

15<sup>th</sup> April 2019

Private and Confidential

**Terms and Conditions  
for Participation in E-Auction Process for Sale of  
JAMES HOTELS LIMITED (In Liquidation) as a going  
concern**

Dated: 15<sup>th</sup> April 2019

**Issued on behalf of James Hotels Limited (in Liquidation)  
by CA Navneet Gupta, Liquidator**

## **DISCLAIMER**

1. *This E-Auction Process Information Sheet is issued by CA. Navneet Gupta, the Liquidator appointed by Honourable NCLT, Chandigarh Bench, in the matter of James Hotels Limited a company in Liquidation, for general information purposes only.*
2. *The purpose of this document is to lay out the process for submitting the E-Auction Bids for the James Hotels Limited, A Corporate Debtor on Going concern basis in accordance with the Insolvency and Bankruptcy Code, 2016('IBC').*
3. *This document is not a statutory document and it has not been approved or registered with any regulatory or statutory authority of Government of India or any State Government. Nothing here in or in materials relating to the E-Auction Process Information Sheet should be construed as legal, financial, accounting, regulatory or tax advice by the Liquidator.*
4. *It is to be noted that no information being provided in this E-Auction Process Information Sheet, claims to be comprehensive, independent due diligence of the intended user of this document or the bidder is highly recommended.*
5. *This E-Auction Process Information Sheet and information contained herein or disclosed should not be printed, reproduced, transmitted, sold, distributed, or published by the recipient, without prior written approval from the Liquidator.*
6. *Neither the Liquidator, nor any of his Legal or other Associates, etc. shall be liable for any damages, whether direct or indirect, including loss of revenue or profits that may arise from or in connection with the use of this E-Auction Process Information Sheet, including for the E-Auction Participant not being selected as a Successful Auction Participant or on account of any decision taken by the Liquidator.*
7. *Further, apart from the provisions set out in this E-Auction Process Information Sheet, the E-Auction process applicant shall be responsible for fully satisfying the requirements and Provisions of the Insolvency and Bankruptcy Code and of the Insolvency and Bankruptcy Board of India's (Liquidation Process) 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.*
8. *It is to be noted that by procuring a copy of this E-Auction Process Information Sheet, the recipient accepts the terms of this disclaimer, which forms an integral part of this E-Auction Process Information Sheet and part of all the other terms and conditions of this E-Auction Process Information Sheet.*
9. *Under no circumstances shall the E-Auction Participant make any contact, direct or indirect, by any mode whatsoever, with the Company until the Liquidator gives his Written Permission.*
10. *The Company are proposed to be sold as corporate debtor on going As is where is whatever there is and without recourse basis*

11. *The E-Auction Participant shall bear all its costs and charges associated with or relating to the preparation and submission of its bid including but not limited to Physical and Electronic preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Liquidator or any other costs incurred in connection with or relating to its bid.*
  
12. *This E-Auction Process Information Sheet is neither an agreement nor an offer by the Liquidator to the Prospective Bidders or any other person. The objective of this E- Auction Process Information Sheet is to provide interested parties with information that may be useful in making their bids. It may be noted that the assumptions, assessments, statements and information contained in the E-Auction Process Information Sheet may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own due-diligence, investigations and analysis and should also check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this E-Auction Process Information Sheet and may get independent advice from appropriate sources.*
  
13. *Information provided in this E-Auction Process Information Sheet to the Bidder(s) has been collected and collated from several sources. The information given by no means claims to be an exhaustive account of statutory requirements and should not be regarded as complete. The Liquidator accepts no liability or responsibility for the authenticity, accuracy or otherwise for any statement or information contained in the E- Auction Process Information Sheet.*

**JAMES HOTELS LIMITED (In Liquidation)**  
**Regd office: Block no 10, Sector 17-A, Chandigarh**

Liquidator's Address: # 1598, Level 1, Sector 22, Chandigarh;

Contact: +91-172-5085213; Email: [liquidatorjames22@gmail.com](mailto:liquidatorjames22@gmail.com)

Liquidator's IBBI Registration No.: IBBI/IPA-001/IP-P00361/2017-18/10619

**TERMS & CONDITIONS OF E-Auction for SALE PROCESS**

**1. Introduction**

An expression of Interest (Eoi) is invited from investors/consortium of investors having adequate financial and technical capabilities to bid for acquisition of James Hotels Limited (Corporate Debtor) as a going concern through e-auction as per details mentioned below. The Corporate Debtor is proposed to be sold on "AS IS WHERE IS WHATEVER THERE IS AND WITHOUT RECOURSE BASIS" and as such the said disposition is without any kind of warranties and indemnities. The Corporate Debtor is currently undergoing the Liquidation Process under the provisions of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as IBC) in terms of the order dated 17th October, 2018 passed by Hon'ble National Company Law Tribunal, Chandigarh (NCLT).

James Hotels Limited, one of the most happening properties, is located in land admeasuring 9602 sq yards in Sector 17 -A Chandigarh. A fully serviced business hotel, James Hotel Limited offers 138 lavish rooms that come fitted with the best of business and leisure amenities. The hotel is also geared up to host various types of business and social events.

**2. E-Auction Process for Sale of Corporate Debtor**

The e-auction process for sale of Corporate Debtor on going concern basis as aforesaid shall be completed in following steps, brief of which is mentioned hereunder:

- a) Submission of Eoi by Prospective Bidder(s) [hereinafter referred to as **PB**] in specified format along with non-refundable process participation fees of INR 2,50,000.00 plus GST as applicable,
- b) Submission of Confidentiality Undertaking by PB in specified format.
- c) Submission of Eligibility Undertaking by PB in specified format.
- d) Providing of Information Memorandum (IM) to the PB by the Liquidator.
- e) Site Visit by the PB.
- f) Submission of Interest Free Earnest Money Deposit (EMD) of INR 10.00 crores plus applicable taxes in the form of Demand Draft / RTGS by the interested PB.
- g) Generation of User Id of the PB concerned for participation in E-Auction through designated service provider after submission of KYC document.
- h) Bidding by PB through designated e-auction platform on the appointed day.
- i) Invitation to successful PB for completion of sale subject to directions, if any, issued by Hon'ble National Company Law Tribunal, Chandigarh Bench

Note: The Liquidator reserves the right to invite the successful PB for completion of sale. Emerging as a successful PB does not confer any right whatsoever on the said PB, to acquire the Corporate Debtor nor does it guarantee any confirmation of sale by the Liquidator until all conditions are fulfilled.

### **3. Pre-Bid Qualification: Technical & Financial**

Expression of interest (EOI) would be subject to evaluation on various Technical & Financial Parameters e.g. revenues, turnover, Net worth and/or Funds available for deployment including the following:

**In case of Individual/ Partnership/Body Corporate:**

- Individual / partnership firm/ Private/Public Limited Company, LLP, Body Corporate whether resident/incorporated in India or outside India, with minimum Tangible net worth (TNW) of INR 50 Crore (as per the Companies Act, 2013) in the immediately preceding completed financial year.
- Committed funds available for investment/deployment in Indian Companies or Indian assets of INR 190 Crore or more in the immediately preceding completed financial year.

*Note:*

1. The aforesaid financial parameters to be certified by Auditor/ Independent Chartered Accountant.

2. Management shall also certify the same in addition to submission of supporting documents.

**In case of bidding as a consortium:**

- Lead member must hold at least 40% equity in the consortium. All other members would need to have a minimum stake of 15% each in the consortium.
- No change in lead member or any member whose financials have been used to meet the criteria set out herein shall be permitted after the last date for submission of Eols.

**4. Process Details**

a] Submission of Eol by PB in specified format along with non-refundable participation fees of Rs. 2,50,000/- plus applicable GST.

Eol needs to be submitted in a format provided herein (**Exhibit A**) along with non-refundable Process Participation Fees of INR 2,50,000.00 (Two Lakhs Fifty Thousand only) plus GST. The fees must be paid along with submission of Eol by drawing Demand Draft payable in Chandigarh favouring “James Hotels Limited-In Liquidation” or by

RTGS/NEFT in the under mentioned bank account:

IFSC Code – PUNB0420700

Beneficiary A/c No. - 4207002100002701

Bank Name & Branch – Punjab National Bank,  
LCB Branch. Sector 17- B, Chandigarh

The Eol as aforesaid may be submitted on or before **6<sup>th</sup> May 2019 (Monday), 5:00 PM** by through post or hand delivering it in a sealed envelope to The Liquidator, James Hotels Limited, # 1598, Level 1, Sector 22-B, Chandigarh-160022.

It may be noted that the other timelines mentioned in this document will not change irrespective of the date of submission of Eol by any PB.

**b) Submission of Confidentiality Undertaking by PB**

All information about the Corporate Debtor furnished to the PB pursuant to the terms hereof shall be governed by the provisions of the Confidentiality Undertaking/Non-Disclosure Agreement. The said undertaking/agreement in specified format (**Exhibit B**) shall be submitted by the PB along with the Eol.

The PB concerned:

- i. agrees to have read this document before submission of their Eol and be bound by the terms and conditions herein.
- ii. agrees to use such measures and/or procedures as it uses in relation to its own most highly confidential information to hold and keep in confidence any and all such confidential Information.
- iii. shall ensure compliance with applicable law and specifically with the IBC with respect to confidential information received pursuant to this sale of corporate debtor.

iv. undertakes to make use of the confidential information solely for purpose of liquidation process of the corporate debtor.

v. 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 need-to-know basis.

vi. 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 PB or its Representative, except for sharing of confidential information as required in relation to this document, if any, as decided by the PB or its representative from time to time.

vii. agrees that this process is being carried out for the purpose of identification of a PB and the sale or confirmation thereof shall take place subject to the orders passed, if any, by the relevant Adjudicating Authority.

viii. agrees that the Liquidator reserves the right to alter, modify or cancel/annul this process at any point of time before confirmation of sale.

**c] Submission of Eligibility Undertaking u/s 29A of the IBC by PB**

A PB shall not be ineligible in terms of the proviso to Section 35(1)(f) read with 29A of the IBC. Therefore, the PB concerned shall submit an eligibility undertaking in prescribed format (**Exhibit C**) which should be duly authenticated and notarized by a notary public.

**d] Providing of Information Memorandum (IM) to the PB by the Liquidator**

The PB shall be provided with the Information Memorandum and access to the other relevant information required from the Corporate Debtor for purpose of due diligence



until the last date fixed for site visit upon payment of process participation fee of INR 2,50,000 plus gst.

**e] Site Visit and Management Meetings**

i. The Corporate Debtor (represented by the Liquidator) shall endeavour to arrange for and facilitate a Site Visit, on a best effort basis and will intimate the PB regarding the date and venue of the Site Visit, as may be applicable.

ii. The PB who are/is desirous of undertaking a Site Visit or Management Meeting, may depute a team comprising of a maximum of 3 (three) personnel of the PB, for such a Site Visit or Management Meeting. If the PB requires more than 3 (three) persons to be accommodated for such Site Visit, the PB shall intimate Liquidator at least 2 (two) days prior to the scheduled date of the Site Visit alongwith details of the said personnel of the PB, and the Liquidator shall facilitate the request of the PB on a best efforts basis.

iii. The purpose of the Site Visit shall be to facilitate the PB to ascertain the current status of the hotel property of the Corporate Debtor including the site conditions, location, surroundings, climate, availability of power, water and other utilities for operations, access to site, handling and storage of materials etc, provided that such Site Visit shall not be utilized for discussions regarding the terms of the bid.

iv. The PB is expected to make its own arrangements including accommodation for the Site Visit. All costs and expenses incurred in relation to such Site Visit shall be borne by the PB. The PB may intimate its preferred date for purpose of the Site Visit to the Liquidator via email to [liquidatorjames22@gmail.com](mailto:liquidatorjames22@gmail.com) reasonably in advance. The Liquidator will use its reasonable endeavour to fix one (1) date for each Site Visit depending on the availability of Company officials & Liquidator.

v. It is hereby clarified that no separate meeting or telephonic conversation / email with the PB shall be entertained by the Liquidator for the purposes of providing clarifications with respect to any such Site Visit. Any unauthorized contact with the

employees, officers or management of the Corporate Debtor may result in disqualification of the PB.

vi. The PB may carry out its own comprehensive due diligence in respect of the corporate debtor and shall be deemed to have full knowledge of the condition of the corporate debtor, assets, relevant documents, information, etc. whether or not the PB actually inspects or participates in the Site Visit or verifies the documentation provided by the liquidator.

The PB shall not be entitled to receive re-imbursalment of any expenses which may have been incurred during the sale process and/or for carrying out of due diligence, search of title to the assets and matters incidental thereto or for any purpose in connection therewith.

The last day by which the Site Visit by any PB shall have to be completed is fixed as 30<sup>th</sup> April, 2019 (Tuesday) by 5.00 PM.

f] Submission of Earnest Money Deposit (EMD) of INR 10 Crores plus applicable taxes in the form of Demand Draft / RTGS by interested PB.

All PB(s) shall provide an EMD of INR 10,00,00,000.00 (Indian Rupees Ten Crores) plus applicable taxes by way of demand draft, in favour of James Hotel Limited-in Liquidation, issued by any scheduled commercial bank in India ("Bank"), or by way of a direct deposit by way of the real time gross settlement system into the Bank account of the company in liquidation.

The EMD of the **unsuccessful bidder** shall be returned to it within one month of the closure of the e-auction process.

It is hereby clarified that non-submission of the EMD by the PB on or before the last date stipulated in this document shall lead to rendering of that PB disqualified to participate in the e-auction. It is further clarified that the EMD in any form shall not carry any interest.

The EMD of the successful bidders shall be forfeited if he fails to pay the sale consideration within a stipulated time fixed for payment after closure of the e-auction process.

g] Generation of User Id of the PB concerned for participation in E-Auction through designated service provider after submission of KYC document

The sale of the Corporate Debtor as a going concern as aforesaid shall take place through online e-auction service provider, via website <http://www.bankeauctions.com>. After submission of the EMD by the PB to the satisfaction of the Liquidator, the PB concerned shall be required to be registered with the said e-auction service provider for generation of login credentials to enable the PB to participate in the e-auction on the appointed date i.e. 15<sup>th</sup> May 2019 (Wednesday) from 10:00 AM to 03:00 PM.

The PB concerned for the above purpose shall be required to submit the necessary documents for KYC verification as per law prior to the appointed date for e-auction to the aforesaid e-auction service provider.

h] Bidding by PB through designated e-auction platform on the appointed day

The bidding process for sale of the corporate debtor as a going concern shall take place through online e-auction service provider via website <http://www.bankeauctions.com>, Wednesday, 15<sup>th</sup> May 2019, between 10:00 AM to 3:00 PM with unlimited extension of "5 minutes" i.e. the end time of the-auction will be extended by 5 minutes each time if bid is made within the last 5 minutes before closure of auction. The minimum incremental bid value shall be a sum of INR 5 lacs (Indian Rupees Five Lacs) with an option to bid in multiples of INR 5 lacs.

On the close of the auction, the Liquidator will issue a Letter of Intent (LOI) to the Successful Bidder within 2 days from the date of closing of e-auction. Successful bidder has to deposit 25% of the bid amount along with applicable taxes within 3 days from the date of issuance of LOI, after adjusting the EMD already paid. The balance 75% of the total bid money plus applicable taxes shall be payable within 45

days from the date of issuance of the LOI. Any default in the payment of bid money within prescribed time would entail forfeiture of EMD and other partial bid amount, if any, already deposited.

On payment of the full amount, the sale shall stand completed and the liquidator shall execute the necessary sale agreement and the subject matter of the sale shall be delivered to the bidder/PB concerned in the manner specified in the terms of such agreement. The aforesaid execution of documents shall be subject to the such orders, if any, of the relevant Adjudicating Authority, as the case may be.

### **5. Sale of Corporate Debtor as a going concern**

The manner of 'sale of corporate debtor as a going concern' is one of the options stipulated under Regulation 32 of the extant IBBI (Liquidation Process) Regulations, 2016. The Insolvency and Bankruptcy Code, 2016 is silent about its implementation. In the interest of probity, the decision of Hon'ble Adjudicating Authority shall be final. The bid of highest Bidder shall be placed before Hon'ble Adjudicating Authority for confirmation.

### **6. Modification in Terms & Conditions**

The Liquidator reserves the right to alter, modify, cancel or relax any of the terms and conditions mentioned in this document in the interest of the liquidation process of the Corporate Debtor including cancellation of the bidding process at any point of time. Any such alteration, modification, cancellation or relaxation of bidding process shall be binding on the PB.

### **7. TIMETABLE**

The following timetable shall apply to the E-Auction Process Information Sheet. The timetable may be amended by the Liquidator through issuance of an addendum to the

## E-Auction Process Information Sheet.

| <b>Sl. No.</b> | <b>Event</b>  | <b>Timeline</b>  |
|----------------|---|--|
| 1              | Public Announcement of Auction  | 15 <sup>th</sup> April, 2019   |
| 2              | E-Auction Process Information Sheet made available on the websites  | 15 <sup>th</sup> April, 2019   |
| 3              | Collection of Information Memorandum  | 25 <sup>th</sup> April, 2019   |
| 4              | Site visit and discussion meeting   | 30 <sup>th</sup> April 2019  |
| 5              | Submission of Bid Forms, EMD, Declaration forms   | 6 <sup>th</sup> May 2019   |
| 5              | E – Auction   | 15 <sup>th</sup> May, 2019 (10:00 AM to 3:00 PM) with unlimited extension of 5 min each. |
| 6              | Signing the Letter of Intent (LOI)  | Upto 17 <sup>th</sup> May 2019   |
| 7              | Payment of 25% of the Bid Money   | Upto 20 <sup>th</sup> May 2019   |
| 8              | Return of EMD for unsuccessful bidders  | Upto 15 <sup>th</sup> June 2019  |
| 9              | Payment of balance consideration by successful bidder along with GST or other taxes as per applicable laws. | Upto 01 <sup>st</sup> July 2019  |

