



INVITATION FOR E-BIDDING FOR BHUSHAN POWER AND STEEL LTD. [BPSL]

Dear Sir/Madam,

We would like to inform you that Export-Import Bank of India (Exim Bank) proposes to consider sale of its loans extended to Bhushan Power and Steel Ltd. [BPSL], with an aggregate principal outstanding of ₹617,44,00,000.00 (Indian Rupees six hundred seventeen crore forty four lakh only). The account is currently under Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code (IBC). Total Outstanding including interest and liquidated damages, as on CIRP initiation date (July 26, 2017) aggregated to ₹746,91,77,307.57 [Indian Rupees seven hundred forty six crore ninety one lakh seventy seven thousand three hundred seven and fifty seven paise only] (Admitted Claim Amount).

2. Should you have interest in the said loan asset, we would like to invite your firm for submitting Expression of Interest (EOI) as per the format enclosed at **Annexure I**. The terms and conditions of the proposed sale will be shared upon signing of a Non-Disclosure Agreement (NDA) with Exim Bank, as per the format enclosed at **Annexure II**. The terms and conditions of NDA are non-negotiable and the same has to be signed on a stamp paper of ₹500.00 [Indian Rupees five hundred only].

3. Exim Bank reserves the right to change terms of such Sale and/or cancel the auction, at any time without assigning any reasons thereof.

For and on behalf of,

Export-Import Bank of India

Office Block, Tower 1,
7th Floor, Adjacent Ring Road,
East Kidwai Nagar,
New Delhi 110023

Email: eximndo@eximbankindia.in

Phone: +91-11-24607700

Date: March 14, 2019

Expression of Interest
On Investor's Letter Head
<Draft>

Dated:

General Manager
Office Block, Tower 1,
7th Floor, Adjacent Ring Road,
East Kidwai Nagar,
New Delhi 110023

Sub: NPA / Loan Asset Auction – March 2019

We refer to EXIM Bank's Publication on its website on 14.03.2019 on NPA auction. We hereby confirm our intention to proceed with due-diligence in Data Room being set up by you. This is to confirm that:

We are eligible and have the financial capacity to conclude the purchase of NPA Account in accordance with the applicable laws and regulations of India.

Subject to our findings and pursuant to the due diligence review, we intend to submit a Bid for the NPA Account being auctioned by EXIM BANK.

In undertaking this transaction, we have no conflict of interest with and are not related, directly or indirectly, to EXIM Bank.

We have already executed NDA on ____, 20XX and the same shall stand valid.

Details of the Contact person/Authorised signatory with address, Contact no and Email ID are as under:

We shall be in touch with you to co-ordinate on the Data room.

With regards,

<Authorised Signatory>

NON-DISCLOSURE AGREEMENT

This Agreement is made on the _____ day of _____ by

Between _____, (a _____ incorporated under the _____) having its office at _____ (hereinafter referred to as “_____” or the “**Receiving Party**”, which expression unless repugnant to the context or meaning thereof be deemed to include its successors and assigns) of the **ONE PART**;

AND

Export-Import Bank of India, a corporation established under the Export-Import Bank of India Act, 1981 and having its Head Office at Floor 21, Centre One Building, World Trade Centre Complex, Cuffe Parade, Mumbai 400005, and regional office at Office Block, Tower 1, 7th Floor, Adjacent Ring Road, East Kidwai Nagar, New Delhi 110023 hereinafter referred “EXIM” or “**Disclosing Party**”) which expression unless repugnant to the context or meaning thereof be deemed to include its successors and assigns) of the **OTHER PART**.

_____ & EXIM are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**”.

WHEREAS

The Parties intend to engage in a business relationship which includes _____. In the course of such business relationship, it is anticipated that EXIM may disclose or deliver to _____ certain or some of its trade secrets, policies, technical and business information, pricing, financial analysis, customer names, customer list, customer data or any other confidential or proprietary information, for the purpose of _____ (hereinafter referred to as “**the Purpose**”).

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. **Confidential information:** For the purposes of this Agreement, "Confidential Information" means any and all information or data that is proprietary to the Disclosing Party and not generally known to the public, whether in tangible or intangible form, in whatever medium provided by the Disclosing Party to the Receiving Party or its representative(s) in connection with the Purpose and the business transacted/to be transacted between the Parties. Confidential Information shall include any copy, abstract, sample, notes or module thereof.

The Receiving Party shall use the Confidential Information solely for and in connection with the Purpose.

Notwithstanding the foregoing, "Confidential Information" shall not include any information which the Receiving Party can show: (a) is now or subsequently becomes legally and publicly available without breach of this Agreement by the Receiving Party, (b) was rightfully in the possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party and can be shown by documentary evidence in support thereof, (c) was rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality and can be shown by documentary evidence in support thereof, (d) was developed by or for the Receiving Party independently and without reference to any Confidential Information and such independent development can be shown by documentary evidence, or (e) is disclosed pursuant to an order of a court or governmental agency as so required by such order, provided that the Receiving Party shall endeavour to, unless prohibited by law or regulation, promptly notify the Disclosing Party of such order and afford the Disclosing Party the opportunity to seek appropriate protective order relating to such disclosure.

2. **Non-disclosure:** The Receiving Party shall not commercially use or disclose any Confidential Information to any other person or entity other than persons in the direct employment of the Receiving Party who have a need to have access to and knowledge of the Confidential Information solely for the Purpose

authorized above. The Receiving Party may with prior written permission of the Disclosing Party, disclose the Confidential Information to its affiliates, consultants, advisors and such other persons who have a need to have access to and knowledge of the Confidential Information solely for the Purpose authorized above, subject to their entering into an agreement containing terms and conditions no less restrictive than as set out in this Agreement. The Receiving Party agrees to notify the Disclosing Party immediately if it learns of any use or disclosure of the Disclosing Party's Confidential Information in violation of the terms of this Agreement. The Receiving Party undertakes to take full responsibility for the Confidential Information given to their Consultants, Advisors, Affiliates and other persons referred in above and consequently any breach by such Consultants, Advisors Affiliates and other persons referred in above shall be treated as breach by the Receiving Party and accordingly will be liable to the Disclosing Party.

