

**ASSET SALE PROCESS MEMORANDUM FOR SALE OF CORPORATE  
DEBTOR AS GOING CONCERN PURSUANT TO AUCTION NOTICE  
DATED 07<sup>th</sup> OCTOBER 2023.**

Invitation for bids for e-auction of *C&C Constructions Limited* (in liquidation) as sale as a going concern under the provisions of Insolvency and Bankruptcy Code, 2016 (“IBC”) pursuant to an order dated 07<sup>th</sup> October 2022 by the Honorable National Company Law Tribunal (“NCLT”), Principal Bench, New Delhi.

Date of Process Note: 07<sup>th</sup> October 2023

Issued by -

**Navneet Kumar Gupta**

Liquidator

IBBI Reg. No: IBBI/IPA-001/IP-P00001/2016-2017/10009

C & C Constructions Limited (in Liquidation)

74, Hemkunt Colony,

New Delhi – 110048 India.

[mailto: navneet@minervaresolutions.com](mailto:navneet@minervaresolutions.com)

AFA valid from 24/01/2023 to 23/01/2024

Mr. Navneet Kumar Gupta has been granted a certificate of registration to act as an Insolvency Professional by the Insolvency and Bankruptcy Board of India, his Registration No. is IBBI Reg. No: IBBI/IPA-001/IP-P00001/2016-2017/10009. C & C Constructions Limited (“**Company**”) has been ordered to be liquidated by the Hon’ble NCLT, Principal Bench, New Delhi via order dated 07<sup>th</sup> October 2022 and Mr. Navneet Kumar Gupta has been appointed as the Liquidator of the Company. Minerva Resolutions LLP has been appointed as Insolvency Professional Entity (“**IPE**”), to assist him in successful liquidation of the Corporate Debtor in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (as amended from time to time).

**IP registration details as under:**

IBBI Reg. No: IBBI/IPA-001/IP-P00001/2016-2017/10009

Unit No. 2, Block D1, Golf Link DDA, Sector 23B, Pocket 8,

Dwarka, New Delhi - 110077

E-mail- [navneet@minervaresolutions.com](mailto:navneet@minervaresolutions.com)

**IPE registration details as under:**

Minerva Resolutions LLP

IBBI Reg. No: IBBI/IPE/0135

10, Alipur Road, Civil Lines, New Delhi – 110054

Email- [navneet@minervaresolutions.com](mailto:navneet@minervaresolutions.com)

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

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

Timelines, notifications, and other details for the e-auction process are also available on the website of the company – [<http://www.candcinfrastructure.com/liquidation.php>]

Qualified Bidders desirous to submit their bid must submit Bids on e-auction Portal - [<https://nclte-auction.e-auctiontiger.net>]

This Process Document can be changed, withdrawn, relaxed wholly or partly at the discretion of liquidator in accordance with law

## DISCLAIMER

*This document is issued by Mr. Navneet Kumar Gupta, the Liquidator for general information purposes, to provide general information only, without regard to specific objectives, suitability, financial situations and the requirements of any person. The purpose of this document is to set out the process for submitting e-auction bids for the sale of C&C Constructions Limited (in liquidation) as a going concern (the “Company”) in accordance with the Insolvency and Bankruptcy Code, 2016 (‘IBC’) in conjunction with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“Liquidation Regulations”) as amended from time to time with full adoption/taking over of all live bank guarantees (“BG”) of C&C Constructions Ltd, in favour of various customers/authorities. Nothing herein or in materials relating to the Asset Sale Process Memorandum is intended to be construed as legal, financial, accounting, regulatory or tax advice or assurance by the Liquidator or IPE. This Asset Sale Process Memorandum is specific to each e-auction process participant and specific to each round of e-auction. Neither this Asset Sale Process Memorandum nor anything contained herein shall form the basis of, or be relied upon in connection with any contract, agreement, undertaking, understanding or any commitment whatsoever.*

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

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

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

*By acceptance of this Asset Sale Process Memorandum and submission of the Bid (defined herein after in the document), the Qualified Bidder(s) shall be deemed to have acknowledged that it has not relied upon any representation and warranty made by the Liquidator and / or IPE. The submission of the Bid*

*form and deposit of EMD means and implies that the Qualified Bidder has read carefully and unconditionally and irrevocably agreed to and accepted all the terms and conditions laid herein. This document has not been filed, registered or approved and will or may not be filed, registered, reviewed or approved by any statutory or regulatory authority in India or any other jurisdiction.*

*The Liquidator has no responsibility towards the authenticity of the trademark/brand used in relation to the products of the Company. Qualified Bidder(s) is / are advised to conduct their own legal diligence towards continuing with the same name in the hands of the Successful Bidder (defined herein after in the document). The Liquidator does not constitute advice/assurance and should not be held responsible for any sort of claim on use of such trademark /brand by any constitution / party (including related party(ies)). The Liquidator hereby excludes any warranty, express or implied by any party on such trademark / brand name. No responsibility is taken by the Liquidator regarding any implications on the future usage of such trademark / brand name.*

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

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

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

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

*By procuring a copy of this Asset Sale Process Memorandum, the recipient accepts the terms of this disclaimer notice, which forms an integral part of this Asset Sale Process Memorandum and all other terms and conditions of this Asset Sale Process Memorandum. Further, no Person, including the Qualified Bidder shall be entitled under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise to claim for any loss, damage, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Asset Sale Process Memorandum*

*or otherwise, including the accuracy, adequacy, authenticity, correctness, completeness or reliability of the information or opinions contained in this Asset Sale Process Memorandum or any other information and any assessment, assumption, statement or information contained therein or deemed to form part of this Asset Sale Process Memorandum, and the Liquidator, IPE, the Company, and their affiliates, directors, employees, agents, representatives or managers do not have any responsibility or liability for any such information or opinions and therefore, any liability or responsibility is hereby expressly disclaimed.*

*All taxes/duties/expenses incurred towards movement / shifting /regularisation/re-registration/renewal of plant & machinery or any asset/rights post the e-e-auction process should be borne and paid by the Successful Bidder. The Liquidator or the company (CD) shall not be held responsible / liable to pay any expenses towards such movement of plant & machinery or any asset sold in the e-auction process. Also, any hindrance, from locals/ex workers faced during the lifting of material beyond reasonable control of liquidator or his team shall be completely resolved by successful bidder at his own expense, and liquidator or his team shall not be accountable for any such hindrance or delay. Kindly note, the sale/auction is on as –is – where – is basis and any movement of goods shall be whole and sole responsibility of bidder/s.*

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

*Company as a going concern are to be sold on “As is where is basis”, “As is what is basis”, “Whatever there is basis” and “No recourse to liquidator/CD” basis. The proposed sale of Company as a going concern does not entail transfer of any title except the title which the Company has on the assets as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the moveable /immoveable assets of the Company. However, if any asset that should have been transferred to the Successful Bidder, is found in the possession of the Company, the Liquidator shall take all reasonable efforts to promptly transfer such asset to the Successful Bidder, post completion of the sale. Whilst it is not the intention to transfer any liabilities (except bank guarantees) associated with the Asset, the Qualified Bidders is advised to ascertain all statutory liabilities / taxes / demands / claims / maintenance fee / electricity / water charges etc., outstanding as on date or yet to fall due in respect of the relevant asset. The Qualified bidder/successful bidder shall bear all expenses for registration of transfer of assets sold through this e-auction, any hindrance or delay or expense shall be to the account of bidder, and liquidator shall not be responsible in any manner, whatsoever, once the auction is concluded and money has been deposited by bidder to the extent of 100%*

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

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

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## 1. KEY HIGHLIGHTS OF THE ASSET SALE PROCESS

<b>Version control:</b>	<i>Version-8/C&amp;C/07<sup>th</sup> October 2023 Kindly note, 7<sup>th</sup> round of E-auction has failed at Auction Price of Rs 158 Crores, and subsequent to that, the SCC (stakeholders consultation committee) has decided to e-auction further through this round of e-auction at reduced auction price of Rs. 143 Crores.</i>
<b>Corporate Debtor:</b>	C & C Constructions Limited
<b>Asset #:</b>	C&C Constructions Limited (Sale as a going concern with full adoption/taking over of all live bank guarantees (“BG”) of C&C Constructions Ltd, in favour of various customers/authorities)
<b>Asset - brief description:</b>	C&C Constructions Limited (Sale as a going concern with full adoption/taking over of all live bank guarantees (“BG”) of C&C Constructions Ltd, in favour of various customers/authorities).  <i>Details of C&amp;C Constructions Limited are available on the Company’s website listed at <a href="http://www.candcinfrastructure.com/liquidation.php">http://www.candcinfrastructure.com/liquidation.php</a> and shall also be uploaded on the E-auction portal.</i>
<b>E-auction commencement date &amp; time:</b>	03 <sup>rd</sup> November 2023 at 10:30 AM
<b>E-auction closure date &amp; time:</b>	03 <sup>rd</sup> November 2023 at 05:30 PM
<b>Reserve price:</b>	INR 143 Crores (exclusive of GST, TDS and other applicable taxes & duties)
<b>Refundable Earnest Money Deposit:</b> (as per terms stated in clause 9)	INR 5 Crores
<b>Minimum bid increment amount:</b>	INR 1 Crore [first bid at INR 143 crores, thereafter, the incremental bids shall be at class intervals of Rs 1 crore each]

*C&C Constructions Limited is proposed to be sold on a 'going concern' basis under liquidation with full adoption/taking over of all live bank guarantees (“BG”) of C&C Constructions Ltd, in favour of various customers/authorities, as per the order of the Adjudicating Authority. Accordingly, all the current assets & liabilities of the Company are being sold along with the transfer of employees and workmen who are engaged currently in the running of the unit, as well as transfer of licenses, to the extent permissible under the Applicable Law. Post the transfer, the Successful Bidder shall be entitled to transfer/apply for transfer of all the licenses, approvals, concessions, benefits as may be applicable to the unit. Any liabilities, current or long term, contingent or not whether due or otherwise pertaining to the operations of C&C Constructions Limited post liquidation commencement date and all current employees related liabilities including Provident Fund, ESI, Gratuity and other retirement benefits shall be to the account of the Successful Bidder including any liabilities accruing post e-auction date.*

*Please note, whilst the actual handover of the Company shall only happen post the receipt of the sale consideration, in its entirety, all liabilities, whether contingent or not, shall be transferred to the account of the Successful Bidder/CD/SPV as on the Liquidation Commencement Date.*

## 2. BRIEF ABOUT THE COMPANY AND KEY TIMELINES

### 2.1 Name of the Company- C&C Constructions Ltd.

Date of Incorporation- 16 July 1996

Registered office- 74, Hemkunt Colony New Delhi- 110048

Corporate office- Plot no 70, Sector 32 Gurugram 122001, Haryana (India)

CIN- L45201DL1996PLC080401

Constitution- Company limited by shares/ Indian non- government company

Listed- NSE/ BSE – Trading Suspended As On Date

Registrar/ Transfer Agent- Big Share Services Pvt Ltd, 4 E/ 8, First Floor, Jhandewalan Extension, New Delhi 110055

C&C Constructions Limited (hereinafter referred to as “C&C” or the Company), is a construction focused enterprise with emphasis on creating nationally important infrastructure (mainly road) assets. The Corporate Debtor was incorporated in the year 1996.

The areas of operations of the Company are:

1. Urban Infrastructure
2. Commercial Buildings
3. Roads and Highways
4. Water Supply & Sewerage
5. Concessions
6. Railway Infrastructure
7. Power & Telecom Transmission Towers

### 2.2 KEY TIMELINES

S.No.	Event	Timeline (cumulative)	Dates based on Timelines
1	E auction advertisement date	E	07-Oct-23
2	Asset Sale Process Document upload on website	E	07-Oct-23
3	Submit Bid form to Liquidator and provide Earnest Money in prescribed form	E+14	21-Oct-23
4	Declaring the prospective bidder as qualified	E+18 (within 2 working days from the date of receipt of documents)	25-Oct-23



5	Last date for Due Diligence of Assets	E+26	02-Nov-23
6	Auction Date & time 10:30 AM	E+27	03-Nov-23
7	Auction End date & time 5:30 PM	E+27	03-Nov-23
8	Declaration of successful bidder	E+30	06-Nov-23
9	Issuance of Demand Letter to the Successful Bidder	E+33 (within 3 working days from declaration of successful bidder)	09-Nov-23
10	Submission of Performance bank guarantee	E+44 (within 7 working days from the date of issue of demand letter)	20-Nov-23
11	Return of Earnest Money to unsuccessful Qualified bidder	E+47 (within 3 working days from the date of receipt of PBG)	23-Nov-23
12	Last date for payment of full sale consideration to the Liquidator's bank account plus any applicable GST, Stamp duty or any other levy/taxes, if any, on 100% of the bid sum, without payment of interest @12% on the sale consideration	E+63	09-Dec-23
13	Last date for payment of full sale consideration to the Liquidator's bank account plus any applicable GST, Stamp duty or any other levy/taxes, if any, on 100% of the bid sum with payment of interest @12% on the sale consideration	E+123	07-Feb-24

**Note:** The Liquidator reserves the right to amend the key or any terms of the e-auction process including reserve price, earnest money deposit, bid increment amounts and timelines at his sole discretion, unless barred in law. Any information about amendments /extension of any of the timelines will be available on the Company's website, e-auction website and communicated to the Qualified/ Successful Bidder through email.

### 3. IMPORTANT INFORMATION

- 3.1. This Asset Sale Process Memorandum has been issued with the intent to carry out e-auction (**E-auction**) of C&C Constructions Limited (in liquidation) (the "**Company**"), as a going concern basis, under the provisions of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("**Liquidation Regulations**") with full adoption/taking over of all live bank guarantees ("**BG**") of C&C Constructions Ltd, in favour of various customers/authorities amounting approximately Rs. 71 crores as on date.
- 3.2. If any live BG is invoked during the liquidation process before execution of sale certificate in the name of successful bidder, the reserve price at which e-auction was concluded shall be subject to the further negotiations between financial creditors (primarily BG issuing bank) and the successful bidder. In case negotiation fails between financial creditors (primarily BG issuing bank) and the successful bidder, the Liquidator reserves the right to cancel the e-auction process and re-auction the company or its assets at the new price as

advised/deliberations/consultations by/with the members of the Consultation Committee.

- 3.3. Adoption of BG shall mean taking over of all BGs and obligation to pay to the BG issuing lender immediately by the successful bidder in case BG is invoked once the sale certificate is issued by Liquidator.
- 3.4. In case BG is returned/released, the liability of the BG issuing lender will be extinguished and there will be no further obligation of any sort on the part of the BG issuing lender or Liquidator.
- 3.5. Post sale certificate issuance, the renewal of BG will happen only at the request of successful bidder subject to payment of applicable BG commission to BG issuing lender.
- 3.6. All information provided in this Asset Sale Process Memorandum should be read together with the provisions of the IBC and the Liquidation Regulations. In the event of a conflict or inconsistency or incongruous overlap between this Asset Sale Process Memorandum and the IBC or the Liquidation Regulations, the provisions of the IBC or the Liquidation Regulations, as the case may be, shall prevail.
- 3.7. The information contained in this Asset Sale Process Memorandum or previously or subsequently provided to Interested Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Liquidator has been collated from several sources, is provided to Interested Bidder(s) on the terms and conditions set out in this Asset Sale Process Memorandum.
- 3.8. This Asset Sale Process Memorandum is neither a prospectus, nor an offer document nor a letter of offer/assurance for sale of assets of the Company or an official confirmation of any transaction entered into by the Company nor an agreement/understanding or assurance by the Liquidator to the Qualified Bidders or any other person. The Asset Sale Process Memorandum purports to ascertain interest of potential eligible applicants and does not create any kind of binding obligation on the part of the Liquidator, IPE or the Company to effectuate the sale of the Company as a going concern.
- 3.9. The Liquidator may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this Asset Sale Process Memorandum at any point in time as it deems appropriate.
- 3.10. The issue of this Asset Sale Process Memorandum does not imply that the Liquidator is bound to select a Qualified Bidder as Successful Bidder for the sale of the Company as going concern and the Liquidator reserves the right to reject all or any of the Qualified Bidders or bids without assigning any reason whatsoever at any point in time.
- 3.11. A new version of the Asset Sale Process Memorandum or addendum to the earlier version of the Asset Sale Process Memorandum shall be circulated if required at the discretion of the Liquidator.
- 3.12. Each Interested Bidder shall bear all its costs and charges associated with or relating to the preparation and submission of its bid and /or participation in the e-auction, including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations, visits or presentations which may be required by the Liquidator or any other costs incurred in connection with or relating to its bid.
- 3.13. E-Procurement Technologies Limited (“**E-auction Service Provider**”) has been appointed as the E-auction Service Provider. The sale of the Company as going concern shall be undertaken by the E-auction Service Provider for and on behalf of the Liquidator through a public e-auction platform provided on the website portal of the E-auction Service Provider (Platform) where bids highest bids are visible. An auction shall be transparent, and the highest bid at any given point shall be visible to the other bidders.

Other details with respect to the e-auction are as follows:

<b>Particulars</b>	<b>E-auction</b>
Liquidator	Navneet Kumar Gupta (Liquidator for C&C Constructions Limited)
Website of E-auction service provider	<a href="https://nclte-auction.e-auctiontiger.net">https://nclte-auction.e-auctiontiger.net</a>
E-auction Service Provider	E-Procurement Technologies Limited, A-801, Wall Street - II, Opp. Orient Club, Near Gujarat College, Ellisbridge, Ahmedabad - 380006 Contact person — Mr. Praveen Kumar Thevar Email id - praveen.thevar@e-auctiontiger.net Mobile No. - +91 97227 78828
Annexures	<ol style="list-style-type: none"> <li>1. <b>Annexure I</b> – Declaration of Interest Form</li> <li>2. <b>Annexure II</b> - Bid Application Form</li> <li>3. <b>Annexure III</b> – Declaration by the Interested Bidder</li> <li>4. <b>Annexure IV</b> – Notarized Affidavit certifying eligibility under Section 29A of IBC</li> <li>5. <b>Annexure V</b> – Certified true copy of resolution passed by the board of directors or equivalent, of the Interested Bidder.</li> <li>6. <b>Annexure VI</b> – Technical Terms and Conditions of E-auction sale</li> <li>7. <b>Annexure VII</b> – Confidentiality Undertaking</li> </ol>
Special Instructions	Last-minute bidding may lead to technical lapses. Neither the E-auction Service Provider nor the Liquidator will be responsible for any lapses on part of the Qualified Bidders or any technical failure 8. of e-auction platform.

- 3.14. All terms and conditions with respect to the sale of the Company as a going concern shall be governed by the directions of the Liquidator, National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), higher courts and in accordance with the provisions of applicable laws. As mandated by the law, the Liquidator shall exercise all rights with respect to sale of the Company as a going concern and it would be open to the Liquidator to appoint such experts, professionals or other persons, as the Liquidator might think necessary for discharge of duties on his office.
- 3.15. The Annexures to this Asset Sale Process Memorandum shall form an integral part hereof and the Annexures shall always be read in conjunction with this Asset Sale Process Memorandum. In case, any defect/deviation/non-compliance is noted, then, the liquidator may offer a cure period to the any of the bidder to cure such defect/deviation/non-compliance in the interest of value maximization and time- lines.
- 3.16. In case any approval is required from Competition Commission of India in pursuance of sale under liquidation process, the successful bidder shall ensure compliance of the same and Liquidator shall not be responsible to fulfil these compliances.
- 3.17. Any liability (including those fastened on occupier) towards any arrears including but not limited to property tax/water tax due to the nigram/municipality or any other authority for any period (including the period of liquidation and insolvency resolution) pertaining to company shall be settled/discharged by the auction purchaser.
- 3.18. The auction purchaser has to satisfy himself/herself as regards all moveable and immovable assets of the corporate debtor in liquidation in all respects including title, area, boundary, possession, occupancy, volume, regulatory clearances, No Objections from authorities, encumbrances, charges (on assets as security), lien, obligations, rights, titles, commitments, undertakings both crystallised/not crystallised. It shall be deemed that purchaser has applied its mind and had full knowledge about the assets in context of above and purchase shall be estopped from citing/basing any arguments on above grounds for any non fulfillment of any commitments of his/her part and the sale shall remain subject to any defect in

title, if any and doctrine of caveat emptor applies to such auction purchaser.

- 3.19. The liquidator shall not provide any guarantee and/or warranty as to quality, quantity or specification of the assets sold and the intending purchaser is required to satisfy itself in this regard after physical inspection of the assets of the company in liquidation and no complaints as to defects, if any, in the description, quantity or quality of the assets sold shall be entertained after the conclusion of bids and declaration of successful bidder and that any mistake in the notice inviting tender or the process document shall not vitiate the sale.
- 3.20. Once the successful bidder is declared, the auction purchaser cannot after having purchased the property on such terms and conditions as published by liquidator then claim diminution in the price on the ground of defect in title or description of the property. The case of liquidator selling the property of a company in liquidation under orders of the court is altogether different from the case of individual selling immovable property belonging to himself/herself.
- 3.21. The Auction purchaser shall not be entitled to any compensation or deduction in price or any other waiver in the process so far as obligations of the auction purchaser is concerned, whatsoever, and auction purchaser shall be deemed to have purchased the property subject to all encumbrances, liens and claims including those under the existing legislation affecting land, labour, staff, capital etc.
- 3.22. The sale as a going concern also includes claims and counter claims of arbitrations which are pending at different stages. In case any liability crystallizes from any of the counter claims filed against the corporate debtor then the same shall be paid/settled/litigated/challenged by the successful bidder and in any case whatsoever this liability shall not be discharged by Liquidator or any lender or creditor.
- 3.23. The Corporate Debtor has made investments in some SPVs i.e., North Bihar Highways Limited, Patna Bakhtiyarpur Tollway Limited, and Mokama Munger Highway Limited which is being regulated by their respective Concession Agreement. According to the said agreement, in case of any change of ownership of these SPVs, prior approval of National Highways Authority of India (NHAI) is required. Therefore, the auction buyer while doing their diligence for the Corporate Debtor may also consider the perusal of these concession agreements as well.
- 3.24. The title documents relating to the asset(s), to the extent available, shall be provided on request to be made to the Liquidator, by secured creditors and personnel of the company, at [navneet@minervaresolution.com](mailto:navneet@minervaresolution.com) with copy to [liquidationofcnc@minervaresolutions.com](mailto:liquidationofcnc@minervaresolutions.com)

#### 4. DEFINITIONS

“**Adjudicating Authority**” or “**NCLT**” shall mean the Hon’ble National Company Law Tribunal, Principal Bench, New Delhi.

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

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

“**Applicable Laws**” shall mean, all applicable laws, regulations, rules, guidelines, circulars, re-enactments, revisions, applications and adaptations thereto, judgments, decrees, injunctions, writs and

orders of any court, arbitrator or governmental agency or authority, rules, regulations, orders and interpretations of any governmental authority, court or statutory or other body applicable for such transactions including but not limited to the IBC, Liquidation Regulations, Companies Act, 2013, Competition Act, 2002, Transfer of Property Act, 1882, Sale of Goods Act, 1930, Foreign Exchange Management Act, 1999, whether in effect as of the date of this Asset Sale Process Memorandum or thereafter and each as amended from time to time;

“**Asset Sale Process Memorandum**” shall mean this document including all the appendices hereto, for the purposes of setting out the process for submission of a bid and selection of Successful Bid in accordance with the provisions of the IBC and shall include all supplements, modifications, amendments, alterations, or clarifications thereto issued in accordance with the terms hereof. This process document is relevant only for sale pursuant to auction notice dated 07th October 2023.

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

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

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

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

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

“**Data Room**” shall mean the virtual data room maintained by the Liquidator, created for the Bidders who have submitted EMD along with annexures I, II, III, IV, V, VI, VII to access information in relation to the Company;

“**Date of Demand**” is the date of issuance of Letter of Demand to the Successful Bidder; “**Declaration**” shall mean the Interested Bidder’s declaration as per Annexure III;

“**E-auction Process**”/“**E-auction**” shall mean the electronic auction process for sale of the company as going concern conducted in accordance with the provisions of IBC, Liquidation Process Regulations, Applicable Law(s) and this Asset Sale Process Memorandum inviting Bid from the Qualified Bidder(s) for consummating the sale of the Company as a going concern on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’; in accordance with the provisions of the Code and the rules and regulations made thereunder.

“**Failed E-auction**” shall mean non-receipt of documents/all prescribed annexures as required under Clause 6 by 21<sup>st</sup> October 2023 as prescribed under clause 2.2 “key timelines” of the Asset Sale Process Memorandum from any of the prospective/interested bidder by the Liquidator or the Qualified bidder does not participate in the e-auction process. Once, an e-auction is declared a failed e-auction, the Liquidator reserve rights to cancel/abort such failed e-auction and conduct the next round of e-auction at a reduced reserve price pursuant to the provisions of the Liquidation Regulations.



**“Group Companies”** shall include a holding company, subsidiary, associate company (including a joint venture company), affiliate and a subsidiary of a holding company to which a company is also a subsidiary.

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

**“Liquidator”** shall mean an insolvency professional appointed as a liquidator;

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

**“Person”** shall mean an individual, a partnership firm, an association, a corporation, a limited company, a trust, a body corporate, bank or financial institution or any other body, whether incorporated or not;

**“Qualified Bidder”** shall mean the Bidder who has duly submitted the Declaration of Interest Form along with affidavit as per section 29A and other documents as required per clause 6 and other clauses as per this Asset Sale Process Memorandum along with the requisite documents to establish eligibility to satisfaction of the Liquidator and whom the Liquidator has notified as accepted by the Liquidator as a Qualified Bidder basis the affidavit from the bidder; Kindly note, liquidator shall be at liberty to appoint a consultant to do eligibility/any other diligence of one or more or all those bidders who have submitted section 29A affidavit, and till the time this report from consultant is received, the qualified bidder eligibility shall remain subject to this report.

**“Reserve Price”** shall mean the minimum price at which a bid will be accepted on the e-auction portal from a participating Qualified bidder. It shall mean an aggregate price of INR 143 Crores (exclusive of GST, TDS and other applicable taxes & duties) as arrived pursuant to provisions of the Liquidation Regulations.

**“Site”** shall mean the location of all the immovable and moveable properties including factories, plant and machinery and fabrication units, owned, leased or occupied by the Company, for the purposes of conducting business in India and outside India;

**“Site Visit”** shall mean a visit to the Site;

**“Successful Bidder”** shall mean the Qualified Bidder whose bid is approved being highest in value and who is declared as such by the Liquidator at the end of the determined e-auction process; this definition shall remain subject to clause 11.4 where in swiss challenge has been referred to. Further, the Successful bidder shall not have any vested right by placing the highest winning bid and being declared as successful bidder unless letter of demand has been issued by liquidator.

**“Sale as a Going Concern”** shall mean, as prescribed in Regulation 32A of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 with full adoption/taking over of all live bank guarantees (**“BG”**) of C&C Constructions Ltd, in favour of various customers/authorities and claims and counter claims of arbitrations excluding personal bank guarantees, third party securities in favour of lenders, benefits arising pursuant to avoidance applications filed by resolution professional of C&C Constructions limited, and right to pursue avoidance applications filed by resolution professional of C&C constructions limited. All known or unknown, claimed, or unclaimed, disclosed or undisclosed liabilities/ obligations, risks as on the cut-off date including prior claims of all creditors whether secured, unsecured, workers, employees, statutory authorities on account of Income Tax, Sales Tax, GST, Service Tax, DGFT, Excise, Customs etc. are required to be dealt with as per Section 53 of the Code as full and final settlement of their claims. Transfer of ownership of the corporate debtor shall take place by way of writing off entire existing shareholding of the corporate debtor and issuance of fresh equity shares to the successful bidder. The share shall be included in the name of Successful Bidder and will not be issued in any other name. A successful bidder who is declared as successful bidder of sale as Going Concern can seek access of the Adjudicating Authority

and may pray for necessary directions in accord with and in consonance with the process document in the liquidation proceedings.

**“Sale as Going Concern”** as defined through an order of Hon’ble National Company Law Tribunal, Allahabad Bench vide its order in the case of Shamken Spinners Limited vs Sujeet Motors (P) Ltd vide application no. IA No 178/2022 in CP 131/ALD/2017 dated 01 July 2023

- CD will not be dissolved, its legal entity remains as such  
Existing equity shareholding is extinguished, and the acquirer takes over the undertaking with assets, licenses, entitlements etc. Undertaking includes the business of the CD, assets, properties, and rights excluding the liabilities
- All rights, titles, interest in the CD including the legal entity is transferred to the purchaser
- After the going concern sale, the purchaser will be carrying the business of the CD
- Normal sales as going concern will include transfer of assets and liabilities, however, when sold as going concern in liquidation, only the assets are transferred and liabilities are settled in accordance with the section 53 of the code
- Assets are transferred free of any encumbrance

As per recent NCLAT Order in the matter of Jasamrit Designers Pvt Ltd vs Mr. Gian Chand Narang, liquidator of Apex Buildsys Ltd, vide order dated 4<sup>th</sup> July 2023, Company appeal AT No 258 of 2023. A successful bidder who is declared as successful bidder of sale as going concern can seek access of the Adjudicating Authority and may pray for necessary directions in accord with and in consonance with the process document in the liquidation proceedings.

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

## **5. INTRODUCTION**

- 5.1. The liquidation process for the Company has been initiated under the provisions of the IBC and the Liquidation Regulations by an order of the NCLT with effect from 07<sup>th</sup> October 2022. As per the said order, Mr. Navneet Kumar Gupta has been appointed as the Liquidator.
- 5.2. The Liquidator endeavors to sell the Company as a going concern with full adoption/taking over of all live bank guarantees (“BG”) of C&C Constructions Ltd, in favour of various customers/authorities, in its capacity as a liquidator and (where applicable and permitted by the Adjudicating Authority), by E-auction conducted in the manner specified in Schedule I as provided under Regulation 32A and 33 of the Liquidation Regulations, any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Regulations, as the case may be, and as per directions, if any, of the NCLT and NCLAT in respect of the liquidation process of the Company and in the manner specified in this Asset Sale Process Memorandum.
- 5.3. The Liquidator will provide User ID & Password to ‘qualified Bidders’ after due verification of requisite documents submitted by the Interested Bidders as stated herein to the satisfaction of the Liquidator.
- 5.4. The E-auction / bidding of the Company as a going concern would be conducted exactly on the scheduled date & time as mentioned by way of *inter-se* bidding amongst the Qualified Bidders. A Qualified Bidder may improve its offer in multiple of amount mentioned under the column “Bid Increment Amount”. The E-auction portal will be open for a period of 06.00 hours. In case any bid is placed within the last 15 minutes of the closing time of the E-auction, the closing time will be automatically extended for 15 minutes. In case, no bid is received during the auction time window further to reserve price at which auction was opened, the auction round shall be declared as failed, and EMDs and all/few other documents as submitted in this round may either be returned or carried forward to next round once informed to liquidator by way of email.



5.5. The Qualified Bidders are encouraged to acquaint themselves with the provisions of the IBC and the Liquidation Regulations and any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Regulations, as the case may be.

## **6. ELIGIBILITY CRITERIA AND DOCUMENTS TO BE SUBMITTED TO BECOME A QUALIFIED BIDDER**

6.1. To become a Qualified Bidder, a Qualified Bidder should comply with the Net Worth criteria as under

### **6.1.1 In case of Body Corporate/Individual/Firm:**

Body Corporate as per Companies Act, 2013 includes a private company, public company, Limited Liability Partnerships (LLPs) whether incorporated in India or outside; or firms including partnership firms (whether registered or not) or Individual, with minimum net worth of INR 50 Crores of its own or of its group companies/associate companies/JV partner/JV's share, or combination thereof, as per the latest audited financial statements (not earlier than FY 2022/2021, whichever is available, with preference for latest one in case both are available).

### **6.1.2 In case of Financial Institutions / Funds / Private Equity Investors / Non-banking financial company (NBFC) / Any other applicant:**

Minimum Asset Under Management (AUM) of INR 100 Crore as per the latest audited financial statements (not earlier than FY 2022/2021, whichever is available, with preference for latest one in case both are available).

### **6.1.3 In case of Consortiums /Any other such joint applicant:**

Net worth of the consortium shall be minimum of INR 50 Crore which will be calculated on the basis of weighted average of the net worth of the individual members (not earlier than FY 2022/2021, whichever is available, with preference for latest one in case both are available). Weight shall be percentage participation of each member in the consortium. For the consortium members like Financial Institutions/Funds/Private Equity/NBFCs, the Networth shall be counted as 50% for the purposes of overall Networth of consortium which shall further be assigned weight as per the participation percentage in the consortium and then added for the purposes of overall Networth. In case, any legal or professional firms is also part of consortium, then, its actual Networth for the relevant period shall be multiplied 2.5 times to arrive at normalised net worth and then this normalized. Networth shall be assigned weight per the participation percentage in the consortium. In case, consortium consists of any one or more partner who/which is already defined/covered in 6.1.1, and is bidding under consortium, then, the net- worth of such person shall be computed in normal course and then added to net worth of other partner/s to arrive at net worth of consortium.

**6.1.4** In case, any professional/legal firms (for the reason there is significant portion of assets in the form of sub judice arbitration claims), the Networth requirement shall not be less than 20 crores as per latest available financial statements.

## **6.2 Documents to be submitted by bidder:**

Applicants should submit the following documents, for qualification criteria evaluation by the

Liquidator:

- 1) Audited Financial Statements for preceding three financial years.
- 2) Ownership structure and composition of the Interested Bidder(s), Proof of Identification, Current Address – Proof, PAN Card, valid e – mail ID, Landline and mobile phone number etc.
- 3) Annexure I – Declaration of Interest Form
- 4) Annexure II - Bid Application Form
- 5) Annexure III – Declaration by the Interested Bidder
- 6) Annexure IV – Notarized Affidavit certifying eligibility under Section 29A of IBC
- 7) Annexure V – Certified true copy of resolution passed by the board of directors or equivalent, of the Interested Bidder.
- 8) Annexure VI – Technical Terms and Conditions of E-auction sale
- 9) Annexure VII – Confidentiality Undertaking

**6.3** The Qualified Bidder would need to submit the above-mentioned forms, documents and authorizations as part of the E-auction by the Qualified Bidder(s), as per the timelines prescribed in this Asset Sale Process Memorandum.

**6.4** Please note that Bidder(s) will gain access to documentation, additional information in relation to the Company, required for due diligence, after due submission of all relevant documents as prescribed under clause 6.2.

**6.5** Further, it should be noted that at any stage of the E-auction Process, the Liquidator may ask for further documents from Interested Bidder(s) to evaluate their eligibility/qualification. The Liquidator, at his discretion may disqualify the Interested Bidder(s) in accordance with law, including for reasons of non-submission of information/documents requested.

## **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 Visit 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(s) 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 purposes 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/ DATA ROOM/ CLARIFICATION**

- 8.1. The Liquidator shall endeavour to provide necessary assistance, facilitating the due diligence by Qualified Bidders upon the submission of confidential undertaking, 29A compliance affidavit and other documents prescribed under clause 6 by the Qualified Bidders. The information and documents shall be provided by the Liquidator in good faith.
- 8.2. The Liquidator proposes to sell the company as going concern basis with full adoption/taking over of all live bank guarantees (“BG”) of C&C Constructions Ltd, in favour of various customers/authorities: on ‘as is where is basis’, ‘as is what is basis’, ‘whatever there is basis’; in accordance with the provisions of IBC and Liquidation Regulations on “As is where is basis”, “As is what is basis”, “Whatever there is basis” and “No recourse” basis and the proposed sale as specified above does not entail transfer of any title, except the title which the Company has on the assets as on date of the transfer. 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.

It must also be noted that the Liquidator does not give any assurance or warranty of the physical condition or title of the assets and their suitability for any sort of operation that the bidder envisages.

If any live BG is invoked during the liquidation process before the successful bidder takes over the company, the reserve price at which e-auction was concluded shall be subject to the further negotiations between financial creditors (primarily BG issuing bank) and the successful bidder. In case negotiation fails between financial creditors (primarily BG issuing bank) and the successful bidder, the Liquidator reserves the right to cancel the e-auction process and re-auction the company or its assets at the new price as advised/deliberations/consultations by/with the members of the Consultation Committee.

### **8.3. Clarifications:**

- 8.3.1 While the data/ information provided in this Asset Sale Process Memorandum and the Data Room, has been prepared and provided in good faith, the Liquidator and their representatives/ advisors etc., shall not accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, correctness, completeness or reliability of the information provided, and shall incur no liability under any law, statutes, rules or regulations as to the accuracy, correctness, reliability and completeness of the information provided, even if any loss or damage is caused to any of the Bidder by any act or omission on their part.
- 8.3.2 It is further clarified that the data/ information provided in the Data Room has been prepared based on books of accounts, financial statements, Company’s website and discussions and representation by erst-while directors and key managerial personnel of the Company. Reasonable care has been taken in compiling various data and information, however the Liquidator along with IPE, consultants, representatives, make no representation or warranties, express or implied, as to the quality, accuracy, authenticity, correctness, fairness and completeness of the data provided in the Data Room, and assume no liability whatsoever in respect of any inaccuracy, incompleteness, or omission or any other deficiency of what-soever nature in the data provided in the Data Room.
- 8.3.3 Any clarification uploaded in the Data Room shall be binding on all the Bidders and shall be deemed to form part of this Asset Sale Process Memorandum. No request for modifications of the clarifications shall be entertained, however, the Liquidator, may, in a fit case and as per his discretion, issue modification to the clarifications, if required. Such modification(s) shall be binding on all the Bidders

and shall be deemed to modify the clarification and be read as part of this Asset Sale Process Memorandum.

- 8.3.4 A Bidder requiring any clarification on this Asset Sale Process Memorandum, liquidation process, submission of Bid or on the Company shall email such request for clarification to [liquidationofcnc@minervaresolutions.com](mailto:liquidationofcnc@minervaresolutions.com) with a copy to [navneet@minervaresolutions.com](mailto:navneet@minervaresolutions.com).
- 8.3.5 The Liquidator reserves the right not to respond to any query or provide any clarification, at their sole discretion, and no extension of time and date referred to in this Asset Sale Process Memorandum shall be granted on the basis of not having received response to clarifications sought from the Liquidator. However, whenever any clarification is issued either Suo moto or in response to the request by a Bidder, the same shall be uploaded in the Data Room and be accessible by all the Bidders, without disclosing the identity of the requesting Bidder, if any. Nothing in this clause shall be considered or read as compelling or requiring the Liquidator to respond to any query or to provide any clarification to the queries raised by a bidder. The Liquidator will not be held responsible for any delay in response or non-response to clarification raised by the Bidder.

## 9. EARNEST MONEY

- 9.1. In order to become a Qualified Bidder and participate in the E-auction process, a Qualified Bidder is, *inter alia*, required to provide as interest free earnest money (“**Earnest Money**”), by 21<sup>st</sup> October 2023, an amount as specified in Clause 1 (Key Highlights) of this document, either by remittance of funds to the bank account of the Company as per the details given below or by way of a demand draft in the name of the Company or a bank guarantee (draft to be mutually agreed) issued by any scheduled commercial bank in India (“**Bank**”) in favor of the "C & C Constructions LT under liquidation", payable Gurgaon (Haryana), or by way of duly executed bank guarantee of scheduled commercial bank in the Format A (*Earnest Money – Bank Guarantee*) provided in this Asset Sale Process Memorandum.
- 9.2. Where the Earnest Money is provided by way of a Bank Guarantee, such Bank Guarantee shall be valid from the date of issuance for a period of no less than 120 (one hundred twenty) days with a claim period of a further period of 1 (one) year.
- 9.3. Qualified Bidders providing the non - interest bearing Earnest Money by remittance of funds to the bank account of the Company should transfer funds through RTGS / NEFT to the account number provided as:

Account Number	41961968122
Beneficiary Name	C and C Constructions Limited in liquidation
Bank Name	State Bank of India
IFSC Code	SBIN 0006199

- 9.4. All payments made by the Qualified Bidder shall be intimated to the Liquidator at [liquidationofcnc@minervaresolutions.com](mailto:liquidationofcnc@minervaresolutions.com) and [navneet@minervaresolutions.com](mailto:navneet@minervaresolutions.com) along with a scanned copy of the remittance challan. Qualified Bidders shall preserve the original remittance challan and produce the same in front of the Liquidator as and when demanded.
- 9.5. The details of any remittances in this regard shall be entered in the Bid Form submitted by the Qualified Bidder. The entire Earnest Money amount shall be remitted by the Qualified Bidder (s) from one bank account only and to be owned by the Qualified Bidder only and not from the associates/group/related/connected entities/other entity/any other person. Kindly note, the any money brought into the process of the company shall be deemed to be legal tender fully compliant with tax laws/FEMA laws/Benami property laws, and it is the responsibility of the bidder to ascertain the same. Liquidator shall not be, in any case, responsible/accountable for any such non-compliance if any, whether apparent on record or not. In case, any such non-compliance is noted, entire proceeds shall be forfeited and reported under applicable laws.

9.6. Subject to the first proviso below, the Earnest Money without interest shall be returned to all the unsuccessful Qualified Bidder(s) post receipt of performance bank guarantee from successful bidder as per clause 2 timelines.

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

The EMD of successful bidder, if received by way of money into bank account, then, it shall be adjusted from the overall sale consideration/PBG without any consent being required from relevant bidder and the letter of demand shall be accordingly issued, similarly, if PBG is received by way of money, the same shall be adjusted to overall sale consideration.

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

10.1. The right to forfeiture shall vest in liquidator of the Earnest Money, paid by bank transfer or demand draft may be forfeited, or in the case of a Bank Guarantee may be invoked, at any time, upon the occurrence of any of the following events:

- if liquidator is of the view that any of the condition/s under this Asset Sale Process Memorandum is/are breached by the Qualified Bidder or in case the Qualified Bidder is found to have made any misrepresentation; or
- if the Qualified Bidder or any person acting jointly or in concert with such Qualified Bidder is found to be ineligible to submit a bid under Section 29A of the IBC (as amended from time to time) or is found to have made a false or misleading declaration of eligibility under Section 29A of the IBC (as amended from time to time); or
- if the Successful Bidder does not submit the Performance Bank Guarantee within prescribed timelines.
- if the Successful bidder fails to pay the balance sale consideration along with interest as per regulations (plus any applicable GST, stamp duty or any other taxes/levy, if any, on 100% of the bid sum) before the expiry of the period for payment of the same.

## **11. DECLARATION OF SUCCESSFUL BIDDER**

11.1. The Liquidator shall determine and at his sole discretion (which shall not be used arbitrarily), declare at the end of the E-auction, the Successful Bidder(s) for the company. Determination of the Successful Bidder(s) shall be done based on highest bid received for the company via E-auction and qualification of the bidder, unless the Liquidator determines, acting reasonably, that the highest bidder shall not be identified as the Successful Bidder. Such declaration shall remain in force if and only if the following three conditions stand continue to be satisfied at all times till closure of this e-auction process –

11.1.1. The Bid received is highest bid as per e-auction portal

11.1.2. The qualification of bidder continues to remain eligible as per section 29A and there is no event or information or analysis or disclosure which puts any reasonable question on eligibility of bidder under section 29A

11.1.3. The bidder is strictly following the timelines of this ASPM and is depositing the money vis a vis demand letter without any delay.

If any of the conditions above is not satisfied at any point in time, the right of revoking the successful bidder shall vest with liquidator at his discretion basis reasonable reasons. Also, in the event, there is consultant appointed to conduct due diligence about eligibility of the bidder in context of section 29A of the IBC, in that case, the successful bidder declaration shall remain subject to this report till the time report is received and considered by liquidator and successful bidder shall continue to honour/fulfil the process commitments including payments due during this time.

11.2. Where the Earnest Money has been provided by means of a remittance to the Company's bank account or by Demand Draft, such funds will be retained by the Liquidator as part payment of the consideration

/PBG that the Successful Bidder has agreed to pay for the company.

- 11.3. Where the Earnest Money has been provided by means of a Bank Guarantee such Bank Guarantee shall be retained by the Liquidator as Earnest Money until such time as the Successful Bidder has paid the total consideration due for the company and shall be returned after execution and registration of the Sale Deed.
- 11.4. The Liquidator is not bound to accept the highest offer and has the absolute right to accept or reject any or all offer(s) or adjourn / postpone / cancel the E-auction at any stage without assigning any reason there for.

Where only one bidder has participated in auction and turns out to be successful bidder, in that case, the liquidator reserves right to do challenge this successful bid as base bid through swiss challenge mechanism, and basis the outcome of swiss challenge, the final successful bidder shall be decided. In such a case, notwithstanding anything contained in this document, where swiss challenge has been invoked, the rest of the liquidation process and timelines as prescribed shall stand modified.

## **12. ISSUANCE OF LETTER OF DEMAND (Letter of Intent) AND SUBMISSION OF PERFORMANCE BANK GUARANTEE**

- 12.1. The Liquidator shall within prescribed time per this ASPM issue to the Successful Bidder a letter of demand (“**Letter of Demand**”), as per the format in Format B, inviting the Successful Bidder to provide balance sale consideration (plus any applicable taxes, if any, on 100% of the bid sum) within 90 (ninety) days of the date of the demand. In case, the successful bidder/auction purchaser has to seek certain reliefs and concessions, pursuant to going concern sale, the same list of reliefs and concessions shall be informed to liquidator as annexure to the “unconditional acceptance” of letter of demand. Kindly note, the letter of demand shall remain unconditionally accepted by successful bidder once it is signed, and this annexure of reliefs and concessions shall only be a “wish list” of the successful bidder which may or may not be available to the successful bidder and the sale/auction shall not at all be contingent upon or subject to grant of these reliefs and concessions. Parallely, the auction purchaser shall move application to NCLT for grant of such reliefs and concessions.

As per Schedule I of the Liquidation Regulations, any payment made after 30 (thirty) days shall attract interest at the rate of 12% p.a.

Provided further that the sale shall be cancelled if the payment is not received within 90 (ninety) days along with invocation of PBG and forfeiture of EMD unless advised otherwise to liquidator by SCC and further directed by NCLT.

- 12.2. The Successful Bidder shall, within time prescribed in this ASPM be required to submit a Performance Bank Guarantee (“**PBG**”) equivalent to 5% of the Bid sum (highest bid). Bank Guarantee shall be valid from the date of issuance for a period of no less than 90 (ninety) days with a claim period of a further period of 1 (one) year. In case, PBG is not provided due to any reason, the successful bidder shall deposit the money of amount equivalent to the amount of PBG into bank account of corporate debtor as designated and same may be reduced from total sale consideration payable by successful bidder.
- 12.3. Failure to submit the PBG within the time period specified may result in the disqualification of the Successful Bidder and forfeiture of the Earnest Money and any failure to pay the balance money post submission of PBG may lead to invocation of PBG as well.
- 12.4. Simultaneously with the conclusion of the E-auction Process and upon submission of Performance Bank Guarantee, the Successful Bidder shall have the option of deploying additional security personnel and few officers/representatives, not exceeding Six (6) in number, at its sole cost and expenses, in the premises/sites where the asset is situated. They shall be only for limited purpose of overseeing the property and shall not intervene into the work of security appointed by liquidator team. Provided that, in the event the Liquidator requires removal of any person from the security team, the Successful Bidder shall be obligated to replace such personnel without any undue delay. The right to appoint such security



personnel shall stand terminated in the event the Successful Bidder fails to pay the balance sale consideration (plus any applicable taxes, if any, on 100% of the bid sum) within the specified term,

12.5. In case of disqualification of a Successful Bidder or non-payment of any money due, the Qualified Bidder who had submitted the next highest bid, may be asked to match the Successful Bidder's bid and be considered the new Successful Bidder. Should the latter be unwilling to match the bid submitted by the earlier Successful Bidder, the Liquidator, at his sole discretion, may decide to carry out a fresh e-auction, or sell the company to the next highest Qualified Bidder at the second highest bid amount.

### **13. COMPLETION OF SALE**

13.1. The Successful Bidder shall be required to provide balance sale consideration within 90 (Ninety) days of the date of the demand in accordance with Schedule I of the Liquidation Regulations. Provided that payment made after 30 (Thirty) days shall attract interest at the rate of 12% p.a. Provided further that the sale shall be cancelled if the payment is not received with 90 (Ninety) days along with invocation of PBG and forfeiture thereof including EMD. Where the Successful Bidder has provided Earnest Money by remittance of cash to the designated liquidation bank account of the Company or Demand draft, the EMD of successful bidder shall be adjusted against the PBG/balance sale consideration, which is equivalent of refund of EMD. Where the Successful Bidder has provided Earnest Money by way of Bank Guarantee, the balance sale consideration shall be an amount equal to 100% of the bid sum (plus any applicable taxes, if any, on 100% of the bid sum).

13.2. On payment of the full amount of sale consideration and any applicable taxes (if any), the sale shall stand completed, and the Liquidator shall execute Certificate of sale or Sale deed subject to application (as mentioned in clause 12.1 above) which may have been filed by auction purchaser (successful bidder) seeking certain reliefs and concessions from Hon'ble Adjudicating Authority and the company shall be transferred to the Successful Bidder in the manner specified in the terms of sale post receipt of No Objection Certificate from secured financial creditors of the Company or similar confirmation. The Certificate of sale or Sale deed will be issued and /or transaction / sale documents will be executed in the name of the Successful Bidder only and will not be issued in any other name(s). It is expressly stipulated that there are no implied obligations on the part of the Liquidator to do all acts, things and deeds whatsoever for the completion of the sale. The liquidator shall stand discharged on execution of sale certificate and shall distribute the proceeds realised from auction sale as per section 53 of the IBC code (including priority payment of liquidator fee and other unpaid CIRP and liquidation process related expenses forming part of insolvency resolution process costs and liquidation costs). Kindly note, the liquidator may, mandate the provision of indemnity from specific/all/class of beneficiaries of distribution under section 53 of the IBC code to pay back the money to liquidator (company bank account) in case there are subsequent legal developments which have the effect of any change in distribution of money under section 53 of the IBC code. This is without prejudice to regulation 43 of liquidation regulations. Further, liquidator shall continue to proceed with the process of liquidation in accordance with law, including distribution of money realised even in case the application seeking reliefs and concessions are pending adjudication at hon'ble NCLT as the grant or rejection of these reliefs and concessions does not have any impact on the process and the sale is not contingent on grant or rejection of such reliefs and concessions.

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

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

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



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

14.2. 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;

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

“**corrupt practice**” shall mean (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the 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 (ii) 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 Interested / Qualified Bidder(s) 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.

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

14.4. The Qualified Bidder shall not divulge either his bid or any other details provided to him by the Liquidator or during the due diligence process in respect of the assets to any other party, other than to

IPE and financiers, who are in each case required in the course of their duties to receive and consider the same for the purpose of advising in relation to the transaction and who are bound by confidentiality obligations that are at least as stringent as the obligations that the Qualified Bidder is subject to.

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

- 15.1. The Interested/ Qualified Bidder(s) shall be responsible for all the costs incurred by it on account of its participation in the E-auction process, including any costs associated with participation in the discussion meeting (if any), site visit, due diligence etc. The Liquidator shall not be responsible in any way for such costs, regardless of the conduct or outcome of the E-auction process.
- 15.2. All expenses incurred towards movement / shifting of plant & machinery or any Asset post the E-auction process should be borne by the Successful Bidder. Successful bidder is here clarified that, if there is any liability or obligation associated with assets like those of workers then, any such liability or obligation shall be passed on to successful bidder and he shall deal with it in accordance with law without any recourse to liquidator or any of its advisors. For the avoidance of doubt, it is hereby clarified that, all the aforesaid costs shall be payable over and above the bid offered during the E-auction process.
- 15.3. The Interested / Qualified / Successful Bidder(s) shall not be entitled to receive re-imburement of any expenses which may have been incurred in carrying out of the due diligence, search of title to the assets and matters incidental thereto or for any purpose in connection with the E-auction process.
- 15.4. All taxes applicable (including GST, TDS, Capital Gain, tax/TDS on scrap sale, stamp duty implications, registration charges and other duties & taxes) on sale of the company as going concern would be borne and paid by the Successful Bidder such as the following:
- all the necessary expenses like applicable stamp duties / additional stamp duty / transfer charges, registration fees, etc. for transfer of the company in his / her / entity name;
  - the payment of all statutory / non - statutory dues, taxes, rates, assessments, charges, fees, etc. owed to anybody in respect of the company shall be sole responsibility of successful bidders; and/or
  - cess or other applicable tax i.e. GST, TDS etc.
  - any other statutory obligation arising by virtue of acquisition/purchase of company.

For the avoidance of doubt, it is hereby clarified that, all the aforesaid costs shall be payable over and above the bid offered during the E-auction process and bidder shall have to pay entire bid amount in full without any deductions whatsoever to the liquidation bank account of the C&C construction limited.

- 15.5. It is expressly stated that the Liquidator does not take or assume any responsibility for any dues, contingent liabilities, statutory or obligation or otherwise or any issues faced by successful bidder while taking delivery or control of the Company, including such dues, if any, which may affect transfer of the asset to the Successful Bidder and such dues, if any, will have to be borne/ paid by the Successful Bidder.
- 15.6. The Qualified Bidder(s) shall be responsible for fully satisfying the requirements of the IBC and related Liquidation Regulations as well as all Applicable Laws that are relevant for the sale process and any subsequent use of assets. The Successful Bidder shall be responsible for obtaining requisite regulatory or statutory or third-party approvals, no-objections, permission or consents, if any, that are or may be required under Applicable Law for purchasing the company or usage of assets of the company or further sale or disposal of asset/s of the company.

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

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

## **17. GOVERNING LAW AND JURISDICTION**

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

**PLEASE FIND ATTACHED THE FORMATS FOR THE GUARANTEE – FOR THE QUALIFIED BIDDER**

**FORMAT A**

**EARNEST MONEY – BANK GUARANTEE – draft shall be to the satisfaction of liquidator and may be reviewed**

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

To

**Mr. Navneet Kumar Gupta**

Liquidator-C&C Constructions Limited (In Liquidation)

Unit No. 2, Block D1, Golf Link DDA, Sector 23B, Pocket 8,

Dwarka, New Delhi -110077

[navneet@minervaresolutions.com](mailto:navneet@minervaresolutions.com)

**(“Liquidator”)**

**WHEREAS**

- A. [Insert name of the Qualified Bidder] incorporated in [India]/ [insert name of country where guarantor is incorporated] under the Companies Act, 2013/ [insert name of legislation under which the entity is incorporated] with corporate identity number [●], whose registered office is at [insert address] (“**Qualified Bidder**”) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR (Indian Rupees only) in accordance with the terms of the Asset Sale Process Memorandum (“**Asset Sale Process Memorandum**”) issued by the Liquidator seeking submission of bid for C&C Constructions Limited (in liquidation) as a going concern.
- B. This bank guarantee is required to be issued in favor of the Liquidator – C&C Constructions Limited (in liquidation), pursuant to the terms of the Asset Sale Process Memorandum.
- C. We, [insert name of the bank] having our registered office at [insert address] (“**Bank**”) at the request of the Qualified Bidder do hereby undertake to pay to the Liquidator at Gurugram (Haryana) an amount not exceeding INR XXXXX (Indian Rupees XXXXX only) to secure the obligations of the Qualified Bidder under the Asset Sale Process Memorandum on demand from the Liquidator on terms and conditions herein contained.
1. Now therefore, the Bank hereby issues in favor of the Liquidator – C&C Constructions Limited (in liquidation) this irrevocable and unconditional payment bank guarantee (“**Guarantee**”) on behalf of the [Insert name of the Qualified Bidder] for an amount of INR XXXXX (Indian Rupees XXXXX).
  2. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the Liquidator – C&C Constructions Limited (in liquidation) without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand made by the Liquidator, a sum not exceeding the aggregate amount of INR XXXXX (Indian Rupees XXXXX).
  3. This Guarantee shall be valid and binding on the Bank up to and including [Insert date of validity of the Earnest Money] and shall in no event be terminable by notice or any

change in the constitution of the Bank or the Liquidator, by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

4. The Bank hereby expressly agrees that the demand made on it under this Guarantee shall be conclusive evidence of that such payment is due and the Bank shall not require any proof in addition to the written demand from the Liquidator, made in any format, raised at the above-mentioned address of the Bank, in order to make the said payment to the Liquidator – C&C Constructions Limited – (in liquidation).
5. The Bank shall make payment hereunder notwithstanding any objection by [*Insert name of the Qualified Bidder*] and / or any other person or any dispute (s) raised by the [*insert name of the Qualified Bidder*] in any suit or proceeding pending before any court or tribunal relating thereto and the Bank's liability under this present being absolute and unequivocal. The Bank shall not require the Liquidator to justify the invocation of this Guarantee, nor shall the Bank have any recourse against the procurer(s) in re- spect of any payment made hereunder.
6. This Guarantee shall be interpreted in accordance with the laws of India and the National Company Law Tribunal, Principal Bench New Delhi shall have exclusive juris- diction. 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 theBank in the manner provided herein.
7. This Guarantee shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Bank.
8. This Guarantee shall be a primary obligation of the Bank and accordingly the Liquidator shall not be obliged before enforcing this Guarantee to take any action in any court or arbitral proceedings against the Qualified Bidder, to make any claim against or any demand on the Qualified Bidder or to give any notice to the Qualified Bidder or to exercise, levy or enforce any distress, diligence or other process against the Qualified Bidder. The Bank waives any such right to that extent.
9. The Bank further unconditionally agrees with the Liquidator that the Liquidator shall be at liberty, without Bank's consent and without affecting in any manner the Bank's obligations under this Guarantee, from time to time to:
  - (i) Vary and/or modify any of the terms of the Asset Sale Process Memorandum;
  - (ii) Extend and/or postpone the time of performance of the obligations of the Bid-der under the Asset Sale Process Memorandum; or
  - (iii) Forbear or enforce any rights exercisable by the Liquidator against the Qualified Bidder under the terms of the Asset Sale Process Memorandum

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

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

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

Witness:

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

For:

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

Banker's Stamp and Full Address:

Dated this ..... day of.....2023.

Notes:

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

## FORMAT B

### LETTER OF DEMAND

To,

[*name to be inserted*]

[*address to be inserted*]

Attn. [  ]

**Re:** E-auction sale of the C&C Constructions Limited (In Liquidation) as a going concern conducted on \_\_\_\_\_.

Dear Sir/ Ma'am,

1. With reference to the above, successful bid was submitted by yourself (“**Successful Bidder**”) in relation to E-auction sale of the C&C Constructions Limited (In Liquidation) (“**Company**”) as a going concern e-auctioned on\_\_\_\_\_.
2. You are requested to make the payment of balance sale consideration within 90 (Ninety) days from the date of this letter, you shall pay an aggregate amount of INR\_\_\_\_\_ as the sale consideration towards purchase/acquisition of the Company (“**Sale Consideration**”) plus any applicable taxes, if any, on 100% of the Sale Consideration, and as set out in the schedule to this letter. You are also required to submit a Performance Bank Guarantee (“**PBG**”) equivalent to 5% of the bid sum (highest bid sum) within 7 days of date of this demand letter. Bank Guarantee shall be valid from the date of issuance for a period of no less than 90 (ninety) days with a claim period of a further period of 1 (one) year. Please note that, failure to submit the PBG within the time period specified may result in your disqualification as the Successful Bidder and forfeiture of the Earnest Money deposited.
3. The Liquidator agrees that simultaneously upon full payment of Sale Consideration and any applicable taxes, if any, the Liquidator shall execute a deed of sale in your favour in accordance with the timelines specified and manner prescribed under the Asset Sale Process Memorandum for conveyancing on “as is where is”, “*as is what is*”, “*whatever there is*” and “no recourse” basis of the Asset, without any representations and warranties on the part of the Liquidator for any encumbrances / statutory liabilities etc. in relation to the Company with full adoption/taking over of all live bank guarantees (“BG”) of C&C Constructions Ltd, in favour of various customers/authorities.
4. This Letter is not a sale confirmation letter and is issued without prejudice to other terms and conditions of the tender / bid document / e-auction/ Asset Sale Process Memorandum. The issuance of this Letter shall not be deemed to be conveying any right, title or interest in the Company or in any manner granting any right against the Liquidator, or their representatives and advisors, except to the extent any right has been created under this Letter.
5. In the event you are found to have made any misrepresentation, wrongful disclosure or misleading declaration of eligibility, this Letter may be revoked and on account of such revocation you shall have no right under this Letter.
6. Any contravention of the terms of this Letter, including non- payment of money demanded hereof within the stipulated time period, shall lead to cancellation of this Letter, unless otherwise provided in the Asset Sale Process Memorandum.
7. You shall keep the contents of this letter confidential, save and except where any disclosure is required under applicable laws or a disclosure is required for securing financing or to your professional advisors and financiers, who are in each case required in the course of their duties



to receive and consider the same for the purpose of advising you in relation to the transaction.

8. This Letter shall be governed by, and construed in accordance with, the laws of India and the National Company Law Tribunal, Principal Bench New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with this Letter.
9. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Asset Sale Process Memorandum.

You are requested to unconditionally pay the money as demanded in this Letter by countersigning this Letter and returning the same to me.

Yours faithfully,

---

**Liquidator**

**Annexure I**  
**(Declaration of Interest Form)**  
(On the letter head of the Company)

Date: \_\_\_\_\_

To,

**Mr. Navneet Kumar Gupta**  
Liquidator-C & C Constructions Limited (In Liquidation)  
  
Unit No. 2, Block D1, Golf Link DDA, Sector 23B, Pocket 8,  
Dwarka, New Delhi -110077  
Email: [navneet@minervaresolutions.com](mailto:navneet@minervaresolutions.com)

**Subject:** Submission of Declaration of Interest (“DOI”) for C&C Constructions Limited (in Liquidation) (“Corporate Debtor”) in response to Invitation via Asset Sale Process Memorandum dated 07th October 2023 by the Liquidator.

Dear Sir,

I/We hereby submit DOI as required under Asset Sale Process Memorandum dated 07th October 2023 issued with regard to sale of the C&C Constructions Limited as a going concern with full adoption/taking over of all live bank guarantees (“BG”) of C&C Constructions Ltd, in favour of various customers/authorities.

I/We have also set out the following information required in the format prescribed as an Annexure to this DOI.

I/We undertake that the information furnished by us in this DOI and the Annexure is true, correct, complete, and accurate. Further, we declare and state that:

- a. the Liquidator reserves the right to determine at his sole discretion, whether or not we qualify for the participation in the going concern sale process and may reject the DOI submitted by us without assigning any reason whatsoever;

- b. the Liquidator reserves the right to request for additional information or clarification from us for the purposes of the DOI and we shall promptly comply with such requirements. Failure to satisfy the queries of the Liquidator may lead to rejection of our participation pursuant to DOI.
- c. submission of this DOI alone does not automatically entitle us to participate in the next stage of the going concern sale process.
- d. we, along with connected parties and persons acting in concert are not ineligible under section 29A of IBC. In case, there is any material adverse change during this process, we shall duly inform the liquidator with in two business days.

Additionally, I/We undertake:

- a. to follow the further process of the sale as the Liquidator informs us which may include deposit of Ernest Money Deposit (bid bond), performance bank guarantee.
- b. that our DOI is on ‘as is where is’, ‘as is what is’ and ‘as is how is’ basis in context of all the assets, property, material under ownership or control or use of company with full adoption/taking over of all live bank guarantees (“BG”) of C&C Constructions Ltd, in favour of various customers/authorities.
- c. to represent and confirm that [I/we], and no person acting jointly or in concert with [me/us] is disqualified under the provisions of Section 29A of the IBC to participate in the sale process as on the date of this undertaking and liquidator may do further diligence in context of same either himself or through representatives/consultants duly appointed by him, and we shall continue to fulfil process timelines and actions including payments/PBG/others irrespective of pendency of this report.

Sincerely yours,

On behalf of [*Insert the name of the entity submitting the DOI*]<sup>1</sup>

Signature: \_\_\_\_\_

Name of Authorized Signatory

Designation (no less than a Director or Partner of the entity):

Company Seal/Stamp

<sup>1</sup> Note: The person signing the DOI and other supporting documents should be an authorized signatory supported by necessary board resolutions/authorization letter or the Director or Partner of the entity itself may sign the DOI.

## **Annexure**

*[Note: In case of joint DOIs, the details set out below are to be provided for each of the entities / groups submitting each joint DOI.]*

### **1. Name and Address:**

- a. Name of the Firm/Company/Organization:
- b. Address:
- c. Telephone No:
- d. Email:
- e. PAN/CIN:

### **2. Date of Establishment:**

### **3. Core Area of Business:**

### **4. Contact Person:**

- a. Name:
- b. Designation:
- c. Telephone No:
- d. Mobile No:
- e. Email:

### **5. Company/FI Profile:**

- a. Company Financial Profile (consolidated / standalone as applicable):

*[Note: The Company profile should necessarily include net worth and revenue numbers of the preceding three years. Where the entity submitting the DOI is a financial investor / fund entity, please provide details pertaining to 'assets under management' and/or "committed funds" for the preceding three years or the committed funds available as on March 31, 2022, for investment.]*

- b. Names & DIN of Directors including Independent Directors
- c. Experience of the Company in the relevant sector.
- d. Names of key lenders, if any, to the Company or its affiliates
- e. History if any, of the Company or affiliates of the Company being declared a 'willful defaulter', 'non-cooperative borrower', 'non-impaired asset' or 'non-performing asset'

## Annexure II

### BID Application Form

Date:

To

**Mr. Navneet Kumar Gupta**

Liquidator-C&C Constructions Limited (In Liquidation)

Unit No. 2, Block D1, Golf Link DDA, Sector 23B, Pocket 8,

Dwarka, New Delhi -110077

[navneet@minervaresolutions.com](mailto:navneet@minervaresolutions.com)

("Liquidator")

Dear Sir,

I/We (if consortium) am/are desirous in participating in the E-auction announced by you in  
..... (source).

Details of Corporate Debtor:

Name	
Account Number	
Bank Name	
IFSC Code	

Details of Bidder

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

Details of Earnest Money:

Description of Asset	
Reserve price	
Earnest Money deposited	
Mode of Earnest Money payment	

Payer's bank and account number	
Instrument number and date	
Validity of Bank guarantee (where applicable)	

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

Name	
Account Number	
Bank Name	
Branch	
IFSC Code	

KYC documents being provided:

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

I/We/M/s. also enclose copies of the required KYC documents and copies of documents substantiating deposit of the Earnest Money or bank guarantee in lieu thereof. We request you to kindly verify the same and arrange with the e-auction portals for issue of an ID and password for us to enable us to take part in the E-auction.

Place:

Signature Date:

(Seal in case of company / firm)

**Annexure III**  
**Declaration by Interested Bidders**

(To be notarized)

To

**Mr. Navneet Kumar Gupta**

Liquidator-C&C Constructions Limited (In Liquidation)

Unit No. 2, Block D1, Golf Link DDA, Sector 23B, Pocket 8,

Dwarka, New Delhi -110077

[navneet@minervaresolutions.com](mailto:navneet@minervaresolutions.com)

(“Liquidator”)

Sir,

1. I/We, (*insert name and address of the Qualified Bidder*) aforesaid do hereby state that, I/We have read the entire terms and conditions for the sale of the company as a going concern with full adoption/taking over of all live bank guarantees (“BG”) of C&C Constructions Ltd, in favour of various customers/authorities as specified and have understood them fully. I/We hereby unconditionally agree to confirm with and to be bound by the said terms and conditions and agree to take part in the E- auction process.
2. I/We declare that the Earnest Money have been made by me/us as against my/our bid and that the particulars of remittance or bank guarantee in lieu of the same and all other information given by me/us in the form is true and correct.
3. I/We further understand and agree that if any of the statement / information revealed by me/us is found to be incorrect and / or untrue, the bid submitted by me/us is liable to be cancelled and in such case, the Earnest Money and / or any monies paid by me/us is liable to be forfeited by the Liquidator and the Liquidator will be at liberty to annul the offer made to me/us at any point of time.
4. I/We also agree that after my/our offer given in my/our bid for purchase of the company as a going concern and accepted by the Liquidator and if, I/We, fail to accept or act upon the terms and conditions of the sale or am/are not able to complete the transaction within the time limit specified for any reason whatsoever and/or fail to fulfil any/all the terms and conditions of the e-auction, issued by the Liquidator seeking submission of bids for the C&C Constructions Limited (in liquidation) (“**As- set Sale Process Memorandum**”), the offer letter and/or the Letter of Demand, the Earnest Money and other monies paid by me/us thereafter, are liable to be forfeited. In case final sale consideration and any applicable taxes, if any, is not paid within the specified timeline, the Liquidator shall forfeit Earnest Money and or invoke bank guarantee.
5. I/We also agree that in the eventuality of forfeiture of the amount by the Liquidator, the I/We shall neither have claim on the Asset of the company) for which my/our bid was approved nor on any part of the sum for which it may be subsequently sold.
6. I/We also understand that the Earnest Money Deposit shall be retained by the Liquidator and returned only in accordance with the timelines and circumstances specified in the Asset Sale Process Memorandum. I/We, state that I/We, have fully understood the terms and conditions therein and agree to be bound by the same.



7. I/We confirm that our participation in the E-auction process, submission of bid or acquisition of the company as a going concern pursuant to the provisions of the Asset Sale Process Memorandum will not conflict with, or result in a breach of, or constitute a default under (i) our constitutional documents; or (ii) any applicable laws applicable to me/us; or (iii) any authorization or approval of any government agency or body applicable to me/us; or (iv) any judgement, order, injunction, decree, or ruling of any court or governmental authority, domestic or foreign binding on me/us; or (v) any agreement to which I am / we are a party or by which I am / we are bound.
8. That the Liquidator 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.
9. That submission of our proposal alone does not automatically entitle us to participate in the next stage of the bid process. The decision taken by the Liquidator with respect to the selection of the Successful Bidder/qualified bidder and communicated to us shall be binding on me/us. We acknowledge that the Liquidator reserve the right to determine at his sole discretion, whether or not we qualify for the submission of the proposal and may reject our proposal without assigning any reason whatsoever.
10. I/We undertake that our jurisdiction is part of the International Organization of Securities Commission.
11. I/We undertake that our country of origination residence is not on the Financial Action Task Force grey list.
12. I/We undertake that I/We am/are not sanctioned entity according to the United Nation Security Counsel sanctions list.
13. I/We undertake to comply with Anti Money Laundering provisions, CFT (Counter Terrorist Financing) provisions and I/We am/are not politically exposed person.
14. 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 e-auction portal and asset lots/company being offered for sale.
15. I/We confirm that the Liquidator and IPE 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.

I/We hereby confirm that I/we are not ineligible to purchase the Company C&C Constructions Limited (under liquidation) under Section 29A of the Insolvency and Bankruptcy Code, 2016, the bidder (along with any partner, if any, or any person acting in concert with bidder) are in full compliance of law and there is no violation of any law (including but not limited to tax laws, FEMA) in the process including sources of money and there is no collusion between the buyer, or the corporate debtor's related parties and buyer, or the creditors and the buyer, or any of the stakeholder and buyer

16. I/We hereby confirm that I/we are not related to promoters, liquidator or any of those appointed by liquidator per IBC 2016 and relevant regulations/circulars therein.

(Signature)

Name:

.....  
.....

Address:

.....  
.....

Email Id:

.....  
.....

Mobile:

.....

**Annexure IV**  
**AFFIDAVIT**

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

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

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

Liquidator in accordance with the past communications, are true, correct, accurate and complete in all respects and we have not provided any information, data or statement which is inaccurate or misleading in any manner. I further undertake that, in the event the Liquidator determines that we have made any misrepresentation, concealed material information, made a wrong statement or submitted information which is misleading in nature, the Liquidator shall have the right to take any action as he deems fits in accordance with the applicable law, including pursuant to IBC and related rules and regulations.

7. On behalf of the Bidder, I undertake that if during the interim period on and from the date of this Affidavit until the date of completion of the sale of assets in terms of the e-auction process, it becomes ineligible to become a resolution applicant under applicable law, including under Section 29A of IBC, it shall immediately and in no event later than two days of such ineligibility, disclose to the Liquidator of its ineligibility in writing with reasons for the same (“**Disclosure**”). I agree, acknowledge and confirm on behalf of the Bidder, that upon being informed of such Disclosure, the Liquidator shall have the right to reject the bid submitted by it and shall have the right to undertake any action as it deems fit in accordance with the Assets Sale Process Memorandum, including forfeiture of Earnest Money and PBG submitted by it (*as defined in the Assets Sale Process Memorandum*).
8. I state that the contents of paragraph nos. 1 to 7 hereinabove, are true to my knowledge

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

Identified by Me

DEPONENT

Advocate

Before Me,

Notary

Notes:

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

**Annexure V**  
**Board Resolutions**

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

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

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**WHEREAS** pursuant to invitation of the expressions of interest dated [●] (“**EOI**”), and subsequent to the Asset Sale Process Memorandum dated [●] (“**ASPM**”), issued by the Liquidator on behalf of C&C Constructions Limited (in liquidation) (**C&C**), in relation to the acquisition of the assets of C&C, the Company, for the purpose of participating in the e-auction process.

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

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

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

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

Certified to be true

**For the Company**

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**Director(s) / Company Secretary**

Notes:

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

**Annexure VI**

### **Technical Terms & Conditions of E-e-auction sale**

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

## **Annexure VII**

### **Confidentiality Undertaking**

This CONFIDENTIALITY AND NON - DISCLOSURE AGREEMENT (hereinafter referred as “**Agreement**”) is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (hereinafter referred as “**Effective Date**”)

amongst

- 1. C & C Constructions Limited (in Liquidation)**, a company incorporated under the provisions of the Companies Act, 1956, and an existing company under the Companies Act, 2013, and having its registered office at 74, Hemkunt Colony New Delhi- 110048 and Corporate office at Plot no 70, Sector 32 Gurugram 122001, Haryana (India) acting through **Mr. Navneet Kumar Gupta, the Liquidator**, appointed for the Company under the order of the National Company Law Tribunal (NCLT), Principal Bench New Delhi dated 07<sup>th</sup> October 2022 (hereinafter referred to as (“**C&C**”, “**Company**”, “**Corporate Debtor**”), which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors and assigns), of the **FIRST PART**;

**AND**

- 2. [Insert name of Applicant]**, [a company incorporated under the Companies Act, 1956 and existing under Companies Act, 2013/ a company to be incorporated under Companies Act, 2013/ a body corporate or corporation] [*Note to Applicant: Please retain/insert appropriate description*] having its registered office at \_\_\_\_\_ (hereinafter referred to as the “**Applicant**”, which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors), of the **SECOND PART**

(C&C, acting through the Liquidator shall hereinafter be referred to as the “**Disclosing Party**”, C&C and the Applicant shall hereinafter individually be referred to as “**Party**” and collectively as the “**Parties**”).

#### **WHEREAS:**

- A.** C&C Constructions Limited (hereinafter referred to as “**C&C**” or the Company) is a construction focused enterprise with emphasis on creating nationally important infrastructure assets. The Corporate Debtor was incorporated in the year 1996. Pursuant to the order dated 07<sup>th</sup> October 2022 (“**Order**”) of the Hon’ble National Company Law Tribunal, Principal bench New Delhi (“**NCLT**”), C&C has been admitted into a liquidation process under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”). Pursuant to the Order, Mr. Navneet Kumar Gupta, an insolvency professional (bearing IP Registration number IBBI/IPA-001/IP-P00001/2016-2017/10009) has been appointed as the Liquidator (“**Liquidator**”) in respect of the Company.
- B.** The Liquidator has prepared an **Asset Sale Process Memorandum** in respect of C&C (“**Asset Sale Memorandum**”) The Applicant has to submit its expression of interest for participating in the e-auction process for the C&C as a going concern with full adoption/taking over of all live bank guarantees (“**BG**”) of C&C Constructions Ltd, in favour of various customers/authorities.



- C. To enable the Applicant to bid, C&C may (including through any officers, and/or advisors including, without limitation, duly authorized attorneys, accountants, legal advisors and financial advisors), from time to time, disclose certain “Confidential Information” (*hereinafter defined*) to the Applicant, including such information as is specified in the Asset Sale Memorandum.
- D. The Applicant agrees to enter into this Agreement to, *inter alia*, keep confidential all Confidential Information that may be disclosed to it and/or its Representatives (*hereinafter de- fined*), in the manner set out hereinafter.

**NOW, THEREFORE**, in consideration for the mutual promises and covenants hereunder, C&C and the Applicant agree as follows:

## **1. DEFINITIONS**

- 1.1. **"Confidential Information"** means any and all information disclosed or submitted to the Receiving Party by or on behalf of Disclosing Party (including by any officers, and/or advisors including, without limitation, duly authorized attorneys, accountants, legal advisors and financial advisors of a Disclosing Party) in written, representational, electronic, verbal or other form and includes (i) all data, materials, prices, debts, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial in- formation, human resource information and any other information; (ii) all technical, commercial, operational, financial, accounting, legal and administrative information, and any notes, analyses, compilations, studies, forecasts, interpretations, memoranda, summaries, re- ports and other materials which contain, reflect or are based upon, in whole or in part, any of such information; (iii) information about the Transaction, or the terms or conditions or any other facts relating thereto, including, without limitation, the status thereof, that discussions or negotiations are occurring or have occurred, the existence of this Agreement, (iv) information and details regarding the terms, conditions and structure of, and other facts relating to, the Company and/or the Transaction, including the status thereof, whether oral, on paper or computer disk or in electronic format; whether prepared by the Disclosing Party, its advisors or other third party on behalf of the Disclosing Party; and/or (v) all reports, analyses, studies, compilations, interpretations or other documents or materials (whether on paper or computer disk or in electronic format) prepared by the Receiving Party or its Representatives which contain, refer to, reflect, enhance, modify, improve, quote or are based upon, in whole or in part, the information mentioned in (i), (ii), (iii) and/or (iv) which is provided to the Receiving Party and/or its Representatives in connection with the Transaction.
- 1.2. **"Disclosing Party"** shall have the meaning scribed to it in the Title clause above.
- 1.3. **"Receiving Party"** shall mean the Applicant, receiving confidential information from the Disclosing Party or from any person acting on behalf of the Disclosing Party.
- 1.4. In relation to the Receiving Party, its **"Representative"** shall means any agent, officer, employee, director, legal or financial advisor, affiliate, investor, counsel, potential financing source who (i) needs to know such information for the sole purpose of the Transaction; (ii) who agrees to keep such information confidential in accordance with the provisions of this Agreement; (iii) who is provided with a copy of this Agreement; (iv) who agrees to be bound by the terms contained in this Agreement to the same extent as if it was a party hereto; and (vi) who has confirmed that it has no conflict with the Disclosing Party, and the term "Representatives" shall be construed accordingly. In relation to any Disclosing Party, its "Representative" shall mean any agent, officer, employee, director, consultant,

legal or financial advisor, authorized attorney, accountant and/or any other person duly authorized in this regard.

## **2. USE OF CONFIDENTIAL INFORMATION**

- 2.1. The Confidential Information divulged by (or on behalf of) the Disclosing Party to the Receiving Party and/or its Representatives will be received and treated by the Receiving Party and/or its Representatives as – (i) strictly confidential; (ii) in accordance with applicable law. The Receiving Party and its Representatives shall not, without the prior written consent of the Disclosing Party or as expressly permitted herein, disclose, disseminate, reproduce, quote, share with, refer to, use or make available to any other person, or use or permit others to disclose or use, the Confidential Information in any manner whatsoever other than for the sole purpose as described in Clause 2.2 below. Without prejudice to the above, the Receiving Party and its Representatives shall comply with all provisions of law applicable to confidential information.
- 2.2. Notwithstanding the provisions of Clause 2.1 above, the Receiving Party may disclose the Confidential Information received under this Agreement to its Representatives (as defined in Clause 1.4 above) in accordance with applicable laws in relation to confidentiality on a strict "need-to-know" basis, and *solely* for the purpose of enabling assessment and evaluation of the Transaction ("**Purpose**").
- 2.3. The Receiving Party and its Representatives shall exercise the same standard of care in respect of the security and safekeeping of the Confidential Information disclosed hereunder as the Receiving Party and its Representatives exercise in respect of its own confidential information.
- 2.4. The Receiving Party understands and acknowledges that pursuant to the order of the Principal bench, New Delhi of the NCLT dated 07<sup>th</sup> October 2022, the NCLT had commenced the Liquidation process of the Company and appointed Mr. Navneet Kumar Gupta as Liquidator. Neither the Disclosing Party nor the Liquidator makes any representation or warranty or inducement, expressed or implied, now or in the future, as to the accuracy, correctness, completeness, fairness or relevance of the Confidential Information. Neither the Receiving Party nor any of its Representatives shall be entitled to rely on the accuracy, correctness, complete- ness, fairness or relevance of the Confidential Information, whether for the purpose of formulation of the Transaction and/or otherwise in relation to the Company. Further, none of the Disclosing Party nor the Liquidator shall, now or in future, have any liability to the Receiving Party or any other person resulting from Receiving Party's or its Representative's use of the Confidential Information.
- 2.5. Receiving Party shall indemnify and hold harmless the Disclosing Party against all direct losses, damages and liabilities including but not limited to all legal fees and expenses on a solicitor and client basis arising from or connected with any unauthorized disclosure, use or misuse of the Confidential Information whether by itself or its Representatives. The Receiving Party further agrees and undertakes, at its sole cost and expense, to take any and all reasonable measures (including but not limited to court proceedings) to restrain any person to whom it has disclosed Confidential Information, directly or indirectly, from

disclosing or using the Confidential Information in violation of this Agreement.

- 2.6. The Receiving Party acknowledges that it shall be responsible for any breach of this Agreement by the Receiving Party and/or any of its Representatives, employees or employees of its Representatives.
- 2.7. The Receiving Party shall not, without prior written consent of the Disclosing Party, engage any advisor, whether professional, legal or otherwise, who are already engaged by the Disclosing Party in relation to the Liquidation process of the Company.
- 2.8. If the Receiving Party decides to not proceed with the Transaction, it will promptly notify the Liquidator in writing of that decision. The Receiving Party shall immediately, upon the earlier of (a) the conclusion of the Transaction; or (b) termination of this Agreement as per Clause 11 below; or (c) a notification by the Disclosing Party, for any reason or for no reason, surrender and return to the relevant Disclosing Party, all Confidential Information in its possession, or destroy the same in accordance with the directives of the Disclosing Party.
- 2.9. The Receiving Party shall not publish any news release or make any announcements or denial or confirmation in any medium concerning this Agreement in any manner nor advertise or publish the same in any medium; and
- 2.10. The Receiving Party shall promptly notify the Disclosing Party of any Confidential Information which has been lost or disclosed or used by any unauthorized third party provided that such notification shall not relieve the Receiving Party from any liability arising from its breach of this Agreement.
- 2.11. The Receiving Party shall protect any intellectual property of C&C which it may have access to which is provided or made available to by the Disclosing Party.
- 2.12. The Receiving Party shall not utilize the Confidential Information to avail any undue gain or undue loss to itself or any other person and shall comply with the provisions of the IBC and the rules and regulations prescribed thereunder.

### **3. EXCEPTIONS**

The Receiving Party's obligations hereunder, shall not apply to Confidential Information which:

- 3.1. at the time of its disclosure, is in public domain or which after disclosure becomes part of public domain through no fault or wrongful act of the Receiving Party or its Representatives; or
- 3.2. was known to the receiving Party, as evidenced by written documentation, prior to its disclosure in connection with the Transaction provided that the source of such information was not known by the Receiving Party or any of its Representatives, after reasonable inquiry and investigation, to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party or any other party with respect

to such information; and

- 3.3. is or has been developed independently by the Receiving Party without reference to or reliance on the Disclosing Party's Confidential Information.

**4. NON-DISCLOSURE OF TRANSACTION**

- 4.1. It is agreed that without the prior written consent of the Disclosing Party, the Receiving Party shall not disclose and shall ensure that its Representatives do not disclose to any person or entity (a) that the Confidential Information has been made available to it or its Representatives, (b) that discussions or negotiations are taking place concerning a possible Transaction between the Parties, or (c) any terms, conditions or other facts with respect to any such possible Transaction, including the status thereof.
- 4.2. The Parties agree that unless and until a definitive agreement(s) regarding a Transaction between the Parties has been executed, neither Party will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement except for the matters specifically agreed to herein. The Parties further acknowledge and agree that each Party reserves the right, in its sole discretion, to reject any and all proposals made by the other Party or any of its Representatives with regard to a Transaction between the Parties and to terminate discussions and negotiations at any time.

**5. NOTICE**

The Receiving Party further agrees that all communications (both written and oral) regarding the Confidential Information and/or the Transaction, requests for additional information, and discussions or questions regarding procedures related to the Transaction, will be sent only to C&C through and/or Minerva Resolutions LLP (who are assisting Liquidator in discharging his duties as an liquidator) as authorized by Liquidator and not directly to any of the Company's affiliates or any of their respective directors, officers or employees.

All notices, statements or other communication required or permitted to be given or made under this Agreement shall be in writing in the English language and delivered by hand, or through a reputed international courier company or through speed post to the address set forth below, or by sending it by email (with delivery of a notification with return receipt requested) to the email address set forth below:

**Notice Details for C&C (Liquidator):**

**Mr. Navneet Kumar Gupta**

IBBI Reg. No: IBBI/IPA-001/IP-P00001/2016-2017/10009

Liquidator-C&C Constructions Limited (In Liquidation)

Unit No. 2, Block D1, Golf Link DDA, Sector 23B, Pocket 8,

Dwarka, New Delhi -110077

Email: [navneet@minervaresolutions.com](mailto:navneet@minervaresolutions.com)

Copy to: [liquidationofcnc@minervaresolutions.com](mailto:liquidationofcnc@minervaresolutions.com)

**Notice Details for Applicant:**

*[to be inserted by the Applicant]*

**6. COMPELLED DISCLOSURE**

In the event that the Receiving Party or any of its Representatives are required by applicable law, regulation or any competent judicial, supervisory or regulatory body to disclose any of the Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, however in the opinion of the counsel of the Receiving Party, the Receiving Party or its Representatives are nonetheless, in the absence of such order or waiver, compelled to disclose such Confidential Information, then the Receiving Party may disclose only such portion of the Confidential Information which, in the opinion of its counsel, the Receiving Party is compelled to disclose. The Receiving Party will not oppose any action by the Disclosing Party to obtain reliable assurance that confidential treatment will be accorded the Confidential Information. The Receiving Party and its Representatives will reasonably cooperate with the Disclosing Party in their efforts to obtain a protective order or other appropriate remedy that the Disclosing Party elects to seek to obtain, in their sole discretion.

**7. OWNERSHIP OF MATERIALS / NO WARRANTY**

Ownership of the Confidential Information, including all intellectual property rights and related rights in the Confidential Information or arising out of the use of the Confidential Information shall at all times remain with the Disclosing Party, in perpetuity and throughout the world. All improvements, derivatives, enhancements, modifications and recommendations to the Confidential Information will also belong exclusively to the Disclosing Party, and the Receiving Party agrees to specifically convey and assign, and hereby do convey and assign to the Disclosing Party all right, title and interest in and to the same in perpetuity and throughout the world. The Receiving Party covenants and agrees to sign any papers and do all acts necessary to secure for the Disclosing Party and/or its successors or assigns, any and all rights, titles and interest in any such improvements, derivatives, enhancements, modifications and recommendations, including rights to any patent and copyright in any jurisdictions, during the term of this Agreement, or any time thereafter.

**8. INJUNCTIVE RELIEF**

The Receiving Party acknowledges that the Confidential Information is valuable to the Disclosing Party and that damages (including, without limitation, all legal fees and expenses on a solicitor and client basis) may not be a sufficient remedy for any breach of its obligations under this Agreement and the Receiving Party further acknowledges and agrees that the remedies of specific performance or injunctive relief (as appropriate) without the necessity of posting bond, guarantees or other securities, are appropriate

remedies for any breach or threatened breach of its obligations under this Agreement, in addition to and without prejudice to, any other remedies available to the Disclosing Party at law or in equity.

**9. INDEMNITY**

The Receiving Party hereby agrees to indemnify and hold each of the Disclosing Party and their Representatives harmless, from and against all claims, demands, liabilities, losses, damages, costs and/or expenses (including all legal costs and expenses) suffered or incurred by such other Party or their Representatives due to a breach by the Receiving Party or its Representatives of the provisions of this Agreement.

**10. NO LICENSE**

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. The Receiving Party and its Representatives shall not use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

**11. TERM**

This Agreement shall remain valid and binding on the Parties until 24 months from the Effective Date of this Agreement or such earlier date as may be mutually agreed by Parties in writing. Upon expiry of this Agreement, the confidentiality obligations of the Parties herein shall cease, provided that payment obligations if any that may arise under this Agreement (including under the indemnity Clause 9 above) shall survive the termination of this Agreement.

**12. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of India. With respect to any action, suit or proceeding relating to this Agreement, the Receiving Party agrees to submit to the non-exclusive jurisdiction of the courts of Delhi. The Parties agree that the aforesaid is for the benefit of the Disclosing Party only, and the Disclosing Party shall not be prevented from taking any action, suit or proceeding relating to this Agreement in any other court or tribunal of competent jurisdiction, if and to the extent permitted under Applicable Laws.

**13. MISCELLANEOUS**

13.1. This Agreement constitutes the entire agreement amongst the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and understandings, whether written or oral, except obligations imposed by law which shall be deemed a part of this Agreement. This Agreement may not be amended except in writing signed by all the Parties hereto. No failure or delay by any Party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or preclude any other or further exercise of any rights hereunder. The

invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. Nothing in this Agreement shall be implied, except as required under statute.

13.2. This Agreement may not be amended or terminated except pursuant to a written agreement duly executed between the Parties.

13.3. If any term or provision of this Agreement is determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the Parties contemplate that the court making such determination shall reduce such extent, duration, scope or other provision and enforce such term or provision in its reduced form for all purposes contemplated by this Agreement.

13.4. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. The Disclosing Party reserves the right to assign all of its rights, powers and privileges under this Agreement (including, without limitation, the right to enforce all of the terms of this Agreement) to any person who enters into the Transaction contemplated by this Agreement. The Receiving Party shall not assign this Agreement.

13.5. Any breach of provisions of this Agreement by any Party hereto shall not affect the other Party's non-disclosure and non-use obligations under this Agreement.

13.6. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by, C&C and the Applicant on the date mentioned hereinabove as follows:

**Signed and Delivered**

**For C&C Constructions Limited in Liquidation,**

**the Liquidator**

**Signed and Delivered**

Accepted and agreed by ("**Receiving Party**") as of the date first written above:

- (1) We confirm that we and our Representatives will keep all Confidential Information confidential.
- (2) We confirm that we and our Representatives shall not use any Confidential Information to cause an undue gain or undue loss to the Disclosing Party or any other person.



- (3) We and our Representatives will comply with the requirements under provisions of the IBC.
- (4) We and our Representatives will protect the intellectual property rights of the Company in relation all Confidential Information.
- (5) We and our Representatives will not share any Confidential Information with any third party including any Representatives, without first ensuring that our obligations under this Agreement are complied with.
- (6) We and our Representatives will comply with all the terms and conditions of the Agreement.

By:

Name:

Title:

Company: