

ELIGIBILITY CRITERIA FOR SUBMISSION OF BID FOR THE ASSETS OF IND-BARATH POWER (MADRAS) LIMITED (UNDER LIQUIDATION)

1. ELIGIBILITY

A Bidder shall not be eligible to submit a Bid in relation to the sale of the Company if it fails to meet the Financial Criteria and Legal Criteria as set out below:

1. Financial Criteria: The Bid would be subject to evaluation on Financial Criteria e.g. consolidated group net worth and/or funds available for deployment including the following:

In case of Body Corporate, Sole Proprietorship, Partnership firms, LLPs and Individuals: Consolidated standalone net worth at a group level or net worth (as may be applicable) as per the audited balance sheet dated March 31, 2019 or any other audited financial statements thereafter or net worth certificate from an independent chartered accountant should be at least Rs. 25,00,00,000/- (Rupees Twenty five crores).

For Financial Institutions/ PE Funds/ Asset Reconstruction Companies/ NBFCs/ Other Financial Investors: Assets under management of at least Rs. 25,00,00,000/- (Rupees Twenty five crores) in the immediately preceding completed financial year.

For Consortium of Investors: In case of a consortium the total net worth of the consortium jointly has to be 25,00,00,000/- (Rupees Twenty five crores) (as per the Companies Act, 2013) in the immediately preceding completed financial year.

A Financial Eligibility Certificate has to be provided by the Bidders evidencing their compliance with the Financial Criteria.

It is clarified that that Liquidator has the absolute right to relax the Financial Criteria at his discretion and can accept a Bid which doesn't meet the total net worth criteria as specified above.

2. Legal Criteria:

Proviso to Section 35A (f) of the IBC provides that the Liquidator shall not sell the assets of the Company to any person who is not eligible to be a resolution applicant. Section 29A of IBC defines the persons not eligible to be resolution applicant. Section 29 A of the IBC is reproduced as below for reference purposes only:

“Sec 29A. Persons not eligible to be resolution applicant:

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person-

- a) *is an un-discharged insolvent;*
- b) *is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 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, 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 (18 of 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) is 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, 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”.*

3. DOCUMENTS REQUIRED TO BE SUBMITTED TO ASCERTAIN ELIGIBILITY OF THE BIDDER

- a. The Bidder would need to submit the following forms, documents and authorizations as part of the E-Auction by the Bidder(s) as per the timelines prescribed in this E-Auction Process Information Document:

- a. Ownership structure and composition of the Bidder, Proof of Identification, Current Address-Proof, PAN card, valid e-mail ID, Landline and mobile phone number etc.
- b. Authorization to the Signatory (in case the bidder is a legal entity).

The interested bidder must submit the Financial Eligibility Certificate; and Affidavit and Undertaking (through Authorized Signatory, in case the bidder is a legal entity). The format for the Affidavit and Undertaking is attached vide **Annexure-I**, available on the website of the Corporate Debtor at <http://ibpml.in/liquidation.html>

Please note that only the Qualified Bidder(s) will gain access to documentation, additional information in relation to the Company, required for due diligence, after due submission of the Financial Eligibility Certificate; Affidavit and Undertaking and after executing a Confidentiality Undertaking.

Further, it should be noted that at any stage of the E-Auction Process, the Liquidator may ask for further documents from the Bidder(s) to evaluate their eligibility. The Liquidator, at his discretion may disqualify the Bidder(s) for non-submission of the requested documents.