

## PROCESS DOCUMENT

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Invitation for submitting bids for e-Auction of  
Assets of KSS Petron Private Limited (in Liquidation)

Jointly with

Assets of Petron Engineering Construction Limited (in Liquidation)  
under the provisions of Insolvency and Bankruptcy Code, 2016 (Code)

at

Petron Engineering Construction Ltd. C/O. Shree Cement Ltd., Kodla Sedam Project, Post Box No.1, Kodla  
& Benkanhalli Taluka, Sedam, Dist: Gulbarga- 585222, Karnataka

Dated: 07<sup>th</sup> January, 2022  
Version 1.0

**Issued By –**

**CS Vineet K Chaudhary**

**Liquidator for KSS Petron Private Limited**

**Insolvency Professional - Regn. No: IBBI/IPA-002/IP-N00103/2017-18/10246**

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## **DISCLAIMER**

*This document is issued by Mr. Vineet K. Chaudhary, the Liquidator for general information purposes, to provide general information only, without regard to specific objectives, suitability, financial situations and the requirements of any particular person. The purpose of this process document is to set out the process for submitting bids for the e-auction of assets of KSS Petron Private Limited (in liquidation) (the “Corporate Debtor” or “Company” or “KSS”) jointly with the assets of Petron Engineering Construction Limited (in Liquidation) (“PECL”) in accordance with the Insolvency and Bankruptcy Code, 2016 (‘IBC’). Nothing herein or in materials relating to the Process Document is intended to be construed as legal, financial, accounting, regulatory or tax advice by the Liquidator. This Process Document is personal and specific to each auction process participant. Neither this 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 Process Document does not solicit any action based on the material contained herein.*

*The information in this Process Document, which does not purport to be comprehensive, is provided by the Company and has not been independently verified by the Liquidator. While this information has been prepared in good faith, no representation or warranty, express or implied, is or will be made and no responsibility or liability is or will be accepted by the Liquidator, the Company or by any of its officers, employees or agents in relation to the accuracy, fairness, authenticity or completeness of this Process Document or any other written or oral information made available to any interested party or its advisers and any such liability is expressly disclaimed. In so far as the information contained in this Process Document includes current or historical information, the accuracy, adequacy, authenticity, correctness, fairness, and completeness of such information cannot be guaranteed. By acceptance of this Process Document, the auction process participant shall be deemed to have acknowledged that it has not relied upon any representation and warranty made by the Liquidator. This document has not been filed, registered or approved and will or may not be filed, registered, reviewed or approved by any statutory or regulatory authority in India or by any stock exchange in India or any other jurisdiction. This Process Document has not been approved, reviewed or recommended by SEBI.*

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

*In addition to the provisions set out in this Process Document, the auction process applicant shall be responsible for fully satisfying the requirements of the IBC and related Regulations as well as all laws in force that are or may be applicable to the applicant or the sale process and for obtaining requisite regulatory or other approvals, if any, that are or may be required under applicable law and nothing contained in this Process Document shall*

*be deemed to relieve, wholly or partially, directly or indirectly, the auction process applicant from compliance with the IBC and related Regulations as well as any other law in force, and/ or any instrument having the force of law as may be applicable and nothing in this Process Document shall be construed as, or operate either, wholly or in part, as exempting the auction process applicant from complying with all such laws, as are or may be applicable.*

*By procuring a copy of this Process Document, the recipient accepts the terms of this disclaimer notice, which forms an integral part of this Process Document and all other terms and conditions of this Process Document. Further, no Person, including the Auction Participant shall be entitled under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise to claim for any loss, damage, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Process Document or otherwise, including the accuracy, adequacy, authenticity, correctness, completeness or reliability of the information or opinions contained in this Process Document and any assessment, assumption, statement or information contained therein or deemed to form part of this Process Document, and the Liquidator, Company, and their advisors, affiliates, directors, employees, agents, representatives or managers do not have any responsibility or liability for any such information or opinions and therefore, any liability or responsibility is hereby expressly disclaimed.*

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

*The assets of the Company are 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 assets of the Company does not entail transfer of any title except the title which the Company had on its assets as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the assets of the Company.*

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

*This Process Document is neither transferable nor assignable.*

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## 1. IMPORTANT INFORMATION

- 1.1 This Process Document has been issued with the intent to carry out e-Auction of assets of KSS Petron Private Limited (the Company or KSS or the Corporate Debtor) jointly with the assets of Petron Engineering Construction Limited (in Liquidation) located at Petron Engineering Construction Ltd. C/O. Shree Cement Ltd., Kodla Sedam Project, Post Box No.1, Kodla & Benkanhalli Taluka, Sedam, Dist: Gulbarga- 585222, Karnataka (the Auction site), under the provisions of IBC read with Liquidation Process Regulations. *The prospective bidder, to be eligible for participation in the e-auction for the assets of KSS, shall also be required to participate in the e-auction process of the assets of Petron Engineering Construction Limited (PECL) at the site under auction and accordingly participation in both the bidding processes of both the entities, being KSS and PECL, housing their assets at the common site shall be a condition precedent. The prospective bidders may access the public notice and process document in relation to assets of PECL at its process specific website i.e. <https://www.petronengineering.com/liquidation-process/liquidation-process> and conduct necessary due diligence of the said assets as well.*
- 1.2 *It is clarified that for a qualified bidder to be declared as successful bidder, the said bidder shall be required to be declared as the highest bidder in both the e-auction bidding of KSS and PECL. It is further clarified that the bidder is also required to be the highest bidder of sum total of the collective bids. The highest bidder (H1) in both the e-auction of the Corporate Debtor and Petron Engineering Construction Limited shall be declared as the successful bidder.*
- For Example: For “M/s A” to be declared as the successful bidder, M/s A requires to be declared as the highest bidder in the e-auction process of KSS and e-auction process of PECL in addition to being declared as the highest bidder cumulatively in the e-auction bidding of KSS and PECL.*
- 1.3 All information provided in this Process Document should be read together with the provisions of the IBC and the Liquidation Process Regulations. In the event of a conflict between this Process Document and the IBC or the Liquidation Process Regulations, the provisions of the IBC or the Liquidation Process Regulations, as the case may be, shall prevail.
- 1.4 The information contained in this Process Document or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Liquidator, is provided to Bidder(s) on the terms and conditions set out in this Process Document.
- 1.5 This Process Document is neither an agreement nor an offer by the Liquidator to the prospective Bidders or any other person. The purpose of this Process Document is to provide interested parties with information that may be useful to them in making their bids pursuant to this Process Document. The assumptions, assessments, statements and information contained in the Process Document may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this Process Document and obtain independent advice from appropriate sources.
- 1.6 Information provided in this Process Document to the Bidder(s) has been collated from several sources. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as complete. The Liquidator accepts no responsibility for the accuracy or otherwise for any statement contained in the Process Document.
- 1.7 The Liquidator, makes no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Process Document or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Process Document and any

assessment, assumption, statement or information contained therein or deemed to form part of this Process Document or arising in any way from participation in this auction process.

- 1.8 The Liquidator also accepts no liability of any nature howsoever caused arising from reliance of any Bidder upon the statements contained in this Process Document.
- 1.9 The Assets of the Company are proposed to be sold on **“As is where is basis”, “As is what is basis”, “Whatever there is basis” and “Without recourse basis”** and the proposed sale of assets of the Company does not entail transfer of any other title, except the title which the Company had on its assets proposed for sale as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the assets of the Company proposed to be sold.
- 1.10 The details about the assets provided in this Process Document or otherwise uploaded on the websites or virtual data room have been fetched from the records of the Company to give a brief idea about the assets of the corporate debtor and put up for e-auction sale. The sale will be on **"As Is Where Is, As Is What Is, Whatever There Is and Without Recourse Basis"** and the prospective Bidders are cautioned to exercise their own diligence in respect of the quality, condition, usefulness, availability and other related aspects. For this, the prospective bidders can conduct physical visit of the assets of the Company proposed to be sold. The Liquidator will not be responsible for any shortcomings/ shortfall or any other consequences arising out of the sale. Please note that the Original/ Copy of invoice, RC, TAX, Permit, Insurance, Form -36 & any other additional RTO Docs in relation to assets of the Company may not be available.
- 1.11 The sale of assets of the Corporate Debtor is strictly “as is where is”, “as is what is”, “as is how is” basis and it includes tier mounted vehicles and equipments. Therefore, post issuance/execution of the Sale Certificate, the Successful Bidder shall deal with such assets in accordance with the applicable provisions of law of land. The Liquidator/Corporate Debtor shall not be responsible for any kind of the obligations including but not limited to transfer or registrations in favour of a bidder, non-compliances or on road usage or any liabilities in relation to such assets.
- 1.12 The Liquidator may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this Process Document.
- 1.13 The issue of this Process Document does not imply that the Liquidator is bound to select a Bidder or to appoint the Preferred Bidder as Successful Bidder for the assets of the Company and the Liquidator reserves the right to reject all or any of the Bidders or bids without assigning any reason whatsoever.
- 1.14 Each Bidder shall bear all its costs and charges associated with or relating to the preparation and submission of its bid and/or participation in the e-auction, including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Liquidator or any other costs incurred in connection with or relating to its bid.
- 1.15 e-Procurement Technologies Limited (“e-Auction Service Provider” or “Auctioneer”) has been appointed as the e-Auction Service Provider. The sale of the assets of the Company shall be undertaken by the e-Auction Service Provider for and on behalf of the Company through an e-auction platform provided on the website portal of the e-Auction Service Provider (Platform).

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

Type of Bid	E- Auction
Website of e-Auction Service Provider	<a href="https://ncltauction.auctiontiger.net">https://ncltauction.auctiontiger.net</a>
Service Provider	e-Procurement Technologies Limited  CIN: U72200GJ2006PLC048011 Registered Office: B-705, Wall Street II, Opposite Orient Club, Near Gujarat College, Ellisbridge, Ahmedabad, Gujarat India 380006. Contact person – <u>Praveen Kumar Thevar</u> Contact Number: <u>+91 9722778828</u>
Annexures	<ol style="list-style-type: none"> <li>1. Format of Bid Application Form (Annexure I)</li> <li>2. Format of Confidentiality Undertaking (Annexure II)</li> <li>3. Format of Affidavit by Bidder under section 29A of the code (Annexure III)</li> <li>4. Format of Board Resolution (Annexure IV)</li> <li>5. Format of Power of Attorney (Annexure V)</li> <li>6. Format of Checklist for Submission of Supporting Documents (Annexure VI)</li> </ol>
Special Instructions	This bidding is a serious matter and last-minute bidding may lead to lapses. Neither the Auctioneer nor the Liquidator will be responsible for any lapses on part of the Bidders.

1.17 All terms and conditions with respect to the sale of the assets of the KSS and PECL shall be subject to any directions passed by the Hon'ble Adjudicating Authority.

1.18 The Liquidator will provide all necessary assistance, gate pass and support as maybe required by the Bidder (s) to verify and/ or take over the specified assets forming part of the e-auction or part thereof. It is specifically clarified that the assets under the present process document are put to e-auction collectively and accordingly the reserve price has been fixed. The assets listed in this process document including the assets of *PECL as available on its process specific website* are tentative in nature and each bidder is required to carry out proper due diligence and verification of the specified assets at its own cost, risk and expenses. However, if the prospective bidder is not satisfied with the quantity, quality, conditions or otherwise the obvious challenges to lift the assets from the site because of the clients/vendors or other issues, the said bidder may withdraw from the bidding process in terms of clause 5.4 (VII) (x) at any time but at least 2 days prior to the e-auction date, after making a representation in writing to the Liquidator. *It is clarified that on or after the e-auction date, any issue with quantity, quality, conditions or otherwise the obvious challenges to lift the assets from the site because of the client/vendors or other issues in relation to specified asset (s) shall not be a ground for withdrawal from the e-auction process.*

1.19 This Process Document is neither transferable nor assignable.

1.20 The annexures/appendices shall form an integral part hereof and this Process Document shall always be read in conjunction with them hereto.



## 2. **DEFINITIONS**

Unless the context otherwise requires, following capitalized terms used in this document, shall have the meanings given hereunder. Terms not defined in this document shall have the meanings assigned to the term under the Code:

**“Adjudicating Authority”** or **“NCLT”** shall mean the Hon’ble Mumbai Bench of the National Company Law Tribunal;

**“Affiliate”** means a company that, directly or indirectly:

- (a) Controls; or
- (b) is Controlled by; or
- (c) is under the common Control;

of the Bidder, as the case may be;

**“Applicable Laws”** means, all applicable laws, regulations, rules, guidelines, circulars, re-enactments, revisions, applications and adaptations thereto, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority, rules, regulations, orders and interpretations of any governmental authority, court or statutory or other body applicable for such transactions including but not limited to the IBC, Liquidation Regulations, Companies Act, 1956 / 2013 (as applicable), Competition Act, 2002 , Transfer of Property Act, 1882, Sale of Goods Act, 1930, Foreign Exchange Management Act, 1999, whether in effect as of the date of this Process Document or thereafter and each as amended from time to time;

**“Assets”** means *specified plant, machineries & other equipments* of the Corporate Debtor at the specified location(s) in terms of this Process Document.

