



**ABG SHIPYARD LIMITED (IN LIQUIDATION)**

---

**ELECTRONIC AUCTION PROCESS DOCUMENT FOR VESSEL VARADA EMPRESS  
(defined herein) COMMENCED VIDE ADVERTISEMENT DATED 06 OCTOBER 2021**

**(“E-AUCTION PROCESS DOCUMENT”)**

Date: 06 October 2021

**Issued by Mr. Sundaresh Bhat**

**Liquidator of ABG Shipyard Limited**

A company under liquidation process vide NCLT Ahmedabad bench order dated April 25, 2019  
(received by the Liquidator on April 29, 2019)

IBBI Registration no. IBBI/PA-001/IP-P00077/2017-18/10162

IBBI Registered Email: [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in)

IBBI Registered Address: BDO Restructuring Advisory LLP, Level 9, The Ruby, North West Wing,  
Senapati Bapat Road, Dadar (W), Mumbai 400028, INDIA

Communications Email Address: [LQABG@bdo.in](mailto:LQABG@bdo.in) ; [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in)

Website: [www.abgindia.com](http://www.abgindia.com)



## **DISCLAIMER**

This E-Auction Process Document is for general information purposes only, without regard to specific objectives, suitability, financial situations, and the requirements of any particular person, and does not constitute any recommendation of an offer to buy, purchase or subscribe to any assets of ABG Shipyard Limited. This E-Auction Process Document is to lay out the process for sale of the asset of ABG Shipyard Limited specified herein. It is not a statutory document, and it has not been reviewed, approved, or registered with, and will or may not be reviewed, approved, or registered with, any regulatory or statutory authority of Government of India or any state governments. Neither this E-Auction Process Document nor anything contained herein shall form the basis of, or be relied upon in connection with any contract, agreement, undertaking, understanding or any commitment whatsoever. This E-Auction Process Document is neither an agreement nor an offer by the liquidator to the prospective bidders or any other person. This E-Auction Process Document does not solicit any action based on the material contained herein and nothing any contained herein or in the materials relating to this E-Auction Process Document, is intended to be construed as or should be construed as legal, financial, accounting, regulatory or tax advice by the liquidator.

It is to be noted that no information being provided hereunder claims it to be comprehensive. The objective of this E-Auction Process Document is to provide interested parties with information that may be useful to them in making/submitting their bids. It may be noted that the assumptions, assessments, statements, and information contained hereunder may not be complete, accurate, adequate, or correct. Each interested party/ bidder should, therefore, conduct its own due-diligence, investigations and analysis and should also check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements, and information contained and should get independent advice from appropriate sources. While the data / information provided hereunder has been prepared and provided in good faith, the liquidator shall not accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, correctness, completeness or reliability of information hereunder and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability and completeness of this E-Auction Process Document, even if any loss or damage is caused by any act or omission on its part. This E-Auction Process Document may not be all inclusive and may not contain all of the information that the recipient may require or consider material for the purpose of sale. Information provided hereunder has been collected and collated from several sources. The information given by no means claims to be an exhaustive account of statutory requirements and should not be regarded as complete. The liquidator accepts no liability or responsibility, whatsoever, for the authenticity, accuracy, correctness, completeness, or otherwise for any statement or information contained hereunder. This E-Auction Process Document and information contained herein or disclosed should not be printed, reproduced, transmitted, sold, distributed, or published by the recipient, without prior written approval from the liquidator.

Neither the liquidator, nor the Insolvency Professional Entity (BDO Restructuring Advisory LLP), its partners, or any of the respective affiliates, associates etc. of the liquidator/ Insolvency Professional Entity nor any of their advisor(s), legal, financial or otherwise, shall be liable for any damages, whether direct, indirect, incidental, special, or consequential including loss of revenue or profits that may arise from or in connection with the use of this E-Auction Process Document, including the participant not being selected as a Successful Bidder (defined below) or on account of any decision taken by the liquidator or otherwise. Therefore, participants acknowledge that they shall not have any right to, and also undertakes that it shall not, take any legal action against the liquidator, the Insolvency Professional Entity (BDO Restructuring Advisory LLP) or any of its partners or respective affiliates or any of their advisors as aforesaid for any damages caused for any reason whatsoever for anything



arising from or in relation to this E-Auction Process Document or this process and the applicant/ buyer hereby unconditionally waives its right to take such legal action.

Further, apart from the provisions set out hereunder, participants shall be responsible for fully satisfying all the requirements and obligations stipulated in provisions of the Insolvency & Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 as well as any other laws for time being in force that are or may be applicable to the participant or the sale process and for obtaining requisite regulatory consents, licenses, and approvals. It is to be noted that by procuring a copy of this E-Auction Process Document, the recipient accepts the terms of this disclaimer, which forms an integral part thereof. Under no circumstances shall any participant make any contact, direct or indirect, by any mode whatsoever, with the Company until the liquidator gives his written permission.

The asset of the Company is proposed to be sold on "as is where is basis", "as is what is basis", "whatever there is basis" and "no recourse basis" and the proposed sale of asset of the Company does not entail transfer of any other title, except the title which the Company had on its asset as on date of transfer. The liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming of whatsoever nature in the moveable/immoveable assets of the Company or in the title/ownership thereof. The sale of the asset of the Company shall be subject to all the secured creditors relinquishing their security interest in the encumbered asset of the Company.

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

This document contains confidential, proprietary, and / or legally privileged information and must be kept confidential. By accepting a copy of this E-Auction Process Document (whether by receipt of an electronic copy of or otherwise) ("**Acceptance**"), the recipient accepts the terms of this disclaimer notice, which forms an integral part of this E-Auction Process Document. The recipient should not use this E-Auction Process Document, or any other document annexed herewith for any purpose other than as stated herein. Further, no representation or warranty, expressed or implied, is made or given by or on behalf of the liquidator, Insolvency Professional Entity or their affiliates or advisors (collectively the "Parties") as to the accuracy, authenticity, completeness, correctness, or fairness of the information or opinions contained hereunder and receipt of this E-Auction Process Document shall be deemed to be an unconditional acknowledgement by the recipient that the Parties do not accept any responsibility or liability for any information in the E-Auction Process Document and therefore, any liability or responsibility is expressly disclaimed by the Parties.



## TABLE OF CONTENTS

1.	Background .....	5
2.	Varada Empress/ Asset .....	5
3.	Minimum Bid Price.....	6
4.	Eligibility Criteria .....	6
5.	Schedule of E-Auction Process.....	7
6.	Stage Description .....	7
7.	Earnest Money Deposit- Terms and Conditions .....	13
8.	Costs, Expenses and Tax Implications.....	16
9.	E-Auction Service Provider and E-Auction Portal .....	17
10.	Terms and Conditions .....	17
11.	Governing Law and Jurisdiction .....	17
	SCHEDULE-A-ASSET DESCRIPTION .....	18
	SCHEDULE-B-TERMS & CONDITIONS.....	19
	SCHEDULE-C-DUE DILIGENCE RULES .....	26
	FORMAT-I-EXPRESSION OF INTEREST LETTER .....	30
	FORMAT-II-AFFIDAVIT-CUM-DECLARATION .....	34
	FORMAT III-AFFIDAVIT UNDER SECTION 29A OF I&B CODE .....	36
	FORMAT-IV-CONFIDENTIALITY UNDERTAKING .....	41



## **E-AUCTION PROCESS DOCUMENT**

### **1. Background**

- 1.1. Pursuant to the order of the Hon'ble National Company Law Tribunal, Ahmedabad Bench ("NCLT/ **Adjudicating Authority**") dated 25 April 2019 (made available on April 29, 2019), ABG Shipyard Limited ("**ABGSL / Company / Corporate Debtor**") was admitted into liquidation under the provisions of the Insolvency and Bankruptcy Code 2016, ("**I&B Code / IBC**") and insolvency professional, Mr. Sundaresh Bhat was appointed as the liquidator of the Company ("**Liquidator**").
- 1.2. In view of the aforesaid and as per the provisions of the I&B Code, the Liquidator issued an advertisement dated 06 October 2021 ("**Advertisement**") to give notice to persons interested in participating in the electronic auction for the purchase of Varada Empress (more specifically defined hereunder) ("**E-Auction Process**"), as per the provisions for e-auction under IBC. The terms of the Advertisement shall be deemed to form part of this E-Auction Process Document and be included herein and in case of any inconsistency in any terms between the documents, then the terms and conditions of the E-Auction Process Document shall prevail, limited to such inconsistency.
- 1.3. The present E-Auction Process Document sets out the process to be followed to participate in the electronic auction. All documents required to be submitted hereunder must be submitted strictly as per the formats hereunder and any deviation therefrom may lead to disqualification of Bidder/ EoI Applicant from the E-Auction Process.

### **2. Varada Empress/ Asset**

- 2.1. It is hereby stated that the asset titled Varada Empress ("**Varada Empress / Asset**") as more particularly described under "**SCHEDULE-A-ASSET DESCRIPTION**" hereto is available for sale pursuant to the terms of the present E-Auction Process Document, as per the provision of I&B Code and its applicable regulations, on the terms contained hereunder and any other terms/ process documents that may be issued by the Liquidator in this regard (in each case as amended, varied, modified, supplemented or replaced from time to time).
- 2.2. Varada Empress is being sold on "As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse basis" and the proposed sale of Varada Empress does not entail transfer of any title, except the title which ABGSL has on Varada Empress as on date of such transfer.
- 2.3. Notwithstanding anything contained herein, ownership and title, and the right to take possession/ lift/ move/ access/ enter Varada Empress shall not vest with the Successful Bidder until after the entire Sale Consideration (defined below) including all applicable duties, charges, cess, and taxes

such as GST, TCS etc. has been paid by the Successful Bidder, the definitive and/or registered agreements are executed as required by law, and the Liquidator has issued a written confirmation to effectuate the sale and transfer of title/ ownership, in accordance with the provisions of the I&B Code and applicable laws. Hence, no ownership, title or other rights shall be created in favour of the Successful Bidder merely upon payment of full Sale Consideration and payment of the same shall not imply legal transfer of Varada Empress. The Liquidator will require the Successful Bidder to enter into definitive agreements.

### 3. **Minimum Bid Price**

- 3.1. The Advertisement specifies the minimum bid price, being the 'reserve price' (as per meaning under the Liquidation Process Regulations), of Varada Empress as Rs. 8,50,00,000/- (Rupees Eight Crore Fifty Lacs only) ("**Reserve Price/ Minimum Bid Price**").
- 3.2. It is clarified that the Reserve Price of Varada Empress is as per its meaning under the IBC and it is to be noted that a Bid cannot be placed at a value below the Reserve Price, in accordance with IBC and that the E-Auction Portal (defined below) will not allow a Bid to be placed at a value below the Reserve Price.
- 3.3. A Bid can only be placed for an amount higher than the Minimum Bid Price. No bid for an amount equal to, or lower than the Minimum Bid Price will be valid or entertained.

### 4. **Eligibility Criteria**

- 4.1. The IBC stipulates that a liquidator shall not sell the immovable and movable property or actionable claims of a corporate debtor in liquidation to any person who is not eligible to be a resolution applicant (as per its meaning under IBC). Therefore, no person shall be eligible to submit a Bid for purchase of Asset of the Company if it fails to meet the eligibility criteria as set out in Section 29A of the IBC (as amended from time to time).
- 4.2. Therefore, if at any time during the E-Auction Process or thereafter, if the participant/ EoI Applicant/ Bidder / Qualified Bidder / Successful Bidder (as the context so requires) is no longer eligible as per the criteria stipulated herein and as per IBC, the said participant / EoI Applicant/ Bidder / Qualified Bidder / Successful Bidder, will stand liable for rejection, disqualification and expungement from the E-Auction Process and no sale will be made to such Person. It is expressly clarified that allowance of person through the various stages of the E-Auction Process cannot be assumed to be a confirmation from the Liquidator that the said person is not ineligible as per I&B Code to purchase the Asset of the Corporate Debtor.
- 4.3. It is to be noted that the EoI Applicant/Bidder must be the intended legal and beneficial owner of the Asset. The Asset will be handed over to Successful Bidder only after it is confirmed that the said Successful Bidder is eligible in terms of Section 29A, notwithstanding payment of full Sale

Consideration (defined below) for the Asset. In case the Successful Bidder is deemed ineligible under Section 29A, the Liquidator reserves the right to disqualify such Successful Bidder and proceed to sell the Asset to next highest bidder as per the terms more specifically detailed in the E-Auction Process Document. In case the Successful Bidder is found to be ineligible after being declared as the Successful Bidder, 100% of the earnest money deposited will be forfeited.

## 5. Schedule of E-Auction Process

The following schedule shall apply to the E-Auction Process and shall be read in context of the terms and conditions set out hereunder. The schedule or a part thereof may be extended/ advanced/ modified / altered / waived by the Liquidator through issuance of communication/ amendment or addendum to the E-Auction Process Document.

#	Date	Stage
1.	06.10.21	<b><u>Stage 1</u></b> Publication of Advertisement and issuance of E-Auction Process Document
2.	10.10.21	<b><u>Stage 2</u></b> Last date for submission of Expression of Interest
3.	Until 14.10.21	<b><u>Stage 3</u></b> Due Diligence
4.	13.10.21	<b><u>Stage 4</u></b> Last Date for submission of Refundable/Adjustable Earnest Money Deposit.
5.	14.10.21	<b><u>Stage 5</u></b> Declaration of Qualified Bidder and training
6.	15.10.21	<b><u>Stage 6</u></b> Date of E-Auction.
7.	16.10.21	<b><u>Stage 7*</u></b> Date for Declaration of Successful Bidder(s) and invitation for balance Sale Consideration
8.	15.11.21*	<b><u>Stage 8</u></b> Payment of balance Sale Consideration by Successful Bidder(s), as per terms herein and IBC
* Provided that in accordance with applicable law: payments made after Thirty days from the date mentioned for Stage 7 (“ <b><u>Stage 7 Date</u></b> ”) shall attract interest at the rate of 12%. Provided further that the sale shall be cancelled if the payment is not received within Ninety days from Stage 7 Date.		

## 6. Stage Description



**6.1. Stage 1 - Publication of Advertisement and issuance of E-Auction Process Document**

Stage completed.

**6.2. Stage 2 – Last Date for Submission of Expression of Interest**

6.2.1. EoIs are mandatorily required to be submitted in the name of the interested persons proposed to be the legal and beneficial owner of the assets.

6.2.2. Interested parties are required to submit their expression of interest along with the documents (including requisite annexures, schedules, attachments and supporting documents) as set out hereinbelow, within the last date specified therefor as per the schedule provided under the clause setting out the Schedule hereunder, in both soft copy vide email with subject -“*Expression of Interest for ABG Shipyard Limited – auction of Varada Empress*” to [LQABG@bdo.in](mailto:LQABG@bdo.in) and [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in) and vide hardcopy in a plain sealed envelope at the address BDO Restructuring Advisory LLP, Level 9, The Ruby, North West Wing, Senapati Bapat Road, Dadar (W), Mumbai 400028, India:

- (i) Express of Interest Letter as per the “**FORMAT-I-EXPRESSION OF INTEREST LETTER** set out hereunder; and
- (ii) Duly executed Affidavit-cum-Declaration as per the “**FORMAT-II-AFFIDAVIT-CUM-DECLARATION** set out hereunder, and
- (iii) Duly executed Affidavit under Section 29A of IBC as per the “**FORMAT III-AFFIDAVIT UNDER SECTION 29A OF I&B CODE** set out hereunder; and
- (iv) Duly executed Confidentiality Undertaking as per the “**FORMAT-IV-CONFIDENTIALITY UNDERTAKING** set out hereunder.

(the documents set out above together are collectively referred to as an “**EoI**”)

6.2.3. EoI not fulfilling the above conditions are liable to be disqualified without any further communication, at any stage of the E-Auction Process.

6.2.4. Persons who have submitted the EoI and its supporting documents by the Last Date for Submission of EoIs (as per the Schedule clause hereunder) shall be referred to as “**EoI Applicants**”.

6.2.5. Non-adherence to forms, documents or authorizations and / or submission of incomplete information may be grounds for declaring that particular EoI as non-responsive and may be rejected. Each form, document or authorization has to be duly signed and appropriately stamped/ company seal affixed by the EoI Applicant.



- 6.2.6. If EoI Applicant is bidding in consortium, each member of the consortium shall individually submit all documents/annexures required under this E-Auction Process Document. However, the documents of each member of the consortium shall be submitted to the Liquidator collectively along with a cover letter stating the lead member of the consortium, who (if the EoI successfully meets the stipulated criteria) will be treated as the Prospective Bidder (defined hereinafter).
- 6.2.7. The Liquidator reserves the right to communicate with the EoI Applicant for any further details, if required, in relation to the EoI submitted, at any stage.
- 6.2.8. The EoI Applicant shall not challenge nor seek extension or relaxation in any timelines (including but not limited to the timelines for conducting the due diligence) and/or terms and conditions of the E-Auction Process Document.
- 6.2.9. By submitting an EoI, each EoI Applicant shall be deemed to acknowledge that it has carefully read the entire Advertisement and E-Auction Process Document and has informed itself and deemed to have accepted all existing terms, conditions and limitations mentioned in the Advertisement, this E-Auction Process Document, and any other information provided by the Liquidator which was uploaded on the website of the Corporate Debtor.
- 6.2.10. Such EoI Applicants as are confirmed by the Liquidator in writing as entitled to further participate in the E-Auction Process shall be referred to as “**Prospective Bidders**”. There will be no further communication to EOI Applicants, if the EOI Applicants are rejected.
- 6.2.11. The bidders participating in the E- Auction Process being the Prospective Bidders, Qualified Bidders and Successful Bidder shall collectively be referred to as “**Bidders**” and individually as “**Bidder**”, as the context may require or admit.
- 6.3. **Stage 3 - Due Diligence**
- 6.3.1. Prospective Bidders shall be entitled to conduct due diligence for the Asset.
- 6.3.2. The due diligence process and rules are set out under **Error! Reference source not found.** hereto and all persons are required to strictly adhere to the same.
- 6.4. **Stage 4 - Last Date for submission of Refundable/Adjustable Earnest Money Deposit**
- 6.4.1. Bidders are mandatorily required to submit within the timeline set out under the schedule provided under this E-Auction Process Document, a non-interest bearing adjustable/ refundable earnest money deposit of Rs. 85, 00, 000 /- (Rupees Eighty-Five



Lakh only) (“**Earnest Money Deposit**” or “**EMD**”) equivalent to 10% of the Minimum Bid Price of the Asset, in the Liquidation Account (“**Liquidation Account**”) through RTGS / NEFT as per details below:

Name of the Bank Account: ABG SHIPYARD LTD IN LIQUIDATION

Account Number: 039305011128

Bank Branch: Backbay Reclamation Branch

Address: ICICI Bank, Backbay Reclamation Branch, Mumbai- 400 020

IFS Code: ICIC0000393

MICR Code: 400229027

- 6.4.2. The details of any remittances in this regard shall be submitted by the Bidders to the Liquidator. All the payments to be made by the Bidders under the E-Auction Process shall be intimated to the Liquidator through an email to [LQABG@bdo.in](mailto:LQABG@bdo.in) along with proof of payment. The entire EMD amount shall be remitted by the Bidder from one bank account only which shall be in the name of the Bidder. The Bidder shall preserve the remittance challan and shall produce the same before the Liquidator as and when demanded. Detailed terms and conditions regarding EMD are contained hereinbelow.

#### 6.5. **Stage 5 - Declaration of Qualified Bidders**

- 6.5.1. Those Bidders who have submitted the EMD and other requirements and documents that were required to be met with in the earlier stages of the E–Auction Process Document and intimated in writing by the Liquidator, shall be entitled to participate in the E–Auction and shall be termed as “**Qualified Bidder**”.
- 6.5.2. Bidders who have not submitted the requisite documents and EMD within the timeline mentioned under the Schedule herein will not be permitted to participate in the next stages of the E- Auction Process. There will be no further communication to Bidders, if they are ineligible to participate ahead in the E-Auction Process contemplated hereunder.
- 6.5.3. The Qualified Bidders may be provided training on the training on E-Auction Platform, before the Date of E-Auction.

#### 6.6. **Stage 6 – Date of E-Auction**

- 6.6.1. Qualified Bidders shall be entitled to submit bid(s) for an amount higher than the Minimum Bid Price for purchase of the Asset (“**Bid(s)**”), electronically on the website of the E-Auction Service Provider (defined below) on the date specified in the schedule set forth hereunder, and in the manner and as per the terms of E-Auction set out under hereunder.

- 6.6.2. The Login ID and password for bid submission will be shared by the Liquidator.
- 6.6.3. Neither the Liquidator, nor his team/ associate/ advisors/ affiliates and/ or BDO Restructuring Advisory LLP and/ or E-Service Provider shall be liable for any internet network problem and/ or any technical difficulty and it shall be sole duty and responsibility of the Eligible Bidders to ensure that they are technically well equipped for participating in the E-Auction Process.
- 6.6.4. The Eligible Bidders are advised to go through the detailed terms & conditions of E– Auction Process available on the web portal of E-Service Provider at <https://ncltauction.auctiontiger.net> and the technical terms and conditions of the E- Auction Process (provided in **Schedule-B** hereunder) before submitting their bids.
- 6.6.5. A bid shall be irrevocable, unconditional, and binding on the Bidder, as per the terms of this E–Auction Process Document. It is clarified that no bid shall be entertained below or equal to the Minimum Bid Price.
- 6.6.6. All taxes, levies, transfer charges, cess, costs etc. shall have to paid by the Successful Bidder over and above the Successful Bid amount
- 6.7. **Stage 7 – Declaration of Successful Bidder**
- 6.7.1. The Liquidator shall declare the Successful Bidder (being the Bidder that places the highest bid in the electronic auction of the Asset) as per the schedule provided under this E- Auction Process Document. The amount of the highest bid so placed plus taxes, levies, transfer charges, cess, costs etc., as applicable, shall be the consideration for the sale of the Asset to the Successful Bidder (“**Sale Consideration**”).
- 6.7.2. The Successful Bidder shall be invited to provide balance Sale Consideration within Thirty days from the date when he is invited to provide the balance Sale Consideration. On payment of the full Sale Consideration, the sale shall stand completed, the Liquidator shall execute certificate of sale and definitive agreement with the Successful Bidder to effectuate the transfer the Asset and the Asset shall be delivered to the Successful Bidder in the manner specified therein. The Liquidator will require further documentation to be entered into to effectuate the sale.
- In accordance with applicable law: payments made after Thirty days from Stage 7 Date shall attract interest at the rate of 12%. Provided that the sale shall be cancelled if the payment is not received within Ninety days from the Stage 7 Date.

- 6.7.3. The right of selecting and declaring the Successful Bidder shall solely rest with the Liquidator at all times. The decision of the Liquidator in this regard shall be final and binding on the Bidders.
- 6.7.4. If the Successful Bidder is rejected for any reason whatsoever, the Liquidator may consider offers from other Bidder(s) or take any such measure as may be deemed fit at the sole discretion of the Liquidator.
- 6.7.5. The Successful Bidder will be required to bear all the expenses for transfer of the Asset in his/ her/ its name. It is expressly stipulated that there are no implied obligations on the part of the Liquidator or Corporate Debtor, and it shall be solely the obligation of the Successful Bidder, at his/ her/ its own cost, to do all acts, things and deeds whatsoever for the completion of the sale. The Liquidator does not take any responsibility to provide information on the same.
- 6.7.6. A sale certificate and/ or transfer documents for the Asset shall be issued/ executed between the Successful Bidder and the Corporate Debtor, through Liquidator, after receipt of the entire Sale Consideration by the Liquidator.
- 6.7.7. The Liquidator shall not proceed with the sale of Asset, if he has reason to believe that there is any collusion between the Bidder(s)/buyers, or the Corporate Debtor's related parties and Bidder(s)/buyers, or the creditors and the Bidder(s)/buyer and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.
- 6.7.8. The Successful Bidder has to make payment within Thirty days of being declared Successful Bidder by the Liquidator. The payment has to be a direct remittance of the amount into Liquidation Account. Security receipts or non - cash instruments will not be accepted.

In accordance with applicable law: payments made after Thirty days from the Stage 7 Date shall attract interest at the rate of 12%. Provided that the sale shall be cancelled if the payment is not received within Ninety days from the Stage 7 Date.

- 6.7.9. The payment obligation by the Successful Bidder has to be completed, irrespective of any kind of hindrances like labour strike, delay in court orders, any kind of settlement, attachments/ confiscations by government authorities/ departments or investigative agencies.

## **6.8. Stage 8 – Last Date for payment of Sale Consideration by Successful Bidder**

- 6.8.1. The date set out under the Schedule under this E-Auction Process Document, shall be the last date for payment of balance Sale Consideration by the Successful Bidder.
- 6.8.2. The details of any remittances in this regard shall be submitted by the Successful Bidder to the Liquidator. All the payments to be made by the Successful Bidder under the E-Auction Process shall be intimated to the Liquidator through an email to [LQABG@bdo.in](mailto:LQABG@bdo.in) along with proof of payment. The entire balance Sale Consideration shall be remitted by the Successful Bidder from one bank account only which shall be in the name of the Successful Bidder. Successful Bidder shall preserve the remittance challan and shall produce the same before the Liquidator as and when demanded.
- 6.8.3. The EMD of the second highest Bidder from the E-Auction (“H2”) shall be withheld at least until the payment of the Sale Consideration by the Successful Bidder or the lapse of Ninety days from the Stage 7 Date, whichever is earlier, whereafter the same may be refunded/ adjusted in accordance with the terms of this E-Auction Process Document. If Successful Bidder defaults in payment of Sale Consideration, the Liquidator may declare H2 Bidder as the Successful Bidder and accordingly, adjust the EMD of the H2 Bidder against Sale Consideration to be received from H2 Bidder.
- 6.8.4. In case the Successful Bidder defaults on its payment obligations as per the process contemplated herein, or if the Successful Bidder is rejected for any reason whatsoever, the Liquidator may consider offers from other Bidder(s) or take any such measure as may be deemed fit at the discretion of the Liquidator.
- 6.8.5. The Liquidator reserves his right to negotiate/ sell the Asset to H2 Bidder/ next highest Bidder or any other Bidder or person outside of the E-Auction Process in case the Successful Bidder is rejected/disqualified/defaults on obligations hereunder, such as failing to make the complete payment towards Sale Consideration. In such cases, the Liquidator reserves the right to issue fresh/ revised terms and/or revised timelines (as the situation may require) that may be notified upon occurrence of such an event of default by the Successful Bidder. The Bidders shall be bound by the decision of the Liquidator in this regard.

## 7. **Earnest Money Deposit- Terms and Conditions**

- 7.1. The non-interest bearing adjustable/ refundable EMD to be submitted by a Bidder, in the Liquidation Account as per the terms of the E-Auction Process Document, shall be equal to 10% of the Minimum Bid Price of the Asset.

## 7.2. **Forfeiture of EMD**



The EMD furnished by the Bidder/ Successful Bidder can be forfeited by the Liquidator at any time, upon the occurrence of any of the following events at any stage of the E-Auction Process:

- 7.2.1. if there is a breach of any of the conditions under this E-Auction Process Document by the Bidders or in case the Successful Bidder is found to have made any misrepresentation; or conceals any material information; or any information provided, or statement made by such Bidder/ Successful Bidder is found to be false and/ or misleading and/ or incomplete; or
  - 7.2.2. if Bidder/ Successful Bidder is found to be ineligible to submit the Bid as per the conditions set out in Section 29A of the I&B Code (as amended from time to time) or is found to have made a false or misleading declaration of eligibility as per the conditions set out in Section 29A of the I&B Code (as amended from time to time); or
  - 7.2.3. if such Bidder/ Successful Bidder does not meet the eligibility criteria set out hereunder; or
  - 7.2.4. if Bidder/ Successful Bidder is found to be acting in collusion with the other bidders/ buyers, or the ABGSL's related parties, or the creditors of the ABGSL; or
  - 7.2.5. if the Bidder/ Successful Bidder at any point during the E-Auction Process or the sale process including but not limited to after being intimated by the Liquidator as the Successful Bidder, withdraws his Bid at any time or fails to make the complete payment of Sale Consideration due as per the terms of E-Auction Process Document.
- 7.3. In case of any occurrence of any/ all of the events as abovementioned in Clause 7.2, the Liquidator will be at liberty to reject and annul the Bid and all the amounts deposited till that date by the Bidder/ Successful Bidder shall be forfeited. The Liquidator reserves his right to negotiate/ sell the Asset to the second highest Bidder/ next highest Bidder after the Successful Bidder in case the Successful Bidder is rejected/ disqualified/ defaults on obligations hereunder, such as failing to make the complete payment towards Sale Consideration.
- 7.4. In cases of disqualification of the Bidder/ Successful Bidder, the Liquidator reserves the right to issue fresh/ revised terms and/or revised timelines (as the situation may require) that may be notified upon occurrence of such an event of default by the Successful Bidder. The Bidder/ Successful Bidders shall be bound by the decision of the Liquidator in this regard. The Bidder/ Successful Bidder shall be bound by the decision of the Liquidator and shall not challenge or contest the decision of the Liquidator to forfeit the amounts as aforesaid or to reject the Bid/ or to sell the Asset or negotiate with the next highest bidder, which decision(s) shall be final and binding on the Bidder/ Successful Bidder.
- 7.5. **Set-off of EMD of the Successful Bidder**

Subject to the right of the Liquidator relating to forfeiture of EMD as stated herein, the EMD shall be set-off against or used/ adjusted as part of the Sale Consideration that the Successful Bidder is required to pay for the Asset for which his/ her/ its Bid has been declared as the successful.

## **7.6. Refund of EMD**

7.6.1. After declaration of Successful Bidder, other Bidders, save and except the Bid submitted by the H2/next highest Bidder, will be eligible for a full refund (without interest) of the EMD and any other monies that may have been deposited by them in the Liquidation Account, within 15 working days (Saturdays, Sundays and any notified public holidays shall be excluded) from such date. The EMDs and other monies of the H2/next highest Bidder shall be withheld in accordance with the provisions of Clause 6.8.3 above, so that in case the Successful Bidder is rejected/ disqualified/ defaults, the Liquidator may commence a process to determine the next the Successful Bidder or declare the next highest Bidder as the Successful Bidder and accordingly, adjust the EMD of the next highest Bidder against Sale Consideration to be received from such next highest Bidder.

7.6.2. Upon the conclusion of the sale process i.e., after Successful Bidder has deposited all amounts towards Sale Consideration in the Liquidation Account, the EMD and any other monies deposited by the H2/next highest Bidder shall be refunded within 15 working days (Saturdays, Sundays and any notified public holidays shall be excluded) therefrom. Notwithstanding anything to the contrary, the Successful Bidder will not be entitled to any refund of EMD and any other monies, as those amounts will be adjusted against the Sale Consideration, as per the terms and conditions herein. In case the E-Auction Process is cancelled or terminated due to any reason including at the instruction of a court of law, tribunal or at the discretion of the Liquidator, the EMD submitted by Bidders shall be refunded without interest within 15 working days (Saturdays, Sundays and any other notified public holidays shall be excluded) from the date of notice of cancellation of the E-Auction Process by the Liquidator or court order, as may be applicable.

## **7.7. Non-interest bearing EMD**

Notwithstanding anything to the contrary, the EMD or any other amounts whatsoever paid/ deposited by the Bidders/ Successful Bidder with the Liquidator shall not carry any interest whatsoever under any circumstances and any amounts that are required to be refunded by the Liquidator shall be refunded without any interest whatsoever.

## 8. **Costs, Expenses and Tax Implications**

8.1. It is to be noted that over and above the Sale Consideration:

8.1.1. all taxes, duties, cess, transfer charges or other charges applicable (including stamp duty implications and registration charges) as applicable on sale of the Asset would be borne by the Successful Bidder.

8.1.2. the sale may attract stamp duty, registration charges etc. as per relevant laws.

8.1.3. the Successful Bidder shall bear all the necessary expenses like applicable stamp duties, additional stamp duty, transfer charges, registration charges, fees, etc. for transfer of the Asset in his/ her/ its name, if applicable.

8.1.4. the payment of all statutory/ non-statutory dues, taxes, rates, assessments, charges, fees, etc. owed by the Company to anybody in respect of the Asset shall be sole responsibility of the Successful Bidder.

8.1.5. the Successful Bidder has to bear cess or other applicable tax i.e., customs duty, excise duty, GST, TDS, TCS, etc.

8.1.6. The payment of all cost, charges, or expenses incurred towards obtaining permission/ approval/ consent/ no objection certificates from statutory and government authorities in respect of the Asset shall be sole responsibility of the Successful Bidder.

8.1.7. It shall be the sole responsibility of the Successful Bidder to liaise with government authorities etc. to effectuate transfer and seek permissions etc.

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

8.3. The Bidder/ Qualified Bidder/ Successful Bidder, as the case may be, shall be responsible for fully satisfying the requirements of IBC and the related regulations as well as all applicable laws that are relevant for the E-Auction Process. The Successful Bidder shall be responsible for obtaining requisite regulatory or statutory or third-party approvals, no-objections, permission or consents, or licenses, if any, that are or may be required under applicable laws for purchasing the Asset.



- 8.4. It is the sole responsibility of EOI Applicant/ Bidder/ Qualified Bidder/ Successful Bidder, as the case may be, to undertake the requisite diligence to determine all the implications of costs, expenses and tax connection with participation in the E-Auction Process/ purchase of the Asset and no reliance can be placed on contents hereunder or any oral discussions, in this regard.

9. **E-Auction Service Provider and E-Auction Portal**

- 9.1. The Liquidator shall shortly announce the electronic auction service provider (“**E-Auction Service Provider**”) hosting the e-auction portal.
- 9.2. The sale of the Asset shall be undertaken by the E-Auction Service Provider for and on behalf of the seller (Liquidator herein) through the website portal of the E-Auction Service Provider (“**E-Auction Portal**”).

10. **Terms and Conditions**

The detailed terms and conditions of this E- Auction Process are contained under “**SCHEDULE-B-TERMS & CONDITIONS**” hereunder and form an integral part of this E-Auction Process Document.

11. **Governing Law and Jurisdiction**

The Advertisement and any amendments thereto, E-Auction Process Document and the other documents pursuant to, arising from, in connection with the E-Auction Process Document shall be governed by the laws of India and any dispute arising out of or in relation thereto shall be subject to the exclusive jurisdiction of the Adjudicating Authority.

Sincerely,

Sd/-

**Sundaresh Bhat**

**Liquidator of ABG Shipyard Limited**

Communications Email Address: [LQABG@bdo.in](mailto:LQABG@bdo.in)

Website: [www.abgindia.com](http://www.abgindia.com)

IBBI Registration no. IBBI/IPA-001/IP-P00077/2017-18/10162

IBBI Registered Email: [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in)

IBBI Registered Address: BDO Restructuring Advisory LLP, Level 9, The Ruby, North West Wing, Senapati Bapat Road, Dadar (W), Mumbai 400028, India



## **SCHEDULE-A-ASSET DESCRIPTION**

(a) Description:

Partially completed Seismic Survey Vessel Y - 238 Varada Empress - bearing Hull Number Y -238 (IMO Number 9369564, DNV class) along with its identified machineries, stores and spares lying in Surat Shipyard of ABGSL near village Gaviar, Taluka Choryasi, Dist. Surat, Gujarat

(b) Inclusions:

- (i) The Vessel Y -238 as it is currently moored in the Surat Shipyard of the Corporate Debtor
- (ii) All installed machineries, spares inside the Vessel
- (iii) The identified spares, machineries of the vessel as available in the Surat yard strictly restricted as per the photo identities of the same made available in the data room. These comprises of and are strictly restricted to - anchor chain, spider reels, accommodation ladder, 6 pcs watch light, identified cables, identified electrical equipment, furniture, gym equipment, kitchen equipment, water purifier, heat exchanger, life-boat, life-saving capsule, solenoid valve(s), seismic knuckle boom crane(s) 1 large and 2 small cranes, storage cabinet, overboard sheaves, helideck part and 2 hydraulic cylinder for helideck, insulation material -rockwool

(c) Exclusions:

- (i) Financial assets concerning the vessel Y-238
- (ii) Any kind of report available with the Liquidator
- (iii) All licenses, permits, government / statutory permissions concerning the vessel
- (iv) All designs, photos, prototypes, models concerning the vessel
- (v) Any third-party assets / items of any nature, discovered and identified at any point of time including after transfer of the asset to the successful bidder. Such items have to be mandatorily returned to the third-party



## **SCHEDULE-B-TERMS & CONDITIONS**

1. This is not an offer document and is issued with no commitment or assurances. This intimation document does not constitute and will not be deemed to constitute any commitment or any representation of the Liquidator / ABG.
2. In case no eligible EoI is received within the specified period or no party submits EMD or participates in the auction, the E-Auction Process shall be deemed to have failed (as per the meaning of failed auction under IBC), without prejudice to the rights of the Liquidator to proceed with a fresh auction sale. The Liquidator shall not be liable to issue any notice in regard to the failed auction or otherwise be liable in any manner whatsoever.
3. The submission of EOI/ Bid, shall render the EoI Applicant/Bidder agreeable to participating at the current stage at which the E-Auction Process for ABGSL's liquidation is at and in accordance with the provisions of E-Auction Process Document.
4. In case, any deficiencies are found in the documents submitted by the Bidder(s), the Liquidator reserves the right, at its sole discretion, to reject such Bidder or provide time as decided by the Liquidator to the Bidder(s) to remedy the deficiencies in documents submitted. The timelines for such rectification shall be communicated at the appropriate stage/ time of the E-Auction Process by the Liquidator.
5. If EOI Applicant/ Bidder is bidding in consortium, each member of the consortium shall individually submit all documents/annexures required in terms of this E-Auction Process Document. However, the documents of each member of the consortium shall be submitted to the Liquidator collectively along with a cover letter stating the lead member of the consortium, who (if the EOI successfully meets the stipulated criteria) will be treated as the Prospective Bidder.
6. It is clarified that issuance of the E-Auction Process Document does not create any kind of binding obligation on the part of the Liquidator or ABG to effectuate the sale of the Asset.
7. No oral communication with the Liquidator or any official, agent or representative of the Liquidator, any creditor or any class of creditors, any member of ABG shall affect or modify any terms of this E-Auction Process Document or E-Auction Process. Any modifications to this E-Auction Process Document or Advertisement shall be binding only if such modification/ amendment has been expressly published as a modification and made available to all by its publication on the website of the Corporate Debtor.
8. If required, the Liquidator may conduct multiple rounds of auctions to maximize the realization from the sale of the Asset, and to promote the best interests of the creditors.
9. A Bid shall be irrevocable, unconditional, and binding on the Bidder.

10. In case there is no Bidder or Qualified Bidder, the E-Auction Process shall be deemed to have failed (as per the meaning of failed auction under IBC), without prejudice to the rights of the Liquidator to proceed with a subsequent auction sale. The Liquidator shall not be liable to issue any notice in regard to the failed auction or otherwise be liable in any manner whatsoever.
11. It is the endeavor of the Liquidator to sell the assets and properties comprising the liquidation estate of the Company in the manner specified under IBC and its rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under IBC or the Liquidation Process Regulations, as the case may be, and as per directions, if any, of the NCLT in respect of the liquidation process of the Company and in the manner specified in this E-Auction Process Document.
12. The E-Auction Process and E-auction may be modified/ amended/ cancelled/ terminated or abandoned at any time by the Liquidator. Even in case a sole Bidder is confirmed to participate in the E-Auction Process by the Liquidator, the said Bidder, regardless of being the sole applicant qualified to participate in the E-Auction Process, will have to mandatorily undertake the process set by the Liquidator to submit a Bid as per terms and conditions of this E-Auction Process Document, subject to terms of this E-Auction Process Document.
13. The Bidder is in receipt of critical information including commercially sensitive information and relating to the Corporate Debtor and Liquidator, and that the Bidder shall keep all such critical information, including the commercially sensitive information, confidential and shall not disclose or divulge such critical information or commercially sensitive information, to any person. The Bidder shall use such critical information including the commercially sensitive information relating to the Corporate Debtor only for the purpose of submission of bid for the Asset, in accordance with the terms of this E-Auction Process Document.
14. The Bidder shall indemnify the Corporate Debtor, Liquidator, team members/representatives of Liquidator and Liquidator's advisors in the event of any claims or actions which may arise against the Corporate Debtor, Liquidator, team members/representatives of Liquidator and Liquidator's advisors in relation to this E-Auction Process or the sale of the Asset.
15. The Bidder represents that it has the necessary financial resources available to meet the payment obligations for Sale Consideration in case of being selected as Successful Bidder, as per the terms and conditions hereunder.
16. Notwithstanding anything contained herein and contrary thereto, the Liquidator may at any stage include a Bidder for participation in the E-Auction Process. The Liquidator reserves the right to decide the procedure for including such potential Bidders into the E-Auction. All EOI Applicants / Bidders agree and accept that the Liquidator has the right to accept or reject any bids even after



the deadline as prescribed herein or at any stage of the E-Auction Process in order to maximise the realization from the sale of the Asset in the best interest of the stakeholders.

17. The EOI Applicant/Bidder hereby agrees and releases the Liquidator and his representatives and Corporate Debtor irrevocably, unconditionally, fully and finally, from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and / or performance of any obligations set out under this E-Auction Process Document, and / or in connection with the submission of a bid, and/ or sale of the Asset, and waives any and all rights and / or claims which the EOI Applicant/Bidder may have in this respect, whether actual or contingent, whether present or in future.
18. If the EOI Applicant /Bidder conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in any manner whatsoever, the Liquidator reserves the right to reject and disqualify such EOI Applicant /Bidder from E-Auction Process and forfeit the Earnest Money Deposit. The EOI Applicant /Bidder shall be solely responsible for such disqualification.
19. The EOI Applicant/Bidder should make their own independent inquiries regarding the encumbrances, title of the Asset put on auction and claims/rights/dues/ affecting the Asset and should conduct their own due diligence prior to submitting their bid. The E-Auction Process Document does not constitute and will not be deemed to constitute any commitment or any representation of the Liquidator. The Asset is being sold with all the existing and future encumbrances/claims/dues/demands whether known or unknown to the Liquidator. Liquidator shall not be responsible in any of way for any third party claims/ rights/ dues.
20. It should be the responsibility of the EOI Applicant / Bidders to inspect and satisfy themselves about the Asset before submission of the bid. Liquidator has right to any demand documents from EOI Applicant /Bidder relevant to the process and in case the documents are not provided, the Liquidator may disqualify such EOI Applicant/ Bidder.
21. The Successful Bidder shall bear the applicable stamp duties/ additional stamp duty / transfer charges, fee, Taxes, GST, etc. and also all the statutory/ non-statutory dues, taxes, rates assessment charges fees etc. payable to any government or authority in connection with the Asset/ transfer of the Asset.
22. The Liquidator has the absolute right to accept or reject any or all offer(s) or adjourn / postpone/ terminate/cancel the e-Auction or E-Auction Process at any stage without assigning any reason therefor and without liability.
23. The sale certificate will be issued and / or transaction / sale documents executed in the name of Successful Bidder / only and will not be issued in any other name(s).



24. The sale shall be subject to conditions prescribed under the Insolvency & Bankruptcy Code, 2016, provisions and regulations thereunder.
25. The Liquidator reserves the right to cancel, abandon or reject an EOI Applicant / Bidder/ Qualified Bidder at any time during the process including after he has won the bid and has been declared the Successful Bidder.
26. All the terms and conditions as set forth in the E-Auction Process Document, a copy of which has been provided to Bidder/ EOI Applicant and which has been read, understood, acknowledged and agreed by Bidder/ EOI Applicant; and which terms and conditions of the E-Auction Process Document.
27. The decision of the Liquidator on declaration of Prospective Bidder, Qualified Bidder and Successful Bidder shall be final and binding on all the Bidders.
28. It is clarified that issuance of E-Auction Process Document does not create any kind of binding obligation on the part of the Liquidator or ABGSL to effectuate the sale of the Asset. All taxes/levies of whatsoever nature in connection with the sale of the Asset will be borne solely by the Successful Bidder. The Liquidator of ABGSL reserves the right to suspend/abandon/cancel/extend or modify the electronic auction process terms and/ or E Auction Process Document and/or reject or disqualify any EOI Applicant /Bidder at any stage of process without assigning any reason and without any notice or liability of whatsoever nature.
29. Neither the EOI Applicant / Bidders nor any of representatives of the EOI Applicant / Bidders shall have any claims whatsoever against the Liquidator or his advisors/ representatives or any of their officials, agents or employees arising out of or relating to the E- Auction Process or sale of the Asset.
30. Any notice of adjournment/postponement/cancellation/ termination of the auction /sale shall be published on the website of the Company at [www.abgindia.com](http://www.abgindia.com) and no public notice thereof shall be published. EOI Applicant / Bidders shall not challenge nor seek extension or relaxation in timelines and/or terms and conditions of the E-Auction Process Document.
31. The EOI Applicant / Bidders should thoroughly satisfy itself about the nature, conditions and quality of the Asset being put on sale. The Liquidator gives no guarantee or warranty as to title of the Asset or the conditions of the Asset or/its quality for any specific purpose or use. It should be clearly understood that no claim/complaint about the quality /conditions /fitness for use/title of the Asset will be entertained by the Liquidator; and the EOI Applicant / Bidders acknowledge that no such claim/complaint would be maintainable against the Liquidator or ABGSL under any law or otherwise and the EOI Applicant / Bidders expressly and irrevocably waive any right to make such claim/complaint.

32. The Bidder agrees that it shall be presumed that all the facts were taken into account by the Bidder while submitting its bid if participating in the E-Auction Process. Even if the Bidder chooses not to inspect or conduct due diligence on the Asset, it shall be presumed that the Bidder has made himself aware of the physical condition, market value, etc., of the Asset and therefore, no complaint/ claim against the same shall be entertained in this regard by the Liquidator after the submission of the bid. The Bidder shall bear any and all risks arising out of the inadequacy or physical condition of the Asset.
33. All the Bidders are required to confirm that they are not ineligible under Section 29A of the Insolvency and Bankruptcy Code, 2016.
34. Each EOI Applicant / Bidders shall be deemed to acknowledge that it has carefully read the entire Advertisement and E-Auction Process Document and has informed itself as to all existing conditions and limitations and understands that the same are binding on the EOI Applicant/ Bidder.
35. Notwithstanding anything stated in this E-Auction Process Document to the contrary, the Liquidator reserves the right to verify the authenticity of the information/documents submitted by the EOI Applicants/Bidders and may request for any additional information or clarification or documents, as may be required by the Liquidator for purposes of verifying/validating the eligibility of the EOI Applicants /Bidders and sources of funds or any other information required by the Liquidator. The Liquidator reserves the right, at his sole discretion, to contact the EOI Applicant's/Bidder's bank, lenders, financing institutions and any other person as may be necessary or expedient to verify the EOI Applicant's/ Bidder's information / documents including sources of funds.
36. Further, it should be noted that at any stage of the E-Auction Process, the Liquidator may ask for any documents from the EOI Applicants /Bidders to evaluate their eligibility. The Liquidator, at his discretion may disqualify the EOI Applicant /Bidder for non-submission of the requested documents.
37. Notwithstanding anything contained in the E-Auction Process Document: Upon the conclusion of the sale of the Asset, the Liquidator shall permit such access to the Selected Bidder as is necessary for removal of the Asset on such terms and conditions and subject to reasonable restrictions as may be deemed fit by the Liquidator. No right, title or interest (including but not limited to any easementary rights, right of way etc.) whatsoever, shall be created in favour of the Selected Bidder in respect of any other assets of the Corporate Debtor other than the Asset upon conclusion of the sale. The Successful Bidder shall not cause any hindrance or disturbance to any parties carrying out any inspections or site visits at or have purchased/been given possession of the other assets at the Surat Shipyard of ABGSL. The Successful Bidder shall cooperate with the purchasers of/ parties interested in purchasing other assets of the Corporate Debtor at the Surat Shipyard of the Corporate Debtor and shall ensure that the removal of the Asset after the sale is

completed is carried out expeditiously and without disturbance or disruption. The Liquidator reserves his right to allow inspection, and have access at all points including to all the interested parties at the Surat Shipyard throughout the period of the removal of the Asset and has the express right to halt any questionable/ non-compliant/ illegal activities that may be on-going in respect of the assets on Surat Shipyard and until such time as till such questionable/ non-compliant/ illegal activities are not stopped and matters resumed to the satisfaction of the Liquidator, the Successful Bidder agrees that the entire Surat Shipyard and any area containing the Asset may be sealed by the Liquidator for such time and all persons other than those of the Liquidator may be expelled from the Surat Shipyard. In case any such questionable/ non-compliant/ illegal activities are attributable to the Successful Bidder, the security and related expenses will be borne by the Successful Bidder and the Liquidator reserves the right to forfeit the Sale Consideration as well as terminate the agreement to sell the Asset entered into between the Corporate Debtor, through the Liquidator and the Successful Bidder.

38. The Successful Bidder shall be required to remove the Asset within a period of 2 months from date of payment of Sale Consideration into the Liquidation Account. In the event, the Successful Bidder is unable to remove the Asset within a period of 2 months from date of payment of Sale Consideration, the Successful Bidder may be given additional time only at the sole discretion of the Liquidator, subject to satisfaction of the Liquidator that genuine efforts have been put by the Successful Bidder to complete removal of the Asset from Surat Shipyard of the Company. Notwithstanding the same, any timeframe provided for removal over 2 months stipulated herein shall attract a penalty of Rs. 10 lacs per month proportionately. Expiry of the timeframe provided by the Liquidator to the Successful Bidder to remove the Asset from Surat Shipyard, entitles the Liquidator to cancel/ terminate the sale agreement entered into between the Corporate Debtor, through the Liquidator and the Successful Bidder and the Liquidator shall be at liberty to sell the Asset to another buyer, without bearing any liability, whatsoever, in this regard. It shall be the sole responsibility of the Successful Bidder to obtain necessary permissions, approvals etc. as may be required for the removal of the vessel from the Surat Shipyard and ensure that the Corporate Debtor and Liquidator do not receive any claims due to the removal activities by the Successful Bidder.
39. The Successful Bidder shall be responsible for maintaining the security and safekeeping of the vessel and its stores, equipment etc. upon payment of the full and final consideration towards the asset. The Liquidator shall not be liable to maintain the security of the vessel or the asset.
40. It shall be the sole responsibility of the Successful Bidder to ensure safe anchorage, towing of the Vessel Varada Empress. The Successful Bidder shall ensure that Varada Empress, till the time it is removed is securely anchored, fastened to the mooring ropes so that it does not cause any damages to the jetty in Surat Shipyard or to any assets belonging to the third parties. The Successful Bidder shall ensure that all the compliances, safe removal requirements as may be imposed by Magdalla Port Authorities, GMB or any other authorities or government bodies are strictly adhered to. It is hereby clarified that the Successful Bidder can-not claim any damages or





compensation of whatsoever nature from the Liquidator or the Corporate Debtor for any damages caused to the Asset by anyone. It shall be the sole responsibility of the Successful Bidder to obtain necessary insurance coverage for the vessel as may be required in this regard.

#### **Technical Terms & Conditions of E-Auction Process**

41. Bidders/ Qualified Bidders shall have a valid e-mail ID, valid PAN Card and KYC document to register with the E - Auction Service Provider.
42. Bidders/ Qualified Bidders have to register with the e-auction service provider. E-Auction will be in accordance with the terms of IBC.
43. The Bidder shall be solely responsible for all consequences arising out of the bid submitted by him (including any wrongful bidding) and no complaint/ representation will be entertained in this regard by the Liquidator. Hence, Bidders are cautioned to be careful to check the bid amount and alter/rectify their bid if required before confirming the bid submitted.
44. Bidder/Qualified Bidders should not disclose their User ID as well as password and other material information relating to the bidding to anyone so as to safeguard its secrecy.
45. Bidder/Qualified Bidders are advised to change the password immediately on receipt thereof.
46. In case of Bidder/Qualified Bidder being an individual, the formats/affidavits/declaration/letters must be personally signed by the Bidder/Qualified Bidder. In case the Qualified Bidder is not an individual, the declaration must be signed by an Authorised Signatory who is in full time employment of the Qualified Bidder. **Authorized Signatory/ Representatives** shall mean person or persons holding in his favor a board resolution or authority letter to represent his company for performing necessary acts as required on behalf of the company to participate in the E-Auction Process of ABGSL
47. After the conclusion of the E-Auction for the Asset, the highest Bidder may be informed through a message generated automatically on the Platform regarding the outcome of the E-Auction. However, this does not automatically constitute the highest Bidder the Successful Bidder. A separate communication will be issued by the Liquidator, declaring the Successful Bidder. Date of sending the e-mail will be considered as the date of receipt of the Intimation i.e. Date of Intimation.
48. 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.



## **SCHEDULE-C-DUE DILIGENCE RULES**

### **1. Due Diligence**

- 1.1. The Liquidator shall permit Prospective Bidders to undertake and conduct due diligence of the Asset. The Liquidator shall provide Prospective Bidders access to a Virtual Data Room wherein the information sheets and details information regarding the Asset will be contained.
- 1.2. The Liquidator shall endeavor to provide assistance on a best effort basis to facilitate the conduct of due diligence. The information and documents available with the Liquidator shall be provided by the Liquidator in good faith and on a best effort basis.
- 1.3. The Asset of the Company is proposed to be sold on “As is where is basis”, “As is what is basis”, “Whatever there is basis” and “No recourse basis” and the proposed sale of Asset of the Company does not entail transfer of any title, except the title which the Company has on the Asset as on date of transfer. All local taxes / maintenance fee / electricity / water charges/ annual lease rentals/ unearned income in case of leasehold properties, operational charges etc., outstanding as on date or yet to fall due in respect of the Asset should be ascertained by the Prospective Bidders and would be borne by the eventual purchaser. By undertaking the E-Auction Process, the Prospective Bidders accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Asset.
- 1.4. Incomplete or non-undertaking of due-diligence and non-attendance at the Site Visit (defined below) on the part of a Prospective Bidders cannot be used as a reason for requesting additional time in the E-Auction Process or otherwise.
- 1.5. The Prospective Bidders shall not be entitled to receive re-imbursement of any expenses which may have been incurred in towards submission of bid/offer and/or for carrying out of due diligence, search of title to the Asset and matters incidental thereto or for any purpose in connection therewith.
- 1.6. The Prospective Bidders shall be deemed to have full knowledge of the Company, at the time when it submits its bid, irrespective of whether or not the Prospective Bidders actually inspects or participates in the Site Visit or verifies the documentation or undertakes due diligence, and shall not cite lack of information to challenge the Liquidator, his processes, Corporate Debtor nor use lack of information for defaulting on payment in the event declared as purchaser.

### **2. Virtual Data Room (VDR/ Data Room) Rules**



- 2.1. The rules set out below shall regulate the terms of use of the information, facilities, and documents, including any commercially sensitive information, provided in the Data Room.
- 2.2. The rules set out below shall regulate the terms of use of the information, facilities, and documents, including any commercially sensitive information, provided in the Data Room.
- 2.3. Every person given VDR access shall at all times strictly comply with these rules.
- 2.4. These rules apply to each and every occasion that the Data Room is accessed.
- 2.5. Confidentiality

Access to and review of the information, documents contained in the Data Room or received in the course of the due diligence process, including any commercially sensitive information in relation to the Corporate Debtor shall be treated as confidential and shall be subject to the provisions of the Confidentiality Undertaking and the I&B Code and other terms stipulated by the Liquidator. The terms and conditions of the Confidentiality Undertaking are incorporated herein by express reference and shall apply *mutatis mutandis* to all information and documents contained in the Data Room or received in the course of the due diligence process. In this regard, all references to the “Disclosing Party” in the Confidentiality Undertaking shall be construed to include references to the Liquidator (acting on behalf of the Corporate Debtor) and personnel/advisors of the Liquidator.

- 2.6. The documents and the information set out in the Data Room are confidential in nature and contain commercially sensitive information.
- 2.7. The Prospective Bidders shall be permitted to use the Data Room for carrying out a due diligence exercise on the Corporate Debt only as per the relevant Stage hereunder after which is shall be revoked by the Liquidator.
- 2.8. Documents contained in the Data Room or as obtained during the due diligence process, shall not be copied without the prior written permission of the Liquidator.
- 2.9. The Liquidator / his team will co-ordinate for providing data access on a best effort basis.
- 2.10. Any written or oral information or representation supplied or made in connection with the use of the Data Room or any investigation or negotiations shall not be considered as constituting an offer or invitation for the sale of any securities or assets or as a prospectus, offering circular or offering memorandum or the solicitation of an offer to buy or acquire securities of the Corporate Debtor or any of its subsidiaries or affiliates in any jurisdiction or as an inducement to enter into investment activity, and shall not be considered as forming



the basis of or relied upon or in connection with any contract, agreement, undertaking, understanding or any commitment or investment decision whatsoever.

- 2.11. Nothing contained in the Data Room is, or shall constitute a representation or warranty, expressed or implied, as to the accuracy or completeness of the information disclosed in the Data Room or in any other written or oral communication transmitted or made available by the Liquidator.
- 2.12. Nothing contained in the Data Room is, or shall be relied upon as, a proposal, offer, promise or representation, whether as to the past, current or future performance of the Corporate Debtor;

### **3. Site Visits**

- 3.1. The Prospective Bidders may request the Liquidator to arrange for physical verification and visit of the Asset ("**Site Visit**").
- 3.2. The Prospective Bidders, who are / is desirous of undertaking a Site Visit, may depute a team comprising of a maximum of 4 (four) authorized personnel of the Prospective Bidders, for such a Site Visit. The Prospective Bidders shall intimate the Liquidator at least 48 hours prior to the suggested date of the Site Visit along with details of the said authorized personnel such as full names along with copies of their identify proof in the form of passport copy / aadhar card copy / PAN Card copy, of the Prospective Bidders, and Liquidator shall assist in facilitating the request of the Prospective Bidders on a best effort basis. The Site Visit shall be conducted upon the date so agreed by Liquidator. The Liquidator shall make reasonable endeavors to schedule the Site Visit on the date(s) requested by the Prospective Bidders, depending on the availability of Corporate Debtor officials, Liquidator and Liquidator's representative(s). The Liquidator may communicate, in advance, to such Prospective Bidders, all the relevant details, terms and conditions, if any, with respect to such site visit. The Liquidator reserves the right to not arrange a site visit without providing any reason whatsoever, irrespective of the request of the Prospective Bidders.
- 3.3. Any unauthorized contact with the Corporate Debtor, Liquidator and Liquidator's representatives/ affiliates/ advisors such as recording of conversations at any time, taking photographs and videos at the site may result in disqualification of the Prospective Bidders from the E-Auction Process and are strictly prohibited.
- 3.4. It is hereby clarified that the Prospective Bidders shall make its own arrangements including accommodation for the discussion meeting (if organized) or Site Visit and all costs and expenses incurred in that relation shall be borne by the Prospective Bidders.

- 3.5. All costs and expenses associated with such Site Visits by the Prospective Bidders, will be borne solely by the Prospective Bidders. The Prospective Bidders shall not be entitled to receive re-imbursement of any expenses which may have been incurred in connection with submission offer/ bid, and/or for carrying out of Site Visit, due diligence, search of title to the Asset and matters incidental thereto or for any purpose in connection with the Asset.
- 3.6. It is acknowledged that the Liquidator has no obligation to respond to any queries with regard the Asset and the Liquidator shall incur no liability in case no response is provided. Any such clarification taken shall be valid and binding only if given in writing from the Liquidator.
- 3.7. The Liquidator may amend/revise/supplement the aforesaid at any stage and all such change shall be valid and binding on Liquidator reserve the right to modify or amend the present procedures and the timelines with respect to the use of the Data Room and the contents thereof, at any time and at the sole discretion of the Liquidator. This document is not for further circulation.



## FORMAT-I-EXPRESSION OF INTEREST LETTER

Date: [●] October 2021

To,

**Mr. Sundaresh Bhat**

**Liquidator of ABG Shipyard Limited**

**IBBI Registration no. IBBI/IPA-001/IP-P00077/2017-18/10162**

BDO Restructuring Advisory LLP

Level 9, The Ruby, North-West Wing,

Senapati Bapat Road, Dadar (W),

Mumbai 400028, INDIA

Email: [LQABG@bdo.in](mailto:LQABG@bdo.in).

**Sub: Expression of Interest (“EoI”) pursuant to E-Auction Process Document dated 06 October 2021 in the liquidation process of ABG Shipyard Limited (“ABG/ Company/ Corporate Debtor”).**

Dear Sir/Madam,

Pursuant to your E-Auction Process Document dated 06 October 2021 (“**E-Auction Process Document**”), we, *[insert Name of the Company/ entity]*, having registration number [●], at *[insert Registered Address]* hereby submit our Expression of Interest towards Asset as described in the E-Auction Process Document. We are the proposed to be the legal and beneficial owner of the Asset.

We have attached necessary information requested in the E-Auction Process Document.

The information furnished by us in this EoI is true, correct, and accurate to the best of our knowledge. All terms used herein, which are defined under the E-Auction Process Document, shall have the respective meanings ascribed to such terms thereunder.

We hereby acknowledge and undertake that:

- (a) We have reviewed the E-Auction Process Document and are aware of the terms and conditions contained therein and hereby accept the same.
- (b) We agree and acknowledge that the Liquidator and/or the Company or any of its stakeholders do not provide any representation, warranty in relation to the Corporate Debtor or the Asset and the expression of Interest is based on our own independent verification and diligence.



- (c) We acknowledge that the Liquidator has the sole right to determine at his discretion, whether or not we are deemed Prospective Bidders and may reject our EoI Application without assigning any reason and without any liability whatsoever;
- (d) The Liquidator reserves the right to request for additional information or clarification(s) from us for the purposes of the EoI and we shall promptly comply with such requirements. Failure to satisfy the queries of Liquidator may lead to rejection of our EoI.

Please see enclosed herewith:

- (1) Confidentiality Undertaking
- (2) Affidavit under Section 29A
- (3) Affidavit-cum-Declaration
- (4) Documents required under Annexure to this letter (as set out under the E-Auction Document)

Sincerely,

On behalf of the firm/company/organization:

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

Name of authorized signatory:

Designation:

Company Seal/stamp

Enclosures: (Annexures)

*[The authorized signatory shall be duly authorized by Board resolution and/or duly executed power of attorney and the expression of interest shall be accompanied with the said resolution/power of attorney authorizing the signatory to execute and submit the expression of interest. In case of Consortium Applicant, the EoI shall be signed by each member]*



## **ANNEXURE-I TO FORMAT-1**

### ***Supporting Documents to be submitted along with EOI***

**1. Details of the EoI Applicant as set out hereinbelow.**

**a. Name and address:**

Name of the EoI Applicant:

Address:

Telephone No:

Fax:

Email:

**b. Ownership Structure and Composition of the EoI Applicant:**

**c. Date of establishment of EoI Applicant:**

**d. Contact Person:**

Name:

Designation with EoI Applicant:

Telephone No:

Email:

**e. PAN No. or equivalent details of EoI Applicant**

**f. Current Address-Proof:**

**g. Valid e-mail ID:**

**h. Landline and Mobile Phone number:**

**i. Authorization to the Signatory (in case the bidder is a legal entity):**

**2. Business Profile of the EoI Applicant**

**3. Legal Documents: Copies of Certificate of Registration and Constitutional Documents of the EoI Applicant**

**4. Passport copies of directors/partners/individual**





5. Preceding 3 (three) years audited financial results of the EoI Applicant
6. Board Resolution/ Power of Attorney authorizing the submission of EoI and authorizing a person to act on behalf of the EoI Applicant.
7. Statement giving details if the EoI Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved by the Adjudicating Authority at any time in the past.

If in case EoI is submitted by a consortium, all of the above details of consortium members in respect of each of the consortium members along with a consortium agreement.



**FORMAT-II-AFFIDAVIT-CUM-DECLARATION**

*<<to be executed on Rs.100 stamp paper and notarized>>*

Date: [●]

To,

**Mr. Sundaresh Bhat**

**Liquidator of ABG Shipyard Limited**

IBBI Registration no. IBBI/IPA-001/IP-P00077/2017-18/10162

BDO Restructuring Advisory LLP

Level 9, The Ruby, North West Wing,

Senapati Bapat Road,

Dadar (W),

Mumbai 400028, INDIA

Email: LQABG@bdo.in

Dear Sir,

This is in reference to the E Auction Process under the document for electronic auction process commenced vide Advertisement dated 06 October 2021 and its subsequent amendments and addendums if any ('**E-Auction Process Document**').

We say that all terms used herein, which are defined under the E-Auction Process Document, shall have the respective meanings ascribed to such terms thereunder.

In relation to the captioned matter, I/We hereby represent, undertake, acknowledge and confirm that:

1. I / We, do hereby state that, I / We have read the entire terms and conditions contained for the sale of Asset as specified in the E-Auction Process Document 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. All the terms and conditions as set forth in the E-Auction Process Document, a copy of which has been provided to us, has been read, understood, acknowledged and agreed by us; and the terms and conditions of the E-Auction Process Document shall be deemed to be specifically incorporated herein and expressly acknowledged and agreed by us.
3. I / We understand and agree that if any of the statement / information made/ provided by me / us is found to be incorrect and / or untrue, the bid submitted by me / us is liable to be cancelled and



in such case, the EMD and 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 understand and agree that the EMD shall not bear interest under any circumstances. In case we are the second highest bidder in the e-auction of the Asset, the Liquidator may retain our EMD in accordance with the terms of the E-Auction Process Document, in order to consider (but not necessarily to accept) the bid submitted by the second highest Bidder.
5. All decisions taken by the Liquidator under the E-Auction Process Document including with respect to the selection of the Prospective Bidder, Qualified Bidder etc. shall be binding on me/us.
6. The decision taken by the Liquidator with respect to the selection of the Successful bidder shall be binding on me/us.
7. I/We also undertake to abide by the additional conditions if announced during the e-auction including any announcement(s) on correction of and / or additions or deletions to the time of auction portal and property (ies) being offered for sale.
8. I/We confirm that the Liquidator and his employees, shall not be liable and responsible in any manner whatsoever for my/our failure to access and bid on the e-auction portal for any reason whatsoever before or during the auction event.
9. I/We hereby confirm that I/we are eligible to purchase the assets of the Company under Section 29A of the Insolvency and Bankruptcy Code, 2016.
10. I/We hereby confirm that I/ we am/ are not acting in collusion with the other bidders/ buyers, or the Company's related parties, or the creditors of the Company.

Thank you.

Yours sincerely,

.....

[Signature and name of Authorised Representative]

(Signature with SEAL)

Name:

Address:

Email:



**FORMAT III-AFFIDAVIT UNDER SECTION 29A OF I&B CODE**

*<<to be executed on Rs.100 stamp paper and notarized and submit along with annexure as required herein and mentioned under clause 1>>*

Date: [●] October 2021

Mr. Sundaresh Bhat

**Liquidator of ABG Shipyard Limited**

**IBBI Registration no. IBBI/IPA-001/IP-P00077/2017-18/10162**

BDO Restructuring Advisory LLP Level 9,

The Ruby, North-West Wing, Senapati Bapat Road,

Dadar (W), Mumbai 400028, INDIA

Email: [LQABG@bdo.in](mailto:LQABG@bdo.in) ; [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in).

**Sub:** Affidavit and Undertaking by [insert name of entity or individual] on eligibility of [insert name of entity or individual] under Section 29A of the Insolvency and Bankruptcy Code, 2016.

Dear Sir,

I, [Insert name of the authorized person of the interested person intended to be the legal and beneficial owner of the asset], son of/ daughter of [●], aged about [●] years, currently residing at [Address to be inserted] and having Aadhaar / Passport number [●], an authorised officer of [name of interested person intended to be the legal and beneficial owner of the Asset ] having [registered] office at [●] (“**EOI Applicant**”, a term which also includes any person acting jointly in a consortium), on behalf of the EOI Applicant, do solemnly affirm and state to Mr. Sundaresh Bhat, the Liquidator of M/s. ABG Shipyard Limited (“**Company /Corporate Debtor**”) as follows:

1. That the EOI Applicant and any person acting jointly with the EOI Applicant or in concert with the EOI Applicant or any person who is a ‘connected person’ (as defined under the Insolvency and Bankruptcy Code, 2016 (“**Code**”), listed herein as ‘**Annexure A**’:
  - a) Is eligible to be a resolution applicant as per its meaning under the Code;
  - b) Is not an un-discharged insolvent;
  - c) Is not a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);
  - d) Does not have an account or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the



Banking Regulation Act 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force and at least a period of one year has lapsed from the date of such classification till the date of commencement of the liquidation process of the corporate debtor;

Provided that the EOI Applicant shall be eligible to submit a bid, if such EOI Applicant makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of bid;

Provided further that nothing in this clause shall apply to the EOI Applicant where the EOI Applicant is a financial entity and is not a related party to the corporate debtor.

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

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

- e) Has not been convicted for any offence punishable with imprisonment
  - (i) for two years or more under any Act specified under the Twelfth Schedule of the Code; or
  - (ii) for seven years or more under any law for the time being in force:

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

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

- f) is not disqualified to act as a director under the Companies Act, 2013 (18 of 2013):

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

- g) Is not prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- h) Has not been a promoter or in the management control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under the Code;

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

- i) Has not executed a guarantee in favor of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;
- j) Is not subject to any disability, corresponding to clauses (b) to (i), under any law in a jurisdiction outside India; or
- k) does not have a connected person not eligible under clauses (a) to (j).

*Explanation I* - For the purposes of this clause, the expression “connected person” means:

- I. Any person who is the promoter or in the management or control of the sale process applicant/ EOI Applicant; or
- II. Any person who shall be the promoter or in management or control of the asset of the corporate debtor pursuant to sale thereof as part of the liquidation process of the corporate debtor; or
- III. The holding company, subsidiary company, associate company or related party of a person referred to in clauses (I) and (II)

Provided that nothing in clause (III) of this Explanation I shall apply to a EOI Applicant where such applicant is a financial entity and is not a related party of the corporate debtor.

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related

party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

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

- (a) a scheduled bank;
  - (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding;
  - (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);
  - (d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
  - (e) an Alternate Investment Fund registered with Securities and Exchange Board of India;
  - (f) such categories of persons as may be notified by the Central Government.
2. That the EOI Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.
  3. I declare that I am not ineligible to be a Resolution Applicant as per the meaning and definition under the Code.
  4. That in the event any of the above statements are found to be untrue, incomplete, or incorrect, then the EOI Applicant unconditionally agrees to indemnify and hold harmless the Liquidator against any losses, claims or damages incurred by the Liquidator on account of such ineligibility of the EOI Applicant.
  5. That the list of the connected persons of the EOI Applicant / or the person acting jointly with it



or any of the connected person(s) set out in **Annexure-A** hereto is exhaustive and complete in all respects and the names of all the connected persons of the EOI Applicant have been set out thereunder without any omission whatsoever.

6. I declare and undertake that in case [*insert name of EOI Applicant*] or the person acting jointly with it or any of the connected person(s) becomes ineligible at any stage during the Liquidation Process, it would inform the Liquidator forthwith on becoming ineligible.
7. I also undertake that in case [*insert name of EOI Applicant*] or the person acting jointly with it or any of the connected person(s) becomes ineligible at any time during the after the date hereof and process for sale of Asset of the Company including after submission of Earnest Money Deposit towards bid, then the EMD would be forfeited and the same would be deposited in the account of ABG Shipyard Limited – in liquidation. The EMD may be forfeited in accordance with the terms of the E-Auction Process Document.
8. I also further undertake that my bid will remain binding unless rejected by the Liquidator.
9. I confirm that the said declaration and disclosure is true and correct, and I agree to compensate the Liquidator for any cost incurred in relation to ascertaining the veracity of this declaration.
10. I am duly authorized to submit this declaration by virtue of [ • ]. The said document is true, valid, and genuine to the best of my knowledge, information and belief.
11. All terms used herein, which are defined under the Code or E-Auction Process Document dated October 6, 2021 for sale of the Asset (Varada Empress) of the Company, shall have the respective meanings ascribed to such terms thereunder as the context may require or admit.

(DEPONENT)

[Signature and name of Authorized Representative]

(Signature with SEAL)

Name:

Address:

Email:

### VERIFICATION

I, the deponent above, do hereby solemnly declare and affirm that the above statement given by me is true and correct to the best of my knowledge and belief and nothing stated above is false or misrepresentation or misleading.

(DEPONENT)





**FORMAT-IV-CONFIDENTIALITY UNDERTAKING**

<<to be executed on Rs.600 stamp paper and notarized>>

Date: [●] October 2021

To,

Mr. Sundaresh Bhat

**Liquidator of ABG Shipyard Limited**

**IBBI Registration no. IBBI/PA-001/IP-P00077/2017-18/10162**

BDO Restructuring Advisory

LLP Level 9, The Ruby, North-

West Wing, Senapati Bapat

Road, Dadar (W), Mumbai

400028, INDIA

Email: [LQABG@bdo.in](mailto:LQABG@bdo.in) ; [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in)

Sub: Confidentiality Undertaking with respect to liquidation process of ABG Shipyard Limited (“**Corporate Debtor**”).

Dear Sir,

1. This acknowledgement and undertaking (“**Undertaking**”) is being furnished by (*insert the name of the recipient*) (“**Recipient**”, which term where relevant includes all directors, employees and consultants, successors and assigns of the Recipient), in respect of the Confidential Information (as defined herein) provided/ to be provided to us in relation to ABG Shipyard Limited (the “**Corporate Debtor**” or the “**Company**”) including information regarding its assets, and is in furtherance to the confidentiality obligations of the Liquidator under the provisions of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) which term includes all rules and regulations made thereunder.
2. I/We understand, acknowledge and agree that any and all information supplied, whether by you, the Corporate Debtor or anyone else on your or the Corporate Debtor’s behalf, to us whether in written form, electronically or orally, including the discussions between the parties, any of the terms or conditions with respect the said discussions and all information without limitation, written or oral, whether proprietary or confidential or otherwise, relating to the Liquidator or his representatives, Corporate Debtor, their respective assets, business or operations that is disclosed to Recipient from or on behalf of the Liquidator, marketing strategies, plans, financial information, or projections, operations, sales estimates, technical data, computer programs, software, computer application or know-how, business plans and performance results relating to the past, present or future



business activities of the Liquidator and Corporate Debtor and their representatives, affiliates, subsidiaries and affiliated companies, including, without limitation, that which relates to research, products, services, customers, markets, developments, inventions, processes, designs, drawings, engineering, marketing or finances of the Liquidator, Corporate Debtor and their representatives; plans for products or services, and customer or supplier lists; any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method any concepts, reports, works-in- progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets, and all information belonging to the Liquidator, Corporate Debtor, their representatives which the Recipient may come across by using the virtual private network, virtual data room, electronic mail, internet and / or SAP of the Corporate Debtor, shall constitute “**Confidential Information**” for the purposes of this Undertaking.

Confidential Information shall also include information or documents generated or derived by the Recipient from Confidential Information that contains, reflects, or is derived from any Confidential Information provided to the Recipient by the Liquidator or the Corporate Debtor.

However, Confidential Information shall not include:

- (a) information which, at the time of disclosure to the Recipient or Secondary Recipient(s) (defined below), is in the public domain through no violation of the provisions of the Code or a breach of this Undertaking; or
- (b) information which, after disclosure to the Recipient or Secondary Recipient(s) (as defined hereinunder), becomes publicly available and accessible through no violation of the provisions of the Code or a breach of this Undertaking; or
- (c) information which was, lawfully and without any breach of this Undertaking, known to, or in the possession of, the Recipient or Secondary Recipient(s) prior to its disclosure, as evidenced by the records of the Recipient or Secondary Recipients; or
- (d) information which is permitted by you or your authorized nominees/ persons to be disclosed solely for legal or regulatory requirements, provided that the obligation upon the Recipient to maintain confidentiality of such information permitted to be disclosed shall continue for all other purposes under this Undertaking.

The Recipient shall disclose such information only with prior intimation to the Liquidator or the Corporate Debtor or any person authorized on their behalf.

3. The Recipient hereby acknowledges, agrees and undertakes that:

- (a) the Recipient shall disclose the Confidential Information received under this Undertaking only to its representatives (“**Secondary Recipient**”) in accordance with applicable laws in relation to confidentiality on a strict "need-to-know" basis, for the sole purpose of enabling assessment and evaluation of the agreement that may be entered



between the parties, subject to such representatives being bound by confidentiality obligations equivalent to those set out in this Undertaking;

- (b) the Recipient shall not use the Confidential Information to avail any undue gain or undue loss to itself or any other person and shall at all times be in compliance with the provisions of the Code and shall undertake (i) to comply with provisions of law for the time being in force relating to confidentiality and insider trading; (ii) to protect any intellectual property of the corporate debtor it may have access to; and (iii) not share relevant information with third parties unless clauses (i) and (ii) of this sub-section are complied with;
- (c) the Confidential Information provided by the Liquidator (which term shall have the meaning assigned to it in the Code) in relation to the liquidation process (“**Liquidation**”) of the Corporate Debtor has been accepted by the Recipient and shall be utilized only in accordance with the Code;
- (d) this undertaking shall be valid in perpetuity;
- (e) the Confidential Information shall be kept secret and confidential by the Recipient and shall be used solely as allowed under the Code;
- (f) the Recipient shall not use Confidential Information to cause an undue gain or undue loss to itself or any other person;
- (g) the Recipient shall comply with the provisions of law from time to time in force relating to confidentiality and insider trading;
- (h) it shall ensure that all Confidential Information is kept safe and secured at all times and is properly protected against theft, damage, loss or unauthorised access, hacking, etc.;
- (i) by virtue of this Undertaking, it has not acquired, does not and shall not acquire at any time hereafter any right, title or interest of any nature whatsoever in the Confidential Information including any intellectual property;
- (j) the Recipient shall protect any intellectual property of the Corporate Debtor it may have access to;
- (k) Any oral discussions between the Recipient and the Liquidator or his representatives shall not be construed as any offer to sell nor deemed to constitute any terms/offer/proposal/acceptance of offer and the like. At no time can the Liquidator or his representatives such as personnel(s) from BDO Restructuring Advisory LLP, be held responsible/liable/accountable for any of their verbal discussion and neither can any verbal discussion be relied upon.

- (l) no representation or warranty has been provided in relation to the authenticity or adequacy of the information provided, including Confidential Information, for the purposes for which the same has been received /sought by the Recipient and the Recipient shall not have any claim against the Corporate Debtor or the Liquidator in relation to any information provided. Further, the Recipient merely because of receipt of any information or execution of this Undertaking shall not have any rights or entitlement against the Liquidator for undertaking any action/transaction in connection with the Liquidation of the Corporate Debtor.
4. The Recipient acknowledges and agrees that in the event of breach or threatened breach of the terms of this Undertaking, the Corporate Debtor shall suffer irreparable damages, for which monetary compensation may be an inadequate remedy. Accordingly, it is agreed that in addition to any other remedy to which they jointly or severally may be entitled to at law or in equity, the Liquidator and the Corporate Debtor, jointly or severally, shall be entitled to seek an injunction to prevent a breach or threatened breach of this Undertaking and/ or specific performance of the terms of this Undertaking and/or any other remedies available at law. The Recipient shall indemnify the Liquidator, personnel(s) from BDO Restructuring Advisory LLP and the Corporate Debtor on demand in respect of any type of liability, loss, damage, claims and expenses (including legal/attorney fees) arising out of or in connection with breach of this Confidentiality Undertaking by the Recipient.
5. Any material(s) or documents containing Confidential Information which have been furnished to the Recipient shall be promptly returned, accompanied by all copies of such documentation, within ten (10) days after receipt by the Recipient of a written notice from the Liquidator or his representatives requesting the return of the Confidential Information.
6. If the Confidential Information is destroyed, a certificate of destruction shall be furnished to the Liquidator.
7. This Undertaking and any dispute, claim or obligation arising out of or in connection with it shall be governed by and construed in accordance with Indian law and the courts and tribunals at Mumbai shall have exclusive jurisdiction over matters arising out of or relating to this undertaking.

IN WITNESS WHEREOF I/We have set our hands hereunder on this \_\_\_\_day of October 2021 at \_\_\_\_\_.

**SIGNED AND DELIVERED BY:**

For and on behalf of \_\_\_\_\_

**WITNESS:**



1. (Name)  
(Signature)  
(Address)
2. (Name)  
(Signature)  
(Address)