

KVK NILACHAL POWER PRIVATE LIMITED
(UNDER CORPORATE INSOLVENCY RESOLUTION PROCESS)
[CIN: U40107TG2001PTC036841]
REVISED INVITATION FOR EXPRESSION OF INTEREST FOR SUBMISSION OF RESOLUTION
PLAN IN KVK NILACHAL POWER PRIVATE LIMITED

1. About the Corporate Debtor:

- (a) KVK Nilachal Power Private Limited (“KVK” or “Company”) is a non-govt private company incorporated under Companies Act 1956 on 6 June 2001, having its present registered office at 4, Plot No.484, Jubilee hills, Road No.36, Hyderabad Telangana-500033. The Company is limited by shares having authorized share capital of Rs. 38,00,00,000 and paid-up share capital of Rs. 31,21,52,040 as per the audited financials of the Company prepared as at 31st March 2019.
- (b) The Company was developing a 350 MW (1 x 350) coal based thermal power project located at Kandrei village, Cuttack, Odisha (**Project**).
- (c) KVK is currently undergoing corporate insolvency resolution process (“CIRP”) initiated under the provisions of Section 7 of Insolvency and Bankruptcy Code, 2016 (“IBC”) through the order of the Hon’ble National Company Law Tribunal, Hyderabad Bench (“NCLT”) passed on 17th September 2019 (“Admission Order”). The period of CIRP for the Company i.e. 180 (one hundred and eighty) days will end on 21st March 2020 as per the provisions of IBC (unless extended by the NCLT).
- (d) A brief of the project status is enclosed as Annexure -A.

2. Invitation of Expression of Interest to submit Resolution Plan for KVK:

Pursuant to the provisions of Section 25(2)(h) of IBC along with Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations (“CIRP Regulations”), the resolution professional (RP) hereby issues this Invitation for Expression of Interest (“EOI”) to invite Resolution Plan(s) for the Corporate Debtor from eligible prospective resolution applicants (“RA”) who fulfills such eligibility criteria, as set out in paragraph 4 below.

3. Transaction Process:

- (a) The transaction process, indicatively, shall include the following steps that may not be in the same order:
 - Submission of EOI by interested resolution applicants (RAs)
 - Shortlisting of RAs by RP
 - Access to virtual data room for due diligence by RAs for Submission of Resolution Plan(s).
 - Issuance of final list of eligible RAs
 - Shortlisted Resolution Applicants will be provided the Information Memorandum on signing the confidentiality agreement as per format at Annexure B.
- (b) The eligibility criteria, detailed terms and conditions, format for submission of the EOI and format of Confidentiality Undertaking is provided herewith the detailed Invitation for EOI. Post receipt of EOI, access to Data Room will be provided to the shortlisted applicant after receipt of confidentiality undertaking as per section 29(2) of the IBC, at the sole discretion of RP/CoC.
- (c) All the EOIs received will be reviewed by the RP and thereafter further information/ documents related to the process will be provided to the shortlisted parties.

4. Eligibility criteria:

4.1 For PRAs that are Private/ Public Limited Company, Limited Liability Partnership (“LLP”), Body Corporates (whether incorporated in India or outside India), Individuals:

- Minimum Tangible Net Worth (“TNW”) of [INR 30 crore] in the immediately preceding completed financial year (not prior to March 31, 2019) based on audited financial statements.

4.2 For PRAs that are Financial Investors – Banks, Non-Banking Finance Companies (NBFCs), Asset Reconstruction Companies, Mutual Funds, Private Equity Funds, Venture Capital Funds, Alternate Investment Funds, Investment Companies and/or Entities (including domestic or foreign institutional / portfolio investors) and similar entities:

- Minimum Assets Under Management (“AUM”) or funds deployed of [INR 100 crore] in the immediately preceding completed financial year (not prior to March 31, 2019) or on the date which is 30 days prior to the date of submission of the EOI

or

- Committed funds (“Committed Funds”) available for investment/deployment in Indian companies or Indian assets of at least [INR 100 crore] on the date which is 30 days prior to the date of submission of the EOI.

4.3 For Consortium Bidders:

- PRAs may be a “Consortium”. “Consortium” shall mean any person acting together with another person as a consortium/ joint bidder or joint venture (whether incorporated or not) for the purpose of submission of the EOI and resolution plan for the Consolidated Corporate Debtors.
- The relevant eligibility criteria for a Consortium would be the aggregate of the relevant eligibility criteria applicable to such Consortium member adjusted on a weighted average basis based on the relevant equity participation of such member and such member(s) would have to meet such eligibility criteria;
- Provided that only such portion of their TNW/ AUM/ Committed Funds (as the case may be) as is proportionate to their shareholding in the Consortium will be considered towards the eligibility criteria TNW/ AUM/ Committed Funds (as the case may be) as specified in Paragraph 4.1 and 4.2 of this invitation for EOI; Provided further that if any member of the Consortium does not satisfy the relevant eligibility criteria applicable to such Consortium member (as specified in Paragraph 4.1 and 4.2 of this invitation for EOI) adjusted on a weighted average basis based on the relevant equity participation of such member, then the Consortium would be eligible only if any one member of the Consortium meets the eligibility criteria applicable to such Consortium member without any adjustment for the relevant equity participation of such member.”

For the purposes of demonstrating the satisfaction of the eligibility criteria, financial strength of the Ultimate Parent/ Parent/ Affiliate of the PRA can be used in line with the generally accepted accounting principles in India. Provided that such PRA may prove its eligibility at Ultimate Parent/ Parent/ Affiliate’s level only if such Ultimate Parent/ Parent/ Affiliate has provided a board resolution or similar authorization agreeing for use of its credentials to evidence eligibility of such PRA.

4.3.1 Where the EOI is being submitted by a Consortium, please note the following:

- i. the EOI, along with all undertakings submitted pursuant to this Invitation to EOI shall be signed by each member of the Consortium;
- ii. A person cannot be part of more than 1 (one) Consortium submitting the EOI for the Consolidated Corporate Debtors. Further, a person shall submit only 1 (one) EOI, either individually as a PRA or as a constituent of a Consortium;
- iii. The Consortium shall submit the copy of consortium agreement/memorandum of understanding, if any, entered into between the Consortium members, setting out the respective obligations of the Consortium members;
- iv. The Consortium would be required to have a lead consortium member identified upfront which shall be the entity with the single largest equity participation in the Consortium and should have the authority to bind, represent and take decisions on behalf of the Consortium. In case more than one member have the largest participation in the Consortium, a lead member would be identified from amongst them at the time of submission of EOI by the Consortium. Such lead member shall be the single point of contact on behalf of the Consortium with the Resolution Professional and the CoC,

- their representative and advisors in connection with all matters pertaining to the Consortium;
- v. All the members of the Consortium shall be jointly and severally responsible for compliance with the terms of the invitation for submission of EOI, the request for resolution plan and the resolution plan submitted by the Consortium;
 - vi. If any 1 (one) member of the Consortium is disqualified under Section 29A of the IBC, then the entire Consortium; i.e., all the members of such Consortium shall stand disqualified;
 - vii. The EOI must contain the details of the members of the Consortium; and
 - viii. No change in the composition of the Consortium shall be permitted after submission of the EOI, except with the prior approval of the CoC.”
 - ix. At least one of the members must hold 26% of total equity participation in the consortium who shall be designated as the lead member. Further, all other members would need to have a minimum stake of 10% each.
- 4.4. An interested RA must (i) not a person ineligible to be resolution applicant” as per the provisions of Section 29A and other provisions of the IBC; and (ii) be a “fit and proper” person that does not suffer from any legal disability to be promoter under the applicable laws including but not limited to listing agreement, stock exchange requirements, SEBI regulations etc. The RA is required to submit an undertaking with regard to the above in the format set out at Annexure – C.
- 4.5 The fulfillment of eligibility conditions in the EOI does not automatically entitle an interested RA to participate in CIRP and such participation will be subject to applicable laws and further conditions stipulated by RP or COC, in their sole discretion, including those in relation to access to VDR or as may be stipulated under the Request for Resolution Plan document.
- 4.6 The Committee of Creditors, the RP (on the instructions of the Committee of Creditors) and/or the Adjudicating Authority shall have the right, in their sole discretion to reject any and all proposed EOIs and/or the Resolution Plan made by or on behalf of any Resolution Applicant or any part thereof, and/or to suspend/cancel/terminate the process for submission of Resolution Plan including invitation/submission of EOI, submission of Resolution Plan, Evaluation of Resolution Plan and / or amend and / or supplement the process for submission of Resolution Plan, all without notice and any liability therefore.
- 4.7 In the event the original financials of the RA are drawn in a currency other than INR then RBI reference rate as on the date of financial statements shall be used for conversion into Indian Rupees. If rate for that particular date is unavailable immediately preceding available rate shall be considered. Such rate of conversion must be mentioned.
- 4.8 An additional annexure requiring details of Joint Venture / Consortium/ SPV Members may be included. Following details may be requested :
- Name of the member
 - Type of entity
 - % of share in the Consortium/joint Venture
 - Nominated as Lead (Y/N)

5. **Submission of EOI:**

- (a) Applicants shall submit the EOI along with details requested in Annexure E and supporting documents requested in Annexure F.
- (b) Applicant shall submit the complete set of the EOI in soft copy along with annexures via email to kvknilachalkgs2019@gmail.com.
- (c) Additionally, a hard copy of the EOI along with all Annexures supporting documents and covering letter in the format set out in Annexure D should be delivered in a sealed envelope with the words “<Expression of Interest for Investment in M/s. KVK Nilachal Power Private Limited> super-scribed on it (by speed/ registered post or delivered in person) to the RP at K. G. Somani & Co., 3/15, 4th floor, Asaf Ali Road, Delhi-110002.