3. **Publications**: Neither Party shall make news releases, public announcements, give interviews, issue or publish advertisements or publicize in print or electronic media or any other manner whatsoever in connection with this Agreement, the contents/provisions thereof, other information relating to this Agreement, the Purpose, the Confidential Information or other matter of this Agreement, without the prior written approval of the other Party.
4. **Term**: This Agreement shall be effective from the date hereof and shall continue till the earlier to occur of (i) the expiration of 1 (one) year from the date of this Agreement unless renewed by both the parties in writing and (ii) till expiration or termination of this Agreement due to cessation of the business relationship between _____ and EXIM. However, the confidentiality obligations shall survive the termination of this Agreement. Upon expiration or termination as contemplated herein the Receiving Party shall immediately, cease any and all disclosures or uses of the Confidential Information and at the request of the Disclosing Party promptly return or destroy all written, graphic or other tangible forms of the Confidential information and all copies, abstracts, extracts, samples, notes or modules thereof. That portion of the Information which consists of analyses, compilations, studies or other documents or data prepared by the Receiving Party or its representatives, will continue to be held by the Receiving Party and will be treated as confidential.

5. **Title and Proprietary Rights:** Notwithstanding the disclosure of any Confidential Information by the Disclosing Party to the Receiving Party, the Disclosing Party shall retain title and all intellectual property and proprietary rights in the Confidential Information. No license under any trademark, patent or copyright, or application for same which are now or thereafter may be obtained by such Party is either granted or implied by the conveying of Confidential Information. The Receiving Party shall not conceal, alter, obliterate, mutilate, deface or otherwise interfere with any trademark, trademark notice, copyright notice, confidentiality notice or any notice of any other proprietary right of the Disclosing Party on any copy of the Confidential Information, and shall reproduce any such mark or notice on all copies of such Confidential Information. Likewise, the Receiving Party shall not add or emboss its own or any other any mark, symbol or logo on such Confidential Information.

Return of Confidential Information: Upon written demand of the Disclosing Party, the Receiving party shall

- a. cease using the Confidential Information,
 - b. return the Confidential Information and all copies, abstract, extracts, samples, notes or modules thereof to the Disclosing Party within seven (7) days after receipt of notice, and
 - c. Upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this agreement.
6. **Remedies:** Both parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The Receiving Party acknowledges that if the Receiving Party fails to comply with any of its obligations hereunder, the Disclosing Party may suffer immediate, irreparable harm for which monetary damages may not be adequate. The Receiving Party agrees that, in addition to all other remedies provided at law or in equity, the Disclosing Party shall be entitled to injunctive relief hereunder.
7. **Entire Agreement, Amendment, and Assignment:** This Agreement constitutes the entire agreement between the Parties relating to the matters discussed herein and supersedes any and all prior oral discussions and/or written correspondence or agreements between the Parties. This Agreement may be

amended or modified only with the mutual written consent of the Parties. Neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable.

8. **Indemnity**: The Receiving Party hereby indemnifies the Disclosing Party, and shall always keep indemnified and hold the Disclosing Party, its employees, personnel, officers, directors, harmless from and against any and all losses, liabilities, claims, actions, costs and expenses (including attorneys' fees) relating to, resulting directly or indirectly from or in any way arising out of any claim, suit or proceeding brought against the Disclosing Party as a result of breach of any of the term of this Agreement or breach of any representation or on account of any false representation or inaccurate statement or assurance or covenant or warranty of the Receiving Party and/or breach of confidentiality obligations of the Receiving Party, or its employees or delegates, contained in this Agreement; and/or negligence or gross misconduct attributable to the Receiving Party its employees/delegates.
9. **Notices**: Any notice or other communication under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier or by electronic mail, to a party at its address as set out below:

Disclosing Party: Export - Import Bank of India
Office Block, Tower 1,
7th Floor, Adjacent Ring Road,
East Kidwai Nagar,
New Delhi 110023.

Receiving Party: _____ *(along with address, name of authorized official and email)*

Or as otherwise specified by a party by notice in writing to the other party.

Any notice or other communication shall be deemed to have been duly received:

- i. If delivered personally, when left at the address and for the contact referred to in this clause; or
- ii. If sent by pre-paid first class post or recorded delivery, at 11.00 am on

- the fourth business day after posting; or
- iii. If delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
 - iv. If sent by an electronic mail, on the day of receipt, if received before 11.00 a.m. on a business day, or otherwise on the first business day after receipt.

10. **Governing Law and Jurisdiction**: The provisions of this Agreement shall be governed by the laws of India and the parties submit to the jurisdiction of courts/tribunals at Delhi.

11. **General**: The Receiving Party shall not reverse-engineer, decompile, disassemble or otherwise interfere with any Confidential Information disclosed hereunder.

All Confidential Information is provided on "as is" basis. In no event shall the Disclosing Party be liable for the inaccuracy or incompleteness of the Confidential Information. None of the Confidential Information disclosed by the Parties constitutes any representation, warranty, assurance, guarantee or inducement by either Party to the other with respect to the fitness of such Confidential Information for any particular purpose or infringement of trademarks, patents, copyrights or any right of third persons. Each party agrees to maintain and go by all the extant laws, regulatory guidelines and such other similar regulations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Date first above written.

Receiving Party

By Export Import Bank of India

By

Name:

Name:

Title:

Title: