

**Detailed Invitation for Expression of Interest to Submit Resolution Plan(s) for
SEMBMARINE KAKINADA LIMITED ('Corporate Debtor')**

Background of the Corporate Debtor

Incorporated on 11th November 2009, Sembmarine Kakinada Limited is an integrated offshore and Marine Engineering Company offering ship repairing, ship building, conversion, offshore fabrication and related services. It was formed as a joint venture of Sembcorp Marine Repairs & Upgrades Pte. Ltd., Kakinada Infrastructures Holding Pvt Ltd. (KIHPL) and India Infrastructure Pte. Ltd (IIPL). It is located in the East Coast of India operating within the vicinity of Kakinada Seaports in the state of Andhra Pradesh, currently catering to offshore drilling units and merchant vessels operating in the waters of Indian Coast. Sembmarine Kakinada limited has distinctive advantages over other shipyards with respect to draft availability (12m) in its approach channel, compared to 4-9m in other shipyard locations. Sembmarine Kakinada limited has repaired around 207 vessels till March 2019 (Rigs, dredgers, offshore vessels etc.) since inception.

The Corporate Debtor is currently undergoing Corporate Insolvency Resolution Process ("CIRP") in accordance with the extant provisions of the Insolvency and Bankruptcy Code, 2016 ("the Code") and other relevant rules and regulations notified thereunder, pursuant to the Order of the Hon'ble National Company Law Tribunal, Amravati Bench ("NCLT") dated 23rd September, 2019 (being the Insolvency Commencement Date) wherein the Hon'ble NCLT has appointed **Mr. Om Prakash Agarwal**, having IBBI Reg. No. as IBBI/IPA-001/IP-P00906/2017-18/11506, as an Interim Resolution Professional ("**IRP**"). Subsequently, in the first meeting of Committee of Creditors ("**CoC**") held on 22nd October, 2019, the CoC confirmed the appointment of Mr. Om Prakash Agarwal as the Resolution Professional ("**RP**").

Invitation for Expression of Interest for submission of Resolution Plan

In accordance with the Section 25(2)(h) of the Code read with Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 ("**the CIRP Regulations**"), the RP hereby invites Expression of Interest ("**EOI**") for submission of Resolution Plan(s) for the Corporate Debtor, from the interested and eligible prospective resolution applicants who fulfil such eligibility criteria, as laid down in this detail Invitation for EOI with the approved of the CoC. The EOI has to be submitted in the prescribed manner by the eligible prospective resolution applicants in terms of the following timelines:

Sr.No.	Particulars	Date
1.	Date of invitation of EOI	19 th March 2020 (originally published on 07 th December 2019)
2.	Last date for submission of EOI	10 th June 2020 (<i>revised from previous last date for submission - 15th May 2020</i>)

Provided that the RP may extend the last date for submission of EOI, with approval of the CoC (at its sole discretion)

Eligibility Criteria for Prospective Resolution applicant

The eligibility criteria for prospective resolution applicants, post approval of CoC in accordance with Section 25(2)(h) of the Code is as follows:

1. Prospective Resolution Applicant

1.1. A prospective resolution applicant should be an individual (being resident of India, foreign national, non- resident Indian or a person of Indian origin, as defined under Foreign Exchange Management Act, 1999 and any related amendments thereto), trust, co-operative society, private limited company, public limited company, sole proprietary firm or a partnership firm, whether registered in India or outside India, whether singly or jointly (in which case each of whom), is eligible to invest in India under the laws of India.

1.2. A prospective resolution applicant can be a strategic investor(s) (“SI”) and / or a financial investor(s) (“FI”). An SI may include body corporates having experience in similar sector whether domestic experience or global experience or both. An FI may include Private Equity Funds, Venture Capital Funds, Investment Funds, Non- banking Finance Companies, Asset Reconstruction Companies, Banks, Foreign Investment Institutions etc.

2. Qualification Criteria for SI and/or FI

2.1. Financial capacity of a SI being private / public limited company, limited liability partnerships, body corporate, whether incorporated in India or outside India and not being a consortium:

Minimum Consolidated Net Worth* of INR 50 Crores (Rupees Fifty Crores Only) as of 31st March 2019 based on the latest audited financial statements of the entity and as certified by its statutory auditors. Or

* Net Worth shall be computed as per (Indian) Companies Act, 2013

2.2. Financial capacity of FI including but not limited to Private Equity Funds, Venture Capital Funds, Investment Funds, Non-banking Finance Companies, Asset Reconstruction Companies, Banks, Foreign Investment Institutions etc. and not being a consortium:

2.2.1. Minimum Asset Under Management (“AUM”) of INR 250 Crores (Rupees Two Fifty Crores Only) in the immediately preceding completed financial year; or

2.2.2. Committed funds available for investment/deployment in Indian companies or Indian assets of INR 250 Crores (Rupees Two Hundred and Fifty Crores Only) or more in the immediately preceding completed financial year.

3. Prospective Resolution Applicants forming consortium / Joint Ventures / Special Purpose Vehicle (SPV)

3.1. The consortium would be required to have a lead consortium member. Lead member must hold **at least 26%** equity in the consortium and should have an authority to bind, represent and take decision for and on behalf of the consortium.

3.2. In the event the consortium is made up of SI / body corporates, the net worth of the consortium shall be calculated as the weighted average of the consolidated net worth of the individual member (value of any negative parameter shall be considered as nil, provided that only such portion of their net worth as is proportionate to their shareholding in the consortium will be considered towards this eligibility criteria under the EOI.

3.3. In the event the Consortium is made up of FI / funds / private equity investors / non-banking financial companies / any other such applicants, the minimum AUM of the consortium shall be calculated as weighted average of individual member's AUM or committed funds available for investment/deployment in Indian companies. Provided that only such portion of their AUM / committed funds as is proportionate to their shareholding in the consortium, will be considered towards this eligibility criteria under the EOI.

3.4. In the event the consortium is made up of a mix/combination of SIs and FIs viz. comprising body corporates, FIs / funds / private equity investors / non-banking financial institutions / any other applicants, the eligibility criteria applicable to the lead consortium member shall be considered based on the weighted share of the members of the Lead members category i.e. SIs or FIs .

3.5. No change of Lead Member or any member whose financials have been considered towards the eligibility criteria shall be permitted post submission of EOI (except at sole discretion of the CoC).

3.6. Any prospective resolution applicant can participate in only 1 (one) consortium and / or can submit only 1 (one) EOI / resolution plan. Further a person shall submit only 1 (one) EOI, either individually as a prospective resolution applicant or as a constituent of a Consortium.

3.7 the Consortium shall submit the copy of duly notarized consortium agreement/memorandum of understanding, if any, entered into between the Consortium members, setting out the respective obligations of the Consortium members.

3.8 the members of the Consortium shall be jointly and severally liable in respect of obligations under the EOI/ undertakings given to the RP.

Applicants can refer to the website www.skilkakinada.com for further details or any amendments or additional requirements thereof and the last date for submission of Expression of Interest is **May 15, 2020**.

Note:

RP and/or COC reserves the right to request further information for the purpose of determining the eligibility and qualification of prospective resolution applicant(s) at any stage. This is not an offer document and is issued with no commitment.

Disqualification Criteria

Without prejudice, a prospective resolution applicant may be disqualified and its EOI or Resolution Plan may be excluded from further consideration for non-compliance with the terms hereof or for any of the reasons (including without limitation) listed below. Where the prospective resolution applicant is a consortium, none of the members should be subject to disqualification under the terms of this document. The disqualification criteria shall include without limitation:

1. Ineligibility in terms of Section 29A of the Code;
2. Material mis-representation in the EOI or the proposal or failure to provide the information required to be provided in accordance with the terms of the detailed invitation or request for resolution plans;
3. The RP is of the view that the prospective resolution applicant has not satisfied the eligibility criteria approved by the CoC. Without prejudice to the generality of the above, the criteria may include among others, the track record (financial, operational strength, turnaround experience or otherwise) of the interested party, its financial strength, etc;
4. Any information regarding the prospective resolution applicant which becomes known to the RP or the CoC which is detrimental to the proposed transaction and / or to the interests of the Corporate Debtor and its stakeholders;
5. If in the opinion of the COC, the prospective resolution applicant is undesirable or not credible or if the prospective resolution applicant fails to provide information, if requested, to establish its credibility, eligibility or ability to implement a resolution plan.

Submission of EOI

Any interested prospective resolution applicant who is eligible in accordance with the eligibility criteria as specified by the CoC, may submit EOI in the format as set out in ‘**Annexure A**’ on or before **May 15, 2020 (18:00 Hrs IST)**. It may be noted that the EOI shall be unconditional and accompanied by:

- a. All the details / information of the applicant along with supporting documents set out in ‘**Annexure B**’ hereto.
- b. An undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under Section 29A of the Code as set out in ‘**Annexure C**’ and relevant information and records to enable an assessment of ineligibility under Section 29A of the Code.
- c. An undertaking by the prospective resolution applicant that it meets the eligibility criteria specified by the CoC as set out in ‘**Annexure D**’.
- d. 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 and attract penal action under the Code as set out in ‘**Annexure D**’.
- e. 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 of the Code as set out in ‘**Annexure D**’.
- f. Executed Version of Confidentiality and Non-Disclosure Agreement as set out in ‘**Annexure E**’
- g. Other Relevant records in evidence of meeting the criteria specified herein.

The prospective resolution applicants shall submit the EoI along with the required documents in a sealed envelope in hard copy along with the relevant Annexures, to the following address by post or courier or deliver in person to:

Mr. Om Prakash Agarwal

Resolution Professional –

Sembmarine Kakinada Limited

c/o EY Restructuring LLP

The SkyView 10, 18th Floor, “Zone A”,

Survey No. 83/1, Raidurgam, Hyderabad,

Telangana – 500032

Additionally, a soft copy of the EOI along with above-mentioned documents should also be mailed to ip.sembmarine@in.ey.com. The RP may seek any clarification and additional information or document, in addition to material on record, from prospective resolution applicant for conducting due-diligence to ensure compliance w.r.t. eligibility in accordance with the applicable provisions of the Code.

It may be noted that any EOI received after **May 15, 2020** shall be rejected without any prejudice.

EOI's not fulfilling the requirement and conditions as mentioned above and this document are automatically liable to be disqualified without assigning any reasons and communication.

The RP and the CoC reserves the right to cancel, amend or modify the invitation without assigning any reason and without incurring any liability of whatsoever nature. Any amendment or modification shall be posted on the website of the Corporate Debtor – www.sklikakinada.com. The prospective resolution applicants are requested to regularly visit the website for updates.

RP and the CoC reserve the right to withdraw the invitation for EOI and change or vary or modify any part thereof at any stage. The decision of the RP regarding eligibility of the applicant shall be final and binding and the RP reserves the right to accept or disqualify any prospective resolution applicant, should it be so necessary at any stage without assigning any reason and without incurring any liability.

No oral conversations or agreements with the RP or any official, agent, advisor or employee of the RP, or any member of the CoC shall affect or modify any terms of this invitation for EOI. Entire costs and expenses in connection with submission of expression of interest shall be solely borne by the prospective applicants.

Upon submission to the RP, all documents submitted by the prospective applicants will be the property of the RP and the RP will be entitled to use and deal with them in such manner as the RP may in its sole discretion consider reasonable.

Neither any prospective resolution applicant nor any of representatives of such prospective resolution applicant shall have any claims whatsoever against the RP or any official, agent, advisor or employee of the RP, or any member of the CoC or any of their directors, officials, agents or employees arising out of or relating to this invitation for EOI.

All prospective resolution applicants must read, understand and comply with all requirements under the Code or any other applicable regulations that are in force now or that may come into force subsequently, for resolution plans and all matters thereunder in relation to this invitation.

By submitting an EOI, each prospective resolution applicant shall be deemed to acknowledge that it has carefully read the entire invitation for EOI and has fully informed itself as to all existing conditions and limitations.

The prospective resolution applicant acknowledges that any investment by them in the Corporate Debtor shall be made by the prospective resolution applicant on an “as is, where is” basis and the RP or the COC will not be providing any representations or warranties for the Corporate Debtor.

For any other further clarifications, kindly write to ip.sebmarine@in.ey.com.

Sd/-

Mr. Om Prakash Agarwal

Resolution Professional for Sembmarine Kakinada Limited

Communication Address: c/o EY Restructuring LLP The Skyview 10 18 th Floor, “Zone A” Survey No. 83/1, Raidurgam Hyderabad – 500032, India Email Id: ip.sebmarine@in.ey.com	Registered with IBBI: IP Registration No. IBBI/IPA-001/IP- P00906/2017-18/11506 Address: BIA Merlin, 18, British India street, 4 th Floor, Room No.-403, Kolkata, West Bengal- 700069 Email Id: opagarwal11@gmail.com
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Date: April 27, 2020

Place: Kolkata

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Annexure A

Format for EOI

{On the Letterhead of the Prospective Resolution Applicant i.e. either entity or lead member submitting the EOI}

Date: [●]

To,

Mr. Om Prakash Agarwal
Resolution Professional –
Sembmarine Kakinada Limited

c/o EY Restructuring LLP
The SkyView 10, 18th Floor, “Zone A”,
Survey No. 83/1, Raidurgam, Hyderabad,
Telangana – 500032

E-mail Id: ip.sebmarine@in.ey.com

Subject: Submission of Expression of Interest for Submitting Resolution Plan for Sembmarine Kakinada Limited Undergoing Corporate Insolvency Resolution Process (“CIRP”)

Dear Sir,

With reference to the invitation dated 19th March 2020 (“**Invitation**”) inviting Expression of Interest (“**EOI**”) for submission of resolution plans by the Resolution Professional (“**RP**”) as per the provisions of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) and rules and regulations made thereunder, we hereby submit our EOI for the submission of Resolution Plan for Sembmarine Kakinada Limited (“**Corporate Debtor**”).

We confirm that we have understood the requirements, necessary thresholds and the terms and conditions (including the eligibility criteria) for submitting EOI for submission of a resolution plan for the Corporate Debtor (“**Resolution Plan**”).

Further, we agree, undertake, acknowledge and confirm as follows:

- a. This EOI shall be evaluated by the RP on behalf of the Committee of Creditors (“**CoC**”) of the Corporate Debtor based on the information/documents/details provided in this EOI and the Annexures and other documents attached herewith to determine if we are eligible to receive a request or invitation for submission of a Resolution Plan in relation to the Corporate Debtor under the CIRP and to submit a Resolution Plan;

- b. The RP and / or the CoC reserve the right to determine, at their sole discretion, whether or not we are eligible for the submission of the proposal and may accordingly, reject the EOI submitted by us at any time without assigning any reason and without incurring any liability whatsoever;
- c. The RP and / or the CoC reserve the right to request for any additional information(s) or clarification(s) from us for the purposes of evaluating the EOI and we shall promptly comply with such requirements. Failure to satisfy/address/respond to the queries of RP and / or CoC to his/their satisfaction may lead to rejection of our submission pursuant to EOI;
- d. Any change in consortium or any material change affecting the consortium members' ability to perform in consortium shall be intimated within 3 (three) business days (means a day other than a Saturday or a Sunday) of such change to the CoC and the RP. Allowing such change will be at the sole discretion of the CoC and the RP, however any change to the lead member of the consortium will not be allowed, further no change in the members of the consortium shall be allowed after the submission of the proposal by the consortium;
- e. Meeting the eligibility criteria set out in the detailed invitation for expression of interest to submit resolution plan(s) for Sembmarine Kakinada Limited ("**Detailed Invitation**") alone does not automatically entitle us to participate in the next state of the resolution process;
- f. We are not ineligible in terms of provisions of Section 29A of the Code. We are enclosing herewith an undertaking in a form set out in "**Annexure C**" of the Detailed Invitation in connection with Section 29A of the Code. We are a 'fit and proper' person and not under any legal disability to be a promoter entity of the Corporate Debtor under the applicable laws including listing agreements, stock exchange requirements and SEBI regulations and guidelines.
- g. We shall continue to adhere to the eligibility criteria throughout the resolution process and any material change effecting our/consortium's (or any of its members) eligibility or ability to submit a Resolution Plan shall be informed to the RP and/or the COC immediately (i.e. not later than 3 working days from happening/occurrence of material change)

Along with our EOI, we have also enclosed the following information as requested in Detailed Invitation:

- i. Details / Information required as per **Annexure B** of the Detailed Invitation;
- ii. Undertakings required in the format set out in **Annexure C** of the Detailed Invitation;
- iii. Undertakings required in the format set out in **Annexure D** of the Detailed Invitation;
- iv. the relevant records and documents in evidence of meeting the eligibility criteria, information & records to enable an assessment of ineligibility under Section 29A of Code;
- v. Executed Version of Confidentiality & Non-Disclosure Agreement as set out in '**Annexure E**'

vi. [Add details of any other documents enclosed]

We further undertake that the information furnished by us in this EOI and Annexures hereto is true, correct, complete, and accurate. We understand you would be able to evaluate our preliminary proposal and eligibility based on this information provided herein in order to shortlist us for the above-mentioned proposal.

[I / We] represent and confirm that [I / we], and no other person acting jointly or in concert with [me / us] is disqualified under the provisions of Section 29A of the Code to submit a resolution plan as on the date of this EOI. Further, I/We has/have not been barred from operating and/or engaging in the type of business being undertaken by the Corporate Debtor, as on date of submission of this EOI, would not be eligible to submit my/our EOI.

[I/We] understand that any information furnished by us under this EOI, if found out to be not in fulfilment with the requirement contained in the detailed Invitation for EOI, then I/We are liable to be disqualified from submitting a Resolution Plan, without assigning any reason or communication to us.

[I/We] understand that in case of bidding under consortium, each member of the consortium shall nominate and authorize a Lead Partner to represent and act on behalf of the members of the consortium. Such Lead Partner 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.

Yours Sincerely,

On behalf of

[Insert the name of the entity submitting the EOI]

{Signature of the Authorised Signatory}

{Name of the Authorised Signatory}

{Designation}

{Company Seal / Stamp}

Note:

- a. *In case of Consortium Applicant, the EOI shall be signed by each member of the Consortium.*
- b. *The person signing the EOI and other supporting documents should be an authorised signatory supported by necessary board resolutions / authorization letter / power of attorney.*

**ANNEXURE B SUPPORTING DOCUMENTS TO BE
ATTACHED WITH EOI**

[Note: In case of consortium, the details set out below are to be provided for each of the members]

For all prospective resolution applicants:

- a. **Name and Address:**
 - i. Name of the Firm/Company/Organisation:
 - ii. Address:
 - iii. Telephone No:
 - iv. Fax:
 - v. Email:
 - vi. PAN/CIN:
- b. Profile of the prospective resolution applicants including subsidiary (wholly-owned subsidiary, partly-owned subsidiary (if any)), associates, affiliates, joint ventures, promoter and promoter group and key managerial personnel.
- c. Rationale for bidding for the Corporate Debtor.
- d. Copies of certificate of incorporation / registration and constitutional documents (including memorandum and articles of association or equivalent document).
- e. Copy of PAN card or equivalent documents.
- f. Audited financial statements for immediately preceding 3 (three) years of the prospective resolution applicant and / or its promoter/promoter group or any other group company as per eligibility criteria.
- g. A notarized declaration from the prospective resolution applicant in order to demonstrate that the promoter / promoter group or any other group company are part of the same group, in case the interested party is using such entities for meeting the eligibility criteria. Please note that the prospective resolution applicant shall provide all relevant documents for its promoter / promoter group or any other group company, if required to meet the eligibility criteria.
- h. Certificate from the statutory auditor (for prospective resolution applicants incorporated in India, if any) or equivalent (for prospective resolution applicants incorporated outside India, if any) certifying as at end of last 3 financial years.
- i. Consolidated Net Worth, in case the prospective resolution applicant is a strategic investor; and
- j. Consolidated Net Worth and Assets Under Management, in case the prospective resolution applicant is a financial investor;