**“Associate Company”** shall have the meaning ascribed to such term in the Companies Act, 2013;

**“Auction Date”** has the meaning ascribed to it in sub-clause VI of Clause 5.4 of this document;

**“Bid”** means, any bid submitted by the Bidder as required in terms of this Process Document and in accordance with the provisions of IBC read together with the Liquidation Process Regulations and the Applicable Laws;

**“Bidder”** means each such Person who is interested in taking part in the Bidding Process and who has accepted this document, and where the context requires, a Person who has submitted a Bid pursuant to this document, and shall include, where relevant, the Authorized Representatives of the Bidder;

**“Bidding Process”** means the process set out in this document for the conduct of an e-auction process for and selection of the Successful Bidder with respect to sale of assets of the Corporate Debtor;

**“Confidential Information”** means all financial, technical, operational, legal, commercial, staff, management and other information, data and know-how, including all information relating to the business, assets, affairs, products, services, assets, costs, terms of trading, customers, suppliers, employees and financial statements of the Corporate Debtor or any of its client’s, disclosed or submitted to the Bidder by the Liquidator or his Representatives in written, representational, electronic, verbal or other form (including on the Data Room or in the course of the Site visit) and includes all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, human resource information and any other information disclosed or submitted about or in relation to the Affiliates and Associate Companies including without limitation, information on the contents and existence of this document and analysis, compilations, studies and other documents prepared by the Corporate Debtor or any of the Corporate Debtor’s Representatives or which contain or otherwise

reflect or are generated from any Confidential Information and conspicuously designated as “Confidential” or “Proprietary” at the time of written disclosure by the Bidder or any Bidder’s Representatives;

**“Confidentiality Undertaking”** means the undertaking as specified in Format II of this document, to be provided by a Bidder, in respect of the Confidential Information shared with the Bidder during the course of the Bidding Process;

**“Connected Person”** has the meaning ascribed to it in the Code;

**“Consideration Payment Date”** shall mean the date on which the Sale Consideration has been transferred into the Liquidation Account by the Successful Bidder in terms of sub-clause X of Clause 5.4 of this document and which shall be any date within 30 (Thirty) days or 90 (Ninety) days, as the case may be, from the issuance of the Letter of Intent (“LoI”) to the Successful Bidder;

**“E-auction Agency” or “e-Auction Service Provider” or “Auctioneer”** means e-auction agency engaged by the Liquidator for e-Auction of assets of the Corporate Debtor;

**“Highest Bidder”** shall mean the qualified bidder whose bid is the highest in the e- auction bidding conducted by the Liquidator and who is as such declared as the highest bidder by the Liquidator.

**“Highest Bidder No. Two or H2”** shall mean the qualified bidder whose bid is the immediate second highest in the e- auction bidding conducted by the Liquidator and who is as such declared as the second highest bidder by the Liquidator.

**“IBBI”** means the Insolvency and Bankruptcy Board of India;

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

**“INR”** means the Indian Rupee;

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

**“Liquidator”** means Vineet K Chaudhary, who has been appointed as the Liquidator by the Adjudicating Authority for conducting the liquidation process of the Corporate Debtor vide order dated 27.12.2019;

**“Liquidation Account”** is the account opened by the Liquidator under Regulation 41 of the Liquidation Regulations;

**“NCLAT”** means the Hon’ble National Company Law Appellate Tribunal;

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

**“Process Document” or “Document”** means this document including all the appendices hereto, for the purposes of setting out the process for submission of a bid and selection of Successful Bid in accordance with the provisions of the IBC and shall include all supplements, modifications, amendments, alterations or clarifications thereto issued in accordance with the terms hereof;

**“Public Notice”** has the meaning ascribed to it in sub-clause I of Clause 5.4 of this document.

**“Qualified Bidder(s)”** shall mean a Bidder whose bid fulfils the eligibility criteria listed out in the Process Document and who is declared as such by the Liquidator in terms of the present process document.

**“Representatives”** includes directors or key managerial personnel of the Person expressly authorized by such Person pursuant to a board resolution (in case of incorporated Persons) or duly executed and legally valid power(s) of attorney (executed under the authority of a board resolution in case of incorporated Persons);

**“Reserve Price”** has the same meaning as ascribed in the Liquidation Regulations read with Schedule I and as provided in the Public Notice, from time to time.

**“Sale Certificate” or “Certificate of Sale”** means a certificate issued by the Liquidator to the Successful Bidder in relation to the sale of assets of the Corporate Debtor in terms of the Liquidation Regulations.

**“Successful Bid”** means the Bid of the Successful Bidder for acquisition of assets of the Corporate Debtor and *Petron Engineering Construction Limited* as declared by the Liquidator in terms of sub-clause VIII of Clause 5.4 of this document.

**“Successful Bidder”** means, the Highest Bidder whose bid is approved and who is declared as such, by the Liquidator at the end of the determined auction phase in the e - auction process of KSS Petron Private Limited and Petron Engineering Construction Limited individually and collectively.

**“Working Day”** shall mean any day between 10:30 Hours and 18:00 Hours IST, other than a public holiday as per the Negotiable Instruments Act, 1881 and excluding days when banks in Mumbai are closed for business.

For the sake of clarity, all timelines contained in this Document pertain to days that are not declared public holidays. If performance of any action falls on a day declared as a public holiday under Negotiable Instruments Act, 1881, the relevant action is to be performed on the next Working Day.

### **3. INTRODUCTION & OVERVIEW OF THE COMPANY**

#### *#Brief Background*

- 3.1 KSS Petron Private Limited (hereinafter referred as “Company” or “Corporate Debtor”), a private limited company incorporated on 19.07.2007 (CIN: U45400MH2007PTC234297) under the Companies Act, 1956, having its registered office at Swastik Chambers, 6<sup>th</sup> Floor, Sion Trombay Road, Chembur Mumbai- 400071, Maharashtra, is a Technology Driven Engineering, Procurement and Construction (EPC) Company with a global presence, engaged in the business of construction, construction management, execution of EPC projects and providing advisory services. It is headquartered in Mumbai.

#### *#Present Status*

- 3.2 The Corporate Insolvency Resolution Process (CIRP), in respect of the Corporate Debtor had been initiated on the Application under Section 10 of the Code filed by ‘Operational Creditor’ M/s Ravi Infrastructure & Projects against ‘KSS Petron Private Limited’, which was admitted vide Order dated 01.08.2017 by the National Company Law Tribunal, Mumbai (Adjudicating Authority). Thereafter, due to failure of CIRP, the Adjudicating Authority vide order dated 27.12.2019, ordered Liquidation of the Corporate Debtor and appointed Mr. Vineet K. Chaudhary as the Liquidator of the Corporate Debtor. Therefore, the Liquidation Commencement Date was considered as 27.12.2019.
- 3.3 The Liquidator endeavours to sell the assets comprising the liquidation estate of the Company in the manner specified under Regulation 32 of the Liquidation Process Regulations, any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be, and as per directions, if any, of the Hon’ble Adjudicating Authority in respect of the Liquidation Process of the Company and in the manner specified in this Process Document.
- 3.4 The e-Auction would be conducted in the manner specified in Schedule I as provided under Regulation 33 of the Liquidation Process Regulations, any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be, and as per directions, if any, of the Adjudicating Authority in respect of the Liquidation Process of the Company and in the manner specified in this Process Document.
- 3.5 The Bidders are encouraged to acquaint themselves with the provisions of the IBC and the Liquidation Process Regulations and any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be.

#### 4. **ELIGIBILITY**

**4.1. As a condition precedent for being eligible to participate in the e-auction under the present process document of KSS, a Bidder is also required to participate in the e-Auction process of PECL** for the site and is also required to meet the eligibility criteria as specified in the e-auction process of *Petron Engineering Construction Limited*.

4.2. Bidder shall not be eligible to submit a bid for the assets of the Corporate Debtor if it fails to meet the eligibility criteria set out in Section 29A of the IBC (as amended from time to time). As on date, as per Section 29A, a person shall not be eligible to submit a bid, if such person, or any other person acting jointly or in concert with such person –

- a. Is an undischarged insolvent;
- b. Is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
- c. at the time of submission of the resolution plan 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 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 corporate insolvency resolution process of the corporate debtor;

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of resolution plan;

Provided further that nothing in this clause shall apply to a resolution applicant where such 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 1 [or completion of such transactions as may be prescribed], prior to the insolvency commencement date. Explanation II.— For the purposes of this clause, where a resolution 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 resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

- d. has been convicted for any offence punishable with imprisonment –
  - (i) for two years or more under any Act specified under the Twelfth Schedule; 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;

- e. Is disqualified to act as a director under the Companies Act, 2013;

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

- f. Is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- g. has been a promoter or in the management or 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 this 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 resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

- h. has executed a guarantee in favour 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;
- i. Has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
- j. Has a connected person not eligible under clauses (a) to (i)

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 resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; 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 Explanation I shall apply to a resolution 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 or completion of such transactions as may be prescribed], 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 Organisation 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 Securitisation 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.

The bidder will provide an Affidavit as per the provisions of Section 29A of the Insolvency and Bankruptcy Code, 2016 confirming that it is eligible to acquire/purchase the assets of the Company.

## 5. DETAILS OF ASSETS TO BE AUCTIONED AND BIDDING PROCESS

### 5.1 Assets to be auctioned and other details such as Reserve Price & EMD etc.

5.1.1 The assets of the Corporate Debtor are proposed to be sold jointly with assets of Petron Engineering Construction Limited (in liquidation) on “As is where is basis”, “As is what is basis”, “Whatever there is” and “No recourse basis”. The proposed e-Auction of sale of assets of the Corporate Debtor does not entail transfer of any other title except the title which the Corporate Debtor had on its assets as on date of transfer. The details of the assets of Petron Engineering Construction Limited can be accessed at <https://www.petronengineering.com/liquidation-process/liquidation-process>, being its process specific website.

5.1.2 The details of assets of the Corporate Debtor to be auctioned, their Reserve Price, EMD Amount & Incremental Bid is given in the below table:

Assets	Reserve Price (In Rs.)	EMD Amount (In Rs.)	Incremental Bid Amount (In Rs.)
Assets of the Corporate Debtor located at Petron Engineering Construction Ltd. C/O. Shree Cement Ltd., Kodla Sedam Project, Post Box No.1, Kodla & Benkanhalli Taluka , Sedam, Dist: Gulbarga- 585222, Karnataka (“the Auction Site”)  For more details in relation to assets, please refer below table	56,28, 450/-	5,62,845/-	20,000/- or above

The nature, description & tentative number of the assets of the corporate debtor located at Petron Engineering Construction Ltd. C/O. Shree Cement Ltd., Kodla Sedam Project, Post Box No. 1 Kodla & Benkanhalli Taluka , Sedam, Dist: Gulbarga- 585222, Karnataka is given below:

S.No	Nature & Description of Specified Assets	Tentative Nos.
1.	Batching Plant	2
2.	Bending machine	5
3.	Big Drilling Machine	1
4.	Concrete Pump	2
5.	Concrete pump (schwing Stetter)-CPP-018	1
6.	Concrete pump (schwing Stetter)-SP-1400	1
7.	Container 20 ft	2
8.	De- watering Mini Pump	1
9.	De – Watering Pump	1
10.	Diesel Vibrator	1



11.	Front End Loader	1
12.	Gentor (Jackson) 45 KVA	1
13.	Hoist Winch	2
14.	JCB (L& T Case)	1
15.	Mini Batching Plant	2
16.	Omni	2
17.	Shearing Machine	6
18.	Tower Crane (6 Ton Ace)	1
19.	Tower Crane (1 Ton Ace)	1
20.	Tractor (mahinder)	2
21.	Tractor (Swaraj)	1
22.	Tractot Trolly	1
23.	Transit Mixer	6
24.	Welding Rectifier	1
	<b>Total</b>	<b>45</b>

- 5.1.3 The Bidder(s) cannot place a bid for the e-Auction at a value below the Reserve Price.
- 5.1.4 Further, the Bidder(s) can increase their Bid by Incremental Amount as indicated in above table.
- 5.1.5 Cognizance should be taken of the fact that the liquidator does not give any assurance or warranty of the physical condition of assets and their suitability for any sort of operation that the bidder envisages.
- 5.1.6 The bidder shall take stock of the specified assets listed above before the bidding and ensure the availability of the assets under auction at his own cost and expenses enabling him to participate in the bid and take the informed decision. It is specifically clarified that the auction is **“As is where is basis”, “As is what is basis”, “Whatever there is” and “No recourse basis”**. It is further clarified that the assets under the present process document are put to e-auction collectively and accordingly the reserve price has been fixed for asset maximization. The assets listed in this process document are tentative in nature and each bidder shall carry out proper due diligence and verification of the specified assets at its own cost, risk and expenses. However, if the prospective bidder is not satisfied with the quantity, quality, conditions or otherwise the obvious challenges to lift the assets from the site because of the clients/vendors or other issues may withdraw from the bidding process in terms of clause 5.4 (VII) (x) at any time but at least 2 days prior to the auction date in writing to the liquidator. *It is further clarified that on or after the auction date, any issue with quantity, quality, conditions or otherwise the obvious challenges to lift the assets from the site because of the client/vendors or other issues in relation to specified asset (s) shall not be a ground for withdrawal from the auction process.*
- 5.1.7 The Liquidator reserves his right to dispose/sell the assets, material and/or scrap other than the specified assets at the site under auction, if any, belonging to the Corporate Debtor within his sole discretion and such assets, material/ scrap have been specifically excluded for the purposes of this process document and the successful bidder shall have no right on those assets, material/scrap.