**EXHIBIT A**

***[On the Letterhead of the Entity Submitting the EoI]***

**EXPRESSION OF INTEREST**

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

To,

The Liquidator,  
James Hotels Limited (In Liquidation)  
1598, Level 1,  
Sector 22-B,  
Chandigarh-160022, India

**Subject:** Expressions of Interest (“EoI”) –for acquisition of James Hotels Limited or “Corporate Debtor” on going concern basis under Liquidation Process under the applicable provisions of the Insolvency and Bankruptcy Code, 2016 (IBC)

Dear Sir,

In response to the advertisement in *[Insert the names of the newspaper and/or website]* dated [•] inviting expressions of interest as captioned above (“**Advertisement**”), we hereby submit an EoI for the acquisition of James Hotels Limited as a going concern through e-auction sale process, on “AS IS WHERE IS WHATEVER THERE IS AND WITHOUT RECOURSE ” basis.

We have also set out the following:

(a) information required in the format prescribed as an Annexure to this EoI;

We undertake that the information furnished by us in this EoI and in the Annexures is true, correct, complete and accurate. We undertake that we have read the terms and conditions for liquidation as mentioned in the advertisement and uploaded on the website of the Corporate Debtor and unconditionally agree to the same. Further, we agree and acknowledge that:

(a) the EoI will be evaluated based on the information provided in the Annexures to determine whether we qualify to participate as a bidder in the aforesaid e-auction;

(b) the Liquidator reserve the right to determine at his sole discretion, whether or not we qualify for the submission of the proposal and may reject the EoI submitted by us without assigning any reason whatsoever;

(c) the Liquidator reserve the right to request for additional information or clarification

from us for the purposes of the EoI and we shall promptly comply with such requirements. Failure to satisfy the queries of the Liquidator within the given timelines may lead to rejection of our submission pursuant to EoI.

(d) Submission of this EoI alone does not automatically entitle us to participate in the next stage of the bid process.

(e) In case of consortium, we would comply with the eligibility criteria pertaining to equity holding and control i.e. we will hold atleast {51%/20%} equity in the Special Purpose Vehicle (SPV) that will also be incorporated in the Joint Bidding Agreement (undertaking to be signed by /on behalf of each member of consortium by authorized signatories).

(f) The applicant is not an ineligible person in terms of the provisions of Section 35 (1)(f) read with section 29A of the IBC and also, the applicant is a 'fit and proper' person and not under any legal disability under the applicable laws.

We confirm that the payment of the process participation fees of INR \_\_\_\_\_ (including GST) has been paid through demand draft number \_\_\_\_\_ or RTGS having UTR no. \_\_\_\_\_ through \_\_\_\_\_ (Bank name).

Sincerely yours,

On behalf of [*Insert the name of the entity submitting the EoI*]

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

Name of Signatory:

Designation:

Company Seal/Stamp

Note: The person signing the EoI and other supporting documents should be an authorised signatory supported by necessary board resolutions/authorization letter.

*2. In case of Consortium Applicant the EoI shall be signed by the nominated lead.*

## **Annexure A**

*[Note: In case of joint Eols, the details set out below are to be provided for each of the entities / groups submitting each joint Eol.]*

### **1. Name and Address:**

- a. Name of the Firm/Company/Organisation/ Other Applicant:
- b. Address:
- c. Telephone No:
- d. Fax:
- e. Email:
- f. PAN
- g. CIN:

### **2. Date of Establishment (if any):**

**3. Nature of Establishment:** *[Individual/ partnership firm/Body Corporate or consortium / others ]*

### **4. Core Area of Expertise:**

### **5. Contact Person:**

- a. Name:
- b. Designation:
- c. Telephone No:
- d. Mobile No:
- e. Email:

### **6. Applicant's Profile:**

- a. Company Financial Profile (consolidated / standalone as applicable):

*[Note: The Company profile should necessarily include net worth and revenue numbers of the preceding three years. March 31 2018.]*

**For Body Corporate**(if for group, give separately for each company)

| <i>INR Crores</i>         | <i>FY18</i> | <i>FY17</i> | <i>FY16</i> |
|---------------------------|-------------|-------------|-------------|
| <i>Revenue</i>            |             |             |             |
| <i>Tangible Net Worth</i> |             |             |             |

- b. Names & DIN of Directors including Independent Directors:



c. Experience of the Company in the relevant sector:

d. Names of key lenders, if any, to the Company or its affiliates:

e. History, if any, of the Company or affiliates of the Company being declared a 'willful defaulter', 'non-cooperative borrower', 'non-impaired asset' or 'nonperforming asset'.

f. Any other relevant details which would be useful for the RP to evaluate the bid and help to shortlist for the next stage in the process.

g. Ownership Details:

h. Proof of Identity and Address:

Note: Applicant shall submit the following documentary proofs as a part of this Annexure B:

**1. Applicable to Body Corporate**

a. Audited financial statements for last 3 financial years along with certificate from Statutory Auditor or Chartered Accountant or Company Secretary or equivalent in the jurisdiction of incorporation of the Company certifying tangible networth and turnover of the last 3 financial years.

b. Copy of Certificate of Registration and latest Constitutional Documents of the Applicant

**(On the Letterhead of the Bank/ Entity Issuing the Certificate)**

Private & Confidential

Ref no: *[Insert reference number]*

Date:

To,

The Liquidator,  
James Hotels Limited  
1598, Level 1, Sector 22,  
Chandigarh, India 160022

QUALIFICATION CERTIFICATE

We the *[insert name of the issuing entity]* do hereby certify that *[insert name of the relevant entity]* incorporated in *[insert jurisdiction of incorporation of entity]* having their registered office at *[insert registered address of the entity]* ("**Prospective Applicant**") are meeting the qualification criteria as required for submission of EoI vide advertisement dated \_\_\_\_\_ as disclosed by the information and records with us.

It is further notified that this certificate is being issued at the request of the Prospective Application without attaching any risk and responsibility to us in any respect whatsoever whether as guarantor or otherwise.  
For *[Name of Entity issuing certificate]*<sub>2</sub>

Authorised Signatory

<sup>1</sup> To be provided for each entity involved in the joint bid, if any.

<sup>2</sup> To be provided by the bank or statutory auditor or chartered accountant or company secretary or equivalent in the jurisdiction of incorporation of the Company.

## **Exhibit B**

### **CONFIDENTIALITY AND NON - DISCLOSURE AGREEMENT**

*[To be executed on stamp paper of Rs. 200 by the Applicant. Please insert the notice details and the Applicant's name and description in the array of parties before execution.]*

This **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** (hereinafter referred to as "**Agreement**") is made on this [ ] day of ....., 2019 (hereinafter referred to as "**Effective Date**")

Amongst

**1. James Hotels Limited**, a company incorporated under the provisions of the Companies Act, 1956, and an existing company under the Companies Act, 2013, and having its registered office at Block no 10, Sector 17-A, Chandigarh-160017, currently under liquidation process in terms of the applicable provisions of the Insolvency and Bankruptcy Code, 2016 acting through **Mr. Navneet Gupta, the Liquidator** appointed for the Company under the order of the National Company Law Tribunal, Chandigarh Bench dated 17<sup>th</sup> October, 2018 (hereinafter referred to as "**Corporate Debtor**", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors and assigns), of the **FIRST PART**;

**AND**

**2. [Insert name of Prospective Applicant]**, [a company incorporated under the Companies Act, 1956 and existing under Companies Act, 2013/ a company to be incorporated under Companies Act, 2013/ a body corporate or corporation, others] [**Note to Applicant: Please retain/insert appropriate description**] having its registered office at \_\_\_\_\_ (hereinafter referred to as the "**Applicant**", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors), of the **SECOND PART**

(Corporate Debtor shall hereinafter be referred to as the "**Disclosing Party**", Corporate Debtor and the Applicant shall hereinafter individually be referred to as "**Party**" and collectively as the "**Parties**").

**WHEREAS:**

A. CORPORATE DEBTOR is engaged in the business of running of hotel at Chandigarh. Pursuant to the order dated 17<sup>th</sup> October, 2018 ("**Order**") of the Hon'ble National Company Law Tribunal, Chandigarh bench ("**NCLT**"), CORPORATE DEBTOR is placed into liquidation process under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). Pursuant to the said Order, Mr. Navneet Gupta,

Insolvency Professional (bearing IP Registration number IBBI/IPA-001/IP-N00361/2017- 18/10619) has been appointed as the Liquidator in respect of the Company. In accordance with section 23(2) read with section 17(1)(b) of the IBC, the powers of the board of directors of CORPORATE DEBTOR are vested with the Liquidator.

B. The Liquidator has prepared an information memorandum in relation to CORPORATE DEBTOR detailing the list of assets and liabilities and other relevant information in respect of CORPORATE DEBTOR ("Information Memorandum") The Applicant has submitted its expression of interest for participating in the sale process for CORPORATE DEBTOR.

C. To enable the Applicant to bid for acquisition of the CORPORATE DEBTOR, the Corporate Debtor may (including through any officers, and/or advisors including, without limitation duly authorized attorneys, accountants, legal advisors and financial advisors), from time to time, disclose certain "Confidential Information" (*hereinafter defined*) to the Applicant, including such information as is specified in the Information Memorandum.

D. The Applicant agrees to enter into this Agreement to, *inter alia*, keep confidential all Confidential Information that may be disclosed to it and/or its Representatives (*hereinafter defined*), in the manner set out hereinafter.

**NOW, THEREFORE**, in consideration for the mutual promises and covenants hereunder, CORPORATE DEBTOR and the Applicant agree as follows:

## **1. DEFINITIONS**

**"Confidential Information"** means any and all information disclosed or submitted to the Receiving Party by or on behalf of Disclosing Party (including by any officers, and/or advisors including, without limitation, duly authorized attorneys, accountants, legal advisors and financial advisors of a Disclosing Party) in written, representational, electronic, verbal or other form and includes (i) all data, materials, prices, debts, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, human resource information and any other information; (ii) all technical, commercial, operational, financial, accounting, legal and administrative information, and any notes, analyses, compilations, studies, forecasts, interpretations, memoranda, summaries, reports and other materials which contain, reflect or are based upon, in whole or in part, any of such information; (iii) information about the Transaction, or the terms or conditions or any other facts relating thereto, including, without limitation, the status thereof, that discussions or negotiations are occurring or have occurred, the existence of this Agreement, (iv) information and details regarding the terms, conditions and structure of, and other facts relating to, the Company and/or the Transaction, including the status thereof, whether oral, on paper or computer disk or in electronic format; whether prepared by the Disclosing Party, its advisors or other third party on behalf of the Disclosing Party; and/or (v) all reports, analyses, studies, compilations, interpretations or other documents or materials (whether on paper or computer disk or in electronic format) prepared by the Receiving Party or its Representatives which contain, refer to, reflect, enhance, modify, improve, quote or are based upon, in whole or in part, the information mentioned in (i), (ii), (iii) and/or (iv) which is provided to the Receiving Party and/or its Representatives in connection with the Transaction.

**"Disclosing Party"** shall have the meaning ascribed to it in the Title clause above..

**“Receiving Party”** shall mean the Applicant, receiving confidential information from the Disclosing Party or from any person acting on behalf of the Disclosing Party.

In relation to the Receiving Party, its **“Representative”** shall mean any agent, officer, employee, director, legal or financial advisor, affiliate, investor, counsel, potential financing source who (i) needs to know such information for the sole purpose of the Transaction; (ii) who agrees to keep such information confidential in accordance with the provisions of this Agreement; (iii) who is provided with a copy of this Agreement; (iv) who agrees to be bound by the terms contained in this Agreement to the same extent as if it was a party hereto; and (vi) who has confirmed that it has no conflict with the Disclosing Party, and the term **“Representatives”** shall be construed accordingly. In relation to any Disclosing Party, its **“Representative”** shall mean any agent, officer, employee, director, consultant, legal or financial advisor, authorized attorney, accountant and/or any other person duly authorized in this regard.

## **2. USE OF CONFIDENTIAL INFORMATION**

The Confidential Information divulged by (or on behalf of) the Disclosing Party to the Receiving Party and/or its Representatives will be received and treated by the Receiving Party and/or its Representatives as – (i) strictly confidential; (ii) in accordance with applicable law; and (iii) as required under the Insolvency and Bankruptcy Code, 2016. The Receiving Party and its Representatives shall not, without the prior written consent of the Disclosing Party or as expressly permitted herein, disclose, disseminate, reproduce, quote, share with, refer to, use or make available to any other person, or use or permit others to disclose or use, the Confidential Information in any manner whatsoever other than for the sole purpose as described in Clause

below. Without prejudice to the above, the Receiving Party and its Representatives shall comply with all provisions of law applicable to confidential information and insider trading.

Notwithstanding the provisions of Clause 2.1 above, the Receiving Party may disclose the Confidential Information received under this Agreement to its Representatives (as defined in Clause 1.4 above) in accordance with applicable laws in relation to confidentiality and insider trading and on a strict "need-to-know" basis, and *solely* for the purpose of enabling assessment and evaluation of the Transaction (**“Purpose”**).

The Receiving Party and its Representatives shall exercise the same standard of care in respect of the security and safekeeping of the Confidential Information disclosed hereunder as the Receiving Party and its Representatives exercise in respect of its own confidential information.

The Receiving Party acknowledges that it is aware and that its Representatives have been advised that applicable securities laws prohibit any person having unpublished price sensitive information about a company from dealing with the securities of that company and the Receiving Party agrees to abide by and cause its Representatives to abide by the terms of such securities laws, including without limitation, the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 as may be replaced, amended or supplemented from time to time and other applicable laws in relation to insider trading and the acquisition of securities and shall indemnify and hold the Disclosing Party and its Representatives, officers, directors, employees, agents and affiliates harmless against any consequences arising from any such violation by the Receiving Party, its Representatives or their affiliates.

The Receiving Party understands and acknowledges that pursuant to the order of the Chandigarh bench of the NCLT dated 18<sup>th</sup> October, 2018, the NCLT had ordered liquidation of the Company and appointed the Liquidator. None of the Disclosing Party nor the Liquidator makes any representation or warranty or inducement, expressed or implied, now or in the future, as to the accuracy, correctness, completeness, fairness or relevance of the Confidential Information.

Neither the Receiving Party nor any of its Representatives shall be entitled to rely on the accuracy, correctness, completeness, fairness or relevance of the Confidential Information, whether for the purpose of formulation of the Transaction and/or otherwise in relation to the Company. Further, none of the Disclosing Party nor the Liquidator shall, now or in future, have any liability to the Receiving Party or any other person resulting from Receiving Party's or its Representative's use of the Confidential Information.

Receiving Party shall indemnify and hold harmless the Disclosing Party against all direct losses, damages and liabilities including but not limited to all legal fees and expenses on a solicitor and client basis arising from or connected with any unauthorized disclosure, use or misuse of the Confidential Information whether by itself or its Representatives. The Receiving Party further agrees and undertakes, at its sole cost and expense, to take any and all reasonable measures (including but not limited to court proceedings) to restrain any person to whom it has disclosed Confidential Information, directly or indirectly, from disclosing or using the Confidential Information in violation of this Agreement.

The Receiving Party acknowledges that it shall be responsible for any breach of this Agreement by the Receiving Party and/or any of its Representatives, employees or employees of its Representatives.

The Receiving Party shall not, without prior written consent of the Disclosing Party, engage any advisor, whether professional, legal or otherwise, who are already engaged by the Disclosing Party in relation to the liquidation process of the Company.

If the Receiving Party decides to not proceed with the Transaction, it will promptly notify the Liquidator in writing of that decision. The Receiving Party shall immediately, upon the earlier of (a) the conclusion of the Transaction; or (b) termination of this Agreement as per Clause 12 below; or (c) a notification by the Disclosing Party, for any reason or for no reason, surrender and return to the relevant Disclosing Party, all Confidential Information in its possession, or destroy the same in accordance with the directives of the Disclosing Party.

The Receiving Party shall not publish any news release or make any announcements or denial or confirmation in any medium concerning this Agreement in any manner nor advertise or publish the same in any medium; and

The Receiving Party shall promptly notify the Disclosing Party of any Confidential Information which has been lost or disclosed or used by any unauthorized third party provided that such notification shall not relieve the Receiving Party from any liability arising from its breach of this Agreement.

The Receiving Party shall protect any intellectual property of CORPORATE DEBTOR which it

may have access to which is provided or made available to by the Disclosing Party.

The Receiving Party shall not utilize the Confidential Information to avail any undue gain or undue loss to itself or any other person and shall comply with the provisions of Section 29(2) of the IBC and the rules and regulations prescribed thereunder.

### **3. EXCEPTIONS**

The Receiving Party's obligations hereunder, shall not apply to Confidential Information which:

at the time of its disclosure, is in public domain or which after disclosure becomes part of public domain through no fault or wrongful act of the Receiving Party or its Representatives; or

was known to the receiving Party, as evidenced by written documentation, prior to its disclosure in connection with the Transaction provided that the source of such information was not known by the Receiving Party or any of its Representatives, after reasonable inquiry and investigation, to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party or any other party with respect to such information; and

is or has been developed independently by the Receiving Party without reference to or reliance on the Disclosing Party's Confidential Information.

### **4. NON-DISCLOSURE OF TRANSACTION**

It is agreed that without the prior written consent of the Disclosing Party, the Receiving Party shall not disclose and shall ensure that its Representatives do not disclose to any person or entity (a) that the Confidential Information has been made available to it or its Representatives, (b) that discussions or negotiations are taking place concerning a possible Transaction between the Parties, or (c) any terms, conditions or other facts with respect to any such possible Transaction, including the status thereof.

The Parties agree that unless and until a definitive agreement(s) regarding a Transaction between the Parties has been executed, neither Party will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement except for the matters specifically agreed to herein. The Parties further acknowledge and agree that each Party reserves the right, in its sole discretion, to reject any and all proposals made by the other Party or any of its Representatives with regard to a Transaction between the Parties and to terminate discussions and negotiations at any time.

### **5. NOTICE**

The Receiving Party further agrees that all communications (both written and oral) regarding the Confidential Information and/or the Transaction, requests for additional information, and discussions or questions regarding procedures related to the Transaction, will be sent only to CORPORATE DEBTOR as authorized by the Liquidator and not directly to any of the Company's affiliates or any of their respective directors, officers or employees.

All notices, statements or other communication required or permitted to be given or made

under this Agreement shall be in writing in the English language and delivered by hand, or through a reputed international courier company or through speed post to the address set forth below, or by sending it by email (with delivery of a notification with return receipt requested) to the email address set forth below:

**Notice Details for CORPORATE DEBTOR :**

**Mr.Navneet Gupta**

Liquidator

James Hotels Limited

1598, Level-1,

Sector 22-B, Chandigarh

India-160022

[liquidatorjames22@gmail.com](mailto:liquidatorjames22@gmail.com);

**Notice Details for Applicant:**

[to be inserted by the Applicant]

**6. COMPELLED DISCLOSURE**

In the event that the Receiving Party or any of its Representatives are required by applicable law, regulation or any competent judicial, supervisory or regulatory body to disclose any of the Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, however in the opinion of the counsel of the Receiving Party, the Receiving Party or its Representatives are nonetheless, in the absence of such order or waiver, compelled to disclose such Confidential Information, then the Receiving Party may disclose only such portion of the Confidential Information which, in the opinion of its counsel, the Receiving Party is compelled to disclose. The Receiving Party will not oppose any action by the Disclosing Party to obtain reliable assurance that confidential treatment will be accorded the Confidential Information. The Receiving Party and its Representatives will reasonably cooperate with the Disclosing Party in their efforts to obtain a protective order or other appropriate remedy that the Disclosing Party elects to seek to obtain, in their sole discretion.

**7. OWNERSHIP OF MATERIALS / NO WARRANTY**

Ownership of the Confidential Information, including all intellectual property rights and related rights in the Confidential Information or arising out of the use of the Confidential Information shall at all times remain with the Disclosing Party, in perpetuity and throughout the world. All improvements, derivatives, enhancements, modifications and recommendations to the Confidential Information will also belong exclusively to the Disclosing Party, and the Receiving Party agrees to specifically convey and assign, and hereby do convey and assign to the Disclosing Party all right, title and interest in and to the same in perpetuity and throughout the world. The Receiving Party covenants and agrees to sign any papers and do all acts necessary to secure for



the Disclosing Party and/or its successors or assigns, any and all rights, titles and interest in any such improvements, derivatives, enhancements, modifications and recommendations, including rights to any patent and copyright in any jurisdictions, during the term of this Agreement, or any time thereafter.

## **8. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

Within fifteen (15) days of completion of the Transaction, or upon termination of the negotiations in relation to the Transaction or being so requested in writing by the Disclosing Party, the Receiving Party shall promptly return or destroy the Confidential Information including all copies, or reproductions or other media containing such Confidential Information, save for such copies as may be required to be retained by law or for compliance with corporate governance requirements and internal policies and copies of electronically exchanged Confidential Information made as a matter of routine information technology backup. The Receiving Party shall provide a written certificate to the Disclosing Party regarding the destruction within 20 (twenty) days thereafter. Any Confidential Information that is not returned or destroyed shall remain subject to the confidentiality obligations set forth in this Agreement. Notwithstanding the return or destruction of the Confidential Information, the Receiving Party will continue to be bound by its obligations of confidentiality and other obligations hereunder, which shall survive termination of this Agreement.

## **9. INJUNCTIVE RELIEF**

The Receiving Party acknowledges that the Confidential Information is valuable to the Disclosing Party and that damages (including, without limitation, all legal fees and expenses on a solicitor and client basis) may not be a sufficient remedy for any breach of its obligations under this Agreement and the Receiving Party further acknowledges and agrees that the remedies of specific performance or injunctive relief (as appropriate) without the necessity of posting bond, guarantees or other securities, are appropriate remedies for any breach or threatened breach of its obligations under this Agreement, in addition to and without prejudice to, any other remedies available to the Disclosing Party at law or in equity.

## **10. INDEMNITY**

The Receiving Party hereby agrees to indemnify and hold each of the Disclosing Party and their Representatives harmless, from and against all claims, demands, liabilities, losses, damages, costs and/or expenses (including all legal costs and expenses) suffered or incurred by such other Party or their Representatives due to a breach by the Receiving Party or its Representatives of the provisions of this Agreement.

## **11. NO LICENSE**

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. The Receiving Party and its Representatives shall not use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

## **12. TERM**

This Agreement shall remain valid and binding on the Parties until 24 months from the Effective Date of this Agreement or such earlier date as may be mutually agreed by Parties in writing. Upon expiry of this Agreement, the confidentiality obligations of the Parties herein shall cease, provided that payment obligations if any that may arise under this Agreement (including under the indemnity Clause 10 above) shall survive the termination of this Agreement.

### **13. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of India.

With respect to any action, suit or proceeding relating to this Agreement, the Receiving Party agrees to submit to the non-exclusive jurisdiction of the courts of Chandigarh.

The Parties agree that Clause 13.2 is for the benefit of the Disclosing Party only, and the Disclosing Party shall not be prevented from taking any action, suit or proceeding relating to this Agreement in any other court or tribunal of competent jurisdiction, if and to the extent permitted under Applicable Laws.

### **14. MISCELLANEOUS**

This Agreement constitutes the entire agreement amongst the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and understandings, whether written or oral, except obligations imposed by law which shall be deemed a part of this Agreement. This Agreement may not be amended except in writing signed by all the Parties hereto. No failure or delay by any Party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or preclude any other or further exercise of any rights hereunder. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. Nothing in this Agreement shall be implied, except as required under statute.

This Agreement may not be amended or terminated except pursuant to a written agreement duly executed between the Parties.

If any term or provision of this Agreement is determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the Parties contemplate that the court making such determination shall reduce such extent, duration, scope or other provision and enforce such term or provision in its reduced form for all purposes contemplated by this Agreement.

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. The Disclosing Party reserves the right to assign all of its rights, powers and privileges under this Agreement (including, without limitation, the right to enforce all of the terms of this Agreement) to any person who enters into the Transaction contemplated by this Agreement. The Receiving Party shall not assign this Agreement.

Any breach of provisions of this Agreement by any Party hereto shall not affect the other Party's non-disclosure and non-use obligations under this Agreement.

This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by, CORPORATE DEBTOR and the Applicant on the date mentioned hereinabove as follows:

**Signed and Delivered  
For CORPORATE DEBTOR,  
the Liquidator**

**Signed and Delivered**

Accepted and agreed by ("**Receiving Party**") as of the date first written above:

- (1) We confirm that we and our Representatives will keep all Confidential Information confidential.
- (2) We confirm that we and our Representatives shall not use any Confidential Information to cause an undue gain or undue loss to the Disclosing Party or any other person.
- (3) We and our Representatives will comply with the requirements of the IBC.
- (4) We and our Representatives will protect the intellectual property rights of the Company in relation all Confidential Information.
- (5) We acknowledge that we are aware that applicable securities laws prohibit any person having unpublished price sensitive information about a company from dealing with the securities of that company and we agree to abide by and cause our Representatives to abide by the terms of such securities laws, including without limitation, the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.
- (6) We and our Representatives will not share any Confidential Information with any third party including any Representatives, without first ensuring that our obligations under this Agreement are complied with.
- (7) We and our Representatives will comply with all the terms and conditions of the Agreement.

By: Name:

Title:

Company:

## **EXHIBIT C**

### **FORMAT OF ELIGIBILITY UNDERTAKING BY PROSPECTIVE APPLICANT**

*[On the letter head of the Prospective Applicant (by each member of the consortium if applicable)]*

To,  
Navneet Gupta  
Liquidator  
1598, Level-1,  
Sector 22-B, Chandigarh  
India-160022

*Dear Sir,*

#### **Sub: Undertaking under the Insolvency and Bankruptcy Code**

*In terms of the terms and conditions of sale of James Hotels Limited as a going concern and in view of the provisions of Section 35(1)(f) read with Section 29A of the Insolvency and Bankruptcy Code, 2016 (IBC), [I/We] ("**Prospective Applicant**") state, submit and confirm as follows:-*

- 1. [I/We] hereby unconditionally state, submit and confirm that [I/We] are not disqualified from participating in a bid for acquisition of James Hotels Limited (Corporate Debtor) as a going concern pursuant to the order dated 18<sup>th</sup> October, 2018 of NCLT, Chandigarh and also pursuant to the provisions of the IBC, as amended from time to time;.*
- 2. [I/We] hereby state, submit and declare that none of (a) [me / us] being the Prospective Applicant; (b) any other person acting jointly with [me / us]; (c) any person who is a promoter and/or in the management and/or control of the Prospective Applicant; (d) any person who shall be the promoter and/or in management and/or control of the business of James Hotels Limited pursuant to its sale by e-auction as aforesaid; and/or (e) the holding company, subsidiary company, associate company or related party of any person referred to in (c) and/or (d)*

- (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 assets 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 relation to non performing asset account 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 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 instrument 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 a non performing asset and such account was acquired pursuant to a prior resolution plan approved under this code then the provision of this clause shall not apply to such resolution applicant for a period of three years from the date 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 year or more under any other 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 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 Adjudication Authority under this code:

**[Provided** that this clause shall not apply if preferential transaction 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 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 clause (a) to (h) under any law in a jurisdiction outside India; or
- (j)** Has a connected person not eligible under clause (a) to (i).

**[ EXPLANATION I.]** For the purpose 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 in the 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 clause (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 financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party 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 purpose of this section, Financial entity shall means 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 foreign central bank or securities market regulator or other financial sector regulator or other 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 Investors, registered foreign portfolio investors 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 securities by a Person Resident outside India) Regulation 2017 made under the Foreign Exchange Management Act,1999(42 of 1999);

- (d) An Assest Reconstruction Company registered with the Reserve Bank Of India under Section 3 of Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002(54 of 2002);
- (e) An alternate investment fund registered with the Securities and Exchange Board Of India;
- (f) Such categories of persons as may be notified bythe Central Government.}

*(k) is otherwise not disqualified in terms of the provisions of Section 29A of the IBC as amended from time to time.*

*Yours sincerely,*

.....  
*[Signature and name of Attorney / authorized signatory of the Prospective Applicant]  
Rubber stamp/seal of the Prospective Applicant  
[to be notarized by a notary public]*

**AFFIDAVIT**

*I, [name of the deponent], being the [Director / Authorised Signatory] of [insert name of the prospective applicant] ("**Prospective Applicant**") currently residing at [insert address], do solemnly state on oath, declare and affirm that all that is stated in paragraphs 1 and 2 of the Additional Undertaking dated [insert date of additional undertaking] is true, correct and complete to my personal knowledge.*

*Solemnly, affirmed at [insert place] on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_*

*Before me,  
Notary / Oath Commissioner*

*Deponent's Signature*