6. Last Date of Submission of EOI:

- (a) An interested RA may submit the EOI on or before 6 pm on 4th February 2020.
- (b) Shortlisted RA will be provided the Information Memorandum, prepared as per the provisions of the IBC, subject to such shortlisted RAs furnishing a non-disclosure agreement in the form and manner set out at Annexure B.
- (c) The shortlisted RAs shall be provided access to the VDR and accordingly, such shortlisted RAs may carry out due- diligence exercise on the Corporate Debtor.
- (d) A shortlisted RA may submit a resolution plan on or before 6 pm on 13th March 2020 unless extended by the RP or the CoC in its sole discretion.

7. Other Terms and Conditions:

- (a) The RP and COC reserve the right to issue clarifications, amendments and modification to the EOI document, to waive or relax any term or condition or its application in any particular case, without assigning any reason whatsoever, in each case as they may deem fit in their sole discretion. Accordingly, the prospective RA should regularly visit the Corporate Debtor's/RP's IPE website to keep themselves updated regarding classifications, amendments or extensions of time, if any.
- (b) RP/COC has the right to withdraw, cancel or modify the process without assigning any reason and without any liability whatsoever. This is not an offer document.
- (c) The COC and/or RP reserve the right to disqualify any prospective RA, at any time it may deem fit and proper.
- (d) No verbal communication or agreement with the RP or any official, representative, affiliates, associate, advisor, agent, director, partner or employee of the RP or, the Company or any member of the COC shall affect or modify any terms of this EOI.
- (e) Neither the applicant nor any of the applicant's representatives shall have any claims whatsoever against the RP or any member of the COC or any of their, officials, representative, affiliates, associate, advisor, agents, director, partner or employee, arising out of or relating to this EOI.
- (f) By submitting a proposal, each applicant shall be deemed to acknowledge that it has carefully read and understood the entire EOI and has fully informed itself as to all existing conditions and limitations.

“Annexure - A”

Background

PFC, HUDCO, IIFCL and UCO Bank provided a project loan of Rs.1080 crores in consortium with PFC as the lead FI. KVK defaulted in repayment and the account was classified as “NPA” from 15.04.2015, 15.01.2015, 31.12.2015 and 30.06.2017 in the books of PFC, HUDCO, IIFCL and UCO Bank respectively. The current Corporate Insolvency Resolution Process against KVK Nilachal Power Private Ltd under Section 7 of the Insolvency and Bankruptcy Code, 2016, initiated on 23rd September 2019 vide order of Hon’ble NCLT, Hyderabad Bench.

Introduction

The corporate debtor, KVK, incorporated on 06.06.2001, was to set up a 1x350 MW Coal Based Thermal Plant in Phase I in Cuttack, Odisha with future plans to implement Phase II of 700 MW, with two units each of 350 MW.

KVK appointed one of its promoters, M/s. Maytas Infra Ltd (Maytas) as EPC Contractor. Maytas was also affiliated to Satyam Computer Service. First disbursement was made by PFC to KVK on 22.12.2008.

In addition to above, stay order on project construction work was issued by Hon’ble High Court of Odisha on 18.05.2012 in the absence of Wildlife Clearance as writ petition was filed alleging that the project site is falling within the eco-sensitive zone around Kapilash Wildlife Sanctuary. The project implementation was stuck for nearly 24 months due to stay order which was finally lifted on 16.05.2014.

Despite this the work at the project site could not be started due to scarcity of funds. KVK defaulted in repayment and the account was classified as “NPA” from 15.04.2015, 15.01.2015, 31.12.2015 and 30.06.2017 in the books of PFC, HUDCO, IIFCL and UCO Bank respectively.

KVK planned to re-start the implementation of the project. The project had to be revived from complete stoppage of works to full mobilization through award/re-negotiation of contracts and arranging financial tie up for cost overrun but did not succeed for various reasons.

In the meeting of lenders’ consortium held on 26.07.2016 to discuss the status of the project progress, reasons for project cost overrun and proposal for revival of project, KVK informed lenders that there was no significant progress added to the project.

“ANNEXURE – B”

CONFIDENTIALITY AGREEMENT
(on non-Judicial stamp paper)

This Confidentiality Agreement is dated ____ January 2020 between:

_____, a company incorporated under the laws of _____ and having its registered office at _____ (hereinafter referred to as “Receiving Party”, which expression shall, unless it be repugnant to the context or meaning thereof, shall mean and include its successors and permitted assigns);

- and –

M/s. KVK Nilachal Power Private Limited, a company incorporated under the laws of India and having its registered office at 4, Plot No. 484, Jubilee hills, Road No.36, Hyderabad Telangana-500033, acting through Mr. R. P. Tak being a registered resolution profession bearing registration number IBBI/IPA-001/IP-P00526/2017-18/10951 (hereinafter referred to as “Disclosing Party”, which expression shall, unless it be repugnant to the context or meaning thereof, shall mean and include its successors and permitted assigns) and appointed as the resolution professional for the KVK Nilachal Power Limited (“**Corporate Debtor**”) in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”);

WHEREAS the Disclosing Party intends to disclose certain information to the Receiving Party regarding M/s. KVK Nilachal Power Private Limited for the purpose of conducting a due diligence on the Corporate Debtor;

AND WHEREAS the Receiving Party has agreed to keep the information confidential on the terms of this Agreement;

NOW THEREFORE in consideration of the foregoing and the mutual agreements contained in this Agreement (the receipt and adequacy of which are acknowledged), the Parties agree as set forth below.

1. Defined Terms.

As used in this Agreement, the following terms have the meanings set forth below.

"**Affiliate**" means, in respect of a Party, any Person (other than a natural person) which (a) is controlled directly or indirectly by such Party, or (b) is directly or indirectly controlled by a Person which directly or indirectly controls such Party.

"**Agreement**" means this confidentiality agreement, as amended, modified, restated, replaced or supplemented from time to time.

"**Business Day**" means any day of the year, other than a Saturday, Sunday or any days on which major banks are closed for business in India.

"**Confidential Information**" means all information relating to Disclosing Party's business, operations, assets, liabilities, plans, prospects and affairs, which has been or is disclosed to or acquired by the Receiving Party regardless of whether such information is in oral, visual, electronic, written or other form and whether or not it is identified as "confidential".

"**Control**" means the right to appoint majority of directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

"**Law**" means any applicable law, statute, code, constitution, treaty, ordinance, order, decree, directive, rule, published policy, regulation or decision of any competent judicial, legislative, administrative, ministerial, departmental or regulatory body or authority or by the rules, policies or other requirements of any relevant stock exchange.

"**Notice**" has the meaning specified in Section 9.

"**Party**" means either Receiving Party and Disclosing Party and any other Person who may become a party to this Agreement. These parties may be referred to individually as "Party" or collectively as "Parties". Reference to a Party includes such Party's Representatives and affiliates and their Representatives.

"**Person**" means a natural person, partnership, limited partnership, limited liability partnership, and corporation, limited liability Corporation, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental or other regulatory entity, and pronouns have a similarly extended meaning.

"**Representative**" means any director, officer, employee, agent, or advisor of that Party, including accountants, counsel, lenders, consultants and financial advisors.

"**Work Papers**" means all notes, analyses, compilations, forecasts, data, studies, interpretations, or other documents prepared by, on behalf of or for the benefit of, the Receiving Party that contain, reflect, summarize, analyze, discuss or review any Confidential Information.

2. Interpretation

In this Agreement, the words "including", "includes" and "include" mean "including (or includes or include) without limitation". The expression "Section" or other subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. Words referencing the singular include a reference to the plural and vice versa.

3. Non-Disclosure of Confidential Information

- (a) The Receiving Party will keep strictly confidential all Confidential Information and Work Papers and will not, and will cause its Representatives not to, disclose or use such Confidential Information or Work Papers except as permitted under this Agreement.
- (b) The restrictions set out in Section 3(a) do not apply to Confidential Information or any part of it that:
 - (i) is or becomes generally available to the public other than as a result of disclosure directly or indirectly by the Receiving Party;
 - (ii) is or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party;
 - (iii) is or was independently acquired or developed by the Receiving Party, its affiliates or their respective Representatives without violating its obligations under this Agreement or any other obligation of confidentiality it may have to the Disclosing Party;
 - (iv) is required to be disclosed by Law, unless such Law permits the Receiving Party, its affiliates or their respective Representatives to refrain from making such disclosure for confidentiality or other reasons; or
 - (v) the Disclosing Party has expressly permitted in writing that the particular Confidential Information may be disclosed.
- (c) The Receiving Party may disclose Confidential Information and its Work Papers to its Representatives only on a need-to-know basis subject to such Representative being informed of the confidential nature of the Confidential Information and Work Papers and such Representatives agreeing to be bound by and act

in accordance with the confidentiality provisions of this Agreement.

- (d) The Receiving Party hereby acknowledges that it is aware, and that the Receiving Party shall ensure that its Representatives are aware that applicable securities laws prohibit any person who has material, non-public information concerning the matters which are the subject of this agreement, from purchasing or selling securities of the Disclosing Party, including an Affiliate, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.
- (e) The Receiving Party shall be responsible for any breach by its Representatives of any of the provisions of this Agreement whether or not such Representatives have agreed in writing to be bound by such provisions. The Receiving Party will, at its sole expense, take all reasonable measures to ensure that its Representatives do not breach any of the provisions of this Agreement.
- (f) If the Receiving Party is required to make disclosure of any or all of the Confidential Information and/or its Work Papers pursuant to Law, it will (unless otherwise prohibited by Law and to the extent possible), after consultation with the Disclosing Party:
 - (i) give the Disclosing Party immediate Notice of the requirement and the proposed content of any disclosure;
 - (ii) co-operate with the Disclosing Party in limiting the extent of the disclosure and in obtaining an appropriate protective order or pursuing such legal action, remedy or assurance as the Disclosing Party deems necessary to preserve the confidentiality of the Confidential Information; and
 - (iii) disclose only that portion of the Confidential Information and its Work Papers that it is, in the written opinion of the Receiving Party's counsel, legally compelled to disclose.

4. Handling and Return of Confidential Information

- (a) The Receiving Party will keep a written record of the subject and location of all Confidential Information disclosed to it and a list of Representatives to whom Confidential Information has been disclosed and will provide a copy of the record and list immediately to the Disclosing Party upon request.
- (b) Confidential Information shall be only for review by the Receiving Party and its Representatives. The Receiving Party may not remove any proprietary, copyright, trade secret or other legend from any of the Confidential Information.
- (c) After the completion of resolution process under the IBC,2016, the Receiving Party will and will cause its Representatives to and on instructions of the Disclosing Party, within 7 Business Days of the Notice:
 - (i) Return to the Disclosing Party all Confidential Information and Work Paper without retaining any copies;
 - (ii) destroy all Confidential Information and Work Papers in its possession; and
 - (iii) certify to the Disclosing Party in writing that this Section 4(c) has been complied with by the Receiving Party.
- (d) Notwithstanding the foregoing, neither the Receiving Party or its Representatives are required to return or destroy the Confidential Information to the extent that it is obliged by any law, court of competent jurisdiction, competent regulatory agency or authority, applicable compliance procedures or the rules of any stock exchange to keep them;
- (e) Notwithstanding the return or destruction of Confidential Information and Work Papers, the Receiving Party and its Representatives will continue to be bound by their obligations of confidentiality and other obligations hereunder.

5. No Representation or Warranty

- (a) The Disclosing Party and the Resolution Professional makes no representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information provided by it or with respect to the infringement of patents, trade-marks, copyrights, or other intellectual property rights respecting such Confidential Information, or of the rights of any other Person.
- (b) The Disclosing Party and the Resolution Professional is not liable to the Receiving Party or to any other Person for any losses, liabilities, damages, claims, demands, fines, penalties or expenses resulting from, connected with or arising out of the Receiving Party's reliance or use of the Confidential Information. This Agreement does not benefit or create any right or cause of action in, or in favor of, any Person other than the Parties and shall exclude any rights under legislative provisions conferring rights under a contract to persons not a party to that contract. Only the Parties are entitled to rely on its provisions in any action, suit, proceeding, hearing or other forum subject to clause 5(d)
- (c) To the extent that any Confidential Information is owned by the Disclosing Party, it will remain the exclusive property of the Disclosing Party. Nothing in this Agreement or in the disclosure of any Confidential Information confers any interest in the Confidential Information on the Receiving Party.
- (d) The Resolution Professional or the CoC shall not be held liable for any damages/ liabilities arising out of the use of confidential information or the accuracy or completeness of the confidential information.

6. Remedies

- (a) In the event of a breach of a Party's obligations under this Agreement, that Party must, immediately following discovery of the breach, give Notice to the other Party of the nature of the breach. The breaching Party must, upon consultation with the other Party, take all reasonable measures to limit the extent of the breach.
- (b) The Receiving Party acknowledges that the Disclosing Party shall be irreparably injured by breach of this Agreement which could not be adequately compensated by damages. The Disclosing Party shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement. Such remedies shall not be exclusive remedies but shall be in addition to all other remedies available in law or in equity including damages.
- (c) The rights and remedies provided in this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity. All such rights and remedies may be exercised from time to time, and as often and in such order as the applicable Party deems appropriate.
- (d) Each Party shall have a duty to use all reasonable endeavors to mitigate its loss and damage arising on account of the breach or default by the other Party.
- (e) Except as may be otherwise provided in this Agreement, or breach by either party will result in the other party being responsible to reimburse the non-defaulting party for all costs incurred directly as a result of the breach of this Agreement and shall be subject to such damages as may be allowed by law including all attorneys' fees and costs of enforcing this Agreement. However, the provision of clause 7(e) shall survive the termination of the agreement.
- (f) Subject to the foregoing provisions of this Section 6, if the Receiving Party or any of its Representatives is in default or breach of its obligations under this Agreement, the Receiving Party shall indemnify the Disclosing Party from and against any direct cost, loss, expense, liability, claim or damage which the Disclosing Party incurs or suffers as a result of any such default or breach. Notwithstanding the forgoing, in no event, shall the Receiving Party be liable for any consequential, punitive, special, exemplary or other similar damages.

7. Other Covenants and Agreements

- (a) The Parties irrevocably undertake not to circumvent, avoid, bypass or obviate each other, directly or indirectly and agree on customer and partner protection for all mutual named customers and partners. By signing this agreement, the parties commit to each other not to contact the partners and customers of the other party or to start any business activity, directly or via third parties, without previous written consent.
- (b) The Parties shall not disclose any contact revealed by either Party to any third Parties and shall not enter into direct and/or indirect offers, negotiations and/or transaction with such contacts revealed by the other Party who made the contact(s) available.
- (c) In the event of circumvention by any of the undersigned Parties, whether direct and/or indirect, the circumvented Party shall be entitled to a legal monetary compensation equal to the maximum service it should realize from such a transaction, plus any and all expenses, including any and all legal fees incurred in lieu of the recovery of such compensation
- (d) Nothing in this Agreement nor the disclosure of Confidential Information to the Receiving Party creates any agency, partnership, joint venture, and representative or employment relationship between the Parties.
- (e) The obligations of the Parties under this Agreement continue and are binding for 3 years.

8. Acknowledgements of Receiving Party

Each Party acknowledges and agrees that, notwithstanding any other provisions of this Agreement, all contacts by one Party and its Representatives with the other Party regarding the Confidential Information shall be made through each Party's authorized representative, and one Party and its Representatives shall not contact any other employee of the other Party unless expressly authorized.

9. Miscellaneous

- (a) Any notice, consent, direction or other communication (each a "Notice") given regarding the matters contemplated by this Agreement must be express and in writing, sent by personal delivery, courier or facsimile (but not by electronic mail) and addressed to:

Receiving Party Name:

Address:

Attention:

Designation:

Telephone/Mobile No:

Email Id:

Disclosing Party Name: M/s. KVK Nilachal Power Private Limited

Address: 3/15, 4th Floor, Asaf Ali Road, Delhi-110002

Designation: Resolution Professional

Telephone/Mobile No: 011-23252225, 011-23277677

Email Id: rptak@kgsomani.com

A Notice is deemed to be delivered and received (1) if sent by personal delivery or service courier, on the date of delivery, or (2) if sent by facsimile, on the day following the date of confirmation of transmission by the originating facsimile, or (3) if sent by e-mail, on the day the e mail was sent.

- (b) Except as otherwise expressly provided in this Agreement, each Party will pay for its own fees, costs and expenses incurred in connection with this Agreement. The fees, costs and expenses referred to in this are those that are incurred in connection with the negotiation, preparation, execution and performance of this Agreement, including the fees, costs and expenses of counsel, financial advisors, bankers, lenders and accountants.

- (c) No waiver of any provision of this Agreement constitutes a waiver of any other provision (whether or not similar). No waiver is binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement is not a waiver of that right. A single or partial exercise of any right does not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.
- (d) This Agreement constitutes the entire agreement between the Parties relating to its subject matter and supersedes all prior agreements, understandings, negotiations and discussions between the Parties, whether oral or written.
- (e) This Agreement may only be amended, supplemented, or otherwise modified by express written agreement signed by the Parties.
- (f) Neither this Agreement, nor any of the rights or obligations under this Agreement, are assignable or transferable by a Party without the express prior written consent of the other Party.
- (g) If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect. This clause has no effect if the severance alters the basic nature of this Agreement.
- (h) This Agreement and any dispute, controversy or claim arising out of, relating to, or in any way connected with this Agreement (including, without limitation, the existence, validity, performance, breach or termination thereof) shall be governed by the laws of India. Any such dispute, controversy or claim shall be fully and finally resolved by binding arbitration in accordance with the Arbitration and Conciliation Act 1996, as amended from time to time. The seat of such arbitration shall be in New Delhi, India. The language of such arbitration shall be English. The dispute shall be heard by three (3) arbitrators. Within thirty (30) days of the respondent's receipt of notice of arbitration, the Disclosing Party, on the one hand, and the Receiving Party, on the other hand, shall each select an arbitrator, and within fifteen (15) days of selection of the second arbitrator, the two arbitrators shall select the third arbitrator, who shall act as the Chair. Each arbitrator must be independent and disinterested and must not be affiliated in any way with any of the Parties.

This Agreement may be executed in any number of counterparts and all counterparts taken together constitute one and the same instrument. Receipt of an originally executed counterpart signature page by facsimile or an electronic reproduction of an originally executed counterpart signature page by electronic mail is effective execution and delivery of this Agreement. Any Party sending a counterpart by facsimile or electronic mail will also deliver the original signed counterpart to the other Party; however, failure to do so will not invalidate this Agreement.

Receiving Party

By:

Disclosing Party

By:

IN WITNESS WHEREOF the Parties have executed this Agreement.

Company Name:

Name:

Designation:

Place:

Date:

Witness:

Name:

Address:

Company Name:

Name:

Designation:

Place:

Date:

Witness:

Name:

Address:

Annexure - C

INELIGIBILITY NORMS AS PRESCRIBED UNDER SECTION 29A OF IBC 2016

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 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 (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) or 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 favor of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;
- (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 Organization of Securities Commissions Multilateral Memorandum of Understanding;
- c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);
- d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the 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.

“ANNEXURE – D”
FORMAT FOR EXPRESSION OF INTEREST FOR SUBMISSION OF RESOLUTION PLAN IN
KVK NILACHAL POWER PRIVATE LIMITED UNDER CIRP

Date: _____

To
Mr. R. P. Tak,
Resolution Professional
M/s. KVK Nilachal Power Private Limited
4th Floor, 3/15,
Asaf Ali Road,
Delhi – 110002

Subject: Expression of Interest (“EOI”) for submission of Resolution Plan in KVK Nilachal Power Private Limited (“KVK”) under Corporate Insolvency Resolution Process (“CIRP”)

Dear Sir,

In response to your public advertisement in [Insert the names of the newspaper and/or website] on [Insert date of the advertisement] inviting EOIs for submission of Resolution Plan in KVK, we hereby submit our EOI.

We have attached necessary information requested in the format for EOI published on www.kgsip.com. The information furnished by us in this EOI is true, correct and accurate to the best of our knowledge. In our view, we meet the eligibility criteria prescribed under the EOI and all information provided by us should be sufficient for us to be shortlisted for the above-mentioned proposal. However, the resolution professional (“RP”) and/or the Committee of Creditors (“COC”) reserve the right to request for additional information or clarification(s) from us for the purposes of the EOI and we shall promptly comply with such requirements. Failure to address the queries of the RP to his satisfaction or our non-responsiveness may lead to rejection of our EOI.

We undertake that we will continue to meet the eligibility criteria throughout the bid process, and any material adverse change affecting our/consortium’s (or any of its members) eligibility or ability to submit a Resolution Plan shall be intimated immediately.

We understand that meeting the qualification criteria set out in EOI alone does not automatically entitle us to participate in the process. We further, understand that the RP and the COC reserve their right to decide whether or not to pre-qualify our proposal without disclosing the reason whatsoever and that Resolution Plan submitted in KVK shall be subject to approval of the final resolution plan by the members of COC and the NCLT, in terms of the provisions of the Insolvency and Bankruptcy Code, 2016.

Sincerely yours,
On behalf of (Insert name of the entity submitting the EOI)

Signature:
Name of signatory:
Designation:
Company Seal/Stamp

“ANNEXURE – E”
DETAILS OF THE PROSPECTIVE INVESTOR / APPLICANT

- a) Name and address
 - Name of the Investor/Applicant:
 - Address:
 - Telephone No:
 - Fax:
 - Email:

- b) Date of establishment of Investor/Applicant:

- c) Core area of expertise of the Investor/Applicant:

- d) Contact Person:
 - Name:
 - Designation:
 - Telephone No:
 - Email:

- e) PAN No. or equivalent details of Investor/Applicant

- f) Effective Net worth/ Funds under Management / Committed Funds of the Investor/
Resolution Applicant

“ANNEXURE – F”
SUPPORTING DOCUMENTS TO BE ATTACHED WITH EOI

- a. Profile of the Prospective Investor / Applicant
- b. Legal Documents: Copies of Certificate of Registration and Constitutional Documents of the Prospective Investor/ Applicant.
- c. For Turnover: Immediately preceding 3 (three) year’ audited financial results of the Prospective Investor and/ or its promoter/ promoter group or any other group company.
- d. For Demonstration of funds availability: Statement of funds availability of the Prospective Investor and/or promoter/promoter group or any other group company.
- e. For Net worth: The applicant should have a Net Worth of at least Rs. 30 cr. in case the applicant is a body corporate or committed funds/ or funds under management of Rs 100 crore investment in case an applicant is an Asset Reconstruction Company/ Private Equity/ Financial Investor/ Non- Banking Finance company/ consortium of Investors, as per latest audited financial statement which should not be older than 31st March 2019, and shall submit all relevant documents/ information for its promoter/promoter group or any other group company. The applicant having adequate financial capability shall submit proof of its effective net worth by means of Chartered Accountant Certificate in this regard.
- f. A notarized declaration from the applicant in order to demonstrate that the promoter/ promoter group or any other group company are part of the same group, in case the applicant is using such entities for submitting EOI. Please note that the applicant must be “fit and proper” person not under any legal disability to be promoter under the applicable laws including listing agreement and SEBI regulations and guidelines and shall provide all relevant documents for its promoter/ promoter group or any other group company.
- g. Undertakings under Regulation 36 A (7) as per the format provided in Annexure G:
 - i. an undertaking by the prospective resolution applicant that it meets the criteria approved by the Committee of Creditors of KVK Nilachal power Private Limited and as specified in the detailed invitation of expression of interest;
 - ii. an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A of IBC 2016 to the extent applicable;
 - iii. an undertaking by the prospective resolution applicant that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;
 - iv. an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code;
 - v. an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29. Resolution Applicant shall furnish the confidential undertaking as per format at “Annexure – H”.
- h. Experience of the Investor/RAs in the relevant sector.
- i. History if any, of the Investor/RAs or affiliates of the Investor/RAs being declared a “wilful defaulter”, “non- cooperative borrower”, “non-impaired asset” or “non- performing asset” (Self Declaration).

Note:

- (1) The Resolution Applicant shall submit relevant information and records to substantiate that it meets the eligibility criteria under point 4 as specified in the invitation of expression of interest.
- (2) The Resolution Applicant shall submit relevant information and records to enable an assessment of ineligibility under Annexure (c)

“ANNEXURE – G”
(on non- Judicial stamp paper)

To
Mr. R. P. Tak,
Resolution Professional
M/s. KVK Nilachal Power Private Limited
4th Floor, 3/15,
Asaf Ali Road,
Delhi – 110002

Date: _____

Subject: Undertaking in terms of Regulation 36A (7) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Dear Sir,

- i. I undertake and confirm that M/s. _____ meets the criteria approved by the Committee of Creditors of KVK Nilachal Power Private Limited and as specified in the detailed invitation of expression of interest;
- ii. I undertake and confirm that M/s. _____ does not suffer from any ineligibility under section 29A of IBC 2016;
- iii. I undertake and confirm that M/s. _____ shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;
- iv. I undertake and confirm that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code;

Name:-
Authorised Signatory for _____

“ANNEXURE – H”
on non-judicial stamp paper

CONFIDENTIAL UNDERTAKING

To
Mr. R. P. Tak
Resolution Professional

KVK Nilachal Power Private Limited (Under CIRP)

I, _____, the Authorised Representative of _____ do hereby undertake personally and on behalf of the Resolution Applicant, having been duly authorised to make such an undertaking on behalf of the Resolution Applicant, that we shall maintain confidentiality of the information provided in the Information Memorandum (In the matter of KVK Nilachal Power Private Limited). We undertake not to use the Information provided in any manner as prescribed in Section 29 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 36(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and thus agree to the following undertakings:-

1. We undertake to comply with the provisions of law for the time being in force relating to confidentiality and insider trading.
2. We undertake to protect any intellectual property of the corporate debtor we gain access to.
3. We undertake not to use such Information to cause undue loss or an undue gain to itself or any other person and comply with the requirements under sub-section (2) of section 29 of the Insolvency and Bankruptcy Code 2016.
4. We undertake not to share the Information with third parties unless the third parties are bound by such an Undertaking / Confidentiality Agreement.

We state that we shall be solely liable for any misuse of Information that can be attributed to us or our employees.

Name:-
Authorised Signatory for _____