## 5.2 Key steps in the process:

- 5.2.1 Public Notice for submission of Bids for purchase/acquisition of assets of the Corporate Debtor through an e-Auction process;
- 5.2.2 Virtual Tour;

- 5.2.3 Submission of Bid Application Form along with Supporting Documents and EMD by the Bidder;
- 5.2.4 Verification of Bid Forms, Supporting Documents & EMD submitted by the Bidder and Declaration of Qualified Bidder
- 5.2.5 Conduct of Site visit and Due Diligence by the Qualified Bidder(s);
- 5.2.6 Registration of Qualified Bidder(s) on the Portal of the E-Auction Agency;
- 5.2.7 Participation of Qualified Bidder(s) in the e-Auction Process on the Auction Date;
- 5.2.8 Declaration of Successful Bidder by the Liquidator;
- 5.2.9 Issuance of LOI by Liquidator to the Successful Bidder;
- 5.2.10 Payment of Sale Consideration by the Successful Bidder;
- 5.2.11 Issuance of Certificate of Sale;
- 5.2.12 Lifting of Assets by the Successful Bidder.

### 5.3 Process Timelines:

**The following timetable shall apply to the E-Auction Process Document:**

Sr. No.	Event Description	Timeline (Date)
1.	Public Notice for submission of Bids for purchase/acquisition of assets of the Corporate Debtor through an e-Auction process;	07.01.2022 (Friday)
2.	Virtual Tour	From 07.01.2022 (Friday)
3.	Submission of Bid Application Form along with Supporting Documents and EMD by the Bidder	From 07.01.2022 (Friday) to 15.01.2022 (Saturday) <b>("Document Submission Date")</b>
4.	Verification of Bid Application Forms, Supporting Documents & EMD submitted by the Bidder and Declaration of Qualified Bidder	Within 2 days from the last date of submission of Bid Application Form, Supporting Documents and EMD by the Bidder
5.	Conduct of Site visit & Due Diligence by the Qualified Bidder(s)	From 18.01.2022 (Tuesday) to 24.01.2022 (Monday)
6.	Registration of Qualified Bidder(s) on the Portal of the E-Auction Agency	25.01.2022 (Tuesday) to 27.01.2022 (Thursday)
7.	Auction Date and Time	28.01.2022 (Friday) Timing- 11:00 AM to 2:00 PM
8.	Declaration of the Successful Bidder	28.01.2022 (Friday)
9.	Issuance of LOI by Liquidator to the Successful Bidder	31.01.2022 (Monday)
10.	Unconditional acceptance of LOI by the Successful Bidder	02.02.2022 (Wednesdays)
11.	Payment of Sale Consideration by Successful Bidder	Within 30 days from the issuance of the LOI or 90 days from the issuance of the Email/LOI as per Schedule I of the Liquidation Regulations
12.	Issuance of Certificate of Sale	Within 10 (ten) days from receipt of the Sale Consideration

13	Lifting of Assets of the Corporate Debtor from the auctioned site	Within 15 (fifteen) days from the issuance of the certificate of sale.
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Notwithstanding any other clause provided in this document, the Liquidator, in his sole discretion, may extend/ modify any and all of the timelines as set out in this Clause/document at any time without giving any reasons whatsoever by way of a public Notice and/or uploading on the website of the Corporate Debtor and/or by email, without incurring any obligation or the need to provide any reasons. In any case, it is and will be assumed that each Bidder takes cognizance of any such extension.

#### 5.4 Detailed steps in the Bid Process:

##### **I. Public Notice**

In accordance with the provisions of Regulation 32 and Schedule I of the Liquidation Regulations, the Liquidator has, vide public Notice, published on Friday, 07.01.2022 in the Business Standard, English (All India Editions), Navakal, Marathi (Mumbai Edition), Vijay Vani, Kannada (Karnataka Edition) and on the website of the Corporate Debtor i.e. <http://petronengineering.com/liquidation-process/liquidation-process> ("Public Notice"), invited Bids for participation by the interested Bidders in the e-Auction process for acquisition/purchase of assets of the Corporate Debtor.

##### **II. Virtual Tour**

- (i) The Bidders can have the Virtual Tour of the site to know about the assets of the Corporate Debtor by clicking on the following link to access the relevant photos and/or videos which have been uploaded.

[https://dcirrus.io/api.acms/html/share\\_login.html?a=19&b=626&i=24](https://dcirrus.io/api.acms/html/share_login.html?a=19&b=626&i=24)

- (ii) Please note that the above Virtual Tour has been provided to assist & facilitate the Bidders beforehand, however, it shall not be a Guarantee or warrantee towards the quality, quantity & physical condition of the Assets of the Corporate Debtor.

##### **III. Submission of Bid Application Form along with Supporting Documents and EMD by the Bidder**

- (i) The Bidders shall submit the Bid Application Form accompanied with the EMD along with the Annexures II to VI of this document to the Liquidator on or before the Document Submission Date.
- (ii) All Supporting Documents shall be in the English language and if any document is not in English language, then the relevant document would need to be translated in English language along with an unconditional affidavit that the translation is true and correct and such translated document shall be considered as the final document. If any discrepancy is found in the original document and the translation, then the Bidder may be disqualified, and the Bid, if any, may be rejected.

- (iii) A Bidder is required to submit information in accordance with this document and in compliance with the requirements set out under the Code and Liquidation Regulations and shall sign and stamp each page of all the documents.
- (iv) All requisite Supporting Documents should be duly signed and stamped by the Bidder or an authorised Representative of the Bidder and supported by evidence of authority of such Person (board resolution and/or power of attorney, as applicable, of the Bidder). Strict adherence to forms, documents, and authorizations wherever specified in the Document, is required. Each form, document and authorization have to be duly signed and appropriately stamped/company seal affixed by the Representatives of Bidder.
- (v) The Bid Application Form and EMD along with the Supporting Documents shall be submitted by post **AND** email, unless otherwise notified and it is the responsibility of the Bidder alone to ensure that the Bid Application Form, along with the necessary documents, is delivered at the address given under point (vi) below within the stipulated time and date.
- (vi) The Bid Application Form and Supporting Documents should be submitted in a single sealed envelope by post **AND** also via email in the following manner as given below. Envelope should bear the following transcript:

**(Bid Application Form) – “Confidential”**

<b>Superscript</b>	<b>:</b>	<b>“Bid Application Form for KSS Petron Private Limited”</b>
<b>Name of the Bidder</b>	<b>:</b>	<b>[●]</b>
<b>Attn. of</b>	<b>:</b>	<b>Vineet K Chaudhary</b>
<b>Designation</b>	<b>:</b>	<b>Liquidator</b>
<b>Address</b>	<b>:</b>	<b>C/o VKC Restructuring Professionals LLP D-38,LGF (L/S) South Extension, Part-II, New Delhi-110049</b>
<b>Phone</b>	<b>:</b>	<b>011-49121644-45</b>
<b>Email Address</b>	<b>:</b>	<b><a href="mailto:liquidatorksspetron@vkcindia.com">liquidatorksspetron@vkcindia.com</a></b>

- (vii) All envelopes used by the Bidder, for the purpose of any submission and communication should be adequately sealed, to prevent any interference/tampering, while in transit. The Liquidator shall assume no responsibility for the misplacement/ damage to the documents/ delay in delivery or premature disclosure of the contents of the same and consequent losses, if any, suffered by the Bidder.
- (viii) The Liquidator or any of his Representatives are not responsible for non-receipt of correspondences in relation to the Bid Application Form.
- (ix) Where the Liquidator finds that the Bidder(s) has submitted an incomplete Bid Application Form/ Supporting Documents or if the Bid Application Form/ Supporting Documents are not as per the annexures laid down in this document, or are not compliant with the provisions of the Code or the Liquidation Regulations, the Liquidator may, at his discretion, reject such Bid Application Form/ disqualify the Bidder or may seek for remedy of such discrepancies within 3 (three) days from the date of communication by the Liquidator to the bidder, to remedy the same in this regard. In case such discrepancies are not remedied within the aforesaid duration, the Liquidator may summarily reject such Bid Application Form without assigning or

giving any reasons for the same. In an event of rejection of Bid Application Form, the Bidder(s) will not be entitled to any compensation and/or any interest whatsoever. However, the amount of EMD submitted by them shall be returned to them within 15 days from the date of rejection of the Bid Application Form unless not already invoked/forfeited and/ or the Bidder(s) has not violated any of the terms and conditions as set out in this Document.

(x) Every Bidder shall, along with the Bid Application Form and Supporting Documents provide a Refundable Earnest Money Deposit which shall be equal to 10% of the Reserve Price i.e., Rupees 5,62,845/- (Rupees Five Lakh sixty two thousand eight hundred and forty five only), to be paid:

- a. in the form of a Demand Draft Payable at New Delhi executed in favour of KSS Petron Private Limited-In Liquidation, issued by any scheduled commercial bank in India, or
- b. by way of a Direct Deposit into a bank account held by the Corporate Debtor, the details of which are given below:
  - Name of the Beneficiary: 'KSS Petron Private Limited-In Liquidation'
  - Bank Name: ICICI Bank Limited
  - Branch Address: D-16, South Extension-II, New Delhi-110024
  - Account Number: 039605003982
  - IFSC Code: ICIC0000396 ['0' is a number]
  - Account Type: Current Account

(xi) It is hereby clarified that non-submission of the Earnest Money Deposit by any Bidder shall lead to ineligibility and disqualification of the Bidder to conduct site visits, accessing Data Room, due diligence and participation in the E-auction Process.

(xii) In case of direct transfer, the entire EMD amount shall be remitted by the Bidder from one bank account only which shall be owned by the Bidder. The Bidders shall preserve the remittance challan and shall produce to the Liquidator as and when demanded.

(xiii) Invocation of Earnest Money Deposit

The Liquidator shall have the right to forfeit the Earnest Money Deposit by appropriating the deposit made by the Bidder. The Earnest Money Deposit can be forfeited at any time at the discretion of the Liquidator, even without making any reference to the Bidder(s), upon occurrence of any of the following conditions/events:

- a. any of the conditions under this document or the LoI are breached by the Bidder;
- b. the Bidder is found to have made a false or misleading declaration or any misrepresentation;
- c. If Bidder is found to be ineligible to submit a Bid as per the conditions set out in Section 29A of the 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 Code (as amended from time to time);
- d. existence of any collusion between the Bidders and the Corporate Debtor's related parties, or any creditors of the Corporate Debtor and the Bidder;
- e. withdrawal of, or change in the Bid after the completion of the Bidding Process;

- f. non-payment or failure to make payment in accordance with the Bid

It is clarified that any forfeiture of the Earnest Money Deposit, by the Liquidator, shall not limit any other rights or remedies that the Liquidator may have under Applicable Law or otherwise, against any Bidder.

- (xiv) The Earnest Money Deposit of the **Successful Bidder** shall be returned within 15 days upon receipt of the Sale Consideration in accordance with the Successful Bid. However, the Successful Bidder shall have the option to adjust the amount of Earnest Money Deposit from the Sale Consideration proposed by such Successful Bidder.
- (xv) The Earnest Money Deposit of H2 if any, shall be returned within 15 days upon receipt of the Sale Consideration from the Successful Bidder in accordance with the Successful Bid. However, the EMD of other qualified bidders except H2 shall be returned within 15 days of auction date. Further, those Bidders who are declared as **Disqualified Bidders** in terms of sub-clause IV of Clause 5.4 of this document, the EMD submitted by them shall be returned within 15 days from the date of declaration as Disqualified Bidder.
- (xvi) In the event the Bidding Process envisaged under this document for sale of assets of the Corporate Debtor is annulled, the EMD of all Bidders shall be returned within 15 days from the date of Notice of the same by the Liquidator, unless not already forfeited and/or the Qualified Bidder(s) has not violated any of the terms and conditions as set out in this document.
- (xvii) For any clarifications on the process, please contact at [liquidatorksspetron@vkcindia.com](mailto:liquidatorksspetron@vkcindia.com) and/or: CS Manish Vyas (Team member of Liquidator): +91- 9667090135;

#### **IV. Verification of Bid Application Forms, Supporting Documents & EMD submitted by the Bidder and Declaration of Qualified Bidder**

- (i) Upon submission of Bid Application Form, EMD and Supporting Documents, the Liquidator shall verify the contents of the Bid Application Form and Supporting Documents to ensure that the same have been provided as per the form and format required under this document, verify that the Earnest Money Deposit has been submitted as per the terms of this document.
- (ii) Upon conducting verification, the Liquidator shall declare the name of the Qualified Bidder(s) and their details shall be shared by the Liquidator with the E-Auction Agency. The Result of the Qualified and Disqualified Bidders shall be shared with the respective Bidders. No representation qua a Disqualified Bidder will be entertained by the Liquidator.
- (iii) It is clarified that only the Bidders who have been declared as Qualified Bidders by the Liquidator, will be given access to the Data Room, allowed to carry on due diligence, site visits/physical verification and further participate in the E-Auction process.
- (iv) Notwithstanding anything stated in this document to the contrary, the Liquidator reserves the right to verify, at any stage of the Bidding Process, the antecedents of any Bidder and such other Persons connected with the Bidder in submitting the Bid, the

eligibility of the Bid, the authenticity of the documents submitted by the Bidder(s), and may request for any additional information or documents, as may be required, for the purpose of verifying/validating the Bid submitted by such Bidder(s). The Liquidator reserves the right, at his sole discretion to contact the Bidder's bank, lenders, financing institutions and any other Person as may be necessary or expedient to verify the information/documents submitted by the Bidder as part of its Bid, and each Bidder expressly consents to the same.

