

## **E-AUCTION PROCESS INFORMATION DOCUMENT**

### **Terms & Conditions for**

**Participation in E-Auction Process for Sale of Athena Chhattisgarh Power Limited (In Liquidation) (“Company”) as Going Concern under Sec 32 (e) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 on “as is where is”, “as is what is”, “whatever there is” and “without recourse basis”.**

**Date of Sale Notice**

**10.12.2021**

**Last date for confirmation of the Bid and submission of EMD**

**20.12.2021**

**Date of E-Auction**

**07.01.2022**

**Issued by:**

**Kumar Rajan**

**Liquidator**

**(IBBI Reg. No. - IBBI/IPA-002/IP-N00658/2018-2019/12116)**

**of**

**Athena Chhattisgarh Power Limited (in Liquidation)**

(Mr. Kumar Rajan is a Registered Insolvency Professional with Insolvency and Bankruptcy Board of India (“IBBI”). His Registration number is IBBI/IPA-002/IP-N00658/2018-2019/12116. Mr. Kumar Rajan has been appointed as a Liquidator of Athena Chhattisgarh Power Limited (in Liquidation) by NCLT, Hyderabad Bench, vide its order dated May 13, 2021, published on June 10, 2021 at NCLT website to manage the affairs, business and property of Athena Chhattisgarh Power Limited (in Liquidation)

**Liquidator:**

Mr. Kumar Rajan

IP Registration No. IBBI/IPA-002/IP-N00658/2018-2019/12116

**Email ID & Address for Correspondence:**

607, 6th Floor, Shangrila Plaza, Road No. 2, Opposite

KBR Park, Banjara Hills, Hyderabad - 500 034.

Email: Lp.acpl@rbsa.in

**NOTES:**

1. This E-Auction Process Information Document is issued for the prospective Bidders who have been shortlisted after the receipt of their Earnest Money Deposit (“**EMD**”) in respect of Athena Chhattisgarh Power Limited (in Liquidation).
2. The terms and conditions, deadlines etc. for participating in the electronic auction are provided in this E- Auction Process Information Document.
3. The timelines, notifications and other details for the e-auction process are available on the website (<https://rbsa.in/ibc-cases>) and will also be available on the website / link of the E-Auction Service Provider (<https://ncltauction.auctiontiger.net>). Bidders desirous to submit their Bid have to submit their Bid on E-Auction portal of the E-Auction Service Provider (<https://ncltauction.auctiontiger.net>). The public announcement for the auction has been published in Business Standard (English- all Editions), Enadu (Telugu- All Hyderabad Edition) and Dabang (Hindi- All Chhattisgarh Edition) dated 10.12.2021.
4. The term “Sale of the Company 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.
5. The entire process shall be subject to extant Regulations, the Code and approval of the Adjudicating Authority (if required).
6. Interested bidders can submit the Bid Application Form (Annexure II), Bid Declaration Form/ Declaration by Bidders (Annexure III) (through Authorized Signatory, in case the bidder is a legal entity) Affidavit and Undertaking (Annexure I), Confidentiality and Non-Disclosure Undertaking (Annexure V) and Earnest Money Deposit of INR Rs. 25 Crores (including GST) through NEFT/RTGS/Demand Draft on or before 20.12.2021 in the Liquidation Account.

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## DISCLAIMER

- 1.1.** *This E-Auction Process Information Document (“Document”) is issued by Mr. Kumar Rajan (an insolvency professional with Registration No. IBBI/IPA-002/IP-N00658/2018-2019/12116), the Liquidator appointed by the Hon’ble National Company Law Tribunal, Hyderabad Bench vide its order dated May 13, 2021, received on June 10, 2021, for general information purposes only to provide general information, without regard to specific objectives, suitability, financial situations and the requirements of any particular person.*
- 1.2.** *The purpose of this Document 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 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.*
- 1.3.** *This E-Auction Process Information 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 or by any stock exchange in India or any other jurisdiction. Nothing herein contained or materials relating to the E-Auction Process Information Document should be construed as legal, financial, accounting, regulatory or tax advice by the Liquidator. 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 user/recipient of this E-Auction Process Information Document or by the Bidder is highly recommended. 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 is or will be expressly disclaimed by the Liquidator or by any of his representatives, officers, agents, or the Company or in relation to the accuracy, fairness, authenticity or completeness of this E-Auction Process Information Document or any other written or oral information made available to any prospective Bidder or its advisors.*
- 1.4.** *In so far as the information contained in this E-Auction Process Information Document includes current and historical information, the accuracy, adequacy, authenticity, correctness, fairness, and completeness of such information cannot be guaranteed. By acceptance of this E-Auction Process Information Document, the Bidder shall be deemed to have acknowledged that it has not relied upon any representation and warranty made by the Liquidator.*
- 1.5.** *This E-Auction Process Information Document and information contained herein or disclosed should not be printed, reproduced, transmitted, sold, distributed, or published by the recipient of this E-Auction Process Information Document, without prior written approval from the Liquidator. Distributing or taking/ending/dispatching/transmitting this E-Auction Process Information Document in certain foreign jurisdictions may be restricted by law, and Persons in whose possession this E-Auction Process Information Document comes should inform themselves about, and observe, any such restrictions.*

- 1.6.** *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, special or consequential including loss of revenue or profits that may arise from or in connection with the use of this E-Auction Process Information Document, including for the Bidder not being selected as a Successful Bidder or on account of any decision taken by the Liquidator.*
- 1.7.** *Neither the Liquidator, nor his Insolvency Professional Entity (RBSA Restructuring Advisors LLP), its / his Partners, Directors, colleagues, advisors, agents, employees, representatives, affiliates, etc. shall be liable for any damages, whether direct or indirect, including loss of revenue or profits that may arise from or in connection with the use of this E-Auction Process Information Document, including for the Bidder not being selected as a Successful Bidder or on account of any decision taken by the Liquidator.*
- 1.8.** *Further, apart from the provisions set out in this E-Auction Process Information Document, the Bidder shall be responsible for fully satisfying the requirements and provisions of IBC and Liquidation Process Regulations as well as all laws in force that are or may be applicable to the Bidder or the intended manner of sale envisaged under this E-Auction Process Information Document and for obtaining consents, waiver from requisite regulatory and statutory approvals from the concerned regulators, third parties and governmental authorities in order to consummate the sale process as contemplated in the E-Auction Process Information Document.*
- 1.9.** *Under no circumstances shall the Bidder make any contact, direct or indirect, by any mode whatsoever, with the Company until the Liquidator gives his written permission. 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 Confidentiality Undertaking and provisions of IBC.*
- 1.10.** *No Person, including the 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 E-Auction Process Information Document or otherwise, including the accuracy, adequacy, authenticity, correctness, completeness or reliability of the information or opinions contained in this E-Auction Process Information Document and any assessment, assumption, statement or information contained therein or deemed to form part of this E-Auction Process Information Document, and the Liquidator or any of his respective advisors, consultants and representatives and the Company, do not have any responsibility or liability for any such information or opinions and therefore, any liability or responsibility is hereby expressly disclaimed.*
- 1.11.** ***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 details more particularly described in Schedule-I of present Document. The Liquidator does not take***

*or assume any responsibility for any shortfall or defect or shortcoming in the moveable/ immoveable assets of the Company.*

- 1.12.** *The Bidders shall bear all its costs and charges associated with or relating to the preparation and submission of its Bid including but not limited to physical and electronic 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.*
- 1.13.** *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 prospective Bidders with information that may be useful to them in making their Bid. 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 should, therefore, 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.*
- 1.14.** *Information provided in this E-Auction Process Information Document to the Bidder(s) has been collected and collated from several sources. This E-Auction Process Information Document may not be all inclusive and may not contain all of the information that the recipient may consider material for the purpose of submission of its Bid. The information given by no means claims to be an exhaustive account of statutory requirements and should not be regarded as complete. The Liquidator accepts no liability or responsibility for the authenticity, accuracy or otherwise for any statement or information contained in the E-Auction Process Information Document.*
- 1.15.** *The Bidders are prohibited from giving or offering any gift, bribe or inducement and any attempt to any such act on behalf of the Bidder towards the Liquidator, or any of his respective professional advisors, affiliates, or Representatives for showing any favour in relation to this document or the process set out herein, shall render the bidder to such liability and penalty as the Liquidator may deem proper, including but not limited to immediate disqualification and exclusion from the process contemplated hereunder.*
- 1.16.** *Neither the information in this E-Auction Process Information Document nor any other written or oral information provided by the Liquidator, or any of his respective advisors, consultants and representatives is intended to form the basis of or the inducement for submission of any document or information or the Bid by any prospective Bidder or for any investment activity.*
- 1.17.** *All information provided in this E-Auction Process Information Document should be read together with the provisions of the Code and the Regulations. In the event of a conflict between this E-Auction Process Information Document and the provisions of the Code or the Regulations as the case may be, the provisions of the Code and the Regulations shall prevail.*

- 1.18.** *It is to be noted that by procuring a copy of this E-Auction Process Information Document, the recipient accepts the terms of this Disclaimer, which forms an integral part of this E-Auction Process Information Document*
- 1.19.** *By procuring this E-Auction Process Information Document the interested bidders will obtain access to the Data Room.*
- 1.20.** *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 E-Auction Process Information Document by way of notice to be uploaded in the website- <https://rbsa.in/ibc-cases>.*

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

- 1.1 This E-Auction Process Information Document has been issued for the purpose of carrying out E-Auction by sale of Company on going concern basis in accordance with the provisions of IBC and Liquidation Process Regulations.
- 1.2 The information provided in this E-Auction Process Information Document should be read together with the provisions of the IBC and the Liquidation Process Regulations. In the event of a conflict between this E-Auction Process Information Document and the IBC or the Liquidation Process Regulations, the provisions of the IBC or the Liquidation Process Regulations, as the case may be, shall always prevail.
- 1.3 The information contained in this E-Auction Process Information Document or subsequently provided to Bidder(s), whether verbally or in documentary or electronically or any other form by or on behalf of the Liquidator, is provided to Bidder(s) on the terms and conditions as set out in this E-Auction Process Information Document.
- 1.4 This E-Auction Process Information Document does not constitute advice and the Liquidator should not be held responsible for any sort of claim on the name Athena Chhattisgarh Power Limited by any constitution / party (including related party (ies)). The Liquidator hereby excludes any warranty, express or implied by any party on the name Athena Chhattisgarh Power Limited. No responsibility is taken by the Liquidator regarding any implications on the future usage of the name Athena Chhattisgarh Power Limited.
- 1.5 The Liquidator also hereby disclaims any and all liability for any statements made or omitted to be made in this E-Auction Process Information Document or, any action taken or omitted to be taken pursuant to this E-Auction Process Information Document. The Liquidator may in his absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this E-Auction Process Information Document. Further, the Bidders must specifically note that the Liquidator reserves the right to change, update, amend, supplement, modify, add to, delay or otherwise annul or cease the liquidation proceedings at any point in time, for any reason whatsoever determined in his sole discretion without obligation to notify any Person of such revision or changes.
- 1.6 The issuance of this E-Auction Process Information Document does not imply that the Liquidator is bound to select a bidder or to appoint the preferred Bidder as Successful Bidder for acquisition of the Company and the Liquidator reserves the right to reject all or any of the Bidders or their Bid(s) without assigning any reason whatsoever.
- 1.7 The timelines, notifications and other details for the E-Auction Process are available on the website

