

PRICE EXPLORATION AND BIDDING PROCESS DURING CORPORATE INSOLVENCY RESOLUTION PROCESS:

A. PRICE EXPLORATION PROCESS

- (i) Expression of interest in newly introduced Form G under The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 will be released in the newspapers by the resolution professional after taking approval of COC about eligibility criteria, earnest money deposit and last date upto which the resolution plan can be accepted.
- (ii) Section 25(2)(h) was amended and provides that the resolution professional shall invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.
- (iii) The enquiries will be received on the official mail ID (specifically created for this process) as published in newspaper as part of EOI and the resolution professional will interact with all leads to assess their capacity and capability to participate in the resolution process of the corporate debtor. The Resolution professional will develop the leads to potential resolution applicants by way of assisting them in their due diligence process, inspections and verification of documents and records. It is recommended that the resolution professional should maintain a data room for the corporate debtor for the purpose of due diligence of perspective resolution applicants. All relevant data about assets, liabilities, technology, marketing, intellectual properties, trained human resources, etc. should be kept at the data room.
- (iv) The resolution professional should ask for necessary documents related to KYC and necessary financial statements to assess capacity and capability of the perspective resolution applicants. The perspective resolution applicants will be accepted as potential resolution applicant by sending them a mail and asking them to submit an undertaking as required under section 29(2) of IBC, 2016 and regulation 36(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (v) The information memorandum as prepared under section 29 of IBC 2016 read with regulation 36 of the IBBI (Insolvency Resolution Process for

Corporate Persons) Regulations, 2016 will be shared with potential resolution applicant along with any other information asked by them.

- (vi) The resolution professional will assist potential resolution applicants in their due diligence process and will make them understand the entire process of price exploration and bidding.
- (vii) All the potential resolution applicants will appear before resolution professional in the presence of COC members and they should submit their brief resolution plan along with tentative bid amount. The process will be taken up one by one and the other applicants would not have any right to know the offer amount and other terms and conditions of the offer.
- (viii) The potential resolution applicants should be explained about the range of offers amounts. All the applicants will be asked to submit final binding offer along with an earnest money deposit in the name of the Corporate Debtor backed by an agreement containing terms and conditions of bidding process including forfeiture of earnest money deposit.
- (ix) The bidders should be explained that they will provide all details required for ascertaining eligibility of the resolution applicant as per section 29A of IBC, 2016. The details are required to be furnished with the Resolution Professional within 15 days from the Publication of the Advertisement of Expression of Interest which includes the business profile, associate concerns, bidder showing networth of Rs. 5,00,00,000/- (Rupees Five crores only), debt profile of resolution applicant and associate concern, family tree, PAN of all related parties and connected persons for verification of eligibility. The bidders may obtain a report from any other professional who is capable of obtaining this information, verification of the information and providing a report thereon. It must be explained that such report from a professional may or may not be accepted by the resolution professional as he is under prime obligation to verify the eligibility of the Resolution Applicant.
- (x) The bidders will be explained that on any next date, closed bids would be received along with earnest money deposit and only top two bidders will qualify for next round of the process and the remaining applicants would be out from the process. It is further explained that open bidding will be done amongst top two bidders to qualify for H1 bidder.

B. BIDDING AND APPROVAL OF RESOLUTION PLAN

- (i) Indian Bank's Association, in their meeting on 29 January 2018 decided that the members of COC would interact and negotiate with H1 bidder only and they may consider, interact and negotiate with H2 bidder only in case H1 bidder withdraw from the process.
- (ii) It was also explained to bidders that the members of COC will negotiate only with H1 bidder. They may decide to interact and negotiate with H2 in case H1 bidder withdraw or is not eligible to become a resolution applicant.
- (iii) The earnest money deposit of H1 and H2 will be retained and the amount of EMD would be returned to all other bidders. An agreement would be signed between the H1 and H2 regarding acceptance of terms and conditions, earnest money deposit and forfeiture thereof in case of certain non-compliances including becoming ineligible under section 29A of IBC, 2016.
- (iv) The H1 bidder would submit detailed resolution plan compliant to various provisions of IBC, 2016 and regulations made thereunder along with the proposed amount for disbursement amongst lenders.
- (v) The Resolution Professional shall examine resolution plan received by him and would confirm that all the provisions of Section 30(2) and Regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are complied with.
- (vi) The resolution professional shall present the resolution plan of H1 bidder for their understanding and approval. The members of COC will obtain their internal approval for the resolution plan.
- (vii) The Resolution Professional will convene another meeting of COC for the approval of resolution plan and will put this resolution for voting.
- (viii) The Resolution Professional thereafter shall submit the resolution plan duly approved by the committee of creditors to Hon'ble NCLT Kolkata with his own certificate that (a) the contents of the resolution plan meet all requirements of the code and the regulations; and (b) the resolution plan has been approved by the committee.
- (ix) Hon'ble NCLT if satisfied, that the Resolution Plan as approved by the committee of creditors under sub section 4 of section 30 meets the requirements as referred to in sub section 2 of section 30, it shall by order approved the resolution plan which shall be binding on the corporate

debtor and its employees, members, creditors, guarantors and other stake holders involved in the resolution plan.

INSTRUCTIONS TO THE BIDDER &
TERMS & CONDITIONS

1. **EARNEST MONEY DEPOSIT:**

Each tender must be accompanied with earnest money deposit(EMD) of Rs.25,00,000/- (Rupees Twenty five lakhs only) in the initial bid in the form of Demand Draft of any nationalized/ scheduled bank drawn in favour of the Corporate Debtor. EMD to be submitted alongwith acceptance of terms and conditions and duly executed agreement with the resolution professional. Bidder without Earnest Money or inadequate earnest money shall be summarily rejected and no interest would be paid on the amount of earnest money deposit.The EMD will be refunded to the bidders who do not qualify to the next level. However, the earnest money deposit stands forfeited if the bidder provides false information or becomes ineligible under any of the provisions of the Insolvency & Bankruptcy Code, 2016.

As for the final bid, when the Resolution Plan of H1 bidder is approved by the members of Committee of Creditors, the H1 bidder is required to submit an Earnest Money Deposit of Rs. 2,00,00,000/- (Rupees Two crores only) in the form of Demand Draft of any nationalized/ scheduled bank drawn in favour of the Corporate Debtor, before the Resolution Plan is submitted before NCLT Kolkata for final orders to be passed on the Resolution Plan.

2. **FURTHER INFORMATION FOR BIDDERS:**

The notice inviting resolution plans in Form G as issued under regulation 36A (5) of The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 along with terms and conditions of bidding process will be available at the website of AAA Insolvency Professional LLP i.e. www.insolvencyandbankruptcy.in.

3. **AUTHORITY OF THE BIDDER & KYC DOCUMENTS:**

- a) Person(s) signing the agreement and other documents shall state in what capacity he or they are signing the documents. The following documents must be submitted along with the bid documents.
 - (i) Documents regarding constitution of the organisation such as memorandum and articles of association, LLP Agreement, Partnership Deed, Trust Deed, etc.

- (ii) Documents regarding registration of the organisation such as certificate of incorporation, registration of partnership, registration with any other government department, PAN, etc.
- (iii) List of Shareholders, Directors, Managing Director, Partners, Trustees, Key Managerial personnel, as may be applicable.
- (iv) Authority of the person to participate in the bid on behalf of the organisation such as board resolution or authority letter.
- (v) Copies of the audited financial statements for the last three years with all schedules, notes and qualifications.

4. **CORRUPT PRACTICES:**

Any bribe, commission or advantage offered or promised by or on behalf of the bidders to any officer or employee of the Resolution Professional or members of Committee of Creditors shall (in addition to any criminal liability which the tenderer may incur) debar his bid from being considered. Canvassing on the part of or on behalf of the bidder will also make his bid liable to rejection.

5. **ACCEPTANCE OF BID/RESOLUTION PLAN:**

The Resolution Applicant and the Committee of Creditors reserves the right to reject any or all the bidders, without assigning any reason thereof and does not bind himself to accept the lowest or any other tender.

6. **VALIDITY OF OFFER:**

The Bid and the offer would remain valid unless it is rejected by Resolution Professional or Committee of Creditors or by adjudicating authority. In case the bid and the offer is withdrawn by the Resolution Applicant for whatsoever reason, the earnest money deposit would be forfeited.

7. **INSPECTION:**

The Bidder/ Resolution Applicant will be entitled to visit the office and other premises of the corporate debtor for the purpose of due diligence, he will also be entitled to inspect documents and other records of the corporate debtor.

8. **AGREEMENT:**

The successful bidder will have to enter into an agreement in the form of Annexure A within 1 day from his acceptance as H1 bidder.