

### 30. ANNEXURES

The Following are the annexures for sending the Bid form for the E-Auction process of the sale of the assets of the Corporate Debtor:

#### ANNEXURE-1

### TERMS AND CONDITION OF E-AUCTION

#### 1. INTRODUCTION

The **E-Auction** of M/S. ETHNIC TOBACCO (INDIA) LIMITED (in Liquidation) as going concern/ Assets of Personal Guarantors shall be conducted in accordance with the provisions of the Insolvency and Bankruptcy Code (IBC), 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ( Liquidation Process Regulations ) by Kasi Srinivas, Liquidator of M/S. ETHNIC TOBACCO (INDIA) LIMITED (in Liquidation).

The E-Auction will be conducted on “**AS IS WHERE IS BASIS**”, “**AS IS WHAT IS BASIS**”, “**WHATEVER THERE IS BASIS**” And “**NO RECOURSE BASIS**” through approved e- auction Service Provider M/S. 4 Closure.

E-Auction Sale Notice and the Process Memorandum containing Annexures that are required to be submitted for participating in the E-Auction are available on website <https://bankauctions.in/>. Bidders will have to search for the Company’s name.

You may contact us at +91 8008022887 or through email at [cirp.ethnictobacco@gmail.com/](mailto:cirp.ethnictobacco@gmail.com) [srinivaskashyap111080@gmail.com](mailto:srinivaskashyap111080@gmail.com),

#### 2. LAST DATE FOR SUBMISSION OF ELIGIBILITY DOCUMENTS

The Last date for submission of Eligibility Documents is 04-11-2024.

#### 3. RESERVE PRICE, EMD AND BID INCREMENTAL VALUE

Qualified Bidders may submit their Bids for purchasing the assets of Corporate Debtor and the assets of the Personal Guarantors. Details are as follows:

Details of Properties to be Sold	Person selling the Property
Plant and Machinery erected on 8 acres and 60 cents at Edulapalem village, Guntur District	Liquidator under Liquidation Process
Financial Assets	
Buildings and Industrial Roof (area 2,92,038 Sq ft.) erected on 8 acres and 60 cents	
8 Acres and 60 cents of Land more fully described in <u>Annexure-7</u>	Secured Financial Creditors under SARFAESI Process

**Reserve Price: Rs.50,35,00,000.00 (Rupees Fifty Crore Thirty-Five Lakhs only)**

**Earnest Money Deposit: Rs.5,03,50,000.00 (Rupees Five Crore Three Five Lakhs Fifty Thousand only)**

**Bid Increment value: In multiples of Rs. 10,00,000/- (In multiples of Rupees Ten Lakhs only)**

During the e-auction bidders will be allowed to offer higher bid in inter-se bidding over and above the last bid quoted and the minimum increase in the bid amount must be of Rs. 10,00,000 /- to the last higher bid of the bidders.

#### **4. GENERATION OF USER ID FOR PARTICIPATION IN E-AUCTION THROUGH E-AUCTION SERVICE PROVIDER.**

- 4.1.** After submission of all documents/ EMD by the Qualified Bidder to the satisfaction of the Liquidator M/S. 4 Closure will provide User id and password after due verification of PAN of the Qualified Bidders to participate in the e-auction process on <https://bankauctions.in/>
- 4.2.** Qualified Bidders shall hold a valid email ID {e-mail ID} is necessary for the Qualified Bidder as all the relevant information and allotment of ID & password by M/S. 4 Closure (“**E-Auction Service Provider**”) and will be conveyed through e-mail.

Contact person –Mr. T. Jaya Prakash Reddy

Contact No. - +91 8142000064

Email id: [prakash@bankauction.in](mailto:prakash@bankauction.in)

#### **5. BIDDING THROUGH E-AUCTION SERVICE PROVIDER PLATFORM ON THE APPOINTED DAY**

The Sale Corporate Debtor as going concern and Sale of assets of Corporate Debtor shall take place through online e-auction Service Provider M/S. 4 Closure (“**E-Auction Service Provider**”) via <https://bankauctions.in/> on 22.11.2024 between 11:00 AM to 04:00 PM for sale of Corporate Debtor with unlimited extension of “5 minutes” i.e. the end time of the e-auction will be extended by 5 minutes each time if bid is made within the last 5 minutes before closure of auction. The highest bid amount (not below the Reserve Price) at any given point shall be visible to other Qualified Bidders. The Qualified Bidder may improve their offer in multiple of “Bid Incremental Value”. The highest bidder on the closure of e-auction process shall be declared as Successful Bidder and a communication to that effect will be issued through electronic mode which shall be subject to approval by the Liquidator.

#### **6. MANNER OF PAYMENT & TRANSFER OF ASSETS OF CORPORATE DEBTOR**

- 6.1.** The Successful Bidder shall deposit the balance consideration (after adjustment of the EMD) of the sale price within 90 days of such demand as prescribed in the Liquidation Process Regulations. Payments made after thirty days shall attract interest at the rate of 12% p.a. till payment of the full amount, the sale shall stand completed and the Liquidator/Secured Creditors shall execute the certificate of sale and the subject matter of the sale shall be delivered to the Successful Bidder in the manner specified in the terms of such certificate of sale.
- 6.2.** The certificate of sale will be issued in the name of the Successful Bidder only and will not be issued in any other name(s).
- 6.3.** The sale attracts stamp duty, registration charges etc. as per relevant laws, rules and regulations.

- 6.4. The Successful Bidder shall bear the applicable stamp duties/additional stamp duty/ transfer charges, fees etc. and all the statutory/ non-statutory dues, taxes, rates, assessment charges, fees etc. owing to anybody in respect of the assets.
- 6.5. Successful Bidder/ purchaser has to bear the cess or other applicable tax i.e. GST, TDS etc.
- 6.6. The Successful Bidder/ purchaser will also be responsible for evaluating completeness of applicability of taxes in India at the time of closure and will be responsible for paying all such taxes.
- 6.7. The sale shall be subject to provisions of IBC and Liquidation Process Regulations, 2016

## **7. TREATMENT OF OUTSTANDING DUES / LIABILITIES / CLAIMS**

The IBC and Liquidation Process Regulations, 2016, provides the following with respect to treatment of outstanding dues / liabilities / claims:

### **7.1 As per Regulation 16 “Proof of Claim” of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016,**

*A person, who claims to be a stakeholder, shall prove his claim for debt or dues to him, including interest, if any, as on the liquidation commencement date.”*

### **7.2 As per Section 53 “Distribution of assets” of the Insolvency and Bankruptcy Code, 2016 (“Code”),**

- 1) *Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period as may be specified, namely: -*
  - (a) the insolvency resolution process costs and the liquidation costs paid in full;*
  - (b) the following debts which shall rank equally between and among the following:*
    - (i) workmen’s dues for the period of twenty-four months preceding the liquidation commencement date; and*
    - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;*
  - (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*
  - (d) financial debts owed to unsecured creditors;*
  - (e) the following dues shall rank equally between and among the following: -*
    - (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*
    - (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*
  - (f) any remaining debts and dues;*

- (g) preference shareholders, if any; and
- (h) equity shareholders or partners, as the case may be.

*Any contractual arrangements between recipients under sub section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.*

- 2) *The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.*

*Explanation. – For the purpose of this section-*

- (i) *it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and*

- (ii) *the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).”*

Therefore, any claim due as on Liquidation Commencement date i.e. March 27, 2023, can be claimed by any person way of submitting the prescribed form to the Liquidator and the same shall be dealt in accordance with Section 53 of the Code.

### **7.3 The relevant extract of Section 32A of the Code is reproduced herein below:**

*“(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –*

- (i) *a promoter or in the management or control of the corporate debtor or a related party of such a person; or*
- (ii) *a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.*

*Explanation. - For the purposes of this sub-section, it is hereby clarified that,-*

- (i) *an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;*
- (ii) *nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code*

*and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.*

*(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.”*

7.4 The aforesaid provisions shall always be read in conjunction with other provisions of the IBC and Liquidation Process Regulations, 2016.

## **8. OTHER TERMS AND CONDITIONS**

- 8.1. The Liquidator has the absolute right to accept or reject any or all offer (s) or adjourn/postpone/cancel the e-Auction or withdraw any property or portion thereof from the auction proceeding at any stage without assigning any reason thereof. The Property, asset, Business and other affairs of M/S. ETHNIC TOBACCO (INDIA) LIMITED (in Liquidation) are being managed by the Liquidator Mr. Kasi Srinivas (IBBI Registration: IBBI/IPA-003/IPA-ICAI-N-000237/2019-2020/12840).
- 8.2. The Qualified Bidder(s) shall be responsible for all the costs incurred by it on account of its participation in the E-Auction process, including any costs associated with participation in the discussion meeting (if any), site visit, etc. The Liquidator shall not be responsible in any way for such costs, regardless of the conduct or outcome of the E-Auction process.
- 8.3. All expenses including any taxes/duties incurred towards movement/ shifting of plant & machinery or any Assets post the E- Auction process should be borne by the Successful Bidder. The Liquidator shall not be held responsible/ liable to pay any expenses towards such movement of plant & machinery or any Assets sold in the E-Auction process. For the avoidance of doubt, it is hereby clarified that, all the aforesaid costs shall be payable over and above the bid offered during the E-Auction process.
- 8.4. It may be noted that there should not be damage to the existing structures of Plant/Unit while movement/ shifting of plant & machinery or any Assets post the E- Auction process. In case the same happens inadvertently the successful bidder to either repair the same to the satisfaction of the Liquidator or compensate the Liquidator adequately for the loss so incurred.
- 8.5. Neither the Liquidator nor M/s. Raghu Associates will be held responsible for any internet network problem /power failure/ any other technical lapses/failure etc. In order to ward-off such contingent situation the Qualified Bidders are requested to ensure that they are technically well equipped with adequate power back-up etc. for successfully participating in the e-auction event.
- 8.6. The Liquidator reserves the right to alter, modify or relax any of the terms and conditions mentioned in this document in the interest of the liquidation process of the Company. Any such alteration, modification or relaxation shall be binding on the interested Bidder.

- 8.7. Qualified / Successful Bidder(s) shall not be entitled to receive reimbursement of any expenses which may have been incurred in carrying out of the due diligence, search of title to the assets and matters incidental thereto or for any purpose in connection with the E-Auction process.
- 8.8. It is expressly stated that the Liquidator does not take or assume any responsibility for any dues, statutory or otherwise, of the Company, including such dues, if any, which may affect transfer of the company/assets to the Successful Bidder and such dues, if any, will have to be borne/ paid by the Successful Bidder.
- 8.9. The Qualified Bidder(s) shall be responsible for fully satisfying the requirements of the IBC and related Liquidation Process Regulations as well as all Applicable Laws that are relevant for the sale process. The Successful Bidder shall be responsible for obtaining requisite regulatory or statutory or third-party approvals, no-objections, permission or consents, if any, that are or may be required under Applicable Law for purchasing the Company/ relevant asset.
- 8.10. In the interest of the liquidation process of the Company, the Liquidator reserves the right to alter, modify or relax any of the terms and conditions mentioned in this E - Auction Process Memorandum. Any such alteration, modification or relaxation, to the terms and conditions contained in this document, subject to provisions contained in the E – Auction Process Memorandum, shall be binding on all the Interested/ Qualified Bidders.
- 8.11. It shall be deemed that by submitting the bid, the Bidder agrees and releases the Agency/ the Liquidator, its employees, subsidiaries, agents and advisers, 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 hereunder, pursuant hereto and/ or in connection with the e-auction process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 8.12. This E-Auction Process document and any information provided earlier or subsequently, the auction process and the other documents pursuant to the E -Auction Process Document shall be governed by the laws of India and any dispute arising out of or in relation to the E - Auction Process
- 8.13. No counter offer /conditions by the Bidder, Eligible Bidder and/or Successful Bidder will be entertained.
- 8.14. The Liquidator shall have the right to accept or reject all or any bid or bids as well as to postpone or cancel the sale for reasons what so ever.
- 8.15. Bidders shall be deemed to have read and understood all the conditions of sale, the E - Auction Process Document and the Notice of Sale and are bound by the same.

- 8.16. The above terms and conditions are general in nature, subject to change and are in addition to other specific conditions given in the E-Auction Process Document and Notice of Sale.
- 8.17. Bidders are advised to preserve the EMD documents and documents pertaining to other deposits/ payments made by it and also a copy of the terms and conditions of the application obtained or downloaded from the portal and other document submitted for future reference.
- 8.18. Bid document with conditional offer will be treated as invalid. Correspondence about any change /modification in the offer after submission of Bid document will not be entertained.
- 8.19. Bids not received in the prescribed bid form or below Reserve Price or incomplete in any respect or unsigned or not accompanied by NEFT/RTGS/Bank Transfer for the requisite EMD are liable to be summarily rejected at the sole discretion of Liquidator.
- 8.20. The sale shall be subject to provisions of IBC, 2016 and Liquidation Process Regulations made thereunder.
- 8.21. Capitalized terms not defined herein shall have the same meaning as provided in the Process Memorandum.

*\* The timeline for payment of final sale consideration may be extended at the sole discretion of Liquidator, to the extent permissible under the applicable laws and regulations. In case the final sale consideration is not paid within the timeline, the Liquidator shall forfeit EMD.*

**ANNEXURE 2**

**APPLICATION FORM**

Date:

To,

**Mr. Kasi Srinivas (Liquidator),**

**M/S. ETHNIC TOBACCO (INDIA) LIMITED (In Liquidation)**

D. No. 6-23-6/A, Jaya Towers 05<sup>th</sup> Lane, 04<sup>th</sup> Cross Road,

Arundalpet, Guntur, Andhra Pradesh-522002, India

**REF. JOINT E-AUCTION SALE NOTICE ADVERTISEMENT ISSUED IN << NAME OF JOURNAL >> (ENGLISH), <<NAME OF JOURNAL >> (<<LANGUAGE IN WHICH PUBLISHED >>) IN EDITION ON 21-10-2024 & HOSTED ON THE WEBSITE <https://bankauctions.in/>FOR SALE OF ASSETS OWNED BY M/S. ETHNIC TOBACCO (INDIA) LIMITED (IN LIQUIDATION) UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 AND ASSETS OF PERSONAL GUARANTORS UNDER SARFAESI ACT, 2002 AND THE RULES FRAMED THEREUNDER.**

I/We/ M/s am desirous in participating in the e-auction of Sale of M/S. ETHNIC TOBACCO (INDIA) LIMITED as going concern and Sale of Assets of Personal Guarantors under SARFAESI Act, 2002 announced by you in the newspaper publication dated 21-11-2024 in Sakshi/Eenadu Telugu daily and the Hindu - English Daily.

<b>BID for:</b>	
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I/We /M/s., the Bidder/s, do hereby state that, I/we/M/s. have read the Process Memorandum and the terms and conditions of bid and the above advertisement and understood them fully. I/We/M/s. hereby unconditionally agree to conform with and to be bound by the said conditions. My/Our offer for purchase of the Asset is as under:

1	(a)	Full Name of the Bidder with Telephone Nos. Mobile Nos. E-mail ID.	
	(b)	Address of the Bidder along with the address proof	
	(I)	Office	
	(II)	Residence	

		(III)	Identity Proof (Self-attested)	
		(i)	Pan Card*	
		(ii)	Aadhaar Card*	
		(iii)	Passport \$	
		(iv)	Voter ID Card	
		(v)	Driving License	
		*	Compulsory for Indians	
		\$	Compulsory for NRIs	
	(c)		(Provide authority letter in case of a partnership firm/LLP/or any other legal entity and board resolution in a form set out in Annexure 5 in case of a company)	
2.	Constitution documents  (Sole Proprietary/Partnership/Company)  (in case of company/firm, also give names of Directors / partners with contact numbers)			

1. I/We/M/s. further declare that I/We/M/s. intend to purchase the above referred assets of corporate debtor from the Liquidator for our/ its own use / business and that the information revealed by me/us in this Application Form is true and correct to the best of my/our knowledge and belief.
2. I/We/M/s. certify that I/We/M/s. am/are eligible to be a Bidder, under Section 29A read with Sec.35(f) of IBC 2016 and affidavit for the same is enclosed herewith.
3. I/We/M/s. also enclose copies of the required KYC documents. We request you to kindly verify the same and arrange with the auction portals for issue of an ID and password for us to enable us to take part in the e-auction process.
4. I/We/M/s. agree if any of the statement / information revealed by me/us is found incorrect, my/our bid document is liable to be cancelled and, in such case, the EMD paid by me/us is liable to be forfeited by the Liquidator and the Liquidator is at liberty to annul the offer made to me/us at any point of time.
5. I/We /M/s. also agree that after my/our offer given in my/our bid for purchase of the assets of Corporate Debtor is accepted by the Liquidator, if I/We/M/s. fail to accept the terms and conditions of

this Joint E-Auction Process Memorandum or Letter of Intent or fail to complete the transaction within the time limit as specified in the Letter of Intent for any reason whatsoever and / or fail to fulfil any/all the terms and conditions of the bid document and Letter of Intent, the EMD paid by me/us along with the bid document is liable to be forfeited by the Liquidator and that the Liquidator has also a right to proceed against me / us for specific performance of the contract.

6. I/We/M/s. will not claim any interest from the date of submission of offer in case the process of sale is delayed for any reason.
7. The general terms and conditions of sale are received, read and acceptable to me / us

**NOTE: Each page of this form shall be duly signed by Bidder.**

Place:

Date:

**Signature of the Bidder**

( \_\_\_\_\_ )

**[Rubber stamp of the proprietor/company/firm]**

**Name**

**Designation**

**Enclosures:**

- a. Address Proof given under point 1(B)(I) and 1(B)(II)
- b. Self-attested copy of Identity Proof given under point 1(C)(III).
- c. Authority Letter of the authorized representative bidding in case of any bidder other than proprietorship firm. given under point 1(C)(III).
- d. Audited financial statements and income tax returns of the preceding three (3) financial years and other financial documents to demonstrate the financial capabilities
- e. Affidavit under section 29A.
- f. Confidentiality Undertaking
- g. Copy of the resolution passed by the Board of Directors/ Designated Partners/ Partners of the Auction Participant (in case the Auction Participant is a company)

**Affidavit by the Bidder in respect of Section 29A**

*(To be notarized on non-judicial stamp paper)*

**ON RS. 100/- STAMP PAPER**

I, \_\_\_\_\_ [name of the chairman/ managing director/ director/ designated partner/ partner/ authorized person of prospective bid applicant, authorized by the Board designated partner/ partner of the Prospective Applicant for giving such affidavit, son of \_\_\_\_\_, aged about \_\_\_\_\_ years, currently residing at \_\_\_\_\_ and having Aadhaar/ Passport number \_\_\_\_\_, on behalf of (“**Prospective Applicant**”), do solemnly affirm and state to the Mr. Kasi Srinivas (IBBI Registration: IBBI/IPA-003/IPA-ICAI-N-000237/2019-2020/12840) (“**Liquidator**”), the liquidator of M/S. ETHNIC TOBACCO (INDIA) LIMITED (“**Corporate Debtor**”), as follows:

1. That I am duly authorized and competent to make and affirm the instant affidavit for and on behalf of the Prospective Applicant in terms of the *resolution of its board of directors/ Designated Partners/ partners/ power of attorney to provide other necessary details of such authorization*. The said document is true, valid and genuine to the best of my knowledge, information and belief.
2. I acknowledge that Bidder is aware of that, in terms of proviso to sub-section (f) of Section 35(1) of Insolvency and Bankruptcy Code, 2016 (“**IBC**”), read with Section 29A of IBC, certain persons/category of persons have been specified as ineligible for the purposes of participation in an auction to acquire immovable and movable property and actionable claims of a Company in liquidation.
3. On behalf of the Bidder, I confirm, that it is eligible to participate in the auction process (“**Bid**”) of M/S. ETHNIC TOBACCO (INDIA) LIMITED – in Liquidation (“**Company**”) in accordance with IBC and related rules and regulations issued thereunder, and any other applicable law.
4. That the Prospective Applicant is not ineligible under Section 29A of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) to submit bid application for purchase of assets of M/S. ETHNIC TOBACCO (INDIA) LIMITED (In Liquidation).
5. I state that the present affidavit is sworn by me on behalf of the Bidder in compliance of section 29A of the IBC.
6. I on behalf of the Bidder and any other person acting jointly or in concert with the Bidder hereby confirm that:
7. That none of the Prospective Applicant or any person acting jointly or in concert with the Prospective Applicant:
  - (a) The Bidder and any connected person as per the Explanation I provided under section 29A of the IBC is not an un discharged insolvent; or
  - (b) The Bidder and any connected person as per Explanation I provided under section 29A of the IBC, has not been identified as a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949; or
  - (c) At the time of submission of the bid, the account of the Bidder and any connected person as per Explanation I provided under section 29A of the IBC or an account of the Corporate Debtor under the management or control of such person of whom such person is a promoter, IBC is not classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or guidelines of a financial sector regulator issued under any other law at the time being in force and at

- least a period of one year or more has lapsed from the date of such classification till the date of commencement of corporate insolvency resolution process of the Corporate Debtor;
- (d) The Bidder and any connected person as per Explanation I provided under section 29A of the IBC have not been convicted for any offence punishable with imprisonment for 2 years or more under any Act specified in the Twelfth Schedule or for seven years or more under any law for the time being in force or a period of two years has expired from the date of release of such imprisonment; or
  - (e) The Bidder and any connected person as per Explanation I provided under section 29A of the IBC have not been disqualified to act as a director under the Companies Act 2013; or
  - (f) The Bidder and any connected person as per Explanation I provided under section 29A of the IBC have not been prohibited by the Securities and Exchange Board of India from trading in securities or assessing the securities markets; or
  - (g) The Bidder and any connected person as per Explanation I provided under section 29A of the IBC have not indulged in preferential transaction or undervalued transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under the IBC; or
  - (h) The Bidder and any connected person as per Explanation I provided under section 29A of the IBC have not executed a guarantee in favour of a creditor, in respect of a Company against which an application for insolvency resolution made by such creditor has been admitted under the IBC and no such guarantee has been invoked by the creditor or remains unpaid in full or part; or
  - (i) The Bidder and any connected person as per Explanation I provided under section 29A of the IBC are not subject to any disability, corresponding to clauses mentioned above under any law in a jurisdiction outside India.
8. On behalf of the Bidder, I acknowledge that the Liquidator reserves the right to verify the authenticity of the information and/or the documents submitted by me/us and the Liquidator may request, at his own discretion, for any additional information or documents, as may be required by the Liquidator, for the purposes of verifying the information so submitted by me/us. On behalf of the Bidder, I unconditionally and irrevocably undertake, that I/we shall provide all data, documents and information as may be required to verify the statements made under this affidavit.
9. On behalf of the Bidder, I confirm that the information and/or documents submitted by me/us to the Liquidator in accordance with the past communications, are true, correct, accurate and complete in all respects and I/we have not provided any information, data or statement which is inaccurate or misleading in any manner. I/We further confirm that, in the event the Liquidator determines that I/we have made any misrepresentation, concealed material information, made a wrong statement or submitted information which is misleading in nature, the Liquidator shall have the right to take any action as he deems fit in accordance with the applicable law, including the IBC and related rules and regulations.
10. On behalf of the Bidder, I undertake that if during the interim period on and from the date of this Affidavit until the date of completion of the sale of assets in terms of the auction process, I/We become ineligible to become a resolution applicant under applicable law, including under Section 29A of IBC, I/We shall immediately and in no event later than two days of such ineligibility, disclose to the Liquidator of its ineligibility in writing with reasons for the same ("Disclosure"). I/We agree, acknowledge and confirm on behalf of the Bidder, that upon being informed of such Disclosure, the Liquidator shall have the right to reject the bid submitted by it and shall have the right to undertake any action as it deems fit in accordance with the Complete E-Auction Process Memorandum,

including forfeiture of Earnest Money submitted by it (as defined in the Complete E-Auction Process Memorandum).

**DEPONENT**

**Before me,  
Notary/Oath Commissioner**

VERIFICATION:

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

Verified at \_\_\_\_\_, on this the \_\_\_\_\_ day of \_\_\_\_\_ 2024

DEPONENT

Notes:

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

For further reference to Sections & Provisions related to the Insolvency and Bankruptcy Code, 2016. Kindly refer to <http://ibbi.gov.in>

## **ANNEXURE 4**

### **CONFIDENTIALITY UNDERTAKING**

*(To be notarized on non-judicial stamp paper)*

#### **ON RS. 100/- STAMP PAPER**

This Confidentiality Undertaking has been signed by\_\_\_\_(Name of potential Bidders) having its office at \_\_\_\_\_acting through Mr.\_\_\_\_\_(Name of person authorised by potential Bidder(s)), the authorized signatory/authorized representative ("**Bidder**"), which expression shall, unless repugnant to the context, be deemed to include its successors, assigns or legal representative) in favour of Mr. Kasi Srinivas, an Insolvency Professional having registration no. IBBI Reg: IBBI/IPA-003/IPA-ICAI-N-000237/2019-2020/12840.

WHEREAS M/S. ETHNIC TOBACCO (INDIA) LIMITED , a Company within the meaning of Company under the Companies Act, 2013 (hereinafter referred as the "**Company**") is undergoing liquidation vide NCLT Amaravati Bench ("**NCLT**") order dated March 27, 2023, vide the said NCLT Order Mr. Kasi Srinivas, a registered Insolvency Professional with Insolvency and Bankruptcy Board of India (IBBI) having registration number IBBI Reg: IBBI/IPA-003/IPA-ICAI-N-000237/2019-2020/12840 has been appointed as liquidator to manage, protect, sell and liquidate the property, assets, business and other affairs of M/S. ETHNIC TOBACCO (INDIA) LIMITED (In Liquidation) ("**Liquidator**").

WHEREAS the Liquidator has invited prospective Bidders for the purpose of submission of bid through e-auction process in respect of Sale of assets of Corporate Debtor and Sale of assets of the Personal Guarantors in accordance with the provisions of Process Memorandum and provisions of Insolvency and Bankruptcy Code, 2016 ("**IBC**") read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("**Liquidation Process Regulations**").

WHEREAS the Liquidator is required to share certain data, documents in relation to the Company for facilitating the prospective Bidder(s) in their due diligence after receiving an undertaking from each of the potential Bidder(s) to the effect that such member shall maintain confidentiality of the information received from the data room and during the course of due diligence and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under IBC and Liquidation Process Regulations.

THEREFORE, the Bidder (s) hereby declare(s) and undertake(s) as follows:

1. The Bidder(s) shall not divulge any part of the information received pursuant to the Process Memorandum or accessed through the data room which shall mean the virtual data room maintained by the Liquidator, created for the Qualified Bidders to access information in relation to the Company ("Data Room") or any other data shared by the Liquidator, through oral or written communication or through any mode to anyone and the same shall constitute "Confidential Information". Any information or documents generated or derived by the recipients of Confidential Information that contains, reflects or is derived from any Confidential Information shall also be deemed as Confidential Information.
2. The Bidder (s) further unconditionally and irrevocably undertake and declare that
  - a. the Confidential Information shall be kept secret and confidential by the Bidder (s) and shall be used solely in accordance with the terms of the IBC;

- b. the Bidder(s) shall not use the Confidential Information to cause any undue gain or undue loss to itself, the Company, Liquidator or any other person;
  - c. the Bidder(s) shall comply with all provisions of Applicable Law(s) for the time being in force relating to confidentiality and insider trading;
  - d. the Bidder (s) shall protect any intellectual property of the Company which it may have access to;
  - e. the Confidential Information may only be disclosed to and shared with any employees or its advisors by the Bidder(s), in accordance with Applicable Law(s), including in relation to confidentiality and insider trading, and terms of this Confidentiality Undertaking on a strict need-to-know basis and only to the extent necessary for and in relation to the liquidation process of the Company, provided that the Bidder binds such employees and third parties, by way of an undertaking/ agreements, to terms at least as restrictive as those stated in this Confidentiality Undertaking;
  - f. the Bidder(s) shall ensure that all Confidential Information is kept safe and secured at all times and is protected from unauthorised access, use, dissemination, copying, any theft or leakage;
  - g. the Bidder(s) shall immediately destroy and permanently erase all Confidential Information upon the completion of Sale of assets of Corporate Debtor as provided under Process Memorandum and the Liquidation Process Regulations;
  - h. the Bidder(s) shall take all necessary steps to safeguard the privacy and confidentiality of the information received either pursuant to the Process Memorandum or through the access of the Data Room and shall use its best endeavors to secure that no person acting on its behalf divulges or discloses or uses any part of the Confidential Information, including but not limited to the financial position of the Company, all information related to disputes by or against the Company and other matter pertaining to the Company; and
  - i. the Bidder(s) shall be responsible for any breach of obligations under this confidentiality undertaking (including any breach of confidentiality obligations by any employee or advisor or agent or director of the Bidder) and shall indemnify the Liquidator for any loss, damages, expenses and costs incurred by the Liquidator due to such breach of such obligations by the Bidder (s) or any person acting on its behalf.
3. Notwithstanding anything to the contrary contained herein, the following information shall however not be construed as Confidential Information:
- a. information which, at the time of disclosure to the Bidder(s) was already in the public domain without violation of any provisions of Applicable Law(s); or
  - b. information which, after disclosure to the Bidder(s) becomes publicly available and accessible without violation of Applicable Law(s) or a breach of this Confidentiality Undertaking; or
  - c. information which was, lawfully and without any breach of this Confidentiality Undertaking, in the possession of the Bidder (s) prior to its disclosure, as evidenced by the records of the Bidder(s).
4. The Bidder(s) hereby expressly agrees and acknowledges that the Liquidator makes no representation, warranty or inducement, whether express or implied, as to the accuracy, completeness, authenticity or adequacy of the information (including but not limited to the Confidential Information) provided to the Bidder(s) in the Process Memorandum/ Data Room.

The Bidder(s) further agrees and acknowledges that the Liquidator shall not be liable to the Bidder(s) for any damage arising in any way out of the use of the Confidential Information and further that the Bidder(s) shall not have any claim against the Liquidator or the Company in relation to any information provided.

5. The terms of this Confidentiality Undertaking may be modified or waived only by a separate instrument in writing signed by the Bidder(s) and the Liquidator that expressly modifies or waives any such term.
6. Damages may not be an adequate remedy for a breach of this Confidentiality Undertaking and the Liquidator may be entitled to the remedies of injunction, specific performance and other equitable relief for a threatened or actual breach of this Confidentiality Undertaking.
7. Nothing in this Confidentiality Undertaking shall have the effect of limiting or restricting the liability of the Bidder(s) arising as a result of its fraud or willful default as defined under Applicable Law(s).
8. The undersigned hereby represents and warrants that it has the requisite power and authority to execute, deliver and perform its obligations under this Confidentiality Undertaking.
9. This Confidentiality Undertaking and any dispute, claim or obligation arising out of or about it shall be governed by and construed in accordance with Indian laws and the courts and tribunal of Mumbai shall have exclusive jurisdiction over matters arising out of or relating to this Confidentiality Undertaking.
  
10. Capitalized terms not defined under this Confidentiality Undertaking shall have the same meaning as provided in the Process Memorandum.

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

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

by Mr. \_\_\_\_\_

(Name and Designation)

Authorised Signatory

Date:

Place:

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

**BOARD RESOLUTION**

*(On the letter head of the Bidder)*

CERTIFIED TRUE COPY OF RESOLUTION PASSED BY THE BOARD OF DIRECTORS/ DESIGNATED PARTNER/ PARTNERS (“**BOARD**”) OF \_\_\_\_\_(**COMPANY/ LLP/ PARTNERSHIP FIRM**) AT THEIR MEETING HELD ON [Insert Date], AT [Insert Time] AT [Insert Place]

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The Chairman informed the Board/ Designated Partners/ Partners that pursuant to the Joint E-auction Process Memorandum for the sale of assets of M/S. ETHNIC TOBACCO (INDIA) LIMITED (In Liquidation) dated \_\_\_\_\_, issued by Mr. Kasi Srinivas (IBBI Registration: IBBI/IPA-003/IPA-ICAI-N-000237/2019-2020/12840) (“**Liquidator**”), the Liquidator of M/S. ETHNIC TOBACCO (INDIA) LIMITED (In Liquidation), the Company is desirous of submitting a Bid Application for the purchase of M/S. ETHNIC TOBACCO (INDIA) LIMITED (In Liquidation) on a going concern basis and Sale of assets of the Personal Guarantors in accordance with the requirements of the Joint E-Auction Process Memorandum published on <<**E-Auction Service Provider Website**>>, for the above- mentioned auction. The Chairman placed before the Board the Joint E-auction Process Memorandum for its perusal.

The Board/ Designated Partners/ Partners considered and approved the same by passing the following resolution:

“**RESOLVED THAT** the draft of the Application Form placed before us is hereby approved for submission to the Liquidator of M/S. ETHNIC TOBACCO (INDIA) LIMITED , in accordance with the terms of the Joint E-Auction Process Memorandum.”

“**RESOLVED THAT Mr./Ms.** \_\_\_\_\_ << >>, Director of the Company/ Designated Partner/ Partner be and is hereby authorized to take all the steps required to be taken by the Company for the submission of the Bid Application in accordance with the terms of the Joint E-Auction Process Memorandum, including the following:

- (a) submit the Application Form and other requisite documents, in accordance with the terms of the Joint E-Auction Process Memorandum;
- (b) execute all other agreements, deeds, forms, writings, affidavits and power of attorney as may be required in relation to the Joint E-Auction Process Memorandum, any amendments or modifications thereto as may be suggested by the Liquidator of M/S. ETHNIC TOBACCO (INDIA) LIMITED , to do any such executed agreements, documents or other writings and in general to do all such acts, deeds and all things as may be required or considered necessary under or in respect of the Process Memorandum;
- (c) submit necessary clarifications or information in relation to the Bid Application, as may be required in accordance with the Joint E-Auction Process Memorandum by the Liquidator;
- (d) pay such amounts and consideration, in the manner as may be agreed with the Liquidator, in accordance with the procedure set out under the Joint E-Auction Process Memorandum;
- (e) to generally do or cause to be done all such acts, matters, deeds and things as may be necessary or desirable in connection with or incidental or for the purpose of implementation and giving effect to the above resolutions for and on behalf of the Company, and to comply with all other requirements in this regard.”

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

**//Certified True Copy//  
For <<Name of the Company>>**

**Date:** <<\_\_\_\_\_>>

**Place:** <<\_\_\_\_\_>>

.....	.....
<b>&lt;&lt;Name of the Director&gt;&gt;</b>	<b>&lt;&lt;Name of the Director&gt;&gt;</b>
<b>&lt;&lt;Designation&gt;&gt;</b>	<b>&lt;&lt;Designation&gt;&gt;</b>
<b>DIN: &lt;&lt;Number&gt;&gt;</b>	<b>DIN: &lt;&lt;Number&gt;&gt;</b>

**Notes:**

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

**ANNEXURE 6**  
**EARNEST MONEY DEPOSIT FORM**

Date:

To,

**Mr. Kasi Srinivas (Liquidator),**  
**M/S. ETHNIC TOBACCO (INDIA) LIMITED (In Liquidation),**  
D. No. 6-23-6/A, Jaya Towers 05<sup>th</sup> Lane,  
04<sup>th</sup> Cross Road, Arundalpet, Guntur,  
Andhra Pradesh-522002, India.

**REF - ADVERTISEMENT ISSUED IN << NAME OF JOURNAL >> (ENGLISH). <<NAME OF JOURNAL >> (<<LANGUAGE IN WHICH PUBLISHED >>) IN <<NAME OF PLACE >> EDITION ON \_\_\_\_\_ & HOSTED ON THE WEBSITE <<E-Auction Service Provider Website >> FOR SALE OF ASSETS OWNED BY M/S. ETHNIC TOBACCO (INDIA) LIMITED (IN LIQUIDATION) UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 AND SALE OF ASSETS OF PERSONAL GUARANTORS UNDER SARFAESI ACT, 2002.**

I/We/ M/s am desirous in participating in the e-auction of M/S. ETHNIC TOBACCO (INDIA) LIMITED (in Liquidation) as going concern and sale of assets of Personal Guarantors announced by you in the newspaper publication dated ..... in ..... (name of media journal).

Bid For:	
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I/We /M/s., the Bidder/s, do hereby state that, I/we/M/s. have read the Bid Document and the terms and conditions of the Bid and the above advertisement and understood them fully. I/We/M/s. hereby unconditionally agree to conform with and to be bound by the said conditions. My/Our offer for purchase of the Asset as appearing in the Bid document is as under:

1.	(a)	Full Name of the Bidder with Telephone Nos. Mobile Nos. E-mail ID.	
	(b)	Address of the Bidder along with the address proof	
	(i)	Office	
	(ii)	Residence	
2.	<b>Details of EMD</b>		
	(i)	Mode of Payment	RTGS / NEFT/ Bank Transfer

(ii)	UTR No.	
(iii)	Date	
(iv)	Account Holder's Name	
(v)	Bank Name	
(vi)	Branch Name	
(vii)	IFSC Code	
(v)	Amount Deposited	

1. I/We request you to kindly verify the same and arrange with the auction portal for issue of an ID and password to enable us to take part in the E-Auction.
2. I/We/M/s. agree if any of the statement / information revealed by me/us is found incorrect, my/our Bid document is liable to be cancelled and, in such case, the Earnest Money Deposit paid by me/us is liable to be forfeited by the Liquidator and the Liquidator is at liberty to annul the offer made to me/us at any point of time.
3. I/We /M/s. also agree that after my/our offer given in my/our bid for purchase of an asset(s) is accepted by the Liquidator and If I/We/M/s. breach any of the conditions under this Process Memorandum or am/are/is found to have made any misrepresentation or am/are/is found to be ineligible to submit the Bid under Section 29A of the IBC (as amended from time to time) or is found to have made a false or misleading declaration of eligibility under Section 29A of the IBC or am/are/is found to be, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the auction process or has, undertaken any action in respect of such process which results in the breach of any applicable law including the Prevention of Corruption Act, 1988 or Default in payment of the balance sale consideration by the Successful Bidder within the timeframe set out this Process Memorandum or not able to complete the transaction within the time limit specified in the Process Memorandum for any reason whatsoever and / or fail to fulfill any/all the terms and conditions of the Process Memorandum, the Earnest Money Deposit paid by me/us along with the Bid document is liable to be forfeited by the Liquidator and that the Liquidator has also a right to proceed against me / us for specific performance of the contract.
4. I/We/M/s. will not claim any interest from the date of submission of Earnest Money in case the process of sale is delayed for any reason.
5. I/ We understand that the Earnest Money of all Bidders shall be retained by the Liquidator and returned only after the conclusion of the auction process as per the timelines mentioned.
6. I/We state that I/We have fully understood the terms and conditions therein and agree to be bound by the same.
7. The general terms and conditions of sale are received, read and acceptable to me / us.

**NOTE: Each page of this form shall be duly signed by bidder.**

Place:

Date:

**Signature of the Bidder**

**(M/s. \_\_\_\_\_)**

**[Rubber stamp of the proprietor/company/firm]**

**Name**

**Designation**