(<https://rbsa.in/ibc-cases>) and will also be available on the website / link of the E-Auction Service Provider (<https://ncltauction.auctiontiger.net>). Bidders desirous to submit their Bid have to submit their Bid on E-Auction portal of the E-Auction Service Provider (<https://ncltauction.auctiontiger.net>) or bids can be submitted directly to liquidator through email [lp.acpl@rbsa.in](mailto:lp.acpl@rbsa.in). The public announcement for the auction has been published in **Business Standard (English- all Editions), Enadu (Telugu- All Hyderabad Edition) and Dabang (Hindi- All Chhattisgarh Edition) dated 10.12.2021.**

**Other details with respect to the E- Auction are as follows and the relevant annexures and formats are provided herein:**

Type of Bid	E-Auction (online only)
Seller	Mr. Kumar Rajan, Liquidator for Athena Chhattisgarh Power Limited (in Liquidation)
Website of E-Auction Service Provider	<a href="https://ncltauction.auctiontiger.net">https://ncltauction.auctiontiger.net</a>
E-Auction Service Provider	Auction tiger
Annexures and Formats	<ul style="list-style-type: none"> <li>• <b>Initial Documents Required to gain VDR access</b></li> </ul> <p>To submit the Bid Application Form (Annexure II), Bid Declaration Form/ Declaration by Bidders (Annexure III) (through Authorized Signatory, in case the bidder is a legal entity) Affidavit and Undertaking (Annexure I), Confidentiality and Non-Disclosure Undertaking (Annexure V) and Earnest Money Deposit of INR Rs. 25Crores (including GST) through NEFT/RTGS/Demand Draft on or before 20.12.2021 in the Liquidation Account.</p> <ul style="list-style-type: none"> <li>• <b>Relevant Documents</b></li> </ul> <p><b>Format A:</b> Format of the bank guarantee for submission of EMD by the Bidder  <b>Format B:</b> Format for letter for submission of EMD by Associate/Associate Company (where applicable)  <b>Annexure I:</b> AFFIDAVIT AND UNDERTAKING  <b>Annexure II:</b> BID APPLICATION FORM  <b>Annexure III:</b> BID DECLARATION FORM/ DECLARATION BY BIDDERS  <b>Annexure IV:</b> TECHNICAL TERMS &amp; CONDITIONS OF E-AUCTION SALE  <b>Annexure V:</b> CONFIDENTIALITY AND NON-DISCLOSURE UNDERTAKING</p>

All terms and conditions with respect to sale of Company on going concern basis shall be governed in accordance with the provisions of IBC and Liquidation Process Regulations read with the directions issued by the Liquidator and NCLT from time to time. As mandated, the Liquidator shall exercise all rights with respect to sale of the Company and it would be open to the Liquidator to

appoint such experts, professionals or other persons, as the Liquidator might think necessary to facilitate the Liquidator in conducting the sale of the Company.

- 1.8 The Annexures and Formats to this E-Auction Process Information Document shall form an integral part hereof and this E-Auction Process Information Document shall always be read in conjunction with the Annexures and Formats appended hereto.
- 1.9 This E-Auction Process Information Document is neither transferable nor assignable.
- 1.10 All title documents in relation to assets of the Company, as is available with the Liquidator, shall be made available to Qualified Bidder(s) on request to the Liquidator through Data Room maintained at the link provided by the Data Room Service Provider. Nothing contained in this E-Auction Process Information Document shall be deemed to relieve, wholly or partially, directly or indirectly, the Bidder from their compliance with the IBC, any other law in force, and/ or any instrument having the force of law, as may be applicable to them.
- 1.11 The Bidder shall inform themselves concerning, and shall observe and comply with, any applicable legal requirements. 1.12 The laws of the Republic of India are applicable to this E-Auction Process Information Document.

## **2. DEFINITIONS**

- 2.1. **“Adjudicating Authority”** or **“NCLT”** shall mean the National Company Law Tribunal, Hyderabad Bench;
- 2.2. **“Affidavit and Undertaking”** shall mean the affidavit and undertaking provided by the Bidder substantially in form and manner as annexed in **Annexure I** hereto;
- 2.3. **“Annexures”** shall mean annexures which form part of the E-Auction Process Information Document;
- 2.4. **“Applicable Law(s)”** shall mean, any or all the applicable laws, codes, regulations, rules, guidelines, circulars, re-enactments, revisions, applications and adaptations thereto, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority, rules, regulations, orders and interpretations of any governmental authority, court or statutory or other body applicable for such transactions including but not limited to the IBC, Liquidation Process Regulations, Companies Act, 1956 / 2013 (as applicable), Competition Act, 2002, Income Tax Act, 1961, The Goods and Services Tax Act, 2017, Transfer of Property Act, 1882, Sale of Goods Act, 1930, Foreign Exchange Management Act, 1999, whether in effect as of the date of this E-Auction Process Information Document or thereafter and each as amended from time to time;
- 2.5. **“Bid”** means, any bid or offer along with other documents, submitted by the Bidder(s) as required in terms

of the Public Advertisement and E- Auction Process Information Document issued by the Liquidator and in accordance with the provisions of IBC read together with the Liquidation Process Regulations as amended from time to time and the Applicable Law(s);

- 2.6. “Bidder(s)”** shall mean a Person or Association of Persons as the case may be, who submitted a Bid as per the E-Auction Process Information Document; and shall include a Qualified Bidder or the Successful Bidder, as the case may be, and as the context requires;
- 2.7. “Bid Application Form”** shall mean the form as specified in **Annexure II** of this E-Auction Process Information Document;
- 2.8. “Bid Declaration Form” or “Declaration by Bidders”** shall mean a declaration by the Bidders in form as specified in **Annexure III** of this E-Auction Process Information Document;
- 2.9. “Company” or “Corporate Debtor”** shall mean Athena Chhattisgarh Power Limited, a company incorporated in India under the Companies Act of 1956, having its registered office at 7-1-24/1/RT, G-1, B-Block, Roxana Towers Greenland’s, Begumpet Hyderabad - 500016.
- 2.10. “Control”** includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
- 2.11. “Confidential Information”** shall mean any and all information and other materials disclosed, furnished, communicated or supplied by the Company to any bidder, in written or electronic or verbal form, including without limitation, and shall be determined to include (without limitation) the following types of information of a similar nature: any commercial and / or financial information, improvement, know how, intellectual property, discoveries, ideas, concepts, papers, techniques, models, data, documentation, manuals, flow charts, research, process, procedures, functions and other information related to price lists and pricing policies and any other information which the Company identifies to be confidential at the time of disclosure to the relevant bidder, and shall include any information that is provided by the Liquidator or his representatives pursuant to the liquidation process or through the Confidentiality Undertaking;
- 2.12. “Confidentiality Undertaking”** shall mean an undertaking as specified in **Annexure V** herewith;
- 2.13. “Data Room”** shall mean the virtual data room maintained by the Liquidator, created for the Qualified Bidders to access information in relation to the Company;
- 2.14. “E-Auction Process” or “E-Auction”** shall mean the electronic auction process for sale of the Company

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;

**2.15. “E-Auction Process Information Document”** means this document including all the annexures, disclaimers, formats hereto, for the purposes of setting out the process for submission of a bid and selection of Successful Bidder in accordance with the provisions of the IBC and Liquidation Process Regulations and shall include all supplements, modifications, amendments, addendums, alterations or clarifications thereto issued in accordance with the terms hereof;

**2.16. “E-Auction Service Provider”** means M/s e-procurement Technologies Limited (Auction Tiger)

**2.17. “Eligibility Criteria”** shall mean the legal criteria as specified in the Clause 5 of this E-Auction Process Information Document;

**2.18. “Going Concern”** means the ability of the Corporate Debtor to continue with its operations/business in the future with the availability of the resources;

**2.19. “IBC” or “Code”** shall mean the Insolvency and Bankruptcy Code, 2016 and the related rules and regulations issued there under, as amended from time to time;

**2.20. “IBBI”** means the Insolvency and Bankruptcy Board of India;

**2.21. “LOI”** shall mean the letter of intent issued by the Liquidator to the Successful Bidder detailing out the terms and conditions to complete the sale of Company on going concern basis, including the balance sale payment by Successful Bidder as per the provisions of IBC and the Liquidation Process Regulations;

**2.22. “Liquidation Process Regulations” or “Regulations”** means, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 as amended from time to time including Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019;

**2.23. “Liquidator”** means Mr. Kumar Rajan an insolvency professional registered with Insolvency and Bankruptcy Board of India (IBBI) having registration number IBBI/IPA-002/IP-N00658/2018-2019/12116, appointed by NCLT, vide its order dated May 13, 2021 received on June 10, 2021 at NCLT website, to manage, protect, sell and liquidate the property, assets, business and other affairs of the Company as going concern as an agent of the Company only in accordance with the IBC and Liquidation Process Regulations;

- 2.24. “Person”** shall mean an individual, a partnership firm, an association, a corporation, a limited company, a trust, a body corporate, bank or financial institution or any other body, whether incorporated or not;
- 2.25. “Public Advertisement”** shall mean an announcement dated 10.12.2021 in newspaper(s) Business Standard (English- all Editions), Enadu (Telugu- All Hyderabad Edition) and Dabang (Hindi- All Chhattisgarh Edition) inviting an expression of interest from the Bidders, who shall submit their Bid to participate in the liquidation process of the Company in accordance with the provisions of IBC and Liquidation Process Regulations;
- 2.26. “Qualified Bidder(s)”** shall mean a Bidder who fulfills the eligibility criteria listed out in the E- Auction Process Information Document and eligible u/s 29A of IBC, 2016, to the satisfaction of the Liquidator;
- 2.27. “Representatives”** shall include partners, directors, officers, employees, affiliates, agents, consultants, advisors or such other representatives of the relevant Person expressly authorized by such Person pursuant to corporate authorizations, powers of attorney, or contract;
- 2.28. “Reserve Price”** shall mean an aggregate price after to INR 1127.31 Crores (Indian Rupees One Thousand One Hundred and Twenty Seven Crores and Thirty one Lakhs only) as arrived pursuant to the provisions of the Liquidation Process Regulations (being reduced by 25% from the reserve price mentioned in the first auction sale notice dated 24.11.2021);
- 2.29. “Site”** shall mean the location of all the immovable and moveable properties including land parcels, office premises, buildings, factories, project locations, plant and machinery and fabrication units, owned, leased or occupied by the Company, for the purposes of conducting business.
- 2.30. “Site Visit”** shall mean a visit to the Site; and
- 2.31. “Successful Bidder”** means, the Qualified Bidder whose Bid is approved and who is declared successful by the Liquidator at the end of the determined auction phase as per the provision of this E-Auction Process Information Document, provisions of IBC and the Liquidation Process Regulations.

Capitalized terms used herein but not defined otherwise shall have meaning prescribed to them under the provisions of the IBC, the Liquidation Process Regulations and Applicable Law(s) to such terms as the context may require.

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### **3. INTRODUCTION**

- 3.1.** The State Bank of India, the lead consortium bank had filed an application for initiating the Corporate Insolvency Resolution Process (“**CIRP**”) against the Company, which was admitted by the NCLT vide its order dated 15th May 2019 and Mr. C. Bala Mouli was appointed as the Interim Resolution Professional (“**IRP**”) of Corporate Debtor.
- 3.2.** Subsequently the Committee of Creditors (“**CoC**”) confirmed Mr. C. Bala Mouli as the Resolution Professional (“**RP**”). The IRP / RP had been vested with the responsibility to manage the affairs of the Company.
- 3.3.** The CIRP coming to an end on 09.01.2021 and the no Resolution Plan was approved by CoC therefore, CoC authorized RP to file necessary application with NCLT for liquidation of Athena Chhattisgarh Power Limited. Accordingly, the RP filed an application under Section 33 of the IBC before the NCLT for initiation of Liquidation (“**Liquidation**”) of the Company.
- 3.4.** Hon’ble Adjudicating Authority, NCLT Hyderabad Bench, vide order dated May 13, 2021 (delivered on) allowed the IA No. 129/2021 in C.P. (IB) No. 616/07/HBD/2018 and directed initiation of the Liquidation Process in respect of the Company. Vide the same order, this Hon’ble Adjudicating Authority appointed Mr. Rajan Kumar as the Liquidator of the Corporate Debtor.
- 3.5.** It is the endeavour of the Liquidator to conduct the sale of Company on going concern basis in accordance with the provisions of IBC and the Liquidation Process Regulations.
- 3.6.** The E-Auction would be conducted in the manner specified in the Liquidation Process Regulations and any other rules, regulations, orders, circulars, directions or notifications issued pursuant to or under IBC or the Liquidation Process Regulations, as the case may be, and as per directions, if any, of the NCLT in respect of the liquidation process of the Company and in the manner as specified in this E-Auction Process Information Document.
- 3.7.** The Bidders 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 maybe.

### **4. AN OVERVIEW OF THE COMPANY**

- 4.1.** Athena Chhattisgarh Power Limited (Corporate Debtor or Company or ACPL) was incorporated on 14 February 2007 as a Special Purpose Vehicle for developing and implementing a domestic coal fired thermal power plant at Singhitarai in Jhanjgir Champa district of Chhattisgarh state with a planned capacity of 1200 MW (2x 600MW).

- 4.2. The Power Project is with 2 nos. of pulverized Coal Fired Steam Generators, 2 nos. of steam turbine generator in sets of 600 MW each and associated balance of plant. Installation of plant could not be completed due to lack of availability of funds.
- 4.3. The installation work was carried till September 2016 by the erstwhile management of the Company and the completed installation capacity for Unit - 1 as % of total installation work is 80% and the completed installation capacity for Unit – 2 as % of total installation work is 30%.
- 4.4. The Company has acquired most of the land required for the project (approx. 964 acres). Bulk of this land has been leased by Chhattisgarh State Industrial Development Corporation for a period of ninety-nine years to the Company.
- 4.5. In 16.02.2012 and 28.03.2016, ACPL had entered into a long-term lease agreement of 99 years with Governor of Chhattisgarh. In the said lease deed there is a clause stating that in case the lessee becomes insolvent and/or goes into liquidation voluntarily or otherwise then the said lease deemed to have been terminated.

For the above mentioned clause liquidator has taken 2 legal opinions where in it was opined that, as per the Lease Deed, the Lessor shall give a notice for rectification of the breach within 60 days of such notice in accordance with Para 34 of the Lease Deed. Since, there is no notice of termination from the Lessor, the leasehold rights are valid and subsisting as of on the date of this opinion. However, we suggest that the Bidder shall independently assess and may obtain clarification from the lessor, if required.

Further as per the legal opinion received from India Law LLP, permission of Lessor is required in case of change in constitution of Lessee, which is reiterated as under:

*“23. The Lessee shall not change the constitution of ownership of the unit without the prior permission of the Lessor in writing. For the purpose of this clause, change in constitution shall have the meaning provided in the ‘Said Rule’ and if there is change in constitution of the ownership as per the relevant provision of the said Rule, the prevailing fees/charges for the same shall be payable on the date of change with penalty as per the ‘Said Rule’. Accordingly, permission of the Lessor is required for change in constitution of the Lessee. Liquidator can sell the property on as is where basis with proper disclaimers. Thereafter, the buyer shall be responsible to approach the Lessor for its consent”*

- 4.6. As per the R & R policy of state government of Chhattisgarh, when land is acquired for setting up an industry, the land losers would be compensated according to the prevailing land rates by the developer. Apart from this, as per the sustainable initiative, one member per land loser needs to be provided with employment in the plant in a prescribed time line mandatorily. In the present case, as the plant didn't come up as per the timelines, developers started compensating the land losers with minimum wages to meet the statutory regulation/requirement, which was stopped since the Application with Hon'ble NCLT was moved for initiation of CIRP. As this is statutory payment, this needs to be cleared. More importantly

the Upper Collector of Janjgir Champa district is also involved in this issue. To have support and in legal compliance from the district administration, the payment to the landloosers is to be complied with.

#### **4.7. Present Status:**

##### **Unit -1**

- Significant progress has been achieved for Unit - 1 at the project site of 2x600 MW Thermal Power Project in terms of physical construction activities.
- Work progressed on all fronts and some of the major milestones for the Power Project like Hydrotest of Boiler of Unit - 1, Completion of Raw Water Intake System including charging of 33kV Over Head Line, Energized the LT Panel of Auxiliary Boiler and completed the no load trial run of Feed Pump motor.
- Hydrotest of Auxiliary Boiler has been successfully completed, energized 1.6 MVA dry type transformer, 415V Raw water PMCC Switchgear and no-load trial run of 30KW Jockey pump motor completed. Erection & stringing work of ACPL's 400kV D/c (Quad moose) transmission line of 18.935 KMs from plant switchyard to end AP-13/0 (PGCIL Pooling Station) completed.
- 80% of physical activity is completed and Boiler was under wet preservation and insulation was almost in place. All other accessories related to boiler were also in place. Turbine and Generator and the related accessories are mostly in place and final completion works were in progress.

##### **Unit -2**

- Boiler Structure erection mostly completed including the installation of silencers on the boiler roof. Pressure parts erection work taken up.
- Balance of Plant: Balance of Plant works are common for both the units and hence most of the systems are in place like DM Plant, Cooling Towers, Coal Handling Facilities, electrical systems etc.

#### **5. ELIGIBILITY CRITERIA/ QUALIFIED BIDDER:**

##### **5.1. Eligibility Criteria:**

##### **5.1.1 Qualifications in case of sole bidder:**

- 5.1.1.a) Any private limited company or public limited company registered under Companies Act 1956 or 2013, Limited Liability Partnership ("LLP") incorporated or formed in India or any company/body corporate incorporated or formed outside India, which is eligible to invest in India under the laws

of India (subject to such parties obtaining all statutory approvals from the GoI/DIPP/RBI etc. by themselves).

5.1.1.b) The prospective Bidder must be eligible to bid for the Corporate Debtor under the provisions of the IBC and must be 'fit and proper' person, i.e. not under any legal disability to be purchaser of Corporate Debtor under the applicable laws.

5.1.1.c) The prospective Bidder shall have a positive net worth not less than Rs. 50 crores as on March 31, 2021 or any latest available subsequent date as certified by Statutory Auditor of the prospective Bidder.

#### **5.1.2 Qualifications in case of consortium bidder:**

5.1.2.a) Consortium of prospective Bidders ("Consortium") may participate in the bidding process provided the members of Consortium are a private limited company or public limited company registered under Companies Act 1956 or 2013, LLP or AIF or NBFC or any other legal entity incorporated/formed in India or any company/ body corporate incorporated/formed outside India, which is eligible to invest in India under the laws of India (subject to such parties obtaining all statutory approvals from the GoI/DIPP/RBI etc. by themselves).

5.1.2.b) The Consortium shall not have more than one (1) lead member ("**Lead Member**"). The Lead Member of the Consortium should have minimum equity contribution of 51% and the minimum equity contribution by other members to qualify as a member of the Consortium should be at least 10%.

5.1.2.c) Each member of the Consortium must be eligible to participate in the bidding process under the provisions of the IBC and must be 'fit and proper' person, i.e. not under any legal disability to be purchaser of Corporate Debtor under the applicable laws.

5.1.2.d) For Consortium, net worth of Lead Member of the Consortium shall not be less than Rs. 50 crores and of consortium not less than Rs. 100 crores as on 31 March 2021 or any latest available subsequent date (to be certified individually for Statutory Auditor of each member).

5.1.2.e) A Power of Attorney/ Board Resolution shall be given by each member of the Consortium authorizing the Lead Member to participate in the process submission of all required documents, information and contact person for all communications.

5.1.2.f) If after the Consortium is shortlisted as a Qualified Bidder, a Consortium Bidder desires a change in the consortium by inclusion/exclusion of members or if a non-consortium Bidder desires to form a consortium by inducting new member(s), it shall have to apply for such change to the Liquidator. After holding consultation/s with the Stakeholders Consultation Committee

and/or obtaining approval from the NCLT, as may be required, the Liquidator shall qualify/disqualify such a Consortium subject to fulfilling the eligibility criteria and subject to the following terms –

- The change shall be permitted only once per consortium.
- No change in Lead Member shall be allowed.
- Jumping from one consortium to another shall not be permitted.
- Request for such modification/withdrawal/substitution shall be entertained only before the Bids are received by the Liquidator. However, the last date for such request shall be specified later.

5.1.2.g) All members of Consortium shall be required to sign the Non-Disclosure Agreement.

5.1.2.h) In case a Consortium is shortlisted as Qualified Bidder and subsequently selected as the Successful Bidder, it shall be required to incorporate a company ("**Investment Vehicle**") that shall enter into definitive agreements for completion of the transaction.

Qualifications in case of Assets under Management (AUM):

5.1.3.a) Any private limited company or public limited company registered as an AIF/VCF/FI/MF/NBFC, etc Alternative Investment Fund ("AIF") or Non-Banking Finance Company ("NBFC") incorporated or formed in India or any company/body corporate incorporated or formed outside India, which is eligible to invest in India under the laws of India (subject to such parties obtaining all statutory approvals from the GoI/DIPP/RBI etc. by themselves).

5.1.3.b) The prospective Bidder must be eligible to bid for the Corporate Debtor under the provisions of the IBC and must be 'fit and proper' person, i.e. not under any legal disability to be purchaser of Corporate Debtor under the applicable laws.

5.1.3.c) The prospective Bidder shall have a net worth not less than Rs. 100 crores as on 31 March 2021 or any latest available subsequent date as certified by Statutory Auditor of the prospective Bidder.

## **5.2. Steps for Qualified Bidder:**

The Bidder is required to submit following documents.

- The Bid Application Form (Annexure II),
- Bid Declaration Form/ Declaration by Bidders (Annexure III) (through Authorized Signatory, in case the bidder is a legal entity)
- Affidavit and Undertaking (Annexure I),
- Confidentiality and Non-Disclosure Undertaking (Annexure V)

- Earnest Money Deposit of INR Rs. 25 Crores/- (including GST) through NEFT/RTGS/Demand Draft on or before 20.12.2021 in the Liquidation Account.
- Bid confirmation Affidavit (Annexure VI)

**Please note that only on submission of aforesaid, the Bidder will gain access to Information Memorandum, documentation, additional information in relation to the Company required for due diligence.**

Note:

- Please note that Bidder after submission of aforesaid documents, the Liquidator will check Section 29A eligibility as per of the IBC once the Section 29A report is clear, then only Bidder is allowed/requested to submit EMD amount.
- The Liquidator may in his absolute discretion, but without being under any obligation may to dismiss/reject the bid of any Bidder, if the Bidder is found ineligible under Section 29A report.
- Qualified bidder shall submit EMD up to 20.12.2021 in Format -A or Format- B.
- On Submission of EMD Bidder will be provided bidding login password of E- Auction Portal
- There after Bidder will be given Mock Auction and Auction portal training.

### **5.3. Legal Criteria:**

Proviso to Section 35(1)(f) of the IBC provides that the Liquidator shall not sell the assets of the Company to any person who is not eligible to be a resolution applicant. Section 29A of IBC defines the persons not eligible to be resolution applicant. Section 29 A of the IBC is reproduced as below for reference purposes only:

***“Sec 29A. Persons not eligible to be resolution applicant:***

*A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person-*

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

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

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

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

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

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

*(i) for two years or more under any Act specified under the Twelfth Schedule; or*

*(ii) for seven years or more under any law for the time being in force:*

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

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

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

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

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

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

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

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

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

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

*Explanation I - For the purposes of this clause, the expression "connected person" means*

*i. any person who is the promoter or in the management or control of the resolution applicant; or*

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

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

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

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

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);
- (d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (e) an Alternate Investment Fund registered with Securities and Exchange Board of India;
- (f) such categories of persons as may be notified by the Central Government."

**5.4.** A Bidder shall be disqualified from participating in the e-Auction, if:

- (a) The Bidder fails to meet the eligibility criteria set out in Section 29A of the IBC;
- (b) There is any breach of the terms of this E-Auction Process Information Document;
- (c) They fail to deliver the original hard copies of the all the original documents required to be submitted under this E-Auction Process Information Document;
- (d) The Application form or the documents submitted along with the Application form is incomplete;
- (e) The Bidder makes any misrepresentation or conceals material information;
- (f) The Bidder fails to submit any additional information, clarifications or documents sought by the Liquidator within the timelines prescribed by the Liquidator;
- (g) Two or more Bidders form a cartel.

## **6. DOCUMENTS REQUIRED TO BE SUBMITTED TO ASCERTAIN ELIGIBILITY OF THE BIDDER**

- 6.1.** The Bidder would need to submit the following forms, documents and authorizations as part of the E-Auction by the Bidder(s) as per the timelines prescribed in this E-Auction Process Information Document:
- 6.1.1** Ownership structure and composition of the Bidder, proof of identification, current address-proof, PAN card, valid e-mail ID, landline and mobile phone number etc.
- 6.1.2** Authorization to the Signatory (in case the bidder is a legal entity).
- 6.1.3** The interested Bidder must submit the Bid Application Form (Annexure II), Bid Declaration Form/ Declaration by Bidders (Annexure III) (through Authorized Signatory, in case the bidder is a legal entity) Affidavit and Undertaking (Annexure I), Confidentiality and Non-Disclosure Undertaking (Annexure V) along with Earnest Money deposit of INR 25 Crores (including GST). The formats for the Affidavit and Undertaking is attached vide Annexure I and the format for the Confidentiality and Non-Disclosure Undertaking is attached vide Annexure V.
- 6.1.4** Please note that only the Qualified Bidder(s) will gain access to Information Memorandum, documentation, additional information in relation to the Company required for due diligence after due submission of the requisite forms, documents and authorizations; Affidavit and Undertaking; executing a Confidentiality Undertaking and Earnest money deposit as stated in para 5.1.1 to para 5.1.3 above.
- 6.1.5** Please note that only the Qualified Bidder(s) will be under obligation to submit its/his EMD amount by 20.12.2021 and only after receipt of EMD, the Qualified Bidder would be provided login password for bidding in e-auction.
- 6.1.6** Further, it should be noted that at any stage of the E-Auction process, the Liquidator may ask for further documents from the Bidder(s) to evaluate their eligibility. The Liquidator, at his discretion may disqualify the Bidder(s) for non-submission of the requested documents.

## **7. SITE VISIT**

- 7.1.** The Qualified Bidder is expected to make its own arrangements including accommodation for the Site Visit. All costs and expenses incurred in relation to Site Visits shall be borne by the Qualified Bidder.
- 7.2.** In Site Visit, the Qualified Bidder(s) may carry out its own comprehensive due diligence in respect of the Company and shall be deemed to have full knowledge of the condition of the Company, its assets, relevant documents, information etc. whether or not the Qualified Bidder actually inspects or participates in the Site Visit or verifies the document provided by the Liquidator. During the Site Visit, a Qualified Bidder shall not:
- i. take any photographs of the Site or take any documents back with it; or
  - ii. initiate any discussion regarding the Liquidation Process, with the personnel at Site, during the course of its Site Visit.

- 7.3. The Qualified Bidder shall not be entitled to receive any reimbursement of any expenses which may have been incurred in carrying out of due diligence, search of title to the assets and matters incidental thereto or for any purpose in connection with the Bid.
- 7.4. Any delay in completion of the Site Visit by the Qualified Bidder, shall not entitle the Qualified Bidder to any extension in the timelines, including the timeline for completion of such Site Visit or submission of the Bid, by or before the last date for submission of the Bid.

## 8. DUE DILIGENCE

- 8.1. The Qualified Bidder, after submission of necessary documents as mentioned in Para 5 of this document shall be provided access to Information Memorandum and other documents after submitting a Confidentiality Undertaking.
- 8.2. It is hereby clarified that the Liquidator does not give any assurance or warranty of the physical condition of the assets and their suitability for any operation that the Bidder envisages.
- 8.3. The Liquidator shall endeavour to provide necessary assistance, facilitating the conduct of due diligence by interested Bidders. The information and documents shall be provided by the Liquidator in good faith.
- 8.4. The Liquidator proposes sale of Company on going concern basis in accordance with the provisions of IBC and Liquidation Process Regulations 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 details more particularly describe in **Schedule-I** of present Auction Document. All local taxes / maintenance fee / electricity / water charges/annual lease rentals / unearned income in case of leasehold assets, etc., outstanding as on date or yet to fall due in respect of the relevant asset should be ascertained by the Bidder and would be borne by the Successful Bidder.
- 8.5. It must also be noted that the liquidator does not give any assurance or warranty of the physical condition of the assets and their suitability for any sort of operation that the bidder envisages.
- 8.6. The Bidders should make their own independent inquiries regarding the encumbrances, titles of assets and claims/rights/dues/affecting the assets and should conduct their own due diligence prior to submitting their Scheme. The Scheme Process Document does not constitute any representation or offer by the Liquidator. The Corporate Debtor or its business would be transferred through Scheme with all the existing and future encumbrances/claims/dues/demands whether known or unknown to the Liquidator. The Liquidator shall not be responsible in any way for any third party claims/rights/dues.
- 8.7. Last Date for carrying out due diligence is 03.01.2022.

- 8.8. A Bidder requiring any clarification on this E- Auction Process Information Document, Liquidation Process, submission of the Bid or on the Company shall email such request for clarification to [Lp.acpl@rbsa.in](mailto:Lp.acpl@rbsa.in) .

## 9. MODE OF SALE AND RESERVE PRICES

- 9.1. As per Regulation 32(e) of the Liquidation Process Regulations, the Liquidator proposes to conduct sale of the Company on a going concern basis through E-Auction process and this E-Auction Process Information Document.
- 9.2. The details of the security interest as charged created by banks/ financial institutions against the financial facility provided on the assets of the Corporate Debtor, relinquished by the secured creditors in accordance with Section 52(1)(a) of the IBC shall be available in the Information Memorandum.
- 9.3. The implementation/ mechanism of such sale is however not specifically provided for in the Liquidation Process Regulations or anywhere in IBC. It is clarified that on being declared as Successful Bidder, the said 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. After identification of a Successful Bidder, the Liquidator shall have the right to approach the NCLT for obtaining suitable directions on the implementation of such sale and any such directions shall be binding on the parties to the sale process as contemplated in this E- Auction Process Information Document.
- 9.4. **The Successful Bidder agrees that, it shall be bound to pay the balance sale consideration (plus any applicable GST/taxes, registration fees, etc if any, on 100% of the bid sum) for consummation of sale of the assets of the Company within the time frame stipulated in the Liquidation Process Regulations, which is 30 days from the closure of the auction but can be extended up to 90 days provided that the payment made after 30 days shall attract interest at the rate of 12%, the sale shall be cancelled if the full payment is not received within 90 days**
- 9.5. 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 Company on going concern basis 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 under the Liquidation Process Regulations. Any failure to obtain such necessary approvals, consents, reliefs that may be required by the Successful Bidder in respect of the sale of the assets of the Company shall not affect the E-Auction Process or sale of the Company as contemplated under this E-Auction Process Information Document. On payment of the full amount, the sale of the Company 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 and the Liquidation Process Regulations.
- 9.6. The Liquidator reserves the right to alter, modify, cancel or relax any of the terms and conditions mentioned in this E-Auction Process Information Document in the interest of the liquidation process

of the Company including cancellation of the E-Auction Process at any point of time. Any such alteration, modification, cancellation or relaxation of E-Auction Process shall be binding on the Bidder.

- 9.7. The Bidder [hereinafter referred to as PB] will have to submit Bid Application Form (Annexure II), Bid Declaration Form/ Declaration by Bidders (Annexure III), Affidavit and Undertaking (Annexure – I) and Confidentiality and Non-Disclosure Undertaking (Annexure V) in specified format along with Earnest Money Deposit of INR 25 Crores (including GST).
- 9.8. 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 Company as going concern.
- 9.9. The attention of Qualified Bidders is invited to the fact that the Bidders cannot place a Bid for a value below the Reserve Price. Such Bid will stand automatically disqualified.
- 9.10. The access to the details of the assets of the Company/ Data Room will be provided only to Qualified Bidder, subject to submission of the requisite forms, i.e. Bid Application Form (Annexure II), Bid Declaration Form/ Declaration By Bidders (Annexure III) (through Authorized Signatory, in case the bidder is a legal entity) Affidavit and Undertaking (Annexure I), Confidentiality And Non-Disclosure Undertaking (Annexure V) along with Earnest Money Deposit of INR 25 Crores (including GST).
- 9.11. Reserve price: - Reserve price is INR 1127.31 Crores (Indian Rupees One Thousand One Hundred and Twenty Seven Crores and Thirty one Lakhs only) as arrived pursuant to the provisions of the IBBI (Liquidation Process) Regulations, 2016 (being reduced by 25% from the reserve price mentioned in the first auction sale notice dated 24.11.2021).

## **10. Earnest Money Deposit**

- 10.1 All the Qualified Bidders shall provide, along with or prior to submission of their auction Bids, an amount which is equal to the INR 25 Crores.
- 10.2 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 Format B (Earnest Money 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

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.

- 10.3 Mode of Payment of EMD and balance sale consideration and other instructions relating to EMD:
  - a. The EMD, which would not be bearing any interest, has to be paid by the Bidder prior to uploading the online Bid Application Form.

- b. The EMD and balance sale consideration or any other payments is to be made through RTGS / NEFT to the account number of the Company as provided under:

Name: M/S Athena Chhattisgarh Power Limited – In Liquidation

Name of A/c Holder:	Athena Chhattisgarh Power Limited
A/c Number:	40500529527
IFSC:	SBIN0040227
Bank Name:	State Bank of India
Branch:	SECUNDERABAD

- c. The details of any remittances in this regard shall be entered in the online form submitted by the Bidder. The entire EMD amount shall be remitted by the Bidder(s) from one bank account only and to be owned by the Bidder.

- 10.4 Bidders shall preserve the remittance challan and shall produce the same in front of the Liquidator as and when demanded.
- 10.5 All the payments to be made by the Bidder under the e-auction shall be intimated to the Liquidator at [Lp.acpl@rbsa.in](mailto:Lp.acpl@rbsa.in).
- 10.6 The process under 10.5 to 10.8 aforesaid shall also be applicable to payment of the balance sale consideration in respect of the sale of the Company on going concern basis.
- 10.7 The EMD may also be provided either:
- (a) in the form of the cash which can be deposited by the Bidder, by way of direct bank transfer to the bank account as notified by the Liquidator; and / or
  - (b) by way of a bank guarantee issued by any leading nationalized bank or private sector bank of India in favour of the Company in Format A.

It should be noted that no interest will be paid to the Bidder in relation to such EMD.

**10.8 Forfeiture of Earnest Money Deposit from the Bidder:**

- 10.8.1 It is to be noted that the EMD furnished can be forfeited at any time, upon the occurrence of any of the following events:
- (a) if there is a breach of any of the conditions under this E-Auction Process Information Document by the Bidder or in case Bidder is found to have made any misrepresentation or fraud; or
  - (b) if Bidder is found to be ineligible to submit the Bid as per the conditions set out in Section 29A of the IBC (as amended from time to time) or is found to have made a false or misleading declaration of eligibility as per the conditions set out in Section 29A of the IBC (as amended from time to time); or
- 10.8.2 if the Successful Bidder after being intimated by the Liquidator as Successful Bidder, fails to make the complete payment within the time stipulated in the Liquidation Regulations as per the terms of letter of intent issued by the Liquidator.

- 10.8.3 In case of any of the above event, all the amounts deposited till that date shall be forfeited and the option to acquire the assets of the Company / Company will be offered to the next highest Bidder.

**10.9 Set-off of EMD of the Successful Bidder:**

- 10.9.1 Unless expressly indicated by the Bidder, the EMD shall be set-off against or used as part of the consideration that the Successful Bidder proposes to offer as a sale consideration of the Company.
- 10.9.2 The Bid once submitted cannot be withdrawn and in case of non-participation in E-Auction after submission of Bid, the offer will be presumed to be given at Reserve Price. The E-Auction Service Provider shall itself register the Bidder in E-Auction in such event.
- 10.9.3 In case the E-Auction fails, then the EMD paid by the Bidder shall be returned (without interest) to such applicant within 15 (fifteen) days of the date of closure of E-Auction process.
- 10.9.4 For Successful Bidder, an email confirmation will be given for being Successful Bidder on the next day of the E-Auction.
- 10.9.5 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 auction thereof from the E-Auction proceedings at any stage without assigning any reason there for.

**11. DEFAULT BY SUCCESSFUL BIDDER AND ITS CONSEQUENCES**

- 11.1 In the event that the Successful Bidder withdraws his Bid Application Form, the Liquidator shall have the right to invoke the bank guarantee provided with respect to the EMD or appropriate the EMD furnished by the Successful Bidder.
- 11.2 If the Successful Bidder does not furnish the balance consideration pursuant to the LOI issued by the Liquidator within the timelines stipulated under the Liquidation Process Regulations, the Liquidator shall have the right to invoke the bank guarantee provided with respect to the EMD or appropriate the EMD furnished by the Successful Bidder.

**12. DECLARATION OF SUCCESSFUL BIDDER**

- 12.1 The Liquidator at the end of the E-Auction Process, shall declare the Successful Bidder(s). The Successful Bidder(s) shall be determined on the basis of highest Bid received in respect of sale of Company on going concern basis unless the Liquidator determines, acting reasonably, that the highest Bidder shall not be identified as the Successful Bidder, in accordance with the provisions of IBC and Liquidation Process Regulations read with terms & conditions as specified in the E-auction portal. In case of any dispute / discrepancy, the Liquidator shall assess the E-Auction applications and declare the Successful Bidder(s) offering maximum value for the auction of the Company. This right of selecting and declaring the Successful Bidder(s) shall always solely rest with the Liquidator.
- 12.2 The Successful Bidder shall be required to execute a LOI provided by the Liquidator within a period of 7 (seven) days from the E-Auction date and record unconditional acceptance of the LOI by providing the Liquidator with one copy of LOI with an endorsement stating that LOI is "Accepted Unconditionally" under the signature of the signatory/ Director of the Successful Bidder within \_\_ days of the issuance of the LOI.

- 12.3 Upon receipt of the balance sale consideration from the Successful Bidder as per the timelines prescribed under the Liquidation Process Regulation, a sale certificate shall be issued/executed between the Successful Bidder and the Company as per the timelines specified in this E-Auction Process Information Document.
- 12.4 This LOI per se does not confirm sale in favour of the Successful Bidder. Confirmation of sale is subject to the fulfilment of conditions stated herein and the approval of the Liquidator.
- 12.5 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.
- 12.6 In case of disqualification of a Successful Bidder, the 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. If the latter is 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 assets from the auction or sell the assets to the next highest Bidder at its bid amount.
- 12.7 Any expenses accrued post declaration of successful Participant till the execution of the transaction documents such as lease rent, common area maintenance charges, electricity expenses and security expenses etc. for the period post shall have to be borne by the Successful Participant.

### **13. FRAUDULENT AND CORRUPT PRACTICES**

- 13.1 The Bidder shall observe the highest standard of ethics during the E-Auction Process and subsequently during the closure of the E-Auction Process and during the declaration of the Successful Bidder. Notwithstanding anything to the contrary contained in this E-Auction Process Information Document, the Liquidator shall reject the Bid, without being liable in any manner whatsoever to the Bidder, if the Liquidator, at his discretion, determines that the 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 retain the EMD, without prejudice to any other right or remedy that may be available to the Liquidator under this E-Auction Process Information Document or Applicable Law(s).
- 13.2 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 E- Auction Process;

**“Corrupt practice”** shall mean the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the E-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 E- 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 E- Auction Process); OR engaging in any manner whatsoever, during the E- 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 E-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 E-Auction Process;

**“restrictive practice”** shall mean forming a cartel or arriving at any understanding or arrangement among the Bidders with the objective of restricting or manipulating a full and fair competition in the E-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 E-Auction Process; or (ii) having a conflict of interest.

The Bidder shall not involve himself or for any of his Representatives in price manipulation of any kind directly or indirectly under the Applicable Law(s) by communicating with other Bidders.

The Bidder shall not divulge either his Bid or any other details provided to him by the Liquidator or during the due diligence process in respect of the Company to any other party. Prior to conduct of due diligence / Site Visits and access of Data Room, the Liquidator shall require the Bidder to execute a Confidentiality Undertaking with the Company / Liquidator.

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

- 14.1 The Bidder 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.
- 14.2 It is hereby clarified that the Bidder shall 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 Bidder.
- 14.3 The Bidder shall not be entitled to receive any reimbursement of any expenses which may have been incurred while carrying out the due diligence, search of title to the assets of the Company and matters incidental thereto or for any purpose in connection with the E-Auction Process.
- 14.4 It is to be noted that all taxes applicable whether 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

on going concern basis; as the case may be in accordance with the provisions of IBC and Liquidation Process Regulations, as the case may be, would be borne by the Successful Bidder. Some of the costs and charges for the sale transaction may include inter-alia the following:

- i. The sale of the Company attracts stamp duty, registration charges, fresh issuance of shares or transfer of shares etc. as per relevant Applicable Law(s);
- ii. The Successful Bidder shall bear all the necessary expenses like applicable stamp duties additional stamp duty / transfer charges, fees, etc. for transfer of the Company in its name; and
- iii. The payment of all statutory / non - statutory dues, taxes, rates, assessments, charges, fees, cess or other applicable tax i.e. GST, TDS, any other applicable expenses etc.

14.5 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 Company in the name of the Successful Bidder and such dues, if any, will have to be borne/paid by the Successful Bidder.

14.6 The Bidder shall be responsible for fully satisfying the requirements of the IBC and the related Regulations as well as all Applicable Law(s) that are relevant for the sale of the Company. 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(s) in respect of the sale of Company as going concern basis as contemplated in E- Auction Process Information Document.

## **15. 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 Hyderabad, India. In addition, the bank guarantee provided by the Bidder in relation to the EMD as per Format A of this document shall be subject to the exclusive jurisdiction of the courts and tribunals at Hyderabad, India.

## **16. TIMETABLE**

The following timetable shall apply to the E-Auction Process Information Document. The timetable may be amended by the Liquidator through issuance of an addendum to the E-Auction Process Information Document:

<b>Sr. No.</b>	<b>Event</b>	<b>Timeline</b>
1	Public Advertisement of E-Auction	10 December 2021
2	Last date for receipt of Earnest Money Deposit and Submission of the Bid Application Form (Annexure I, II, III,V) & Bid Declaration Form	20 December 2021

3	This E- Auction Process Information Document made available on the website: <a href="https://rbsa.in/ibc-cases">https://rbsa.in/ibc-cases</a>	10 December 2021
4	Date of issue of Information Memorandum and VDR access.	24 December 2021
5	Last date for Site visit	03 January 2022
7	Facilitation of Due Diligence	10 December 2021 to 03 January 2022
9	E-Auction date & announcement of the successful Bidder	07 January 2022
10	Issuance of email confirmation as successful Bidder	07 January 2022
11	Execution of LOI by Successful Bidder	09 January 2022
12	Return of EMD for unsuccessful Bidders	22 January 2022
13	Payment of final balance consideration by Successful Bidder	** (Within 90 days from date of demand of balance sale consideration)
<i>Note: The Timetable may undergo change subject to any further development which shall be intimated to the Participants via email or uploaded on the website: <a href="https://rbsa.in/ibc-cases">https://rbsa.in/ibc-cases</a>.</i>		

\*\*Successful bidder required to submit the balance sale consideration within 30 days from the date of issuance of demand, an interest @12% PA will be charged after expiry of 30 days (30 days from issuance of demand) till 90th day (90th day from the date of issuance of demand). Further any delay of more than 90 day in depositing the full consideration by the successful bidder would entail forfeiture of EMD and any amount already deposited. Company shall be put to re-auction and the defaulting Bidder shall have no claim / right in respect of Company / amount paid whatsoever.

**Note –**

- In case the final sale consideration is not paid within the timelines prescribed under this document / IBC/ Liquidation Process Regulations, the Liquidator shall forfeit the EMD.
- Bidders should regularly visit the website(s)/link(s) mentioned in public advertisement to keep themselves updated regarding clarifications, amendments and/or extension of time, if any

## SCHEDULE-I

### ASSETS TO BE AUCTIONED AND RESERVE PRICES

Asset Description	Mode of Sale	Reserve Price (Rs.)	EMD (Rs.)
<b><u>Thermal Power Plant:</u></b> 2x600 MW Capacity (complete plant) comprising of <b>Land</b> (approx. 964 acres). {Bulk of this land has been leased by Chhattisgarh State Industrial Development Corporation for a period of ninety nine years}, <b>Building</b> including shed and other civil structures along with <b>plant and machinery</b> situated at Janjgir Champa district.	As a going concern on “as is where is”, “as is what is”, “whatever there is” and “without recourse” basis (Under Regulation 32(e) of Liquidation Regulations).	1127.31 Crores	25 Crores

The bidders can increase their bid by a minimum increment amount of INR 10 Lakh or in multiples of these amounts.

## FORMAT- A: EARNEST MONEY DEPOSIT – BANK GUARANTEE

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

To

Mr. Kumar Rajan

Reg. No. - IBBI/IPA-002/IP-N00658/2018-2019/12116

Liquidator of Athena Chhattisgarh Power Limited (in liquidation)

Having registered office at

7-1-24/1/RT, G-1, B-Block, Roxana Towers Greenlands,

Begumpet Hyderabad- 500016 IN

(**"Liquidator"**)

and

[Insert Details of the Bank and Address]

WHEREAS

- A. [Insert name of the Bidder] incorporated in [India]/\_\_\_\_[insert name of country where guarantor is incorporated] under the [Companies Act, [1956/2013]]/\_\_\_\_[insert name of legislation under which the entity is incorporated] with corporate identity number\_\_\_\_[insert the corporate identity number of the entity], whose registered office is at\_\_\_\_[insert address] (**"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 E- Auction Process Information Document dated\_\_\_\_(**"E-Auction Process Information Document"**) issued by the Liquidator seeking submission of bids for the carrying out the sale of Athena Chhattisgarh Power Limited under Liquidation as Going Concern.
- B. This bank guarantee is required to be issued in favour of Athena Chhattisgarh Power Limited (In Liquidation) (**"Beneficiary"**), pursuant to the terms of the E-Auction Process Information Document.
- C. We, [insert name of the bank] having our registered office at [insert address] (**"Bank"**) at the request of the Bidder do hereby undertake to pay to the Beneficiary at Hyderabad an amount not exceeding INR \_\_\_\_ (Indian Rupees Only) [insert the amount of Earnest Money Deposit] 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.
1. Now therefore, the Bank hereby issues in favour of the Beneficiary this irrevocable unconditional payment bank guarantee (**"Guarantee"**) on behalf of the [Insert name of the Bidder] for an amount.

2. 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 INR \_\_ (Indian Rupees\_Only) [Insert the amount of Earnest Money Deposit].
3. This Guarantee shall be valid and binding on the Bank up to and including last day of admissible period of 180 days for the successful bidder with an additional claim period of 30 (thirty) days thereafter and shall in no event be terminable by notice or any change in the constitution of the Bank or the Beneficiary, by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.
4. The Bank hereby expressly agrees that the demand made on it under this Guarantee shall be conclusive evidence of that such payment is due and the Bank shall not require any proof in addition to the written demand from Beneficiary, made in any format, raised at the above mentioned address of the Bank, in order to make the said payment to the Beneficiary.
5. The Bank shall make payment hereunder notwithstanding any objection by [Insert name of the Bidder] and / or any other person or any dispute (s) raised by the [insert name of the Bidder] in any suit or proceeding pending before any court or tribunal relating thereto and the Bank's liability under this present being absolute and unequivocal. The Bank shall not require the Beneficiary to justify the invocation of this Guarantee, nor shall the Bank have any recourse against the procurer(s) in respect of any payment made hereunder.
6. This Guarantee shall be interpreted in accordance with the laws of India and the courts and tribunals at Hyderabad shall have exclusive jurisdiction. The Bank represents that this Guarantee has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Bank in the manner provided herein.
7. This Guarantee shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Bank.
8. This Guarantee shall be a primary obligation of the Bank and accordingly the Beneficiary shall not be obliged before enforcing this Guarantee to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder or to exercise, levy or enforce any distress, diligence or other process against the Bidder. The Bank waives any such right to that extent.
9. The Bank further unconditionally agrees with the Beneficiary that the Beneficiary shall be at liberty, without Bank's consent and without affecting in any manner the Bank's obligations under this Guarantee, from time to time:
  - i. Vary and/or modify any of the terms of the E-Auction Process Information Document;
  - ii. Extend and/or postpone the time of performance of the obligations of the Bidder under the E-Auction Process Information Document; or
  - iii. 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.

10. 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.
11. Our liability under this Guarantee is restricted to INR\_\_\_\_(Indian Rupees\_Only) [Insert the amount of Earnest Money Deposit] and it shall remain in force till 180 days from [Insert Earnest Deposit Validity Date], with an additional claim period of 30 (thirty) days thereafter.
12. Failure to re-issue or extend this Guarantee in accordance with Clauses stated 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 \_\_\_\_\_.

Signature of the Bank Official:

Name of the Bank Official:

Designation with Bank Stamp

**Witness:**

1. \_\_\_\_\_

Name and Address

2. \_\_\_\_\_

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 \_\_2019

Notes:

The Stamp paper should be in the name of the Bank

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**FORMAT- B: EARNEST MONEY DEPOSIT PAYMENT BY AN ASSOCIATE COMPANY/ASSOCIATE**  
(on the letterhead of an Associate Company/ Associate)

To  
Mr. Kumar Rajan  
Reg. No. - IBBI/IPA-002/IP-N00658/2018-2019/12116  
Liquidator of  
Athena Chhattisgarh Power Limited (in liquidation)  
Having registered office at  
7-1-24/1/RT, G-1, B-Block, Roxana Towers Greenlands,  
Begumpet Hyderabad- 500016 IN  
(**"Liquidator"**)

[Copy to: ]  
[Insert name of Bidder with Address]

Dear Sir,

**Sub:** Payment of the amounts of EMD on behalf of the Bidder in relation to the E-Auction of Athena Chhattisgarh Power Limited (**"Company"**) as a sale of Company on a going concern basis as per IBC and Liquidation Process Regulations.

In light of the Bid for Athena Chhattisgarh Power 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/Associate Company and address of the head office] hereby declares and confirms it is [an/the] [Insert relationship of the Associate/Associate Company with the Bidder] of the Bidder (**"Associate/Associate Company"**), and the payment of the EMD vide [Insert mode of payment] (**"Payment"**) is on behalf of the Bidder. The Associate Company acknowledges that such amounts paid as EMD shall be subject to the terms of the E-Auction Process Information Document 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/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.

Yours sincerely,

[Signature and name of the Authorized Officer of the Associate/ Associate Company]

Rubber stamp/ seal of the Associate/Associate Company

#### **ACKNOWLEDGMENT**

We hereby acknowledge and confirm the statements set out above by the Associate/Associate Company.

Yours sincerely,

[Signature and name of the Authorized Officer of the Bidder]

Rubber stamp/seal of the Bidder

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**ANNEXURE- I: AFFIDAVIT AND UNDERTAKING**  
(To be notarized on stamp paper)

Date:

To  
Mr. Kumar Rajan  
Reg. No. - IBBI/IPA-002/IP-N00658/2018-2019/12116  
Liquidator of  
Athena Chhattisgarh Power Limited (in liquidation)  
Having registered office at  
7-1-24/1/RT, G-1, B-Block, Roxana Towers Greenlands,  
Begumpet Hyderabad- 500016 IN

**Sub: Disclosure and Undertaking on eligibility under Section 29A of the Insolvency and Bankruptcy Code, 2016**

Dear Sir,

A. I hereby submit this declaration under Section 29A of the Insolvency and Bankruptcy Code, 2016 ("IBC") as inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2018 and further amendments thereto:

I have understood the provisions of Section 29A of IBC and confirm that I am eligible to submit my bid under section 29A of IBC. I confirm that in accordance with the provisions of section 29 A of IBC, inter-alia, neither [Insert name of the Bidder] nor any person acting jointly with [Insert name of the Bidder] or any person who is a promoter or in the management or control of [Insert name of the Bidder] or any person acting jointly with [Insert name of the Bidder]:

- a) is an un-discharged insolvent;
- b) is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
- c) at the time of submission of the Bid, has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor;
- d) has been convicted for any offence punishable with imprisonment – (i) for two years or more under any Act specified under the Twelfth Schedule; or (ii) for seven years or more under any law for the time being in force: Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment : Provided further

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

- e) is disqualified to act as a director under the Companies Act, 2013;
  - f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
  - g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this IBC;
  - h) has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this IBC;
  - i) has been subject to any disability, corresponding to clauses (a) to (h) of Section 29A, under any law in a jurisdiction outside India; or
  - j) has a connected person (as defined in Explanation to Section 29A) who is ineligible under clauses (a) to (i) of Section 29A of IBC.
- B. I, therefore, confirm that \_\_\_\_ [Insert name of the Bidder] is eligible under Section 29A of IBC submit its Bid for Athena Chhattisgarh Power Limited – In Liquidation as a Going Concern.
- C. I undertake on behalf of \_\_\_\_ [Insert name of the Bidder], that during the Liquidation Process, no person who would be considered as Connected Person as is not eligible to submit resolution plan under Section 29A of Insolvency and Bankruptcy Code, 2016 and the regulation 38 of IBBI (Insolvency Resolution Process of Corporate Persons) regulations, 2016 shall be engaged in the management and control of the corporate debtor.
- D. I declare and undertake that in case [Insert name of the Bidder] becomes ineligible at any stage during the Liquidation Process, it would inform the Liquidator forthwith on becoming ineligible.
- E. I also undertake that in case \_\_\_\_ [Insert name of the Bidder] becomes ineligible at any time after submission of EMD, then the EMD would be forfeited and the same would be deposited in the account of Athena Chhattisgarh Power Limited – in liquidation.
- F. I confirm that the said declaration and disclosure is true and correct and the undefined legal terms in this undertaking shall have the same meaning as ascribed to them under IBC and regulations there under.
- G. I am duly authorized to submit this declaration by virtue of \_\_\_\_ [Insert the details of the corporate authorizations]

(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)

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**ANNEXURE- II: BID APPLICATION FORM**  
*[On the Letterhead of the Entity Submitting the Bid]*

(Please fill up separate Bid application form)

Date:

To

Mr. Kumar Rajan

Reg. No. - IBBI/IPA-002/IP-N00658/2018-2019/12116

Liquidator of

Athena Chhattisgarh Power Limited (in liquidation)

Having registered office at

7-1-24/1/RT, G-1, B-Block, Roxana Towers Greenlands,

Begumpet Hyderabad- 500016 IN

Dear Sir,

I am desirous in participating in the E-Auction Process of Athena Chhattisgarh Power Limited (in liquidation) announced by you on 10.12.2021 in newspaper(s) Business Standard (English- all Editions), Enadu (Telugu- All Hyderabad Edition) and Dabang (Hindi- All Chhattisgarh Edition) .

Details of Bidder

Name of the Bidder	
Constitution of Bidder	
Contact No.	
Email ID	
PAN No.	
Address	
Details of EMD:	

The Details of the Company for the purposes of remittance of payment is as follows:

Name of A/c Holder:	Athena Chhattisgarh Power Limited
A/c Number:	40500529527
IFSC:	SBIN0040227

Bank Name:	State Bank of India
Branch:	SECUNDERABAD

I/We/M/s. also enclose/s 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 as per auction timelines.

on behalf of Bidder

Place:

Date:

## 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 is being held 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 details more particularly describe in **Schedule-I** hereto. The E- Auction will be conducted through the approved service provider, which shall be published on the website ([www.https://rbsa.in/ibc-cases](http://www.https://rbsa.in/ibc-cases)). E-Auction Process Information Document containing Bid Documents will be available at the website / link of the E-Auction Service Provider at \_\_\_\_\_ and also shall be published on the website ([www.https://rbsa.in/ibc-cases](http://www.https://rbsa.in/ibc-cases)). Interested bidders can register, bid and receive confirmation of their bid online. The requisition of additional information, if any, be sent to [Lp.acpl@rbsa.in](mailto:Lp.acpl@rbsa.in) with a copy to [kumar.rajana@rbsa-advisors.com](mailto:kumar.rajana@rbsa-advisors.com) disclosing the identity of the interested Bidder.
2. The Bidders should make their own independent inquiries regarding the encumbrances, title of assets put on auction and claims/rights/dues/ affecting the assets of the Company and should conduct their own due diligence prior to submitting their Bid. The e-Auction advertisement does not constitute and will not be deemed to constitute any commitment or any representation of the Liquidator. The Company is proposed to be sold on a going concern basis 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.
3. The Bidders should submit the evidence for EMD deposit like UTR number along with the request letter for participation in E-Auction as follows:
  - i. In case of individuals: (a) Proof of identification (KYC) viz. Voter ID card/ Driving License/ Passport etc., (b) Current Address-Proof for communication, (c) PAN card of Bidder, (d) Valid Email ID, (e) contact number (Mobile/Landline) (f) and all other relevant documentation in relation to the bidding process.
  - ii. In case the Bidder is a Company/Entity: (a) Copy of original authorization letter at company letter head, in the name of the individual authorized to collect Letter of Intent on behalf of the company; (b) Copy of ID Proof of the authorized representative like AADHAR/Passport etc; (c) Copy of PAN Card of the Company; (d) Copy of Memorandum and Articles of Association of the company; and (e) All relevant documentation related to the E-Auction Process to the office of the Liquidator by. Scanned copies of the original of these documents can also be submitted to the email of the Liquidator at [Lp.acpl@rbsa.in](mailto:Lp.acpl@rbsa.in) with a copy to [kumar.rajana@rbsa-advisors.com](mailto:kumar.rajana@rbsa-advisors.com).
  - iii. At the time of the delivery, the authorized person would have to show the original documents of: (a) Original authorization letter of the company; (b) Original ID Proof of the authorized representative/Individual appearing like AADHAR/Passport etc. and (c)Original PAN Card of the Company/ Individual.

\*Demand draft or NEFT/ RTGS receipts of refundable process participation fee shall reach the office of liquidator on/before 7:00 PM of 20.12.2021 otherwise proposed bidder will not be given access to Information Memorandum and other details of corporate debtor.

4. Name of the prospective Bidders will be identified and conveyed by Liquidator to participate in online E-Auction on the portal as per timelines specified in the E-Auction Process Information Document. The prospective Bidder shall be required to be registered with the E-Auction Service Provider for generation of login credentials to enable the prospective Bidder to participate in the E-Auction on the appointed date.
5. It should be the responsibility of the prospective/interested Bidders to inspect and satisfy themselves about the assets of the Company / Company before submission of the Bid.
6. Liquidator has right to demand any additional documents from the Bidder for the E- Auction Process. In case such additional documents are not provided by the Bidder, the Liquidator in his own discretion may disqualify the Bid.
7. The E-Auction of the Company would be conducted by multiple rounds of auction by the Liquidator if required, to maximise the realization from the sale of the assets and to promote the interests of the Creditors.
8. The EMD of unsuccessful bidders shall be refunded within fifteen days from the date of E-Auction. The EMD shall not bear any interest.
9. In case of the Successful Bidders, the EMD in cash may be adjusted towards the balance sale consideration. The EMD shall not bear any interest.
10. The Liquidator will intimate through mail to the Successful Bidder, detailing the total payable amount for consummating the sale of the Company and other terms and conditions. The Successful Bidder would have to pay the balance sale consideration amount less EMD for the sale of the Company within time stipulated in this E- Auction Process Information Document. Any default in payment of the bid amount by the Successful Bidder would entail forfeiture of EMD already deposited the Company shall be put to re-auction and the defaulting Bidder shall have no claim / right in respect of Company / amount paid whatsoever.
11. The Successful Bidder shall bear the applicable stamp duties/ additional stamp duty / transfer charges, fresh issuance of share charges or transfer of shares fee, taxes, Good and Services Tax, etc. and also all the statutory/ non statutory dues, taxes, rates assessment charges fees etc. owing to anybody.
12. The Liquidator is not bound to accept the highest offer or 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.
13. The Liquidator, must however, on rejection of the highest Bid in the E-Auction, intimate the reasons for doing so to the highest Bidder and mention the same in the Progress Report.
14. The sale certificate will be issued and / or transaction / sale documents executed in the name of Successful Bidder(s) only and will not be issued in any other name(s). The sale of the Company as contemplated under this document shall be subject to conditions prescribed under the Insolvency & Bankruptcy Code, 2016 read with amendments and rules/ regulations made thereunder.
15. The Bidder may submit his offer as per the process specified in the E-Auction Process Information Document.
16. The decision of the Liquidator on declaration of Successful Bidder shall be final and binding on all the Bidders.
17. 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.

Date: 10.12.2021

Place: Hyderabad

SD/-

**Kumar Rajan**

Reg. No. - IBBI/IPA-002/IP-N00658/2018-2019/12116

Liquidator of

**Athena Chhattisgarh Power Limited**

**IBBI registered and Communication address:**

607, 6th Floor, Shangrila Plaza, Road No. 2, Opposite

KBR Park, Banjara Hills,

Hyderabad - 500 034.

E-mail – [kumar.rajan@rbsa-advisors.com](mailto:kumar.rajan@rbsa-advisors.com), [Lp.acpl@rbsa.in](mailto:Lp.acpl@rbsa.in)

(Athena Chhattisgarh Power Limited is under liquidation as Going Concern under the provisions of the Insolvency and Bankruptcy Code 2016. Its affairs, business and assets are being managed by the Liquidator, Mr. Kumar Rajan, appointed by the National Company Law Tribunal by order dated 13th May, 2021.)

### ANNEXURE- III: BID DECLARATION FORM/ DECLARATION BY BIDDERS

To  
Mr. Kumar Rajan  
Reg. No. - IBBI/IPA-002/IP-N00658/2018-2019/12116  
Liquidator of  
Athena Chhattisgarh Power Limited (in liquidation)  
Having registered office at  
7-1-24/1/RT, G-1, B-Block, Roxana Towers Greenlands,  
Begumpet Hyderabad- 500016 IN

Dear 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 the Company as going concern basis as specified in the Public Advertisement and E-Auction Process Information Document and have understood them fully. I/We hereby unconditionally agree to conform with and to be bound by the said terms and conditions of the Public Advertisement and E-Auction Process Information Document and agree to take part in the e-auction process.
2. I / We declare that the Earnest Money Deposit/EMD and documents submitted in relation to the Eligibility Criteria as specified in the E-Auction Process Information Document and that the particulars of remittance 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 EMD and / or any monies paid by me / us is liable to be forfeited by the Liquidator and the Seller will be at liberty to annul the offer made to me/us at any point of time.
4. I / We also agree that after my /our offer given in my /our Bid in relation to the sale of the Company as contemplated under the E-Auction Process Information Document, 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 under the E-Auction Process Information Document or the Liquidation Process Regulations for any reason whatsoever and /or fail to fulfill any / all the terms and conditions of the E- Auction and letter of intent, the EMD and other monies paid by me / us along with the form and thereafter, are liable to be forfeited along with other deviations pertaining to forfeiture of EMD as specified in the E-Auction Process Information Document. The timeline for payment of final sale consideration may be extended by sole discretion of Liquidator and as per the Liquidation Process Regulations, to the extent permissible under the Applicable Law(s). In case final sale consideration is not paid within timeline stated in the Liquidation Process Regulations, the Liquidator shall forfeit EMD.

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 Assets for which my/our bid was approved nor on any part of the sum for which it may be subsequently sold.
6. I / We understand that the EMD of all Bidders shall be retained by the Liquidator and returned only after the successful conclusion of the sale of the assets of the Company. 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 the sale of the Company, 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 Law; or (iii) any authorization or approval of any government agency or body; 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. I/ We understand that I/We shall be responsible for fully satisfying ourselves with the requirements of the IBC and the related regulations as well as all Applicable Law(s) that are relevant for the E- Auction Process and consummating the sale of the Company on going concern basis. I/We 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(s) for consummation of sale of Company on going concern basis in accordance with the provisions of IBC and Liquidation Process Regulations.
9. I/we undertake that the successful bidder has to honor and execute all commercial commitments, day to day business expenses and other liabilities relating to the corporate debtor which the liquidator / his team has made till the completion of bid or the date of handover as fixed by the liquidator whichever is later.
10. That the Liquidator reserves 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.
11. 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 qualified Bidder and communicated to us shall be binding on me/us. We acknowledge that the Liquidator reserve the right to determine at his/her sole discretion, whether or not we qualify for the submission of the proposal and may reject our proposal without assigning any reason whatsoever.
12. I/we undertake that the sale of the Company is conducted 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 as going concern basis does not entail transfer of any other title. I/we further confirm & accept that the Liquidator does not have any responsibility for any shortfall or defect or shortcoming in the moveable/immoveable assets of the Company.
13. I/we undertake that successful bidder would not get any legal entitlements, rights, duties, obligations and remedies with respect to subject pending litigations before court & tribunals. The said pending litigations are not part of "assets & liabilities" of the corporate debtor which is going to be auctioned under Regulation 32(e). I/we would not claim any substitution of corporate debtor in said pending litigations.
14. 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.

15. 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 being offered for sale.
16. I/We confirm that the Liquidator and his/her 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 E-Auction event.
17. I/We hereby confirm that I/we are eligible to submit our Bid in relation E- Auction under Section 29A of the Insolvency and Bankruptcy Code, 2016 read with subsequent amendments thereto.
18. I/ We hereby expressly acknowledge and agree that no representations or warranties of any kind, have been made by the Liquidator or any of its representative to me/ us with respect to the Corporate Debtor including that of its rights, licenses, approval, permissions etc. and that any statements whatsoever made by Liquidator to me/ us are not material and have not been relied upon by the me/ us. I/ We represents that I/ We have conducted such investigation and due diligence of the Corporate Debtor, as it deems necessary and desirable to satisfy myself/ ourselves as to status and conditions of all rights, licenses, approval, permissions etc. of the Corporate Debtor. Upon sale, I/ we shall assume all responsibility towards such rights, licenses, approval, permissions etc. Without limiting the generality of this acknowledgment and agreement, it is specifically acknowledged and agreed that the Corporate Debtor shall be accepted by me/ us on an “as is where is”, “as is what is”, “whatever there is” and “without recourse basis”.

The capitalized terms not defined in this Bid Declaration Form/ Declaration by Bidders and phrase “sale of the Company” shall have the same meaning as ascribed to it in the E-Auction Process Information Document.

(Signature with SEAL)

Name:

Address:

Email:

#### **ANNEXURE- IV: TECHNICAL TERMS & CONDITIONS OF E-AUCTION SALE**

1. Intending bidders shall have a valid e-mail ID, valid PAN Card and know your customer documents to register with the E - Auction Service Provider.
2. Bidders have to register themselves with the E-Auction Service Provider.
3. Only upon verification of the online form and confirmation of remittance of EMD will the Qualified Bidders be declared and thereafter, permitted to access the Platform for bidding for the Company.
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 Liquidator. Hence, Bidders are cautioned to be careful to check their bid amount(s) 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 Undertaking and Bid Declaration Form/ Declaration by Bidders by the Bidders as per the formats substantially provided in Annexure I, III and VI respectively of the E- Auction Process Information Document be executed by the Bidders in accordance with Applicable Law(s) and it must be in 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 Bid Declaration Form/ Declaration by Bidders by the Bidders. 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 person who is in full time employment of the Bidder and 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 Liquidator in accordance with the E- Auction Process Information Document.
9. All Bid(s) 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 EMD deposited by the Bidder shall be forfeited.
10. The highest Bid on the E-Auction date 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 of the Company, 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. The date of sending of the e-mail intimating the Successful Bidder shall 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 Bidders are required to keep themselves updated with any revised terms and conditions of E-Auction by regularly visiting the links of the auction portal and website of the Company as mentioned in this E-Auction Process Information Document.

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**ANNEXURE- V: CONFIDENTIALITY AND NON-DISCLOSURE UNDERTAKING**  
(onstamp paper)

This Confidentiality Undertaking has been signed by **(Name of potential Bidders)** having its office at acting through Mr. **(Name of person authorized 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. Kumar Rajan, an Insolvency Professional having registration no- IBBI/IPA-002/IP-N00658/2018-2019/12116, Liquidator of Athena Chhattisgarh Power Limited (in Liquidation).

WHEREAS M/s Athena Chhattisgarh Power Limited (in Liquidation), a company registered under Companies, Act, 1956 (hereafter referred as the "**Company**") is undergoing liquidation vide NCLT Hyderabad Bench ("**NCLT**") order dated May 13, 2021, received on June 10, 2021. Vide the said NCLT Order Mr. Kumar Rajan, a registered insolvency professional with Insolvency and Bankruptcy Board of India (IBBI) having registration number IBBI/IPA-002/IP-N00658/2018-2019/12116 has been appointed as liquidator to manage, protect, sell and liquidate the property, assets, business and other affairs of Athena Chhattisgarh Power Limited (In Liquidation) ("**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 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 or any 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 unauthorized 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 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/ 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 Hyderabad shall have exclusive jurisdiction over matters arising out of or relating to this Confidentiality Undertaking.
10. Capitalized terms not defined under this Confidentiality Undertaking shall have the same meaning as provided in the E-Auction Process Information Document.

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

Signed on behalf of (Name of Bidder(s))

by Mr.\_\_\_\_

(Name and Designation)

Authorized Signatory

Date:

Place:

Note- In case of consortium, undertaking to be executed by each of the members

#### **ANNEXURE- VI: AFFIDAVIT FOR BID CONFIRMATION**

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

I, [name of the chairman/managing director/director/authorized person of applicant, authorized by the Board of the Applicant for giving such affidavit], son of [•], aged about [•] years, currently residing at [Address to be inserted] and having Aadhaar/ Passport number[•], on behalf of [name of the Applicant] ("Applicant") having registered office at [], do solemnly affirm and state to Mr. Kumar Rajan, the Liquidator of Athena Chhattisgarh Power Limited (In Liquidation) as follows:

1. That I am duly authorized and competent to make and affirm the instant affidavit for and on behalf of the Applicant 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. That the Applicant is not in-eligible to submit the proposal for purchase of Athena Chhattisgarh Power Limited (In Liquidation) as a "Going Concern" basis under the Insolvency & Bankruptcy Code, 2016 ("Code") read with the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 under Section 29 A of the Code.
3. That none of the Applicant or any person acting jointly or in concert with the Applicant are ineligible u/s 29A of the Code.
4. That the Applicant hereby confirms the submission of Bid and payment of EMD amounting to Rs.25 crores vide \_\_\_\_\_(name of instrument) dated \_\_\_\_\_ bearing no. \_\_\_\_\_.
5. That the Applicant unconditionally and irrevocably represents, and confirms that it is eligible under the terms and provisions of the Code (read with the relevant regulations framed there under) to participate in the auction process and it shall provide all documents, representations and information as may be required by the Liquidator to substantiate that the Applicant is eligible under the Code to submit a proposal for purchase of Athena Chhattisgarh Power Limited (In Liquidation) as a 'Going Concern" basis, under the Code read with the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 on as is where is basis, as is what is basis, whatever there is basis and no recourse basis.
6. That the Applicant is aware that the Liquidator does not give any assurance or warranty of the physical condition of the assets and their suitability in any manner and the applicant submitted Bid amount post conducting due diligence of the Corporate Debtor.

That the 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 and The information contained/disclosed in the information memorandum is as provided by the Corporate Debtor and the creditors of the Corporate Debtor. No representation or warranty, express or implied, is given by the Corporate Debtor, any of its officers, employees or its agents, the Resolution Professional as to the accuracy, authenticity or completeness of the contents of the Information Memorandum or any other document or information supplied, or which may be supplied at any time or any opinions or projections expressed during the process, nor is any such party under any obligation to update the Memorandum or correct any inaccuracies or omissions in it which may exist or become apparent. The Applicant also undertakes that the Information Memorandum should not be considered as a recommendation by the Corporate Debtor, any of its officers, employees or its agents, the Liquidator to invest in the Corporate Debtor and each prospective applicant must make its own independent assessment of the merits or otherwise of investing in the corporate debtor.

7. If, at any time after the submission of this affidavit and before the completion of e-auction process under the Code, the Applicant becomes ineligible to be an Applicant as per the provisions of the Code (and in particular Section 29A of the Code), the fact of such ineligibility shall be forthwith brought to the attention of the Liquidator.
8. By submitting its EOI, applicant shall be deemed to acknowledge that it has carefully read the entire Process Document and has fully informed itself as to all existing conditions and limitations. Ignorance of law/s will not be treated as any excuse.
9. That the Applicant is aware and has conducted its own due diligence for the condition of plant, leasehold land and is aware about the legal opinions taken by the Liquidator which has been separately looked at as part of due diligence by the Applicant.

Solemnly affirmed at \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_(place).

Before me,

**DEPONENT**

Notary/Oath Commissioner

**VERIFICATION:**

I, [name of the chairman/managing director/director/authorized person of Applicant, authorized by the Board of the Applicant company (in case of a company) for giving such affidavit], the deponent above named, on behalf of [name of the Applicant], currently residing at [ ], do hereby solemnly state on oath and declare and verify that the contents of the above affidavit are true, correct and complete to the best of my knowledge and nothing material has been concealed therein. Verified at [ ], on this the [ ] day of [ ] 2021.

**DEPONENT**