**V. Conduct of Site visit and Due Diligence by the Qualified Bidder(s)**

- (i) Only after classification as Qualified Bidder by the Liquidator, the Qualified Bidder(s) shall be given access to Data Room, if required, containing detailed information related to the assets of the Corporate Debtor and requests for Site visit shall be entertained and provided to only the Qualified Bidder(s), for undertaking due diligence of assets of the Corporate Debtor and other information.
- (ii) The Data Room has been organized only for the ease of reference of the Qualified Bidder(s), and the Qualified Bidder(s) shall be responsible to conduct their own due diligence, research, assessment and analysis with respect to the information contained in the Data Room and otherwise. Notwithstanding anything to the contrary contained in this document, the Liquidator or his Representatives, shall not in any manner whatsoever, be held liable for the relevance, adequacy, correctness, completeness or accuracy of the information contained in the Data Room.
- (iii) The Qualified Bidder who is desirous of undertaking Site visit/physical verification of assets of the Corporate Debtor will be allowed to do so in the course of the current Bidding Process and such Site visit will be arranged, on a pre-determined Working Day between 10:00 a.m. to 6:00 p.m., after a prior written request of at least 1 day is made to the Liquidator along with the names, designation and any government identification number of each of the persons who are being deputed for site visit, at [liquidatorkssp@vkcindia.com](mailto:liquidatorkssp@vkcindia.com). Such requests shall be considered by the Liquidator depending on the availability of the personnel/ employees at the Site/office and the lockdown related restrictions, by whatever name called. The Qualified Bidder shall ensure that such Site visit is conducted on the pre-determined Working Day only in order to maintain the schedule for any visits to be conducted by other Qualified Bidder(s). The Liquidator shall co-ordinate among the Corporate Debtor and the Qualified Bidder(s) to facilitate the Site visit, to the extent possible. The Qualified Bidder(s) are required to depute their own team for the Site visit and the Liquidator shall be under no obligation to depute any of his Representatives or a member of the Corporate Debtor's team for this purpose. The Qualified Bidder may depute a team comprising of a maximum 2 (two) personnel in the employment of the Qualified Bidder or its consultants for such visit. Each Qualified Bidder is expected to make its own arrangements including accommodation, travel or other expenses related to the Site visit. All costs and expenses incurred in relation to the Site visit and due diligence shall be borne by the Qualified Bidder(s) and no Qualified Bidder shall be entitled to deduct such expenses from the Bid amount. The Liquidator/ Corporate Debtor will not be required to provide any arrangements in relation to the Site visit. The personnel of the Qualified Bidder(s) shall not be permitted to undertake any photography or videography during the Site visit without obtaining specific written approval from the Liquidator.
- (iv) During the Site visit, the Qualified Bidder(s) shall not be permitted to: (i) take possession of any documents/ assets; or (ii) alter/ reposition/ tamper with or damage

any asset or document on the premises of the Site; or (ii) initiate any discussion regarding the Bidding Process, with any personnel at the Site other than the person duly authorised by the Liquidator, in this regard. Any of the aforesaid actions may result in the disqualification of the Qualified Bidder. Any damages incurred by the Corporate Debtor or the Liquidator in the course of any Site visit attributable to the wilful actions of any Qualified Bidder shall be at the cost of such Qualified Bidder.

- (v) Non-attendance at the Site visit will not be a cause for disqualification of a Qualified Bidder. Failure to undertake a Site visit or access the Data Room by the Bidder will not be a valid ground to relieve the Qualified Bidder subsequently from submission of its Bid nor shall it relieve the Qualified Bidder from any responsibility for estimating the risks in submission of its Bid or costs of successfully fulfilling the terms and conditions of its Bid. The Qualified Bidder(s) may carry out its own comprehensive due diligence in respect of the Corporate Debtor and shall be deemed to have full knowledge of the conditions of the assets of Corporate Debtor, its relevant documents, information etc. whether or not the Qualified Bidder actually inspects or participates in the Site visit or verifies the assets of the Corporate Debtor and documents provided by the Liquidator or accesses the Data Room.
- (vi) Any delay in completion of the Site visit by the Qualified Bidder, shall not entitle the Qualified Bidder to any extension in the timelines, including the timeline for completion of such Site visit or due diligence.
- (vii) It is assumed that the Qualified Bidder(s) shall have undertaken the necessary due diligence and appraisal of the Corporate Debtor for participation in the Bidding Process, submission of the Bid(s) and the requisite financial closure. The Qualified Bidder(s) shall not be provided any additional time for undertaking diligence or be provided access to the Data Room, after the last date of accessing the Data Room.
- (viii) While the data/information provided in this document and the Data Room, has been prepared and provided in good faith, the Liquidator and his Representatives shall not accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, correctness, completeness or reliability of the information provided, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability and completeness of the information provided, even if any loss or damage is caused to any of the Qualified Bidders by any act or omission on their part.
- (ix) The asset(s) to be auctioned are to be sold on **“AS-IS-WHERE-IS” and “AS-IS-WHAT-IS” and “WHATEVER-THERE-IS” and “ON NON-RECOURSE BASIS”** only.
- (x) It shall be the duty of the Qualified Bidder to inspect the asset(s) as there may be missing asset/parts/equipment and to ensure complete satisfaction and knowledge about the quality, quantum and condition of the Asset(s) being sold, taxes and duties, local working condition and other extraneous factors before placing the bid for the Auction.
- (xi) The Principle of Caveat Emptor (let the buyer beware) shall apply to the Auction. No complaints or grievances by the Qualified Bidder shall be entertained by the Auctioneer or/and Liquidator/Corporate Debtor after the Auction Closure on the ground that certain information about the quality, quantum and condition of the asset(s) were not known, including issues/queries pertaining to Tax Liability, RTO



Expenses, Warranty or Guarantee of the quality, quantity, measurement, condition, defects in any item/s etc.

- (xii) For site visit/physical verification of the asset(s), the Qualified Bidder may please contact the liquidator or his authorized representative for gate pass(s). Bidders are advised to obtain all relevant information before bidding and during the inspection of the Assets. This information provided are for reference only and shall not absolve the duty of the Bidder to inspect the Asset(s).

## **VI. Registration of Qualified Bidders on the Portal of the E-Auction Agency**

- (i) After the Bidder has been classified as a Qualified Bidder, such Bidders can get themselves registered by visiting the Portal created by the E-Auction Agency and create an account as per the instructions mentioned on the Portal. Bidders will have to submit a valid e-mail ID, valid PAN Card and other KYC documents as required on the Portal for the purpose of registration. Once a Bidder registers itself on the Portal, a username and password for the Bidder's account shall be generated.
- (ii) The Bidder(s) shall create its account on the Portal after accepting the terms and conditions on the Portal by clicking on the "I Accept" button. By accepting the terms and conditions on the Portal, the Bidder shall be deemed to have accepted that:
  - a. The account shall be operated in accordance with the terms and conditions set out in this document and the terms and conditions of E-auction Agency;
  - b. The confidentiality of the username and password of the account shall be the responsibility of the Bidder;
  - c. The account shall be operated only by the Bidder or an authorised Representatives of the Bidder;
  - d. The selections made on the account and the Bid submitted on the account shall be binding on the Bidder and the Liquidator shall be entitled to assume that the activities on the account have been performed under the rightful authority of the Bidder;
  - e. Any Bid placed will be binding on the Bidder holding the relevant UIN and the same cannot be avoided on grounds of unauthorised access to the account of the Bidder or mistaken operation of the account;
  - f. The Bidder shall be precluded from raising a dispute regarding unauthorised access and operations of the account.
- (iii) The E-Auction Agency shall assist in the process of registration and all queries/ assistance in relation to the registration are required to be directed by the Bidders to the E-Auction Agency along with the Liquidator. It is clarified that the E-auction Agency, the Liquidator and his Representatives shall not incur any liability on account of any problems related to registration of the Bidders on the Portal. It is clarified that any expenses relating to the registration process will be borne by the Bidders and that the Liquidator or the Corporate Debtor will not be liable to pay or reimburse the same. Instructions and steps related to the process of registration, and details of contact persons of the E-Auction Agency will be hosted on the website of the Corporate Debtor by the Liquidator prior to the commencement of registration on the Portal, so that the Bidder(s) can get themselves registered on E-Auction Portal. It is clarified that E-Auction Agency may require any Bidder(s) to furnish such documents/ information or clarification as it may deem fit for the purpose of successful registration.

- (iv) Once the Bidder has been successfully registered on the Portal, evidence of the same has to be provided to the Liquidator.
- (v) In the event any Bidder fails to register itself on the Portal, notwithstanding the fact that such Bidder may have provided the Bid Application Form and the Supporting Documents and the EMD, such Bidder shall not be entitled to participate in the Bidding Process, and no liability shall be incurred by the Liquidator or his advisors or the Corporate Debtor or the E-auction Agency in this regard.

## **VII. Participation of Qualified Bidders in the e-Auction Process on the Auction Date**

- (i) E-auction for the acquisition/purchase of assets of the Corporate Debtor shall be conducted on the Auction Date. Live and open e-Auction shall be conducted on the Portal of the e-Auction Agency from 11:00 am on the Auction Date and be open till 02:00 pm on the Auction Date. The Qualified Bidder(s) shall be required to submit their Bid on the Portal within the aforementioned timelines. It is clarified that in case any Qualified Bidder submits a Bid in the last 5 (five) minutes before the end time of 02:00 pm on the Auction Date, the duration of the E-Auction shall be automatically extended by another 5 (five) minutes, and so on and so forth in relation to subsequent submission of Bids in the last five (minutes) of the closing time.
- (ii) The Reserve Price for assets of the Corporate Debtor under the Bidding Process will be hosted on the Portal at the start of the E-Auction process. Any Bid submitted which is below the Reserve price shall be automatically rejected.
- (iii) The Reserve Price for assets of the Corporate Debtor under the Bidding Process is exclusive of all applicable taxes and duties and the Qualified Bidder shall be required to bear all applicable taxes and duties as may be applicable. It is clarified that no incidence of tax or other rates will be applicable on or borne by the Corporate Debtor.
- (iv) Every Qualified Bidders shall have the option to see the live status of the Bid(s) being received for the acquisition of assets of the Corporate Debtor and accordingly shall have the option to revise their Bid(s) during the Bidding Process. Such revision can only be in the nature of increment and not reduction in the Bid. In any case, the Bids received shall at all points of time be visible on the Portal.
- (v) In case any Qualified Bidder wishes to increase the Bid proposed by it on the Portal, he may do so within the timelines mentioned in (i) above, in a manner that such increase shall be in an incremental bid of Rupees 20,000/- (Rupees Twenty Thousand only) or above, applicable to the latest displayed Bid offered by such Qualified Bidder.
- (vi) Upon the closing of the E-auction Process, and the bidding is time over, no modification, substitution or withdrawal to/of the Bid(s) shall be permitted thereafter, unless specifically permitted by the Liquidator at his sole discretion.
- (vii) The Bid submitted by the Qualified Bidder(s) for the acquisition of assets of the Corporate Debtor shall be reviewed by the Liquidator.
- (viii) The Liquidator reserves the right to conduct due diligence on any Qualified Bidder(s) with the assistance of external agencies at any stage of the Bidding Process.

- (ix) Each Bid of a Qualified Bidder, once submitted must be valid for acceptance by the Liquidator for a minimum period of 6 (six) months from the Auction Date including any revisions to such Auction Date. In case of extension of Auction Date, the validity period of the Bid shall also be deemed to be extended for a minimum period of 6 (six) months from such revised Auction Date. It is clarified for abundant caution that the Bid of the Successful Bidder approved by the Liquidator shall not be subject to any expiry and shall remain valid and binding on the Successful Bidder.
- (x) In the event any Qualified Bidder(s) wishes to exit the Bidding Process prior to the Auction Date, the Qualified Bidder(s) must submit a prior written request to the Liquidator to irrevocably withdraw from the Bidding Process. Such written request must be submitted at least 2 (two) days prior to the Auction Date. Any request received post such date shall not be considered by the Liquidator. The EMD submitted by such Qualified Bidder(s) shall be refunded within 15 (Fifteen) days of receipt of such written request, unless not already invoked/forfeited and/ or the Qualified Bidder(s) has not violated any of the terms and conditions as set out in this Document.

#### **VIII. Declaration of Successful Bidder by the Liquidator**

The Successful Bidder shall be finalized by the Liquidator based on the highest Bid submitted by the Qualified Bidders on the e-auction Portal. *It is clarified that for a qualified bidder to be declared as successful bidder, the said bidder shall be required to be declared as the highest bidder in both the e- auction bidding of KSS and PECL. It is further clarified that the bidder is also required to be the highest bidder of sum total of the collective bids. The highest bidder (H1) in both the e- auction of the Corporate Debtor and Petron Engineering Construction Limited shall be declared as the successful bidder.*

*For Example: For "M/s A" to be declared as the successful bidder, M/s A requires to be declared as the highest bidder in the e- auction process of KSS and e- auction process of PECL in addition to being declared as the highest bidder cumulatively in the e- auction bidding of KSS and PECL.*

#### **IX. Issuance of LOI to Successful Bidder**

- (i) The Liquidator shall issue the Letter of Intent to the Successful Bidder within such timelines mentioned in clause 5.3 and as per the indicative format given in Format VII of this document, stating that such Bidder has been selected as the Successful Bidder.
- (ii) It is hereby clarified that no commitment is being given by the Liquidator to carry out the sale of assets of the Corporate Debtor either before or post identification of the Successful Bidder by way of the e-Auction process, and that the Bidding Process may be cancelled at any time and at any stage by the Liquidator without assigning any reason or assuming any liability or costs.

#### **X. Payment of Sale Consideration by the Successful Bidder**

- (i) On the close of the auction, the Successful Bidder shall be required to deposit Sale Consideration within 30 days from the issuance of the LOI or 90 days from the issuance of the LOI ("Consideration Payment Date") as per Schedule I of the Liquidation Regulations into the bank account, details of which will be given in the LoI and every such communication shall have to be in writing.

Provided that payments made after thirty days shall attract interest at the rate of 12% in terms of the Liquidation Regulations

Provided further that the sale shall be cancelled if the payment is not received within ninety days.

- (ii) Failure to pay the entire Sale Consideration into the Liquidation Account within such aforesaid timeline shall result in cancellation of the LoI, forfeiture of the EMD submitted by the Successful Bidder without any intimation, rejection of the Bid submitted by the Successful Bidder and declaration as Defaulting Successful Bidder.
- (iii) It is clarified that in the event the Successful Bidder does not pay the Sale Consideration as per this document, the Liquidator reserves the right to take such other actions including but not limited to annulling and restarting the Bidding Process. These actions shall not preclude the Liquidator from taking any other appropriate steps as per applicable laws against such Defaulting Successful Bidder. Additionally, in the event the Successful Bidder is unable to complete the transaction for whatsoever reason, the Liquidator, in its discretion, reserves its right to call upon the next highest Qualified Bidder(s), provided the Bid value of such next highest Qualified Bidder(s) is greater than or equal to the Reserve Price, to complete the transaction. Such an option is only within the discretion of the Liquidator and shall not cause to form any right in favour of any Qualified Bidder. The Liquidator shall be entitled to call upon the next highest Qualified Bidder(s) subsequent to failure by the Successful Bidder, by issuing the LoI to such next highest Qualified Bidder, and such subsequently selected highest Qualified Bidder shall be deemed to be then the Successful Bidder. In any case, the Liquidator may repeat such steps of the Bidding Process of this document as deemed fit in the sole discretion of the Liquidator. Notwithstanding anything else contained herein, the Liquidator reserves the right to take any and all measures required for maximization of the value of the Corporate Debtor being auctioned.

#### **XI. Issuance of Certificate of Sale**

- (i) On payment of the full amount of Sale Consideration, and any applicable GST/taxes, registration fees, stamp duty, etc. if any, the Liquidator shall execute Certificate of Sale, as the case may be, upon which the Sale shall stand complete, within 10 (ten) days from receipt of the Sale Consideration.
- (ii) The Certificate of Sale will be issued and /or transaction / sale documents will be executed in the name of the Successful Bidder or its assignee on submission of affidavit under section 29A as provided under Format III.
- (iii) It is expressly stipulated that there are no implied obligations on the part of the Liquidator to do all acts, things and deeds whatsoever for the completion of the sale.
- (iv) The sale shall be subject to conditions prescribed under the IBC and provisions and regulations thereunder.
- (v) If the sale attracts stamp duty, registration charges, GST and any other taxes as per relevant laws, it has to be borne by the Successful Bidder in addition to the Sale consideration.
- (vi) Certificate of Sale may be collected in person by the Successful Bidder or through an authorized person only on submission of appropriate authority, to the satisfaction of the Liquidator.

- (vii) It is specifically clarified that upon the issuance/execution of Certificate of Sale, the ownership, risk and title to the assets of the Corporate Debtor shall stand transferred to the Successful Bidder and the Liquidator/ his Representatives/ his professional advisors shall be released of 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 document, and / or in connection with the Bidding Process, and waives any and all rights and / or claims, the Successful Bidder may have in this respect, whether actual or contingent, whether present or in future. The legal or beneficial interest, right or title over the assets of the Corporate Debtor shall be issued, vested, transferred pursuant to the Successful Bid, to the Successful Bidder pursuant to issuance/execution of the Certificate of Sale on an “as is where is”, “as is what is”, “as is how is” and “without recourse basis” and without any representation, warranties or indemnities.

#### **#LIFTING PERIOD**

- (viii) Asset Lifting Period shall be within 15 days from the date of the issuance/execution of Certificate of Sale.
- (ix) Neither the Liquidator/Corporate Debtor nor the Auctioneer will be responsible for the upkeep, maintenance or security of the Assets after the due date for lifting of the asset(s) as mentioned in the Certificate of Sale. If the Successful Bidder doesn't take delivery of the asset(s) within 15 (fifteen) days from the date of the Certificate of Sale, the Liquidator may reject the sale and sell the Asset to another Bidder and the whole Bid Amount including EMD may be forfeited by the liquidator without any intimation. And in such cases, the Successful Bidder's claim on the said asset(s) will cease to exist.
- (x) The Successful Bidder understands and agrees that the Auction and transfer of title of asset(s) may be subject to the directions/confirmations/orders passed by competent courts and the Bidder agree to all risks or material considerations associated with it.

## **6. OTHER TERMS OF BIDDING PROCESS**

### **6.1 Right to disqualify or accept or reject any or all Bids**

Notwithstanding anything contained in this document, the Liquidator reserves the absolute right to accept or reject any Bids(s), if the Bid(s) are not in compliance with this document and/or the provisions of the Code and/or the Liquidation Regulations, and in any case, notwithstanding anything contained herein, reserves the absolute right to annul the Bidding Process and reject any or all Bids, at any time or at any stage, without any liability or costs or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof for such actions. Without prejudice to the aforesaid, the Liquidator also reserves the absolute right to:

- (a) disqualify any Bidder that is found to have made a false disclosure or made any misrepresentation with regard to its eligibility to participate in the Bidding Process or submit Bids, at any stage of the Bidding Process;
- (b) disqualify any Bidder who does not provide the Earnest Money Deposit and/or the Supporting Documents in compliance with this document, and any Successful Bidder who does not pay the Sale Consideration as per the terms herein;

- (c) annul the Bid Process and reject any/all Bids for any reason, at any point of time or at any stage, including if considered unsatisfactory or commercially unacceptable or below Reserve price as determined by the Liquidator, in its sole discretion, without any obligation to provide reasons or justifications, and if deemed fit move to other methods of Liquidation as per Regulation 32 of the Code.;
- (d) restart the Bidding Process and invite fresh bids either on the Auction Date itself or any subsequent date with or without prior intimation of the same. The Liquidator reserves the right to conduct subsequent rounds of the E- auction process with reduction in Reserve Price, as per the Code and Liquidation Regulations; and/ or
- (e) select or approve any Bid, as it may deem fit, at any time.

#### 6.2 The Bidder(s) acknowledge that:

- (a) If any Bidder is rejected/ disqualified for any reason whatsoever, the Liquidator may (subject to the code and the Liquidation Regulations):
  - (i) consider other Bid(s) received from other Bidder(s), whose Bid(s) is/are valid and is in compliance with this document and Code, including any deviations/amendments to the Bid, as may be allowed by Liquidator; or
  - (ii) annul the Bidding Process; or
  - (iii) invite fresh Bids; or
  - (iv) take any such measure as may be deemed fit at the discretion of the Liquidator including discussion with other Bidder(s).
- (b) Acceptance or rejection by the Liquidator of the Earnest Money Deposit and/or the Supporting Documents received by the Liquidator after the Document Submission Date shall be subject to the sole discretion of the Liquidator.

6.3 A Bidder shall be ineligible to submit a Bid if the Bidder or any Person acting jointly or in concert with the Bidder or any of their connected person (as defined under Code), falls in any of the categories of ineligibility as set out in Format III. The Bidder(s) shall be required to submit an affidavit in the form set out in Format III to satisfy that they are not ineligible to submit a Bid.

### **7. TERMS AND CONDITIONS OF PARTICIPATION**

In accordance with the terms of this document, each Bidder is deemed to have made the following acknowledgements and representations:

- (a) The Bidder(s) shall, unconditionally and irrevocably, promptly upon demand, indemnify and hold harmless the Corporate Debtor, the Liquidator, his Representatives and his professional advisors against all actions, proceedings, claims, demands, losses, liabilities, damages, costs and expenses imposed, asserted against or incurred by the Corporate Debtor, the Liquidator, his Representatives and his professional advisors arising out of or pursuant to or in connection with a breach of the obligations of the Bidder(s) under this document, the Bid(s) and/or the LoI or in the event the Bidder(s) withdraws the Bid(s) post the timelines mentioned herein, or withdraws from the Bidding Process pursuant to the approval of the concerned Bid(s) by the Liquidator or delays in the implementation of the Bid(s).
- (b) The Bidder(s) represents that the Bidder(s) is in compliance with the requirements set out under the Applicable Laws for participating in the Bidding Process and executing the Bid.

- (c) The Bidder(s) represents to the Corporate Debtor and the Liquidator or his Representatives that it has the necessary financial resources available for the purpose of implementation of the Bid(s), for the consideration, stated in the Bid(s).
- (d) The vesting of any legal or beneficial interest, right or title over asset(s) of the Corporate Debtor shall be issued, vested, transferred pursuant to the Successful Bid, to the Successful Bidder on an “as is where is”, “as is what is” “as is how is” and a “without recourse basis”.
- (e) The Successful Bidder represents to the Corporate Debtor and the Liquidator that it has obtained all the requisite corporate authorizations and regulatory approvals required for submission of the Bid(s), and has also obtained or shall obtain necessary authorisations & regulatory approvals for the acquisition of assets of the Corporate Debtor, as may be required in compliance of the applicable laws, for the time being in force.
- (f) The Successful Bidder acknowledges that it shall fulfil all the terms of this document, LoI and the/ Bid(s) (as submitted by it and as accepted by the Liquidator), if it is declared as a Successful Bidder upon the completion of the Bidding Process.
- (g) The Successful Bidder acknowledges that all information submitted by it is complete, strictly as per the requirements stipulated in this document and is true and correct.
- (h) The Successful Bidder acknowledges that no modification, alteration, amendment or change may be made to the Bid Application Form/ EMD/ Supporting Documents submitted by a Bidder except as provided in this document.
- (i) The Bidder(s) should regularly visit the Data Room and the website of the Corporate Debtor to keep themselves updated regarding clarifications/amendments/time extensions, if any, in relation to the Bidding Process.
- (j) The Bidder(s) agree and acknowledge that encashment or forfeiture of the Earnest Money Deposit is not the only remedy available to the Liquidator, and the Liquidator shall have the unfettered right to initiate appropriate legal proceedings against the Bidder(s) as it deems fit for the damages recovery of losses caused to the Liquidator and/or the Corporate Debtor on account of withdrawal of the Bid or non- fulfilment of the terms and conditions of this document, including pressing for specific performance or injunctions.
- (k) It shall be the responsibility of each Bidder to bear all costs in relation to acquisition of assets of the Corporate Debtor. It is clarified that the Liquidator or the Corporate Debtor do not undertake any responsibility or obligation in relation to maintenance/ moving/ delivery of any asset/ equipment/ document prior or post the issuance of the LoI.
- (l) The Sale Consideration shall not be subject to any deductions, adjustments, set off, claims, reimbursements and expenses of any sort whatsoever.

## **8. CLARIFICATIONS**

- 8.1 While the data/information provided in this document and the Data Room, has been prepared and provided in good faith, the Liquidator and his Representatives shall not accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, correctness, completeness or reliability of the information provided, and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability and completeness of the information provided, even if any loss or damage is caused to any of the Bidders by any act or omission on their part.
- 8.2 A Bidder requiring any clarification on this document, Bidding Process, submission of the Bid or on assets of the Corporate Debtor shall email such request for clarification to [liquidatorkssp@vkcindia.com](mailto:liquidatorkssp@vkcindia.com) on or before Last Date for Registration on the E- Auction Portal.
- 8.3 The Liquidator reserves the right not to respond to any query or provide any clarification, at their sole discretion, and no extension of time and date referred to in this document shall be granted on the basis of not having received response to clarifications sought from the Liquidator. Nothing contained herein shall be considered or read as compelling or requiring the Liquidator and/or his Representatives to respond to any query or to provide any clarification to the queries raised by a Bidder. The Liquidator and his Representatives will not be held responsible for any delay in response or non-response to clarifications raised by the Bidders.
- 8.4 The Liquidator and/or his Representatives may issue interpretations and clarifications on this document or in relation to the Bidding Process to the Bidder(s). All clarifications and interpretations issued by the Liquidator or his Representatives shall be deemed to be part of this document if provided in writing.



## **9. CONFIDENTIALITY**

- 9.1 All information furnished in this document and/or pursuant to the terms hereof shall be governed by the provisions of this document and the Confidentiality Undertaking, where applicable. Information relating to the Bidding Process, examination, clarifications, evaluations, and recommendations relating to the Bids or relating to the Bidder(s) shall not be disclosed by the Bidder(s) to any Person who is not officially concerned with the Bidding Process or is not a retained professional advisor.
- 9.2 The Bidder(s) acknowledges that the Confidential Information contains critical information including commercially sensitive information relating to the Corporate Debtor, by virtue of which the Bidder(s) shall keep all such critical information, including the commercially sensitive information and UPSI, confidential and shall not disclose or divulge Confidential Information, such critical information or commercially sensitive information or UPSI, to any other Person.
- 9.3 The Bidder(s) shall use such Confidential Information including the commercially sensitive information and UPSI relating to assets of the Corporate Debtor only for the purpose of preparation and submission of the Bid, in accordance with the terms of this document and the Confidentiality Undertaking, where applicable.
- 9.4 The Bidder(s):
- (a) agrees to use such measures and/or procedures as it uses in relation to its own confidential information to hold and keep in confidence any and all Confidential Information;
  - (b) agrees that the Confidential Information shall be kept confidential and shall be used solely for the purposes of the Bidding Process;
  - (c) shall ensure compliance with Applicable Law and specifically with the Code and the Liquidation Regulations, with respect to Confidential Information received pursuant to this document;
  - (d) shall take all reasonable steps and measures to minimize the risk of disclosure of Confidential Information by ensuring that only such Representatives who are expressly authorized by it and whose duties require them to possess the Confidential Information shall have access to the Confidential Information on a strict need-to-know basis;
  - (e) shall ensure that the Confidential Information will not be copied or reengineered or reproduced or transmitted by any means and in any form whatsoever (including in an externally accessible computer or electronic information retrieval system) by the Bidder or its Representatives, except for sharing of Confidential Information as required in relation to this document, as decided by the Bidder or its Representatives from time to time;
  - (f) shall not use the Confidential Information to cause any undue gain or undue loss to itself or any other person;
  - (g) shall protect any intellectual property of the Corporate Debtor which it may have access to;
  - (h) shall ensure that all Confidential Information is kept safe and secure at all times and is protected from any theft or leakage;

- (i) shall comply with the confidentiality obligations hereunder and the Bidder shall be responsible for any breach thereof.

9.5 The Bidder's obligations hereunder, shall not apply to Confidential Information if the same:

- (a) at the time of its disclosure, is in public domain or which after disclosure becomes part of public domain other than as a result of a disclosure by the Bidder or its Representatives contrary to the terms of this document; or
- (b) prior to its disclosure to the Bidder, was lawfully in the possession of the Bidder as evidenced by the records of the Bidder, or thereafter becomes known to the Bidder on a non-confidential basis from a source other than the Liquidator or his Representatives who is not in breach of its confidentiality obligations;
- (c) is approved for disclosure in writing by the Liquidator, or his Representatives.
- (d) was or is independently developed by the Bidder(s) or its Representatives without relying upon or using the Confidential Information.

## **10. MISCELLANEOUS**

- 10.1 The Bidder(s) should make their own independent inquiries regarding the assets of the Corporate Debtor and that of Petron Engineering Construction Limited, any encumbrances, title of assets and claims/rights/dues/ affecting the assets, etc., and should inspect the properties/assets at their own expense. Anything contained in this document or in the Public Notice does not constitute and will not be deemed to constitute any commitment or any representation of the Liquidator.
- 10.2 This document is issued upon an express understanding and agreement that the Bidder shall use it solely for the purpose of preparation and submission of the Bid/Supporting Documents and for the purpose necessarily associated with the Bid and for no other purpose whatsoever.
- 10.3 The Liquidator reserves the right to conduct due diligence/know your customer verifications on the Bidder(s) at any stage of the Bidding Process.
- 10.4 All payments under this document shall be made in INR (Indian Rupees).
- 10.5 The Bidder(s) shall ensure compliance with any amendment or clarifications to the Code, or to any of the rules and regulations issued thereunder, as amended from time to time. If the Liquidator requires any information, document, or other support from the Bidder, to comply with their obligations under the Code or for the purposes of conducting any diligence, the Bidder shall provide the same immediately at its own cost.
- 10.6 If any Bidder conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its Bid, in any manner whatsoever, found to be ineligible to submit bid under Section 29A of the Code, the Liquidator reserves the right to reject such Bid and/or cancel the Letter of Intent (if issued) and forfeit the Earnest Money Deposit. The Bidder shall be solely responsible for such disqualification based on its declarations in the Bid.
- 10.7 Save as provided in this document, no change or supplemental information to the Supporting Documents shall be accepted after the Document Submission Date. The Liquidator, may, at his sole discretion, request for additional information/document and/or seek clarifications from Bidder(s), even after the Document Submission Date/Auction Start Date, which the Liquidator reserves the right to accept. Delay in submission of additional information and/or documents sought by the Liquidator shall make the Bid liable for rejection.

- 10.8 No extension of time shall be granted under any circumstances to the Bidder(s) for submission of the Supporting Documents including, but not limited to, on the grounds that the Bidder did not obtain a complete set of this document, or did not get an opportunity to conduct a Site visit, or on any other ground(s) as may be deemed appropriate by the Liquidator. However, the Liquidator at his discretion may extend the timelines for submission of Supporting Documents. Such extension in timeline shall be communicated to all Bidders by sending emails and/or publishing the notice of extension on the website of the Corporate Debtor.
- 10.9 A Bidder, accepting this document and gaining access to the Data Room, confirms that the Bidder is in compliance with the Insider Trading Regulations, if applicable and waives any right to claim that there was any involvement of the Liquidator or its Representatives in the Bidder's compliance or lack thereof with the Insider Trading Regulations, if applicable.
- 10.10 Liquidator and his Representatives shall not be responsible in any way for such any costs incurred by the Bidder(s), regardless of the conduct or outcome of the Bidding Process.
- 10.11 The Bidders shall not be entitled to receive any reimbursement of any expenses which may have been incurred in preparation of the Bid(s) and/or carrying out of due diligence, and matters incidental thereto or for any purpose in connection with the Bid(s).
- 10.12 This document and the Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Adjudicating Authority shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with this document and/or the Bidding Process.
- 10.13 The Bidder(s) hereby agrees and releases the Liquidator and his Representatives 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 document, and/or in connection with the Bidding Process, and waives any and all rights and/or claims the Bidder(s) may have in this respect, whether actual or contingent, whether present or in future.
- 10.14 The Liquidator in its sole discretion and without incurring any obligation or liability or cost, reserves the right, at any time, to;
- (a) suspend and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Process or modify the dates or other terms and conditions set out in this document;
  - (b) consult with any Bidder(s) in order to receive clarifications or further information;
  - (c) retain any information and/or evidence submitted to the Liquidator/ his Representatives, by, on behalf of, and/or in relation to any Bidder;
  - (d) cancel or disqualify the Bid submitted by any Bidder at any stage of the Bidding Process;
  - (e) restart the Bidding Process as per the discretion of the Liquidator and even post issuance of LoI;
  - (f) independently verify, disqualify, reject and/or accept any and all submissions or

other information and/or evidence submitted by or on behalf of any Bidder.

- (g) accept any Bid, conduct subsequent rounds of auction as per the terms deemed fit by the Liquidator.

## **11. TECHNICAL TERMS & CONDITIONS OF E-AUCTION SALE**

- 11.1 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.
- 11.2 Bidders are advised to change the password immediately on receipt thereof.
- 11.3 Qualified Bidders may encounter certain unforeseen problems such as time lag, heavy traffic, and system/ power failure at their end. To avoid losing out on bidding because of above-mentioned reasons, it is advised not to wait for the last moments.
- 11.4 The point of contact for all Bidders in relation to the Portal, technical glitches, instructions relating to the Portal etc. shall be the E-Auction Agency, and the Bidders shall not approach the Liquidator in relation to the same.
- 11.5 Post identification of Qualified Bidders, prior to the Auction Date, a mock auction training may be conducted by the E-Auction Agency for familiarity purposes.

## **12. AMENDMENT TO THE DOCUMENT**

The Liquidator may, for any reason whatsoever and without assigning any reason, or incurring any liability, amend, modify or supplement this document by amendment(s). Any amendment(s) shall be uploaded on the website of the Corporate Debtor. Bidders are requested to check website of the Corporate Debtor on a regular basis. The Acceptance of this document shall be deemed to be an acknowledgement by the Bidder(s) that any such amendment(s) pursuant to this document shall be binding on the Bidder(s).

## **13. FRAUDULENT AND CORRUPT PRACTICES**

The Bidder shall observe the highest standard of ethics during the E-Auction Process and subsequently during the closure of the E-Auction Process and during the declaration of the Successful Bidder. Notwithstanding anything to the contrary contained in this E-Auction Process Information Document, the Liquidator shall reject the Bid, without being liable in any manner whatsoever to the Bidder, if the Liquidator, at his discretion, determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the E-Auction Process or has, undertaken any action in respect of such process which results in the breach of any Applicable Law including the Prevention of Corruption Act, 1988. In such an event, the liquidator may invoke/forfeit the EMD, without prejudice to any other right or remedy that may be available to the Liquidator under this document or Applicable Law(s). For the purposes of this Clause, the following terms shall have the meaning hereinafter respectively assigned to them: “coercive practice” shall mean impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the E-Auction Process;

“corrupt practice” shall mean:

- i. the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the E-Auction Process (for avoidance of

doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Liquidator or the Corporate Debtor, who is or has been associated or dealt in any manner, directly or indirectly with the E-Auction Process or arising there from, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Liquidator or the Corporate Debtor, shall be deemed to constitute influencing the actions of a person connected with the E-Auction Process); or

- ii. engaging in any manner whatsoever, during the E- Auction Process or thereafter, any person in respect of any matter relating to the Company, who at any time has been or is a legal, financial or technical adviser of the Liquidator or the Corporate Debtor, in relation to any matter concerning the E-Auction Process;

**“fraudulent practice”** shall mean a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the E- Auction Process;

**“restrictive practice”** shall mean forming a cartel or arriving at any understanding or arrangement among the Bidders with the objective of restricting or manipulating a full and fair competition in the E-Auction Process; and

**“undesirable practice”** shall mean (i) establishing contact with any person connected with or employed or engaged by the Liquidator with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the E- Auction Process; or (ii) having a conflict of interest.

The Bidder shall not involve himself or for any of his Representatives in price manipulation of any kind directly or indirectly under the Applicable Law(s) by communicating with other Bidders. The Bidder shall not divulge either his Bid or any other details provided to him by the Liquidator or during the due diligence process in respect of the Corporate Debtor to any other party. Prior to conduct of due diligence / Site Visits and access of Data Room, the Liquidator shall require the Bidder to execute a Confidentiality Undertaking with the **Corporate Debtor/ Liquidator as provided in Format II.**

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

- 14.1 The Bidders shall be responsible for all the costs incurred by it on account of its participation in the 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 Auction Process.
- 14.2 For purpose of abundant clarity, it is hereby clarified that the Bidder is expected to 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 Bidders.
- 14.3 The Bidder shall not be entitled to receive re-imbursement of any expenses which may have been incurred for carrying out due diligence, search of title to the assets and/or matters incidental thereto or for any purpose in connection with the process.
- 14.4 All taxes applicable (including stamp duty implications and registration charges) on account of sale as envisaged under this document would be borne by the Successful Bidder:

- i. The sale may attract GST, other taxes, stamp duty, registration charges etc. as per relevant laws;
- ii. The Successful Bidder shall bear all the necessary expenses like applicable stamp duties / additional stamp duty / transfer charges, fees, etc.
- iii. Cess or other applicable taxes i.e., GST, TDS etc.

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

## **15. GOVERNING LAW AND JURISDICTION**

This document, the Auction Process, and the other documents pursuant to the Document shall be governed by the laws of India and any dispute arising out of or in relation to the Document or the Auction Process shall be subject to the exclusive jurisdiction of the Adjudicating Authority, Courts and Tribunals at Mumbai, Maharashtra, India.

## **ANNEXURES**

- Format I: Bid Application Form
- Format II: Confidentiality Undertaking
- Format III: Format of Affidavit by Bidder under Section 29A of the Code
- Format IV: Board Resolution
- Format V: Power of Attorney
- Format VI: Checklist for Submission of Documents
- Format VII: Letter of Intent

## FORMAT I: BID APPLICATION FORM

*(On the letter head of the Bidder)*

Bidder's Name:

Full Address:

Telephone No.:

E-mail address:

Fax/No.:

To,

CS Vineet K Chaudhary

Liquidator

In the matter of KSS Petron Private Limited (In Liquidation)

D-38, LGF (L/S), South Extension,

Part-II, New Delhi-110049

[liquidatorksspetron@vkcindia.com](mailto:liquidatorksspetron@vkcindia.com) (process specific)

[ip.vineetchaudhary@gmail.com](mailto:ip.vineetchaudhary@gmail.com) (registered with IBBI)

**Sub: - Bid Application Form for participation in e-Auction of assets of KSS Petron Private Limited ("Corporate Debtor") jointly with Assets of Petron Engineering Construction Limited**

**Ref: - Process Document dated [07.01.2022] for submission of Bid Application Form & Bid for acquisition of assets of the Corporate Debtor ("Document") jointly with Assets of Petron Engineering Construction Limited**

Sir,

1. We, the undersigned Bidder having read and examined in detail the Process Document (being referred to as the document also) including the disclaimers to the document, set out the related information in relation to the Bidding Process conducted for the acquisition of assets of the Corporate Debtor.
2. We, the undersigned Bidder are desirous in participating in the e-Auction announced by you in the newspaper publication dated in \_\_\_\_\_[please specify the name of Newspaper (s)]
3. We are interested to bid for the acquisition of assets of the Corporate Debtor jointly with Assets of Petron Engineering Construction Limited located at Gulbarga Site.
4. I hereby confirm that I will bid for the assets of Petron Engineering Construction Limited (in Liquidation) along with the assets of the Corporate Debtor.
5. We enclose herewith the Supporting Documents with duly signed and/or certified forms/documents/authorizations as mandated by you in the document, for your consideration.
6. We have submitted all the requisite documents as per the prescribed formats set out in the Document, without any deviations, conditions and without any assumptions or notes.



7. We further represent and confirm as follows:

**(a) Earnest Money Deposit**

In relation to the Earnest Money Deposit required to be submitted as per sub-clause III of Clause 5.4 of this document, we enclose Demand Draft/proof of Direct Transfer of INR [●], dated [●].

**(b) Acceptance**

We hereby unconditionally and irrevocably agree and accept the terms of the document and that the decision made by the Liquidator and/or the Adjudicating Authority in respect of any matter with respect to, or arising out of, the document, shall be binding on us. We hereby expressly waive any and all claims in respect of the Bidding Process.

**(c) Litigation/Proceedings**

We confirm that there are no litigation/disputes/proceedings pending or threatened against us, which affects our ability to fulfil our obligations under the Bid Application Form & Bid and the document.

**(d) Familiarity with Relevant Indian Laws and Regulations and Authorizations**

We confirm that we have studied the provisions of the Code and other relevant laws and regulations to enable us to submit and execute our Bid Application Form & Bid along with required documents and execute the other required documents in the event of our selection as the Successful Bidder. We have obtained all the requisite corporate authorizations and regulatory approvals required for submission of the Bid Application Form & Bid, and has also obtained or shall obtain necessary authorizations & regulatory approvals for the acquisition of assets of the Corporate Debtor, as may be required in compliance of the applicable laws, for the time being in force.

We further confirm that our Bid Application Form & Bid is not in contravention of the provisions of any law for the time being in force and is in strict compliance with the Code.

**(e) Contact person**

The details of the contact person for the purposes of this Bid Application Form & Bid are provided below:

Name	:	[●]
Designation	:	[●]
Company Address	:	[●]
Phone Nos	:	[●]
Fax Nos.	:	[●]
E-mail address	:	[●]

1. We are enclosing herewith the physical copy of the Supporting Documents, and necessary documents as described herein and duly signed forms/documents/authorizations, i.e. the Bid Application Form, Supporting Documents and EMD and necessary documents as described herein, as mandated in the document, for your consideration.

2. We confirm that the Bid Application Form & Supporting Documents submitted by us is consistent with all the requirements of submission as stated in the document and the Code and subsequent clarifications/communications from the Liquidator or his Representatives.
3. The information submitted by us is complete, strictly as per the requirements stipulated in the document and is true and correct. We acknowledge that we shall be solely responsible for any errors or omissions in our Bid Application Form & Bid.
4. We confirm that all the terms and conditions of our Bid are valid for acceptance for a minimum period of 6 (six) months from the Auction Date. We further confirm that in the event that we are declared as Successful Bidder, then the Bid shall continue to remain valid and binding without any expiry period. We confirm that we have not taken any deviations and duly complied with the provisions of the document.
5. Capitalized terms, not defined herein, shall have the meaning given to them in the document.

Thanking you,

Yours faithfully,

(Signature and Name of the Attorney as per Format IV-Board Resolution/Format V – Power of Attorney)

Address of the duly Authorized Representatives of the [Bidder]  
Bidder's rubber stamp/seal

## **ADDITIONAL DETAILS TO BE SUBMITTED WITH BID APPLICATION FORM**

1. Details of the Bidder such as:

- A. Name:  
Address with Proof:  
Telephone No:  
Fax:  
Email:
- B. Date of establishment of the Bidder:
- C. PAN No. or equivalent details of the Bidder:
- D. GST details of the Bidder:

2. Legal Documents: Copies of Certificate of Registration and Constitutional Documents of the Bidder (if any)

3. \*Details of Consortium Members (if any):

Name of the Member	% of share in the Consortium

4. \*Copy of the Consortium Agreement, if any.

\*Consortium details will be applicable to those who are applying as a Consortium Bid.

## FORMAT II: CONFIDENTIALITY UNDERTAKING

***[TO BE PRINTED ON A STAMP PAPER OF APPROPRIATE VALUE AND DULY ATTESTED  
BY NOTARY PUBLIC]***

### CONFIDENTIALITY UNDERTAKING

To,

CS Vineet K Chaudhary ("**Liquidator**")  
D-38, LGF (L/S), South Extension,  
Part-II, New Delhi-110049\

**Sub: Liquidation Process of KSS Petron Private Limited (In Liquidation)**

Dear Sir,

1. This acknowledgement and undertaking ("**Undertaking**") is being furnished by \_\_\_\_\_ ("**Recipient**", which term where relevant includes all partners, directors, employees and consultants, successors and assignees of the Recipient), in respect of the Confidential Information (*as defined herein*) provided / to be provided to us in relation to KSS Petron Private Limited (CIN U45400MH2007PTC234297), a Company having its registered office at Swastik Chambers, 6<sup>th</sup> Floor, Sion, Trombay Road, Chembur, Mumbai-400071 (Maharashtra) (the "**Corporate Debtor**") and is further 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), read with the applicable regulations.

2. I/We understand, acknowledge and agree that any and all information supplied, whether by you, the Corporate Debtor or any person on behalf of you and/or the Corporate Debtor, to us or to any other person on our behalf, including any third parties ("**Secondary Recipient**") including information related to the assets of the Corporate Debtor, information related to assets whether in written form, electronically or information accessed from the data room, in any form, or orally shall constitute "**Confidential Information**" for the purposes of this Undertaking.

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

However, Confidential Information shall not include:

- i. information which, at the time of disclosure to the Recipient or Secondary Recipient(s), is in the public domain through no violation of the provisions of the Code or a breach of this Undertaking; or

- ii. information which, after disclosure to the Recipient or Secondary Recipient(s), becomes publicly available and accessible through no violation of the provisions of the Code or a breach of this Undertaking; or
- iii. 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
- iv. information which is permitted by you or your authorized representatives 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;
- v. information which was independently developed by any party (including the Recipient and the Secondary Recipient) without breach of this Undertaking, and not on the basis of Confidential Information; or
- vi. information that is required to be disclosed on account of an order of a court or due to any requirement of law, regulation or any competent judicial, supervisory, regulatory or administrative authority/ body including the directions of any regulatory authority applicable to, or having jurisdiction over, the Recipient and the Secondary Recipient, or in any other legal proceedings (including the National Company Law Tribunal, Insolvency and Bankruptcy Board of India, any other court, tribunal or government authority) or pursuant to the guidelines of regulatory/administrative authority. The Recipient shall disclose such information only with prior intimation to the Liquidator or the Corporate Debtor or any person authorised on their behalf.

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

- i. the Confidential Information provided by the Liquidator in relation to the Corporate Debtor has been accepted by the Recipient and shall be utilized only in accordance with this Undertaking;
- ii. the Confidential Information shall be kept secret and confidential by the Recipient and shall be used solely as allowed herein;
- iii. the Recipient shall not use Confidential Information to cause an undue gain or undue loss to itself or any other person;
- iv. the Recipient shall comply with the provisions of law from time to time in force relating to confidentiality and insider trading;
- v. the Confidential Information may only be disclosed to and shared with Secondary Recipients, in accordance with applicable laws, including in relation to confidentiality, and terms of this Undertaking on a strict need-to-know basis and only to the extent necessary for and in relation to the auction of the assets of the Corporate Debtor/ its assets with prior intimation to the Liquidator, provided that the Recipient shall ensure that such Secondary Recipients shall strictly be bound by obligations that are at least as restrictive as those stated in this Undertaking. The Recipient shall be liable for any breach of this Undertaking due to any action or omission of any Secondary Recipient and in this regard this Undertaking would be read as if the Secondary Recipient were a party hereto with all references to Recipient being a reference to Secondary Recipient;
- vi. it shall immediately disclose to the Liquidator, if so required by the Liquidator, the names and details of any and all Secondary Recipients;
- vii. 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.;
- viii. 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;

- ix. the Recipient shall protect any intellectual property of the Corporate Debtor it may have access to;
- x. 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 or any person on behalf of the Liquidator and/or the Corporate Debtor 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 Corporate Debtor.

4. 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 including monetary compensation to which the Liquidator and the Corporate Debtor jointly or severally will 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.

5. 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 Adjudicating Authority as per the Code 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 \_\_\_\_\_, 2022  
at \_\_\_\_\_.

SIGNED AND DELIVERED BY:

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

WITNESS:  
(Signature)

(Signature)

(Name)  
(Address)

(Name)  
(Address)

### FORMAT III: FORMAT OF AFFIDAVIT BY BIDDER UNDER 29A OF THE CODE

*[To be submitted by each Bidder and in case the Bidder is a consortium, then to be submitted by each member of such consortium]*

*[To be stamped with adequate value under the Stamp Act applicable to the particular state and duly attested by Notary Public]*

#### AFFIDAVIT

I, [name of the chairman/managing director/director/authorized person of Bidder], son of [\_\_\_\_], aged about [\_\_\_\_] years, currently residing at [Address to be inserted] and having Aadhaar / Passport number [\_\_\_\_], on behalf of [name of the Bidder] having registered office at [\_\_\_\_] ("**Bidder**") pursuant to authorization of the Board of Directors of the Bidder dated [\_\_\_\_] OR authorization by way of Power of Attorney dated [\_\_\_\_], do solemnly affirm and state to the Liquidator of KSS Petron Private Limited ("**Corporate Debtor**") ("**Liquidator**") as follows:

- a. That I am duly authorized and competent to make and affirm the instant affidavit for and on behalf of the Bidder in terms of [resolution of its board of directors/ power of attorney dated \_\_\_\_]. I hereby unconditionally state, submit and confirm that the document is true, valid and genuine.
- b. I hereby unconditionally state, submit and confirm that the Bidder is not disqualified from submitting a Bid in respect of the acquisition of assets of the Corporate Debtor, pursuant to the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code").
- c. That neither the (i) Bidder nor (ii) any person acting jointly or in concert with the Bidder nor (iii) any person who is a connected person (as defined under the provisions of the Insolvency and Bankruptcy Code, 2016) of (a) the Bidder or (b) any person acting jointly or in concert with the Bidder:
  - (i) is an undischarged insolvent;
  - (ii) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
  - (iii) is, at the time of submission of the Bid, a person who (i) has an account which has been classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, or (ii) controls or manages or is the promoter of a Corporate Debtor whose account has been, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force; and such classification has continued for a period of one year or more from the date of such classification till the date of commencement of the corporate insolvency resolution process of the Corporate Debtor and all such overdue amounts along with interest, costs and charges thereon has not been fully repaid at the time of submission of the Bid.

- (iv) has been convicted of any offence punishable with imprisonment:
    - i. for two years or more under any statute specified under the Twelfth Schedule of the Insolvency and Bankruptcy Code, 2016 and two years have not passed from the date of release from such imprisonment; or
    - ii. for seven years or more under any law for the time being in force and two years have not passed from the date of release from such imprisonment
  - (v) has been disqualified to act as a director under the Companies Act, 2013;
  - (vi) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
  - (vii) has been a promoter or in the management or control of a Corporate Debtor in which a preferential transaction or undervalued transaction or extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Hon'ble National Company Law Tribunal (or its Appellate Tribunal /Court) under the Insolvency and Bankruptcy Code, 2016 (other than a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction which has taken place prior to the acquisition of assets 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 the Bidder has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction),
  - (viii) has executed a guarantee in favour of a creditor, in respect of a Corporate Debtor against which an application for insolvency resolution made by such creditor has been admitted under the Insolvency and Bankruptcy Code, 2016 where such guarantee has been invoked by the creditor and remains unpaid in full or part; and
  - (ix) is subject to any of the aforesaid conditions under any law in a jurisdiction outside India.
- d. That the Bidder unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons.
  - e. That the Bidder unconditionally and irrevocably represents, warrants and confirms that it is eligible under the terms and provisions of the Insolvency and Bankruptcy Code, 2016 and the rules and regulations thereunder to submit a Bid for acquisition of assets of the Corporate Debtor, and that it shall provide all documents, representations and information as may be required by the Liquidator to substantiate to the satisfaction of the Liquidator that the Bidder is eligible under the Insolvency and Bankruptcy Code, 2016 and the rules and regulations thereunder to submit a Bid for acquisition of assets of the Corporate Debtor.
  - f. That the Bidder 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.
  - g. That the Bidder understands that the Liquidator may evaluate the Bid to be submitted by the Bidder or any other person acting jointly with it and such evaluation shall be on the basis of the confirmations, representations and warranties provided by the Bidder under this affidavit.
  - h. That the Bidder agrees that the Liquidator is entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the Bid submitted by the Bidder.



- i. That in the event any of the above statements are found to be untrue or incorrect, then the Bidder 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 Bidder.
- j. That the Bidder agrees and undertakes to disclose/inform forthwith, to the Liquidator, if the Bidder becomes aware of any change in factual information in relation to it or its connected person (as defined under the Code) which would make it ineligible under the provisions of Section 29A of the Code at any stage of the Bidding Process.
- k. That if, at any time during the Bidding Process, the Bidder becomes ineligible to acquire the assets of Corporate Debtor as per the provisions of the Code (and in particular Section 29A of the Code), the fact of such ineligibility shall be forthwith brought to the attention of the Liquidator.
- l. That this affidavit shall be governed in accordance with the laws of India and the Adjudicating Authority shall have the exclusive jurisdiction over any dispute arising under this affidavit.

Any capitalized and undefined term shall have the meaning assigned to it in the Process Document.

SOLEMNLY AFFIRMED AT \_\_\_\_\_ ON THIS THE [\_\_\_\_\_] DAY OF [\_\_\_\_\_] 2022.

DEPONENT

VERIFICATION:

I, [name of the authorized person of Bidder, authorised by the Board of the Bidder (in case of a company) for giving such affidavit], the deponent above named, on behalf of [name of the Bidder], having registered office at [\_\_\_\_], do hereby verify and state that the contents of the above affidavit are true to the best of my knowledge and nothing material has been concealed therein.

Verified at \_\_\_, on this the [\_\_\_\_] day of [\_\_\_\_] 2022.

DEPONENT

## FORMAT IV: BOARD RESOLUTION

(On the letter head of the Bidder)

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

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**WHEREAS** pursuant to the process document dated [●] (“**Process Document**”), issued by Liquidator of KSS Petron Private Limited (“**Corporate Debtor**”), in relation to submission of bids for acquisition of assets of the Corporate Debtor, jointly with assets of Petron Engineering Construction Limited, the Company, being the Bidder, is desirous of submitting a Bid for the same in accordance with the requirements of the Process Document.

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

**“RESOLVED THAT [insert]**, of the Company, be and is hereby authorized to take all the steps required to be taken by the Company for the submission of the Bid Application Form and Bid in accordance with the terms of the Process Document, including the following:

- a) submit the Bid Application Form and Bid and other requisite documents, in accordance with the terms of the Process Document;
- b) execute all other agreements, deeds, writings and powers of attorney as may be required in relation to the Process Document, including any amendments or modifications as may be suggested by the Liquidator of Petron Engineering Construction Limited to any of 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 Document;
- c) submit necessary clarifications or information in relation to the Bid Application Form and Bid, as may be required in accordance with the Process Document;
- d) operate the account created by the Bidder on the web portal of the e-auction agency engaged by the Liquidator for the submission of Bid as per the terms of the Process Document;
- e) pay such amounts and consideration, in the manner as may be agreed with the Liquidator, in accordance with the procedure set out under the Process Document in furtherance of or under the Bid ; and
- f) 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 *[insert name of authorised person]*.”

Certified to be true

**For the Company**

---

**[insert]**

**Notes:**

- 1) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
- 2) In case of the Board Resolution being provided by a company incorporated in India, the Board Resolution shall to be notarized by a notified notary. In the event the Board resolution is from a company incorporated outside India, the same shall be duly notarized/consularised in the jurisdiction of incorporation of the company.
- 3) In case the Board Resolution is alone not adequate for authorizations of the actions contemplated in the Board Resolution, then in addition to the Board Resolution, all other corporate and other authorizations, as are required to give effect to the aforesaid authorizations (e.g., necessary shareholders resolution, if required) would also be submitted and the copy of the same shall be authenticated in the same manner as Board Resolution. Such authorizations should meet the expectation of the Liquidator and Liquidator may not accept such authorizations if it/they does/do not meet the requirement of the Liquidator.
- 4) This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act, 2013 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an opinion issued by the legal counsel of such foreign entity, stating that the board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.
- 5) The Board Resolution is to be certified in accordance with applicable law and the constitutional documents of the Company.

**FORMAT V: POWER OF ATTORNEY\***

***(TO BE ON NON-JUDICIAL STAMP PAPER OF APPROPRIATE VALUE AS PER THE STAMP ACT RELEVANT TO THE PLACE OF EXECUTION. FOREIGN COMPANIES SUBMITTING BIDS ARE REQUIRED TO FOLLOW THE APPLICABLE LAW IN THEIR COUNTRY.)***

**POWER OF ATTORNEY**

Know all men by these presents, We, *[Insert name and address of the registered office of the Bidder]* (“**Bidder**”) do irrevocably hereby constitute, appoint and authorize Mr./Ms. *[Insert name and residential address of the attorney]* who is presently holding the position of [●] as our true and lawful attorney (“**Attorney**”), to do in the name of the Bidder and on behalf of the Bidder, all such acts, deeds and things necessary in connection with or incidental to the submission of the Bid or any other document as may be required under or pursuant to the Process Document issued by Liquidator of KSS Petron Private Limited dated [●] (“**Process Document**”), including all other documents related to the Bid, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other deeds or document that the Liquidator, may require the Bidder to submit. The aforesaid Attorney is further authorized to provide representations, information or responses to the Liquidator, and represent the Bidder and generally deal with the Liquidator and the E-Auction Agency with respect to the Bid and the Bid Process, in accordance with the terms of the Process Document and to agree to any modification to the Bid Application Form, Supporting Documents or Bid and other documents submitted pursuant to the Process Document.

We hereby ratify all acts, deeds and things done by the said Attorney pursuant to this power of attorney and that all acts, deeds and things done by the aforesaid Attorney shall be binding on the Bidder and shall always be deemed to have been done by the Bidder.

All the terms used herein but not defined shall have the meaning ascribed to such terms under the Process Document.

Signed by the within named  
*[Insert the name of the Bidder]* Through the hand of

Mr..... (Name, designation and address of the executant)

Accepted

.....

Signature of Attorney  
(Name, designation and address of the Attorney)

Attested

..... (Signature of the executant)  
(Name, designation and address of the executant)

.....

Signature and stamp of Notary of the place of execution

Common seal of ..... has been affixed in my / our presence pursuant to Board of Director's

Resolution dated..... WITNESS

1.(Signature)

Name ..... Designation.....

2.(Signature)

Name ..... Designation.....

Notes:

- 1) The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the Bidder and the same should be under common seal of the Bidder affixed in accordance with applicable procedure. Further, the person whose signatures are to be provided on the Power of Attorney shall be duly authorized by the Bidder in this regard.
- 2) In case of the Bidder being a foreign company, the same shall be signed by a person of equivalent position and the requisite legalization and consularization process shall be duly completed.
- 3) In the event, the Power of Attorney has been executed outside India, the same shall be required to be duly notarized by a notary public of the jurisdiction where it is executed.
- 4) Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board resolution/power of attorney, in favor of the person executing this power of attorney for delegation of power hereunder on behalf of the Bidder.
- 5) The Bidder shall submit a power of attorney or such other equivalent authorization as may be deemed to be adequate in the jurisdiction of incorporation of the Bidder.

# FORMAT VI: CHECKLIST FOR SUBMISSION OF DOCUMENTS

*(On the letter head of the Bidder)*

Sr. No	Documents	Response (Y/N/NA)
1.	Bid Application Form along with Supporting Documents – <b>Format-I</b>	
2.	Confidentiality Undertaking <b>Format-II</b>	
3.	Affidavit under Section 29A <b>Format-III</b>	
4.	Board Resolution <b>Format-IV</b>	
5.	Power of Attorney <b>Format-V</b>	

## FORMAT VII: LETTER OF INTENT

Ref. No.: \_\_\_\_\_

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

To

Name (as the “**Successful Bidder**”, “**you**”, “**your**”)

Address

Kind Attention: Name

**Sub: Declaration of the Successful Bidder and issuance of Letter of Intent by the Liquidator of KSS Petron Private Limited.**

Sir,

This is with reference to the Liquidation process of KSS Petron Private Limited (“**Corporate Debtor**”). Pursuant to the Public Notice published on \_\_\_\_\_, 2022 and the Process Document dated \_\_\_\_\_, 2022, as amended and supplemented from time to time (“**Process Document**”), bids were invited for conduct of e-auction for acquisition of assets of the Corporate Debtor; in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and rules and regulations framed thereunder. You have pursuant to the said Public Notice and Process Document, submitted a binding Bid of INR \_\_\_\_\_. Pursuant to the review of the Bid Application Form, Supporting Documents by the Liquidator and submission of the EMD in terms of the Process Document, you were identified as a Qualified Bidder.

Post conduct of the e-auction process, you have been selected as the Successful Bidder for the acquisition of assets of the Corporate Debtor, as per the Process Document, and the Letter of Intent is being issued to you subject to the fulfilment of the following condition:

You shall provide the entire Sale Consideration as per the terms of this Letter of Intent and ensure that the Consideration Payment Date occurs, within 90 (ninety) days from the issuance of this Letter of Intent, into the following bank account:  
*[details of Liquidation Account]*

Please note that payments made after 30 (thirty) days from the issuance of this Letter of Intent shall attract interest at the rate of 12%: Further, the sale shall be cancelled if the payment is not received within 90 (ninety) days as mentioned above.

In case of any contravention or breach of the terms of the Process Document, the Liquidator of the Corporate Debtor shall be entitled to exercise such remedies as it may deem fit under applicable law as well as under the terms of the Process Document, including revoking this Letter of Intent.

It is hereby clarified that as per the terms of the Process Document, sale certificate shall be issued within 10 (ten) days from receipt of the Sale Consideration and asset lifting period shall be within 15 days from the date of issuance/execution of Certificate of Sale.

Further, as per Clause XI (ix) of the Process Document, neither the Liquidator/Corporate Debtor nor the Auctioneer will be responsible for the upkeep, maintenance or security of the Assets after the due

date for lifting of the asset(s) as mentioned in the Certificate of Sale. If the Successful Bidder doesn't take delivery of the asset(s) within 15 (fifteen) days from the date of the Certificate of Sale, the Liquidator may reject the sale and sell the Asset to another Bidder and the whole Bid Amount including EMD may be forfeited by the liquidator without any intimation. And in such cases, the Successful Bidder's claim on the said asset(s) will cease to exist.

Notwithstanding anything contained herein, the issuance of this Letter of Intent shall not be deemed to grant any right against the Liquidator of the Corporate Debtor or his Representatives or his professional advisors, and no obligation or cost or risk shall be undertaken by the Liquidator or his Representatives or his professional advisors.

You shall keep the contents of this Letter of Intent, confidential, save and except where any disclosure is required under Applicable Laws to your shareholders, Adjudicating Authority, courts or tribunals, stock exchanges, if applicable, your advisors and your representatives (on need to know basis) in relation to the liquidation process of the Corporate Debtor, provided that any such disclosure shall be as per the Confidentiality Undertaking signed by you.

This Letter of Intent shall be governed by, and construed in accordance with, the laws of India and the Adjudicating Authority shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with this Letter of Intent.

Unless otherwise defined herein, capitalized terms used and not defined herein shall have the meanings ascribed to them under the Process Document.

Thanking You,

CS Vineet K Chaudhary  
Liquidator in the matter of KSS Petron Private Limited  
IBBI Registration No.: IBBI/IPA-002/IP-N00103/2017-18/10246  
[liquidatorksspetron@vkcindia.com](mailto:liquidatorksspetron@vkcindia.com) (process specific)  
[ip.vineetchaudhary@gmail.com](mailto:ip.vineetchaudhary@gmail.com) (registered with IBBI)  
Address of the Liquidator registered with IBBI:  
D-38, LGF (L/S), South Extension, Part-II,  
New Delhi-110049  
Phone: 011 – 49121644-45  
***Accepted Unconditionally,***

Signature of authorized representative/attorney holder of the Successful Bidder:

Name and Designation

Name of the Successful Bidder:

Date:

Place: