memorandum.
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. Capitalised terms used but not defined herein shall have the meaning ascribed to them in the Asset Sale Process Memorandum.

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

Yours faithfully,

Unconditionally agreed and accepted by:  
**For**

\_\_\_\_\_  
**Liquidator**

\_\_\_\_\_  
**Authorized Signatory**

## **SCHEDULE**

### **PART A**

**Plant and Machinery: All Plant & Machinery lying at Sodepur Plant unit**

**FORMAT D**

**SALE DEED**

**(Separately Provided)**

**Annexure I**  
**BID Application Form**

(Please fill up separate Bid application forms for each asset lot)

Date:

**Mr. Kshitiz Chhawchharia**

Liquidator-Concast Steel & Power Limited (In Liquidation)  
c/o B. Chhawchharia & Co  
8A & B, Satyam Tower  
3, Alipore Road,  
Kolkata - 700027

Dear Sir,

I am desirous in participating in the E-Auction announced by you in .....  
..... (source).

Details of Corporate Debtor:

Name	Concast Steel & Power Limited (in Liquidation)
Account Number	409001069816
Bank Name	RBL Bank
Branch	Gariahat, Kolkata
IFSC Code	RATN0000196

Details of Interested Bidder

Name of the Interested Bidder	
Constitution of Interested Bidder	
Contact No.	
Email ID	
PAN No.	
Address	

Details of Earnest Money and Asset Lot to be bid:

Description of Asset lot	
Floor Price	
Earnest Money deposited	
Mode of Earnest Money payment	
Payer's bank and account number	
Instrument number and date	
Validity of Bank guarantee (where applicable)	

Bank details of Bidder (for refund of Earnest Money as may be applicable):

Name	
Account Number	
Bank Name	
Branch	
IFSC Code	

KYC documents being provided:

- (a) Certificate of incorporation;
- (b) Memorandum and Articles of Association;
- (c) Certified copy of Board resolution authorizing a person to sign the Bid Form and participate in e-auction on behalf of the Interested Bidder;
- (d) The last available audited balance sheet;
- (e) Permanent Account Number; and
- (f) GSTIN;

I/We/M/s. also enclose copies of the required KYC documents and copies of documents substantiating deposit of the Earnest Money or bank guarantee in lieu thereof. 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:

Signature Date:

(Seal in case of company / firm)

**Annexure II**  
**Declaration by Interested Bidders**

(To be notarized)

To,

**Mr. Kshitiz Chhawchharia**

Liquidator-Concast Steel & Power Limited (In Liquidation)

c/o B. Chhawchharia & Co

8A & B, Satyam Tower

3, Alipore Road,

Kolkata - 700027

Sir,

1. I/We, (*insert name and address of the Interested Bidder*) aforesaid do hereby state that, I/We have read the entire terms and conditions for the sale of assets/asset lots as specified and have understood them fully. I/We, hereby unconditionally agree to confirm with and to be bound by the said terms and conditions and agree to take part in the e-auction process.
2. I/We declare that the Earnest Money have been made by me/us as against my/our bid and that the particulars of remittance or bank guarantee in lieu of the same and all other information given by me/us in the form is true and correct.
3. I/We further understand and agree that if any of the statement / information revealed by me/us is found to be incorrect and / or untrue, the bid submitted by me/us is liable to be cancelled and in such case, the Earnest Money and / or any monies paid by me/us is liable to be forfeited by the Liquidator and the Liquidator will be at liberty to annul the offer made to me/us at any point of time.
4. I/We also agree that after my/our offer given in my/our bid for purchase of asset lot(s) is accepted by the Liquidator 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, except as otherwise permitted in para 6.9 of Asset Sale Process Memorandum dated [13 August 2020] issued by the Liquidator seeking submission of bids for assets of Concast Steel & Power Limited (in liquidation) (“**Asset Sale Process Memorandum**”), the offer letter and/or the Letter of Intent, the Earnest Money and other monies paid by me/us thereafter, are liable to be forfeited In case final sale consideration and any applicable GST, if any, is not paid within the specified timeline, the Liquidator shall forfeit Earnest Money and or bank guarantee.
5. I/We also agree that in the eventuality of forfeiture of the amount by the Liquidator, the I/We shall neither have claim on the Asset Lot(s) for which my/our bid was approved nor on any part of the sum for which it may be subsequently sold.
6. I/We also understand that the Earnest Money Deposit shall be retained by the Liquidator and returned only in accordance with the timelines and circumstances specified in the Asset Sale Process Memorandum. 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 our participation in the e-auction process, submission of bid or acquisition of the asset lots pursuant to the provisions of the Asset Sale Process Memorandum will not conflict with, or result in a breach of, or constitute a default under (i) our constitutional documents; or (ii) any applicable laws applicable to me/us; or (iii) any authorisation or approval of any government agency or body applicable to me/us; or (iv) any judgement, 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.
  
8. That the Liquidator reserve the right to request for additional information or clarification from us in relation to our proposal and we shall promptly comply with such requirements. Failure to satisfy the queries of the Liquidator within the given timelines may lead to rejection of our proposal.
  
9. That submission of our proposal alone does not automatically entitle us to participate in the next stage of the bid process. The decision taken by the Liquidator with respect to the selection of the Successful Bidder and communicated to us shall be binding on me/us. We acknowledge that the Liquidator reserve the right to determine at his sole discretion, whether or not we qualify for the submission of the proposal and may reject our proposal without assigning any reason whatsoever
  
10. Subject to the provisions contained in Clause 6.9 of the Asset Sale Process Memorandum, I/We also undertake to abide by the additional conditions if announced during the e-auction including any announcement (s) on correction of and/or additions or deletions to the time of auction portal and asset lots being offered for sale.
  
11. I/We confirm that the Liquidator and his professional advisors along with employees/agents/advisors, shall not be liable and responsible in any manner whatsoever for my/our failure to access and bid on the e-auction portal due to any unforeseen circumstances etc. before or during the auction event.
  
12. I/We hereby confirm that I/we are not ineligible to purchase the asset lots of the Company under Section 29A of the Insolvency and Bankruptcy Code, 2016.

(Signature)

Name:

.....  
 .....

Address:

.....  
 .....

Email

Id:

.....  
 .....

Mobile:

.....

### Annexure III

#### AFFIDAVIT

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

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

1. That I am duly authorised and competent to make and affirm the instant affidavit for and on behalf of the Bidder in terms of the *[resolution of its board of directors/ power of attorney to provide other necessary details of such authorization]*. The said document is true, valid and genuine to the best of my knowledge, information and belief.
2. I acknowledge that Bidder is aware of that, in terms of proviso to sub-section (f) of Section 35(1) of Insolvency and Bankruptcy Code, 2016 (“**IBC**”), read with Section 29A of IBC, certain persons/category of persons have been specified as ineligible for the purposes of participation in an auction to acquire immovable and movable property and actionable claims of a corporate debtor in liquidation.
3. On behalf of the Bidder, I confirm, that it is eligible to participate in the auction process (“**Bid**”) for the Concast Steel and Power Limited – in Liquidation (“**Company**”) in accordance with IBC and related rules and regulations issued thereunder, and any other applicable law.
4. Neither *[insert name of the Bidder]* nor any person acting jointly with *[insert name of Bidder]* or any person who is a promoter or in the management or control of *[insert name of Bidder]* or any person acting jointly with *[insert name of Bidder]* is a person who would have been ineligible under Section 29A of the IBC to be a resolution applicant.
5. On behalf of the Bidder, I acknowledge that the Liquidator reserves the right to verify the authenticity of the information and/or the documents submitted by it pursuant to the communication and the Liquidator may request, at his own discretion, for any additional information or documents, as may be required by the Liquidator, for the purposes of verifying the information so submitted by us. On behalf of the Bidder, I unconditionally and irrevocably undertake, that we shall provide all data, documents and information as may be required to verify the statements made under this affidavit.



6. On behalf of the Bidder, I confirm that the information and/or documents submitted by us to the Liquidator in accordance with the past communications, are true, correct, accurate and complete in all respects and we have not provided any information, data or statement which is inaccurate or misleading in any manner. I further confirm that, in the event the Liquidator determines that we have made any misrepresentation, concealed material information, made a wrong statement or submitted information which is misleading in nature, the Liquidator shall have the right to take any action as he deems fits in accordance with the applicable law, including pursuant to IBC and related rules and regulations.
  
7. On behalf of the Bidder, I undertake that if during the interim period on and from the date of this Affidavit until the date of completion of the sale of assets in terms of the auction process, it becomes ineligible to become a resolution applicant under applicable law, including under Section 29A of IBC, it shall immediately and in no event later than two days of such ineligibility, disclose to the Liquidator of its ineligibility in writing with reasons for the same (“**Disclosure**”). I agree, acknowledge and confirm on behalf of the Bidder, that upon being informed of such Disclosure, the Liquidator shall have the right to reject the bid submitted by it and shall have the right to undertake any action as it deems fit in accordance with the Assets Sale Process Memorandum, including forfeiture of Earnest Money submitted by it (*as defined in the Assets Sale Process Memorandum*).
  
8. I state that the contents of paragraph nos. 1 to 7 hereinabove, are true to my knowledge

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

Identified by Me

DEPONENT

Advocate

Before Me,

Notary

Notes:

1. Please note that in case of the Bidder being an unlimited liability partnership firm under the Indian Partnership Act, 1932, the affidavit is required to be furnished separately by each partner of the partnership firm.
2. Please note that in case of the Bidder being a limited liability partnership (“**LLP**”) incorporated under the Limited Liability Partnership Act, 2008, the affidavit will be provided by the ‘designated partners’ of the LLP on behalf of the LLP and also by each partner of the LLP for itself, acting in its capacity as partner of the LLP.

## Annexure IV

### Board Resolutions

*(On the letter head of the Interested bidder)*

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

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**WHEREAS** pursuant to the expressions of interest dated [●] (“**EOI**”), and subsequent to the Asset Sale Process Memorandum dated [●] (“**ASPM**”), issued by the Liquidator on behalf of Concast Steel & Power Limited (in liquidation) (**CSPL**), in relation to the acquisition of the asset lot no [●] of CSPL, the Company has been shortlisted by the Liquidator, for the purpose of participating in the auction process.

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

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

- (a) participating in the auction process and submit and sign other requisite documents, in accordance with the terms of the ASPM;
- (b) execute all other agreements, deeds, writings and LOI as may be required in relation to the auction process, including any amendments or modifications as may be suggested by the Liquidator;
- (c) to generally do or cause to be done all such acts, matters, deeds and things as may be necessary or desirable in connection with or incidental or for the purpose of implementation and giving effect to the above resolutions for and on behalf of the Company, and to comply with all other requirements in this regard.”

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

Certified to be true

**For the Company**

\_\_\_\_\_  
**Director(s) / Company Secretary**

Notes:

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

**Annexure V**  
**Technical Terms & Conditions of E-auction sale**

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