Note: For a prospective resolution applicant which is a Financial Investor - Relevant statement of committed funds available for investment/deployment in Indian companies or Indian assets

- i. Contact Person
 - a. Name:
 - b. Designation:
 - c. Telephone No:
 - d. Email:
- j. Names & DIN of Directors including Independent Directors
- k. Names of key lenders, if any, to the Company or its affiliates
- l. History if any, of the Company or affiliates of the Company being declared a 'wilful defaulter', 'non-cooperative borrower', 'non-impaired asset' or 'non-performing asset'.
- m. Any other relevant details which would be useful for the resolution professional to be aware of in respect of the EOI including but not limited to their eligibility/ineligibility pursuant to conditions prescribed under Section 29A of the Code.
- n. Any other relevant details which would be useful for the resolution professional to evaluate the EOI and help to shortlist for the next stage in the process.

Note: in case of consortium the above mentioned documents are required for each member of the consortium.

ANNEXURE C UNDERTAKING FOR NO DISQUALIFICATION
UNDER SECTION 29A OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016

[To be stamped for the adequate amount as per the applicable stamp laws]

To,

Mr. Om Prakash Agarwal
Resolution Professional –
Sembmarine Kakinada Limited

c/o EY Restructuring LLP

The SkyView 10, 18th Floor, “Zone A”,

Survey No. 83/1, Raidurgam, Hyderabad,

Telangana – 500032

Dear Sir,

Sub: Resolution Applicant’s undertaking under the Insolvency and Bankruptcy Code, 2016 (“the Code”) and the rules and regulations prescribed thereunder confirming no disqualification under Section 29A of the Code.

We refer to the expression of interest dated 19th March 2020 (“**Expression of Interest**”) in relation to the corporate insolvency resolution process of Sembmarine Kakinada Limited (“**Corporate Debtor**”). In furtherance of the Expression of Interest, [I/ We], [Insert name], the prospective resolution applicant (“**Prospective Resolution Applicant**”) hereby confirm that we are not ineligible resolution applicant(s) under Section 29A of the Code.

Without prejudice to the generality of the foregoing, we hereby unconditionally certify and confirm as follows:

1. [I/ We] are not disqualified from submitting a resolution plan in respect of the Corporate Debtor under the Code and rules and regulations framed thereunder, each, as amended from time to time or under any applicable laws;
2. [I/ We] hereby state, submit and declare that neither the Prospective Resolution Applicant nor any other person acting jointly or in concert with us:
 - (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 nonperforming 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 Company;

[Note:

- i. A 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. If that is the case, please provide details of the NPAs and undertaking in relation to payment of all overdue amounts prior to submission of the resolution plan.*
- ii. 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.*
- iii. For the purposes of this clause,*
 - 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; and*

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 nonperforming asset and such account was acquired pursuant to a prior resolution plan approved under the 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 the 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 of the Code; or
 - ii. for seven years or more under any law for the time being in force;

[Note: This clause shall not apply:

- i. to a person after the expiry of a period of two years from the date of his release from imprisonment: or*
- ii. in relation to a connected person referred to in clause(iii) of the definition of connected person.]*

- (e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013);

[Note: This clause shall not apply in relation to a connected person referred to in clause (iii) of the definition of connected persons.]

- (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 the Code;

[Note: 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 the Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction.]

- (h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under the 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) above, under any law in a jurisdiction outside India; or
- (j) has a connected person not eligible under clauses (a) to (i) above.

Unless a contrary intention appears, the terms used herein shall have the meaning assigned to such terms under the Code. Additionally, the following terms used herein shall have the following meaning:

(a) "**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: (a) nothing in clause (iii) of this definition shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor; and (b) 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.

(b) "**financial entity**" 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:

- i. a scheduled bank;

- ii. any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- iii. 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);
- iv. an asset reconstruction company registered 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);
- v. an Alternate Investment Fund registered with Securities and Exchange Board of India;
- vi. such categories of persons as may be notified by the Central Government.

Yours Sincerely,

On behalf of

[Insert the name of the entity submitting the EOI]

Name of Signatory:

Designation:

Company Seal/Stamp

Note:

- a) *In case of Consortium Applicant, the EOI shall be signed by each member.*
- b) *The person signing the EOI and other supporting documents should be an authorised signatory supported by necessary board resolutions / authorization letter / power of attorney.*

**ANNEXURE D- FORM OF UNDERTAKING TO BE PROVIDED
BY PROSPECTIVE RESOLUTION APPLICANT**

[To be stamped for the adequate amount as per the applicable stamp laws]

Prospective Resolution Applicant's Undertaking

To,
Mr. Om Prakash Agarwal
Resolution Professional (RP)
Sembmarine Kakinada Limited
c/o EY Restructuring LLP
The SkyView 10, 18th Floor, "Zone A",
Survey No. 83/1, Raidurgam, Hyderabad,
Telangana – 500032

Dear Sir,

Sub: Prospective Resolution Applicant's undertaking in relation to the Expression of Interest in in the corporate insolvency resolution process of for Sembmarine Kakinada Limited ("Company").

1. We, [Insert name of the Prospective Resolution Applicant] ("**Prospective Resolution Applicant**"), refer to the expression of interest dated 19th March 2020 ("**EOI**") submitted by us in relation to the captioned matter.
2. We hereby undertake, agree, acknowledge and confirm that:
 - a) the Prospective Resolution Applicant meets the criteria specified by the committee of creditors of the Company under clause (h) of sub-section (2) of section 25 of the Insolvency and Bankruptcy Code, 2016 ("**the Code**"), relevant records in evidence of meeting the said criteria is attached herewith as _____;
 - b) the Prospective Resolution Applicant does not suffer from any ineligibility under section 29A of the Code (to the extent applicable), relevant information and records to enable an assessment of our ineligibility are enclosed herewith as _____;
 - c) the Prospective Resolution Applicant shall intimate the RP forthwith if we become ineligible at any time during the corporate insolvency resolution process;
 - d) all the information and records along with all the confirmations, declarations and representations provided in expression of interest is/are true, accurate and correct and discovery of any false information or record at any time will render the Prospective Resolution Applicant ineligible to submit resolution plan and attract penal action under the Code; and
 - e) the Prospective Resolution Applicant 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 of the Code.

3. We further undertake and confirm that the EOI submitted by us is unconditional.

Yours Sincerely,

On behalf of

[Insert the name of the entity submitting the EOI]

Name of Signatory:

Designation:

Company Seal/Stamp

Note:

- (a) In case of Consortium applicant this undertaking shall be signed by each member of the Consortium.*
- (b) The person signing this undertaking and other supporting documents should be an authorised signatory supported by necessary board resolutions/ authorization letter/ power of attorney.*

ANNEXURE E -FORMAT OF CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

[To be stamped for the adequate amount as per the applicable stamp laws]

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“Agreement”) is made on this [●] day of [●], 2020 by and between:

Sembmarine Kakinada Limited, a company incorporated in India under the Companies Act of 1956, having its registered office at Kakinada Deep Water Port, First Floor, OSV Complex, Beach Road, Kakinada- 533007, East Godavari Andhra Pradesh (“**Corporate Debtor**” unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors and assigns), acting through **Mr. Om Prakash Agarwal**, being a registered insolvency professional bearing registration no. IBBI/IPA-001/IP-P00906/2017-18/11506 (“**Disclosing Party / RP**” unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors and assigns), and appointed as resolution professional for the Corporate Debtor in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), of the **FIRST PART**;

AND

[●], a [company] incorporated in India under the [Companies Act of 1956], having its registered office at [●] (“**Recipient / Prospective Resolution Applicant**”, which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its successors, transferees and permitted assigns), of the **SECOND PART**.

(the Disclosing Party / RP and the Recipient / **Prospective Resolution Applicant** are hereinafter referred to as a “**Party**” individually and as “**Parties**” collectively)

WHEREAS:

A. Pursuant to the invitation published by the RP in Form G dated 19th March 2020 the RP had invited expressions of interest (“**EOI**”) from prospective resolution applicants for the purpose of submission of resolution plans for the Corporate Debtor in accordance with the provisions of the Code. The Prospective Resolution Applicant, has accordingly, submitted its EOI to the RP on [●], 2020.

B. As per the provisions of the Code and the CIRP Regulations, in the event that the Prospective Resolution Applicant is mentioned in the final list of prospective resolution applicants issued by the RP, the Prospective Resolution Applicant shall have the right to submit a resolution plan for the Corporate Debtor to the RP. For the purpose of preparation and submission of the resolution plan for the Corporate Debtor (“**Purpose**”), the RP is required to

provide the Prospective Resolution Applicant with access to the relevant information in that respect, provided that the Prospective Resolution Applicant provides a Non-Disclosure Agreement to the RP with respect to such information provided.

C. In view of the above, the RP will be sharing certain Confidential Information (*as defined in Clause 1 below*) with the Prospective Resolution Applicant and accordingly the Parties have agreed to enter into this Agreement and be bound by the terms and conditions hereinafter set forth governing, *inter-alia*, the disclosure, use and protection of such Confidential Information.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. In this Agreement, in addition to the capitalised terms defined in the introduction to, recitals of and the text of this Agreement, the following capitalised terms used herein shall, unless a contrary intention appears, have the following meaning:

“**Affiliate**” shall mean, with respect to the Recipient, any person or entity who is directly or indirectly Controlling, or is Controlled by, or is under the direct common Control of the Recipient and the term “**Control**” means a person who has the power to direct the management and policies of any person or entity, directly or indirectly, whether by ownership of voting securities, board control, by contract or otherwise. The terms “**Controlling**” and “**Controlled by**” or “**under common Control**” shall have corresponding meanings

“**Confidential Information**” shall mean any and all information disclosed or submitted to the Recipient by or on behalf of the 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), whether written, oral, pictorial, electronic, visual or other form relating, in any manner whatsoever, to the Corporate Debtor or to any group entity (including any holding, subsidiary, associate, joint venture or related entity) of the Corporate Debtor. Without prejudice to the generality of the foregoing, Confidential Information includes, without limitation:

- (i) any information which relates to the business, business plans, products, sales and marketing, operations, pricing arrangements, suppliers, customers, network, finance, technology, corporate, organisation, management, strategic initiatives, human resource and plans, policies and reports, of the Corporate Debtor;
- (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) any drawing, calculation, specification, instruction, diagram, catalogue, manual, data, templates, models, prototypes, samples, materials, debts, presentations, proposals, quotations, computer programs, software;
- (iv) any unpatented invention, formula, procedures, method;
- (v) any unregistered patent, design, copyright, trademark including any pending applications and any intellectual or industrial proprietary right vested in the Disclosing Party or in which Corporate Debtor has an interest of any kind;
- (vi) any information belonging to identified third parties with whom the Corporate Debtor has business dealings;
- (vii) any proposed business deals, contracts or agreements;
- (viii) information, documents, agreements, materials, communications, fact, matter or thing about the corporate insolvency resolution process of the Corporate Debtor, 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;
- (ix) information and details regarding the terms, conditions and structure of, and other facts relating to, the Corporate Debtor and/or the corporate insolvency resolution process of the Corporate Debtor, 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
- (x) all reports, analysis, studies, compilations, interpretations or other documents or materials (whether on paper or computer disk or in electronic format) prepared by the Disclosing 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) to (ix) above which is provided to the Recipient and/or its representatives in connection with the corporate insolvency resolution process of the Corporate Debtor.

“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 Purpose; (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 (v) 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. The Recipient shall (and shall procure that each Representative shall), at all times:
- (i) hold in trust, in strict confidence and as required under Regulation 36(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Confidential Information provided to the Recipient and/or its Representatives by the Disclosing Party;
 - (ii) not use the Confidential Information for any purpose other than for the Purpose;
 - (iii) not disclose, reveal, disseminate, reproduce, quote, share with, refer to, use or make available to any other person, or use or permit others to disclose or use any Confidential Information to any person or party whatsoever (save and except as provided below) without the prior consent of the Disclosing Party;
 - (iv) disclose the Confidential Information to its Representatives, strictly on a need to know basis and solely for the Purpose. The Recipient acknowledges that any agreement (written or otherwise) entered into between the Recipient and the employees/advisors would not discharge the Recipient from its confidentiality obligations under this Agreement. In any event, breach by any Representative of the Recipient shall be deemed as breach by the Recipient;
 - (v) use the same degree of care in respect of the protection, security and safekeeping of the Confidential Information as the Recipient and its Representatives use to protect its own confidential information but no less than a reasonable degree of care to prevent the unauthorised access, use, dissemination, copying, theft, and/or re-publication of the Confidential Information;
 - (vi) at no time, discuss with any person, the Confidential Information or any other matter in connection with, or arising out of, the discussions or negotiations in relation to the Purpose (other than to the extent permitted hereunder);
 - (vii) immediately, upon the earlier of (a) the conclusion of the Purpose; or (b) termination of this Agreement as per Clause 13 below; or (c) a notification by the Disclosing Party for any reason whatsoever, surrender and return to the Disclosing Party, all Confidential Information and any notes, memoranda or the like, including any copies or reproductions in its possession, or destroy the same in accordance with the directives of the Disclosing Party, in each case, except to the extent, retention of such Confidential Information is required under applicable law, provided that the Recipient in these cases, shall notify the Disclosing Party of the information that has been retained as a result of such applicable law along with the corresponding details of the applicable law which warranted such retention. Further, any Confidential Information that is not returned shall remain subject to the confidentiality obligations set forth in this Agreement. Notwithstanding the return of the Confidential Information, the Recipient will

continue to be bound by its obligations of confidentiality and other obligations hereunder, which shall survive termination of this Agreement;

- (viii) 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, without the prior written consent of the Disclosing Party;
- (ix) promptly notify the Disclosing Party of any Confidential Information which has been lost or disclosed or used by any unauthorised third party provided that such notification shall not relieve the Recipient from any liability arising from its breach of this Agreement; and
- (x) not utilize the Confidential Information to avail any undue gain or undue loss to itself or any other person and shall comply with all provisions of applicable law, including Section 29(2) of the Code.

3. The Recipient shall not be liable for disclosure or use of the Confidential Information in the event and to the extent that such Confidential Information:

- (i) is or becomes available to the public domain without breach of this Agreement by the Recipient; or
- (ii) is disclosed with the written approval of the Disclosing Party; or
- (iii) was in the possession of the Recipient prior to its disclosure to them under this Agreement, as evidenced by written documentation; or
- (iv) is disclosed pursuant to any law or a court order or any requirement of any stock exchange provided that in the event the Recipient is required to make such disclosure the Recipient shall, to the extent permissible, promptly notify the Disclosing Party in advance, so that the Disclosing Party has the opportunity to object to such disclosure or discuss the extent of disclosure by the Recipient. Additionally, the Recipient and/or its Representatives shall only disclose such portion of the Confidential Information as it is compelled to disclose pursuant to any law or a court order or any requirement of any stock exchange.

4. It is agreed that without the prior written consent of the Disclosing Party, the Recipient 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.

5. 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 Recipient 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 Recipient 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.
6. The Recipient agrees that, the Disclosing Party will not be under any legal obligation of any kind whatsoever with respect to the Purpose by virtue of this Agreement except for the matters specifically agreed to herein. The Recipient further acknowledges and agrees that the Disclosing Party reserves the right, in its sole discretion, to reject any and all proposals made by the Recipient with regard to the Purpose and to terminate discussions and negotiations at any time. The Recipient further acknowledges that the resolution plan proposed by it may be rejected by the committee of creditors of the Corporate Debtor and/or the National Law Company Tribunal at any time.
7. The Recipient agrees that the Disclosing Party, by the disclosure of the Confidential Information to the Recipient, does not grant, express or implied, any right or license to use the Confidential Information for any purpose other than the Purpose contemplated under this Agreement or vest any intellectual property rights or legal or beneficial interest in the Confidential Information so disclosed to the Recipient.
8. For the avoidance of doubt, nothing in this Agreement shall compel the Disclosing Party to disclose to the Recipient, any or all the Confidential Information requested by the Recipient and the Disclosing Party shall, at all times during the subsistence of this Agreement, reserve the right to determine, in its sole discretion, whether it shall disclose such Confidential Information (in whole or part).
9. The Disclosing Party or its Representatives makes no representation, warranty or inducement, whether express or implied, as to the accuracy, completeness or relevance of the Confidential Information and shall not be liable in any way in connection with the use of, or termination of the Recipient's right to use the Confidential Information.
10. The Recipient 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 Recipient 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.

11. The Recipient shall indemnify and hold harmless the Disclosing Party and its Representatives against all losses, damages and liabilities including but not limited to all legal fees and expenses arising from or connected with any unauthorized disclosure, use or misuse of the Confidential Information whether by itself or its Representatives or gross negligence or wilful misconduct of the Recipient and/or its Representatives. The Recipient 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.
12. The Recipient shall not, without prior written consent of the Disclosing Party, engage any advisor, whether professional, legal or otherwise, where a conflict of interest exists with the Disclosing Party in relation to the corporate insolvency resolution process of the Corporate Debtor.
13. This Agreement shall be effective and shall stay in force for a period of three (3) years from the date first stated above. 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 11 above) shall survive the termination of this Agreement.
14. All notices and other communications provided for hereunder shall be: (i) in writing; and (ii) hand - delivered, sent through an overnight courier (if for inland delivery) or international courier (if for overseas delivery) to a party hereto or sent by electronic mail, at its address specified below or at such other address as is designated by such party in a written notice to the other parties hereto.

For Disclosing Party/ RP

Postal Address : c/o EY Restructuring LLP
The SkyView 10, 18th Floor, “Zone A”,
Survey no. 83/1, Raidurgam, Hyderabad,
Telangana – 500032

Contact Person : Mr. Om Prakash Agarwal

Email : ip.sebmarine@in.ey.com

Recipient/ Prospective Resolution Applicant

Postal Address : [●]
Contact Person : [●]
Email : [●]

All such notices and communications shall be effective: (i) if hand-delivered, when delivered; (ii) if sent by courier, (a) one (1) business day after its deposit with an overnight courier if for inland delivery; and (b) 5 (five) calendar days after its deposit with an international courier if for an overseas delivery; and (c) if sent by registered letter, when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not; and (iii) if sent by electronic mail, when actually received in readable form.

15. If any provision of this Agreement is invalid or illegal, then such provision shall be deemed automatically adjusted to conform to the requirements for validity or legality and as so adjusted, shall be deemed a provision of this Agreement as though originally included. If the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted from this Agreement as though the provision had never been included, in either case, the remaining provisions of this Agreement shall remain in full force and effect.

16. No amendments, changes or modifications of any provision of this Agreement shall be valid unless made by a written instrument signed by a duly authorised representative of each of the Parties.

17. No failure or delay by any Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other exercise thereof or the exercise of any other right, power or privilege hereunder.

18. The benefit of Recipient's covenants under this Agreement shall also extend to the Corporate Debtor and its successors upon the RP handing over management of affairs of the Corporate Debtor upon approval of the resolution plan in accordance with Section 31 of the Code. Recipient shall not assign or transfer its rights or obligations contained in this Agreement or any interest therein without the prior written consent of the Disclosing Party.

19. This Agreement shall be governed by and construed in all respects according to the laws of India and, the Parties hereto agree to submit to the exclusive jurisdiction of the courts and tribunals of Hyderabad.

20. This Agreement comprises the full and complete agreement of the Parties hereto as at the date hereof with respect to the disclosure of Confidential Information and supersedes and cancels all prior communications, understandings and agreements between the Parties hereto, whether written or oral, expressed or implied.

21. This Agreement may be executed in counterparts, each of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorised representatives to set their hands the day and year first above written.

Signed by/ for and on behalf of the Disclosing Party/ RP

Name: **Mr. Om Prakash Agarwal**
Designation: **Resolution Professional**
For Sembmarine Kakinada Limited

in the presence of

Name:
Designation:

Signed by for and on behalf of the Recipient/Prospective Resolution Applicant

in the presence of

Name: Designation: