

## PROCESS MEMORANDUM

Inviting EoI from Prospective Bidders to participate in the sale of assets and properties owned by Sembmarine Kakinada Limited (in liquidation) forming part of liquidation estate formed by the Liquidator, appointed by Hon'ble National Company Law Tribunal, Amaravati bench vide order dated 01<sup>st</sup> November 2021.

For Sembmarine Kakinada Limited (In Liquidation)

Registered Office: 1<sup>st</sup> Floor OSV Complex, Kakinada - 533007, Andhra Pradesh

*(Sembmarine Kakinada Limited is undergoing Liquidation Process as per the provisions of the Insolvency and Bankruptcy Code, 2016 (“IBC / Code”) vide order dated November 1, 2021 passed by the Adjudicating Authority, National Company Law Tribunal (“NCLT”), Amaravati Bench.)*

Issued by -

Vedagiri Venkata

Krishnamurthy

Liquidator for Sembmarine Kakinada Limited

Registration No.: IBBI/IPA-001/IP-P00905/2017-18/11505

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Date of Public Announcement for Inviting EoI – 09<sup>th</sup> June 2022

Last date of Submission of EoI/EMD – 21<sup>st</sup> June 2022

Date of Auction: 23<sup>rd</sup> June 2022

Terms and conditions, deadlines etc. for participating in the electronic auction are provided in the Process Memorandum and is non-transferable. All the capitalized terms to have the same meaning as defined in the “Invitation for Expression of Interest” document unless otherwise specified.

## **DISCLAIMER**

*This Process Memorandum (as defined herein) is issued by the Liquidator (as defined herein) for the Corporate Debtor (as defined herein) to provide general information only without regard to specific objectives, suitability, financial situations and the requirements of any particular person. The purpose of this document is to set out the process for submitting Bids (as defined herein) in the E-Auction (as defined herein) for sale of the assets forming part of the liquidation estate of the Corporate Debtor in accordance with the IBC (as defined herein) and the Regulations (as defined herein).*

*Nothing herein or in materials relating to the Process Memorandum is intended to be construed as legal, financial, accounting, regulatory or tax advice by the Liquidator. This Process Memorandum is not personal and specific to each Applicant(s) (as defined herein). Neither this Process Memorandum nor anything contained herein shall form the basis of, or be relied upon in connection with any contract, agreement, undertaking, understanding or any commitment whatsoever. This Process Memorandum does not solicit any action based on the material contained herein.*

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

*This Process Memorandum and information contained herein or disclosed pursuant to the terms of this Process Memorandum or any part of it does not constitute or purport to constitute any advice or information in publicly accessible media and should not be printed, reproduced, transmitted, sold, distributed, or published by the recipient without prior written approval from the Liquidator. Distributing or taking/ sending/ dispatching/ transmitting this Process Memorandum in certain foreign jurisdictions may be restricted by law, and Persons (defined herein) into whose possession this Process Memorandum comes should inform themselves about, and observe, any such restrictions. Neither the Liquidator, nor his professional advisors, affiliates, directors, employees, agents, representatives or managers of the E-Auction (as defined herein), and any other connected process, shall be liable for any damages, whether direct or indirect, incidental, special or consequential including loss of revenue or profits that may arise from or in connection with the use of this Process Memorandum, including for the Auction Participant (as defined herein) not being selected as a Successful Bidder (as defined herein) or on account of any decision taken by the Liquidator. The purpose of this Document is to provide Bidders with information that may be useful to them in participating in the auction process pursuant to this Document. This Document may not be appropriate for all Bidders, and it is not possible for the Liquidator, its employees or advisors to consider the objectives, financial situation and needs of each Bidder who reads or uses this Document.*

*The Liquidator and/ or the Corporate Debtor gives no undertaking to provide the recipient with access to any additional information or to update this Process Memorandum or any additional information, or to correct any inaccuracies in it which may become apparent, and they reserve the*

*right, without giving reasons, at any time and in any respect, to amend or terminate the procedures set herein or to terminate negotiations with any Auction Participant. The issue of this Process Memorandum shall not be deemed to be any form of commitment on the part of the Liquidator or the Corporate Debtor to proceed with any transaction.*

*The Liquidator 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.skllakinada.com](http://www.skllakinada.com). The Prospective Bidders are requested to regularly visit the website for updates.*

*Liquidator reserves the right to withdraw the invitation for EOI and change or vary or modify any part thereof at any stage. The decision of the Liquidator regarding eligibility of the applicant shall be final and binding and the Liquidator reserves the right to accept or disqualify any Prospective Bidder, should it be so necessary at any stage without assigning any reason and without incurring any liability. It is hereby clarified that if any bid (or the terms thereof) which is received by the Liquidator is not pursuant to this Document and/or such bid is not in accordance with the terms and conditions set out in this Document, and/or if Liquidator decides the Bid to be not acceptable at his discretion, then such bid shall not be considered eligible.*

*In addition to the provisions set out in this Process Memorandum, the Applicant shall be responsible for fully satisfying the requirements of Applicable Laws (as defined herein), including the IBC and the Regulations, that are or may be applicable on the Applicant or the E-Auction process. The Applicant shall also be responsible for obtaining requisite regulatory or other approvals, if any, that are or may be required under Applicable Laws and nothing contained in this Process Memorandum shall be deemed to relieve, wholly or partially, directly or indirectly, any Applicant from compliance with Applicable Laws including the IBC and the Regulations, and/ or any instrument having the force of law as may be applicable. Nothing in this Process Memorandum shall be construed as, or operate either, wholly or in part, as exempting any Applicant from complying with Applicable Laws.*

*By procuring a copy of this Process Memorandum, the recipient accepts that the terms of the Disclaimer (as defined herein) and Annexures (as defined herein) form an integral part of this Process Memorandum and are binding on Applicants even if the terms set out herein and in the Annexures are not reiterated in any other portion of the Process Memorandum. Further, no Person, including the Auction Participant, shall be entitled under any Applicable Laws, tort, principles of restitution, unjust enrichment or otherwise to claim any loss, damage, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Process Memorandum, shared pursuant to the terms of the Process Memorandum or otherwise, including the accuracy, adequacy, authenticity, correctness, completeness or reliability of the information or opinions contained in this Process Memorandum and any assessment, assumption, statement or information contained herein or deemed to form part of the Process Memorandum. The Liquidator, Corporate Debtor, and their advisors, affiliates, directors, employees, agents, representatives or managers do not have any responsibility or liability for any information or opinions in the Process Memorandum or shared pursuant to the terms of the Process Memorandum, and therefore, any liability or responsibility is hereby expressly disclaimed.*

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

*The sale of certain assets of the Corporate Debtor shall take place on “As is where is basis”, “As is what is basis” and “Whatever there is basis” without any recourse to Corporate Debtor or its Liquidator/stakeholders. The Liquidator does not take or assume any responsibility for any shortfall, defect or shortcoming in the Corporate Debtor, its business or assets in any circumstance whatsoever, and irrespective of whether the said shortfall, defect or shortcoming was within the*

*knowledge of any Applicant at the time of submission of Bid(s). The Liquidator is not bound to respond to the requests for information made by any Applicant.*

*No oral conversations or agreements with the Liquidator or any official, agent, advisor or employee of the Liquidator 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 Bidders.*

*Upon submission of documents required under this Process Memorandum to the Liquidator, all documents submitted by the Prospective Bidders will be the property of the Liquidator and the Liquidator will be entitled to use and deal with them in such manner as the Liquidator may in its sole discretion consider reasonable.*

*Neither any Prospective Bidder nor any of representatives of such Prospective Bidder shall have any claims whatsoever against the Liquidator or any official, agent, advisor or employee of the Liquidator, or any of their directors, officials, agents or employees arising out of or relating to this invitation for EOI.*

*The Prospective Bidder acknowledges that the Liquidator and his advisors is neither providing any representation, indemnity or warranty, express or implied regarding the status of business, the business prospects or assets the Corporate Debtor nor do they have any obligation to give such representation, indemnity or warranty in relation to the Corporate Debtor and the Liquidator / his advisors assume no liability whatsoever in this respect.*

*The Prospective Bidder acknowledges that no guarantee or warranty is provided on the time period for completion of the Transaction and/or liquidation process period.*

*The Prospective Bidder shall indemnify and hold harmless the Liquidator and his representatives and advisors, unconditionally and irrevocably in the event of any losses, claims or actions, costs or expenses which may arise against the Liquidator or his advisors for reasons attributable to the Prospective Bidder in relation to EOI.*

*The Prospective Bidder shall not (unless required by any law for the time being in force) publish any article or statement, deliver any lecture or broadcast or make any communication to the press, including magazine publication relating to the Corporate Debtor's assets or to any matter with which the Corporate Debtor may be concerned, unless have previously applied to and obtained the written permission from the Liquidator.*

*The Prospective Bidder shall make itself or its representative available as and when required by Liquidator to explain any query or provide any clarification about the information submitted by it.*

*The Prospective Bidder shall not accept or offer any present, commission or any sort of gratification in cash or kind from/ to any person having dealing with the Corporate Debtor/Liquidator and if it is offered any, it shall immediately report the same to the Liquidator*

*All Prospective Bidders 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 bids and all matters thereunder in relation to this invitation.*

*By submitting an EOI, each Prospective Bidder 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.*

*All claims against the Corporate Debtor as on the liquidation commencement date shall be dealt with in accordance with the Code and the rules and regulations made thereunder. In the event the Successful*

*Bidder wishes to seek any reliefs or concessions and the Liquidator, at its sole discretion, is of the opinion that it is not within his powers to grant the same, the Successful Bidder may approach the Hon'ble Adjudicating Authority for grant of such reliefs or concessions. The Successful Bidder shall be bound to proceed with the acquisition assets of the Corporate Debtor notwithstanding the fact that any reliefs or concessions sought by the Successful Bidder are not granted.*

*This Process Memorandum is neither transferable nor assignable.*

## Contents

<b>1. IMPORTANT INFORMATION</b>	7
<b>2. DEFINITIONS</b>	9
<b>3. BRIEF BACKGROUND OF THE CORPORATE DEBTOR</b>	12
<b>4. INVITATION FOR EXPRESSION OF INTEREST</b>	12
<b>5. TRANSACTION PROCESS</b>	14
<b>6. SUBMISSION OF EOI AND OTHER DOCUMENTS</b>	15
<b>7. ELIGIBILITY</b>	15
<b>8. EARNEST MONEY</b>	16
<b>9. SELECTION OF ELIGIBLE BIDDERS</b>	16
<b>10. DUE DILIGENCE, SITE VISIT AND DISCUSSION MEETINGS</b>	16
<b>11. ASSETS TO BE AUCTIONED, RESERVE PRICE AND EMD</b>	17
<b>12. INVOCATION OF EARNEST MONEY BG/ FORFEITURE OF EARNEST MONEY</b>	18
<b>13. RETURN OF EARNEY MONEY BG/ EARNEST MONEY DEPOSITED BY THE APPLICANT</b>	19
<b>14. TERMS AND CONDITIONS PERTAINING TO THE CONDUCT OF THE E-AUCTION</b>	20
<b>15. DECLARATION OF SUCCESSFUL BIDDER</b>	21
<b>16. LETTER OF INTENT AND TRANSACTION DOCUMENTS</b>	21
<b>17. FRAUDULENT AND CORRUPT PRACTICES</b>	22
<b>18. COSTS, EXPENSES AND TAX IMPLICATIONS</b>	23
<b>19. TIMETABLE</b>	24
<b>20. CLARIFICATIONS</b>	24
<b>21. APPLICABLE LAW AND JURISDICTION</b>	25
<b>ANNEXURES</b>	26

## 1. IMPORTANT INFORMATION

1.1. Sembmarine Kakinada Limited is an integrated offshore and Marine Engineering Company offering ship repairing, ship building, conversion, offshore fabrication and related services. It is located in the East Coast of India and operating within the vicinity of Kakinada Seaports in the state of Andhra Pradesh.

1.2. The auction for sale of assets forming part of the liquidation estate of Sembmarine Kakinada Limited (“Corporate Debtor”) is being carried out on standalone basis in the manner as set out hereinbelow:

- Sale of Travelling Luffing Crane owned by the Corporate Debtor
- Sale of Deck Barge owned by the Corporate Debtor
- Sale of Aerial Platform -1 owned by the Corporate Debtor
- Sale of Aerial Platform -2 owned by the Corporate Debtor
- Sale of Shearing Machine owned by the Corporate Debtor
- Sale of Rolling Machine owned by the Corporate Debtor
- Sale of Frame Bender owned by the Corporate Debtor
- Sale of CNC Machine owned by the Corporate Debtor
- Sale of Pipe Bender owned by the Corporate Debtor
- Sale of Crawler Crane-Kobelco 1 owned by the Corporate Debtor
- Sale of Crawler Crane-Kobelco 2 owned by the Corporate Debtor
- Sale of Rights for insurance claim assessed at a value of INR 32.6 Crs owned by the Corporate Debtor
- Sale of Bobcat owned by the Corporate Debtor
- Sale of Inventory owned by the Corporate Debtor
- Sale of Doosan Forklift 9 Ton owned by the Corporate Debtor
- Sale of Doosan Forklift 6 Ton owned by the Corporate Debtor
- Sale of Doosan Forklift 3 Ton owned by the Corporate Debtor
- Sale of Ace forklifts 6 tons and 3 tons owned by the Corporate Debtor
- Sale of Escorts Hydra-1 owned by the Corporate Debtor
- Sale of Escorts Hydra-2 owned by the Corporate Debtor
- Sale of EOT Crane 1 – 25 Tons owned by the Corporate Debtor
- Sale of EOT Crane 2 – 25 Tons owned by the Corporate Debtor
- Sale of EOT Crane 3 – 25 Tons owned by the Corporate Debtor
- Sale of EOT Crane 4 – 25 Tons owned by the Corporate Debtor
- Sale of EOT Crane 1 – 16 Tons owned by the Corporate Debtor
- Sale of EOT Crane 2 – 16 Tons owned by the Corporate Debtor
- Sale of EOT Crane 1 – 10 Tons owned by the Corporate Debtor
- Sale of EOT Crane 2 – 10 Tons owned by the Corporate Debtor
- Sale of EOT Crane 3 – 10 Tons owned by the Corporate Debtor
- Air Compressors – Lot owned by the Corporate Debtor
- Hydraulic Hoses – Lot owned by the Corporate Debtor
- Water Bags – Lot owned by the Corporate Debtor

The interested bidder may choose to bid for the above assets individually or collectively.

The specifications of the assets enlisted hereinabove are mentioned in Section 4 of this Process Memorandum

- 1.3. This Process Memorandum has been issued with the intent to carry out the E-Auction in respect of the Sale of assets forming part of liquidation estate of Sembmarine Kakinada Limited in accordance with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“Liquidation Process Regulations”).
- 1.4. All information provided in this Process Memorandum should be read together with the provisions of the IBC and the Liquidation Process Regulations. In the event of a conflict between this Process Memorandum and the IBC or the Liquidation Process Regulations, the provisions of the IBC or the Liquidation Process Regulations, as the case may be, shall prevail.
- 1.5. The information contained in this Process Memorandum or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Liquidator, is provided to Bidder(s) on the terms and conditions set out in this Process Memorandum.
- 1.6. This Process Memorandum is neither an agreement nor an offer by the Liquidator to Bidders or any other Person. The purpose of this Process Memorandum is to provide Eligible Bidders with information that may be useful to them in making their Bids pursuant to this Process Memorandum. The assumptions, assessments, statements and information contained in the Process Memorandum may not be complete, accurate, adequate or correct. Each Bidders should, therefore, conduct its own investigations, due diligence, analysis and should verify the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements, and information contained in this Process Memorandum or shared information pursuant to the terms of this Process Memorandum and obtain independent advice from appropriate sources.
- 1.7. Information provided in this Process Memorandum to Bidders has been collated from several sources. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as complete. The Liquidator accepts no responsibility for the accuracy or otherwise for any statement contained in the Process Memorandum.
- 1.8. The Liquidator, makes no representation or warranty and shall have no liability to any person, including any Applicant under any law, statute, rules or regulations, tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Process Memorandum or otherwise.
- 1.9. The Liquidator also accepts no liability of any nature whatsoever arising from reliance of any Applicant upon the statements contained in this Process Memorandum.
- 1.10. The Liquidator may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this Process Memorandum, by way of notice to be uploaded on the website of the Corporate Debtor.
- 1.11. The issue of this Process Memorandum does not imply that the Liquidator is bound to select a Bidder or to appoint any particular Bidder as a Successful Bidder. The Liquidator reserves the right to reject all or any of the Bidder(s) or Bid(s), at any stage, without assigning any reason whatsoever, save and except as otherwise provided under Applicable Laws.
- 1.12. Under no circumstances shall the Applicant make any contact, direct or indirect, by any mode whatsoever, with the Corporate Debtor or its erstwhile management or any creditors of the Corporate Debtor in connection with this Process Memorandum until the Liquidator gives his written permission.



- 1.13. In case of any refund, no interest will be paid and neither the Liquidator nor any of the Stakeholders shall be responsible for the same and the same shall not be subject to any question or challenge whatsoever by the buyers.
- 1.14. The sale of the assets forming part of the liquidation estate of the Corporate Debtor shall be undertaken by Tiger Acution (**E-Auction Service Provider**), an e-auction service provider appointed by the Liquidator. The E-Auction shall be conducted on the website portal of the E-Auction Service Provider (**Platform**). Other details with respect to the E- Auction are as follows:

Type of Bid	E-Auction
Seller	Vedagiri Venkata Krishnamurthy (as Liquidator for Sembmarine Kakinada Limited)
Website of E-Auction service provider	Online Auction Platform – Tiger Auction
Service Provider	Tiger Acution
Annexures to be provided (Fromats provided in annexures)	<ol style="list-style-type: none"> <li>1. Annexure A – Expression of Interest</li> <li>2. Annexure B – Undertaking of no disqualification under section 29A of IBC</li> <li>3. Annexure C - Earnest Money Deposit (Bank Guarantee)</li> </ol> <p>*In case the Bidder intends to bid for multiple assets, he shall tick mark the appropriate boxes in the Bid Application Form enlisting the assets which is Exhibit A to EOI.</p>
Special Instructions	Bidding is a serious matter and last-minute bidding may lead to lapses. Neither the E-Auction Service Provider nor the Liquidator will be responsible for any lapses on part of the Applicant irrespective of whether the lapses are accidental / beyond the Applicant’s control.

- 1.15. All terms and conditions with respect to the sale as referred to in Section 1.1 shall be governed in accordance with the Applicable Laws. The Liquidator shall exercise all rights with respect to sale and it would be open to the Liquidator to appoint such experts, professionals or other persons, as the Liquidator might think necessary so as to enable the sale process.
- 1.16. This Process Memorandum is neither transferable nor assignable.
- 1.17. The Disclaimer and the Annexures to this Process Memorandum form an integral part of the Process Memorandum. The Process Memorandum shall always be read in conjunction with the Disclaimer and the Annexures.

## 2. DEFINITIONS

- 2.1 **Adjudicating Authority** or NCLT shall mean the Amaravati Bench of the National Company Law Tribunal.
- 2.2 **Annexures** shall mean Annexures A to C which form part of the Process Memorandum.
- 2.3 **Applicable Laws** shall mean all statutes, enactments, acts of legislature or parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directions, directives, circulars and orders made from time to time and in force and effect by any Government, Adjudicating Authority, statutory authority, tribunal, board, court or other body

applicable for such transactions including but not limited to the IBC and the rules and regulations framed thereunder, Companies Act, 1956 / 2013 (as applicable), Transfer of Property Act, 1882, Sale of Goods Act, 1930, Competition Act, 2002 and Foreign Exchange Management Act, 1999, whether in effect as of the date of this Process Memorandum or thereafter and each as amended from time to time;

- 2.4 **Application Form** shall mean the application form for participation in the E-Auction which is Exhibit A to Expression of Interest.
- 2.5 **Applicant(s) / Prospective Bidder(s)** shall mean any Person(s) interested in participating in the E-Auction and the Person(s) who submit the all the relevant annexures as set forth above, individually or jointly, in accordance with the terms of the Process Memorandum. It is clarified that if two or more Applicants submit an Application Form jointly, they shall be referred to as **Applicant** (singular) in this Process Memorandum.
- 2.6 **Auction Participant(s) or Bidder(s)** mean, Person or Persons who submitted a complete and compliant bid as per the Process Memorandum and in accordance with the provisions of the IBC read together with the Liquidation Process Regulations and other Applicable Laws; and shall include Eligible Bidder(s) or the Successful Bidder, as the case may be, and as the context requires;
- 2.7 **Bid(s)** means, any bid submitted by the Bidder(s) as per the terms of the Process Memorandum and in accordance with the provisions of the IBC read together with the Liquidation Process Regulations and other Applicable Laws;
- 2.8 **Consortium** shall mean any Person stated to be acting together with another Person as a consortium or joint venture (whether incorporated or not) for the purpose of submission of a bid, provided that no member of such consortium is disqualified under Section 29A of the IBC.
- 2.9 **Corporate Debtor** means Sembmarine Kakinada Limited (In Liquidation);
- 2.10 **Data Room Link:** shall mean the online drive (data room) maintained by the Liquidator, i.e., link to be shared.
- 2.11 **Disclaimer** means the disclaimer to the Process Memorandum, which forms an integral and inseparable part of the Process Memorandum.
- 2.12 **E-Auction** shall mean an electronic public auction process conducted on the website of the E-Auction Service Provider for sale of asset forming part of liquidation estate of the Corporate Debtor under the IBC and the Liquidation Process Regulations, and in the manner set out in the Process Memorandum
- 2.13 **E-Auction Service Provider** shall mean AuctionTiger, an e-auction service provider appointed by the Liquidator;
- 2.14 **Earnest Money** shall mean the “EMD” as provided in the latest public announcement by the Liquidator for Invitation of Expression of Interest
- 2.15 **Earnest Money BG** shall mean the bank guarantee equivalent to the Earnest Money submitted by the Applicant, individually or jointly, in the format provided in Annexure C.
- 2.16 **Eligible Bidder(s)** shall mean the Applicant(s) who are eligible to submit Bid(s) in terms of this Process Memorandum, provisions of IBC and provisions of the Liquidation Process Regulations;

- 2.17 **EOI** means an Expression of Interest as submitted by a person in accordance with Annexure A of this Process Memorandum.
- 2.18 **Government** shall include the President of India, the Government of India, the Governor and the Government of any State in India, any Ministry or Department of the same and any local or other authority exercising powers conferred by Applicable Laws and shall include, without limitation, the IBBI.
- 2.19 **Highest Bidder** means the Eligible Bidder who has offered the highest bid in the E-Auction Process in accordance with the Process Memorandum.
- 2.20 **IBBI** means Insolvency and Bankruptcy Board of India.
- 2.21 **IBC** shall mean Insolvency and Bankruptcy Code, 2016 as amended from time to time.
- 2.22 **Assessed Insurance Claim** shall mean the insurance claim in respect of the Industrial All Risks Policy (IAR) bearing Policy No. 62040211180600000001 as availed by the Corporate Debtor from the New India Assurance Company Limited for the validity period being June 23, 2018 to June 22, 2019, at a value of nearly 32.60 Crores as assessed by the surveyor appointed by the New India Assurance Company Limited.
- 2.23 **Letter of Intent** or **LOI** shall mean the letter issued by the Liquidator to the Successful Bidder stating that its Bid is the highest and has been approved by the Liquidator in accordance with the IBC, Liquidation Process Regulations and the Process Memorandum.
- 2.24 **Liquidation Process Regulations** means, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 as amended from time to time.
- 2.25 **Liquidator** means Mr. Vedagiri Venkata Krishnamurthy, an insolvency professional (IBBI Reg. No: IBBI/IPA-001/IP-P00304/2017-18/10568), appointed as the Liquidator for the Corporate Debtor in accordance with section 34 of the IBC.
- 2.26 **Person** shall mean a natural person, a partnership firm, an association, a corporation, a limited company, a trust, a body corporate, bank or financial institution or any other body, whether incorporated or not;
- 2.27 **Platform** shall mean <https://www.auctiontiger.net/EPROC/> the website portal of the E-Auction Service Provider.
- 2.28 **Process Memorandum** means this document including the Disclaimer and Annexures, for the purposes of setting out the process for submission of a Bid, selection of a Successful Bidder and the process thereafter in accordance with the provisions of the IBC, and shall include all supplements, modifications, amendments, alterations or clarifications thereto issued in accordance with the terms hereof.
- 2.29 **Reserve Price** means the minimum price for sale of the assets forming part of liquidation estate of the Corporate Debtor and fixed in accordance with the IBC and the Liquidation Process Regulations by the Liquidator.
- 2.30 **Site** shall mean all the immovable and moveable properties including factories, plant and machinery owned by Corporate Debtor at location Kakinada Deep water port, Kakinada for the purposes of conducting business in India.

- 2.31 **Stakeholders Consultation Committee (“SCC”)** shall mean the consultation committee constituted by the Liquidator in accordance with Section 31A of IBBI (Liquidation Process) Regulations 2016
- 2.32 **Successful Bidder or Successful Auction Participant** means, the Highest Bidder whose Bid is approved and who is declared as successful bidder by the Liquidator.
- 2.33 **Virtual Data Room or VDR** shall mean the virtual data room maintained by the Liquidator or any Person on his behalf, created for Persons(s) who have submitted a Confidentiality Undertaking, to access information in relation to the Assets.

### **3. BRIEF 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 (I IPL). It is located on 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 an available draft of ~12 m in its approach channel, compared to ~4-9m in other shipyard locations. Sembmarine Kakinada limited has repaired around 250 vessels since inception including but not limited to Rigs, dredgers, offshore vessels, tugs to identify a few and still continues to undertake repairs. Major assets of the Corporate Debtor include a 13,500-ton lifting capacity Floating Dry Dock supported with fully equipped workshops and cranes with various lifting capacities to support the operations. The yard also has a well-constructed slipway to carry out new build activities. Currently, the Corporate Debtor is operating under the supervision of the Liquidator with a team of ~ 40 on the payroll supported by a team of ~ 80 members on a monthly subcontracting basis.

Furthermore, it may be pertinent to mention that the Corporate Debtor had obtained insurance from the New India Assurance Company Limited, by executing Industrial All Risks (IAR) Policy. Subsequently, from time to time, the aforesaid policy was renewed by the Corporate Debtor. Accordingly, the Corporate Debtor had renewed the IAR Policy bearing Policy No. 62040211180600000001 on June 23, 2018 and having validity for the period from June 23, 2018 to June 22, 2019 and the total premium amount paid towards this policy was INR 19,36,469/- (Rupees Nineteen Lakhs Thirty-Six Thousand Four Hundred and Sixty-Nine). Further, the total sum insured in the said insurance policy was INR 269,08,98,590/- (Rupees Two Sixty-Nine Crores Eight Lakhs Ninety-Eight Thousand Five Hundred and Ninety Only). Due to an accident in the premises of the Corporate Debtor on December 17, 2018, regarding which further details may be enquired by Eligible Bidders from the Liquidator of the Corporate Debtor, claim in respect of the aforesaid IAR Policy was made from the New India Assurance Company Limited. However, since the New India Assurance Company Limited repudiated the claim on flimsy and frivolous grounds, a Consumer Complaint bearing no. 23 of 2021 was filed by the Corporate Debtor through the erstwhile Resolution Professional in July 2021. The aforesaid Consumer Complaint is pending adjudication before the Hon’ble District Consumer Redressal Commission at Kakidana, East Godavari.

### **4. INVITATION FOR EXPRESSION OF INTEREST**

Sembmarine Kakinada Limited is currently undergoing Liquidation Process under Section 33 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) pursuant to Order dated 1st November 2021 passed by the Hon’ble Adjudicating Authority, National Company Law Tribunal, Amaravati (“NCLT”) and Mr. Vedagiri Venkata Krishnamurthy (IP Registration no. IBBI/IPA-

001/IP-P00905/2017-18/11505) has been appointed as the Liquidator of the Corporate Debtor by the Hon'ble NCLT.

Expression of Interest (EoI) is invited from prospective bidders ("Prospective Bidders") on or before 21<sup>st</sup> June 2022 for sale of assets forming part of liquidation estate of the Corporate Debtor, details in respect of which are as provided hereinbelow:

<b>Particulars</b>	<b>Reserve Price (in INR Lakhs)</b>	<b>EMD (in INR Lakhs)</b>	<b>Bid Incremental Value (in INR Lakhs)</b>
Travelling Luffing Crane 70 Ton Capacity	1,109.00	25.00	25.00
Deck Barge	111.00	11.00	1.10
Aerial Platform – 1	26.00	2.60	0.30
Aerial Platform – 2	26.00	2.60	0.30
Shearing Machine	60.00	6.00	0.60
Rolling Machine	37.00	3.70	0.40
Frame Bender	26.00	2.60	0.30
CNC Machine	122.00	12.00	1.20
Pipe Bender	26.00	2.60	0.30
Crawler Crane – Kobelco 1 – 250-ton capacity	253.00	25.00	2.50
Crawler Crane – Kobelco 2 – 250-ton capacity	253.00	25.00	2.50
Rights for insurance claim assessed at a value of ~ INR 32.6 cr	978.00	97.80	9.80
Bobcat	18.70	35.00	4.00
Inventory - Lot	200.00	20.00	2.00
Doosan Forklift 9 Ton	9.30	0.93	0.10
Doosan Forklift 6 Ton	7.00	0.70	0.10
Doosan Forklift 3 Ton	2.20	0.22	0.02
Ace Forklifts - 6 tons and 3 tons each	2.20	0.22	0.02
Escorts Hydra 1 - 14 ton	5.40	0.54	0.10
Escorts Hydra 2 - 14 ton	5.40	0.54	0.10
EOT crane 1 - 25 tons	17.00	1.70	0.20
EOT crane 2 - 25 tons	17.00	1.70	0.20
EOT crane 3 - 25 tons	17.00	1.70	0.20
EOT crane 4 - 25 tons	17.00	1.70	0.20
EOT crane 1 - 16 tons	11.00	1.10	0.10
EOT crane 2 - 16 tons	11.00	1.10	0.10
EOT crane 1 - 10 tons	8.00	0.80	0.10
EOT crane 2 - 10 tons	8.00	0.80	0.10
EOT crane 3 - 10 tons	8.00	0.80	0.10
Air Compressors - Lot	17.00	1.70	0.20
Hydraulics Hoses - Lot	9.00	0.90	0.10
Water Bags - Lot	7.00	0.70	0.10
Hydraulic jack cylinders - Lot	7.00	0.70	0.10
Blasting Loose tools - Lot	11.00	1.10	0.10
Lathe Machine	4.00	0.40	0.04
Portable Gas Detectors - Lot	5.00	0.50	0.10
Ventilation Fans - Lot	8.00	0.80	0.10
500 KVA DG Set (YDG-1)	5.20	0.52	0.10
500 KVA DG Set (YDG-2)	5.20	0.52	0.10
125 KVA DG Set (YDG-4)	1.00	0.10	0.01

Generator 400 KW/60 HZ GEN SET (YDG-8)	29.00	2.90	0.30
Generator 400 KW/60 HZ GEN SET (YDG-9)	26.00	2.60	0.30
Generator 380 KW/50 HZ GEN SET (YDG-6)	27.00	2.70	0.30
Generator 380 KW/50 HZ GEN SET (YDG-7)	26.00	2.60	0.30
Generator 725KVA (YDG-3)	7.00	0.70	0.10

Applicants (Prospective Bidders) may provide EoI for all the blocks or may also pick specific block representing specific asset(s). If the Applicant bids for more than one block, the EMD shall be a summation of the EMD for the respective block.

In the event the Prospective Bidder provides all the requisite documents under this Process Memorandum and meets the Eligibility Criteria as laid out in this document, the Eligible Bidder(s) shall be provided with access to VDR.

Auction/ bidding shall be only through “Online Electronic Bidding” on 23<sup>rd</sup> June 2022 (“Auction Date”). The E-Auction website shall show the highest bid at any point of time during the E-Auction process. Any Prospective Bidder who does not furnish the EMD before the stipulated timeline is not eligible to participate in the auction process.

Nothing contained in this document shall affect the right of the Liquidator to accept or reject any Bidder as Eligible Bidder without assigning any reason or liability.

## 5. TRANSACTION PROCESS

The process for sale of the assets of the Corporate Debtor as envisaged in Section 4 of this document, shall be completed in two stages brief of which are provided hereunder:

### STAGE-I

- a. Submission of EOI by Prospective Bidders in separate sealed envelopes on or before the due date of submission of EOI;
- b. Payment of refundable earnest money deposit as provided in this Process Memorandum (“EMD”)
- c. Execution of Annexure B - Undertaking for no disqualification under Section 29A of IBC.
- d. Screening of EOI and short listing of Eligible Bidders by the Liquidator as per the Eligibility Criteria provided in this document.

### STAGE-II

- a. Access to data room to the Eligible Bidders for carrying out the due diligence.
- b. Participation by the Eligible Bidders to take part in the auction process scheduled on 23<sup>rd</sup> June 2022.
- c. Declaration of Highest Bidder
- d. Declaration of Successful Bidder after the bid is approved by Liquidator / SCC.
- e. Execution of necessary agreements with the Successful Bidder to complete the sale of assets of Corporate Debtor.

## **6. SUBMISSION OF EOI AND OTHER DOCUMENTS**

- 6.1 Applicant(s) must submit the EOI, relevant declarations provided in Annexure A to Annexure C by way of an email to [vyk.sklliquidator@gmail.com](mailto:vyk.sklliquidator@gmail.com) individually or jointly, along with the supporting documents listed in the Annexures and in accordance with the terms of the Process Memorandum.
- 6.2 Deadline for submission of EMD and EoI – On or before 21<sup>st</sup> June 2022.
- 6.3 The Bidders should also courier the hard copies of EOI, relevant Annexures to the following address: #197 Sai Kripa, 6<sup>th</sup> A Main JP Nagar 4<sup>th</sup> Phase Bengaluru, Karnataka, India 560078
- 6.4 The Liquidator reserves the right to seek clarifications or additional documents / information, at any time prior to completion of the E-Auction, from the Applicant(s).

## **7. ELIGIBILITY**

- 7.1 An Applicant shall be disqualified from participating in the E-Auction if:
- a. They fail to meet the eligibility criteria set out in section 29A of the IBC;
  - b. There is any breach of the terms of this Process Memorandum;
  - c. They fail to deliver original hard copies of the Earnest Money BG and/ or the affidavit affirming that they meet the eligibility criteria set out in section 29A of the IBC, within the timelines prescribed in this Process Memorandum;
  - d. The EOI containing Application Form or the documents submitted along with the Application Form are incomplete;
  - e. The Applicant makes any misrepresentation or conceals material information;
  - f. The Applicant fails to submit any additional information, clarifications or documents sought by the Liquidator within the timelines prescribed by the Liquidator;
  - g. The Applicant fails to extend the validity of the Earnest Money BG as and when requested by the Liquidator and within the timelines specified by the Liquidator;
  - h. The Applicant fails to deposit the Earnest Money in accordance terms of the Process Memorandum;
  - i. Two or more Applicant(s) form cartel;
  - j. Any information regarding the Prospective Bidder which becomes known to the Liquidator which is detrimental to the proposed transaction and / or to the interests of the Corporate Debtor and its stakeholders;

## **8. EARNEST MONEY**

EMD can be provided by way of a bank guarantee (in the format as set out in Annexure -C) issued by any scheduled commercial bank in India (“Bank”) in favour of the Corporate Debtor (“Earnest Money BG”). The Earnest Money BG shall mandatorily be payable at the Bank’s branch located in Kakinada.

### **For submission of Earnest Money BG**

- 8.1 The Earnest Money BG is required to be in the format prescribed in Annexure C.
- 8.2 The Earnest Money BG is required to be issued by any scheduled commercial bank in India.
- 8.3 The Applicant(s) shall be required to extend the validity of the Earnest Money BG as and when requested by the Liquidator and within the timelines specified by the Liquidator. For direct bank transfer
- 8.4 Alternatively, Earnest Money may also be provided in the form of the cash which can be deposited by Bidder by way of direct bank transfer to the bank account of Sembmarine Kakinada Limited (“Designated Bank Account”) held as per details given below. No interest will be paid to the Prospective Bidders in relation to such amount.

- **BENEFICIARY:** SEMBMARINE KAKINADA LIMITED (IN LIQUIDATION)
- **NAME AND ADDRESS OF THE BANK:** Axis Bank Kakinada Main Branch Kakinada
- **BANK ACCOUNT NO.:** 922020002053432
- **IFSC CODE:** UTIB0000076

- 8.5 Applicant(s) are required to submit the proof of payment of the Earnest Money along with the Application Form.

## **9. SELECTION OF ELIGIBLE BIDDERS**

- 9.1 On verification of the EOI (including Application Form), Annexure B - Undertaking for no disqualification under Section 29A of IBC and the Earnest Money – Bank Guarantee, submitted by the Applicant(s), the Eligible Bidder(s) shall be identified by the Liquidator.
- 9.2 Nothing contained in this document shall affect the right of the Liquidator to accept or reject any Bidder as Eligible Bidder without assigning any reason or liability.

## **10. DUE DILIGENCE, SITE VISIT AND DISCUSSION MEETINGS**

- 10.1 Access to a Virtual Data Room will be provided to any Eligible Bidder(s) having cleared Stage I in terms of Clause 5 of this process document to undertake a due diligence of the Assets. The access to and usage of the information in the Virtual Data Room by the Eligible Bidders shall be kept open till the end of the E-Auction process on 23<sup>rd</sup> June 2022.
- 10.2 The Liquidator shall endeavour to provide necessary assistance for the conduct of due diligence by the Eligible Bidder(s) to whom access to the VDR is granted. The information and documents shall be provided by the Liquidator in good faith.
- 10.3 The Liquidator would not have verified any of the information, data or documents shared and shall not accept any responsibility or liability, whatsoever, in respect of any statements or omissions contained in the data / information shared.



- 10.4 Eligible Bidder(s) to whom access to the VDR is granted may request the Liquidator only once to arrange for a Site visit and physical verification of the Assets. Upon receipt of such a request, the Liquidator may arrange for a discussion meeting / Site visit at any time prior to the closure of the E-Auction. The details (date and time) with respect to the meeting shall be communicated by the Liquidator 1 (one) days in advance by way of an e-mail. The Liquidator reserves the right to not arrange a discussion meeting / Site visit for any reason whatsoever, irrespective of any request whatsoever.
- 10.5 The Eligible Bidder(s) are expected to make their own arrangements including accommodation for the Site visit. All costs and expenses incurred in relation to Site visit shall be borne by the Eligible Bidder(s). Each Eligible Bidder shall be deemed to have full knowledge of the assets, at the time when it submits its bid, irrespective of whether or not such Bidder actually inspects or participates in the Site visit.
- 10.6 It is hereby clarified that the Liquidator does not give any assurance or warranty of the physical condition of the Assets and their suitability for any operation that the Eligible Bidder envisages.
- 10.7 The Eligible Bidder(s) should make their own independent inquiries regarding the encumbrances, title of Assets and claims/rights/dues/affecting the assets and should conduct their own due diligence prior to participating in the auction process. The Process Memorandum does not constitute any commitment or any representation of the Liquidator. The Assets are being sold with all the existing and future encumbrances / claims / dues / demands whether known or unknown to the Liquidator. The Liquidator shall not be responsible in any way for any third-party claims / rights / dues.
- 10.8 Access to the Virtual Data Room shall stand revoked for any Eligible Bidder(s) who are discovered as ineligible to submit a Bid pursuant to the verification of the EOI (including Application Form), Annexure B - Undertaking for no disqualification under Section 29A of IBC and the Earnest Money – Bank Guarantee. Further, the Liquidator shall not be required to provide any assistance and / or respond to the requests for information of such Eligible Bidder(s). At the request of the Eligible Bidder, the Liquidator may permit their employee and advisors to accompany the Eligible Bidder for the Site visit and diligence.
- 10.9 An Eligible Bidder requiring any clarification on this Document, the auction process, submission of the bid or on the assets of the Corporate Debtor shall email such request for clarification to [vyk.sklliquidator@gmail.com](mailto:vyk.sklliquidator@gmail.com) latest by 21<sup>st</sup> June 2022.

## 11. ASSETS TO BE AUCTIONED, RESERVE PRICE AND EMD

11.1 The Assets to be auctioned are:

<b>Particulars</b>	<b>Reserve Price (in INR Lakhs)</b>	<b>EMD (in INR Lakhs)</b>	<b>Bid Incremental Value (in INR Lakhs)</b>
Travelling Luffing Crane 70 Ton Capacity	1,109.00	25.00	25.00
Deck Barge	111.00	11.00	1.10
Aerial Platform – 1	26.00	2.60	0.30
Aerial Platform – 2	26.00	2.60	0.30
Shearing Machine	60.00	6.00	0.60

Rolling Machine	37.00	3.70	0.40
Frame Bender	26.00	2.60	0.30
CNC Machine	122.00	12.00	1.20
Pipe Bender	26.00	2.60	0.30
Crawler Crane – Kobelco 1 – 250-ton capacity	253.00	25.00	2.50
Crawler Crane – Kobelco 2 – 250-ton capacity	253.00	25.00	2.50
Rights for insurance claim assessed at a value of ~ INR 32.6 cr	978.00	97.80	9.80
Bobcat	18.70	35.00	4.00
Inventory - Lot	200.00	20.00	2.00
Doosan Forklift 9 Ton	9.30	0.93	0.10
Doosan Forklift 6 Ton	7.00	0.70	0.10
Doosan Forklift 3 Ton	2.20	0.22	0.02
Ace Forklifts - 6 tons and 3 tons each	2.20	0.22	0.02
Escorts Hydra 1 - 14 ton	5.40	0.54	0.10
Escorts Hydra 2 - 14 ton	5.40	0.54	0.10
EOT crane 1 - 25 tons	17.00	1.70	0.20
EOT crane 2 - 25 tons	17.00	1.70	0.20
EOT crane 3 - 25 tons	17.00	1.70	0.20
EOT crane 4 - 25 tons	17.00	1.70	0.20
EOT crane 1 - 16 tons	11.00	1.10	0.10
EOT crane 2 - 16 tons	11.00	1.10	0.10
EOT crane 1 - 10 tons	8.00	0.80	0.10
EOT crane 2 - 10 tons	8.00	0.80	0.10
EOT crane 3 - 10 tons	8.00	0.80	0.10
Air Compressors - Lot	17.00	1.70	0.20
Hydraulics Hoses - Lot	9.00	0.90	0.10
Water Bags - Lot	7.00	0.70	0.10
Hydraulic jack cylinders - Lot	7.00	0.70	0.10
Blasting Loose tools - Lot	11.00	1.10	0.10
Lathe Machine	4.00	0.40	0.04
Portable Gas Detectors - Lot	5.00	0.50	0.10
Ventilation Fans - Lot	8.00	0.80	0.10
500 KVA DG Set (YDG-1)	5.20	0.52	0.10
500 KVA DG Set (YDG-2)	5.20	0.52	0.10
125 KVA DG Set (YDG-4)	1.00	0.10	0.01
Generator 400 KW/60 HZ GEN SET (YDG-8)	29.00	2.90	0.30
Generator 400 KW/60 HZ GEN SET (YDG-9)	26.00	2.60	0.30
Generator 380 KW/50 HZ GEN SET (YDG-6)	27.00	2.70	0.30
Generator 380 KW/50 HZ GEN SET (YDG-7)	26.00	2.60	0.30
Generator 725KVA (YDG-3)	7.00	0.70	0.10

11.2 Any bid(s) below the Reserve Price shall stand disqualified.

## 12. INVOCATION OF EARNEST MONEY BG/ FORFEITURE OF EARNEST MONEY

12.1 The Liquidator shall be entitled to invoke the Earnest Money BG, or the Earnest Money deposited by an Applicant shall stand forfeited, upon the occurrence of any of the following events:

- a. The Applicant fails to meet the eligibility criteria set out in section 29A of the IBC;

- b. There is any breach of the terms of this Process Memorandum;
- c. The Applicant fails to deliver original hard copies of the Earnest Money BG and/or the affidavit affirming that they meet the eligibility criteria set out in section 29A of the IBC within the timelines prescribed in this Process Memorandum;
- d. The Applicant makes any misrepresentation or conceals material information;
- e. The Applicant fails to extend the validity of the Earnest Money BG as and when requested by the Liquidator and within the timelines specified by the Liquidator;
- f. The Successful Bidder fails to accept Letter of Intent in accordance with the terms of the Process Memorandum;
- g. The Successful Bidder fails to deposit the entire sale consideration within 90 (ninety) days from the date of issuance of the Letter of Intent by the Liquidator or commits any default in payment of the part or whole of the sale consideration;
- h. The sale certificate, conveyance deed and/ or any other transfer documents as required under Applicable Laws are not executed by the Successful Bidder, within 90 (ninety) days from the date of receipt of entire sale consideration by the Liquidator.
- i. Any invocation (as applicable) of the Earnest Money, shall not limit any right or remedies that the Liquidator and/or the Stakeholders of Corporate Debtor may have under Applicable Law or otherwise, against any Bidder, Eligible Bidder or Successful Bidder, as the case may be.

**13. RETURN OF EARNEST MONEY BG/ EARNEST MONEY DEPOSITED BY THE APPLICANT**

- 13.1 The Earnest Money of the Applicants, who have not participated in the auction process on Auction Date, shall be returned (without interest) within 30 (thirty) days after the Auction Date. The Earnest Money of the Applicants who are not shortlisted as Eligible Bidders shall be returned (without interest) within 30 (thirty) days after the declaration of the Eligible Bidders.
- 13.2 The Earnest Money of the unsuccessful Bidder, who has participated in the auction process on Auction Date, shall be returned (without interest) within 45 (forty-five) days after the issuance of Letter of Intent to the Successful Bidder by the Liquidator.
- 13.3 The Earnest Money deposited by the Successful Bidder shall be returned (without interest) to the Successful Bidder within 30 (thirty) days from the date on which the Successful Bidder deposits the entire consideration for the assets for which they bid for, equivalent to the successful Bid, to the satisfaction of the Liquidator in the Designated Bank Account set out in the Process Memorandum.
- 13.4 The Earnest Money deposited by the Successful Bidder, by way of a bank transfer, shall not be set-off against or used as part of the consideration for the Corporate Debtor, unless expressly indicated in writing, which includes email, by the Successful Bidder.

#### **14. TERMS AND CONDITIONS PERTAINING TO THE CONDUCT OF THE E-AUCTION**

- 14.1 The Platform shall accept Bid(s) of Eligible Bidder(s) from the date to be specified in the sale notice.
- 14.2 The Bid(s) shall be considered to be legally valid. The Bidder would not be permitted to reduce or withdraw the Bid under any circumstances.
- 14.3 Each Incremental Bid must be as per the “Bid Incremental Value” column table as mentioned in 11.1.
- 14.4 The Bid(s) shall be for all the asset(s) owned by the Corporate Debtor or certain specific assets as clearly specified by the bidder in the Bid Application Form which is Exhibit A of the EOI.
- 14.5 The highest Bid shall supersede all the previous bids of the respective Bidder(s).
- 14.6 The Bidder with the highest Bid shall not have the right to demand the acceptance of its Bid.
- 14.7 Whilst declaring the Successful Bidder, it shall be the sole discretion of the Liquidator as to whether to accept the bid for sale of the assets of the Corporate Debtor on standalone basis and no Applicant shall be entitled to challenge or question the same. Nothing contained in this document shall affect the right of the Liquidator to accept or reject any bid without assigning any reason or liability.
- 14.8 Eligible Bidder(s) or Bidder(s) may encounter unforeseen technical problems such as time lag, heavy traffic, system failure and power failure at the Eligible Bidder’s or Bidder’s end. The Liquidator shall not be liable for any losses suffered / costs incurred by any of the Eligible Bidders or Bidders due to any technical problems faced by such Eligible Bidders or Bidders. Please note that last-minute bidding may lead to unnecessary lapses. Neither the e-auction service provider nor the Liquidator will be responsible for any inability to bid due to technical reasons or lapses on the part of the Bidders or any technical glitch faced whilst bidding.
- 14.9 The timelines set out herein may be subject to change if there is any order of stay or injunction or the like from a court or tribunal having jurisdiction or on account of any pending legal proceedings.
- 14.10 Each Eligible Bidder shall be deemed to have full knowledge of the assets, at the time when it submits its bid, irrespective of whether or not such Bidder actually inspects or participates in the Site visit.
- 14.11 As per Schedule I of the Liquidation Regulations, on the close of the auction, the Highest Bidder shall be invited to provide balance sale consideration within ninety days of the date of such demand.
- 14.12 For Eligible Bidders bidding for the Assessed Insurance Claim, it may be noted that assets proposed to be sold include the Assessed Insurance Claim. Subsequent to the sale of the Assessed Insurance Claim, the Successful Bidder may continue the adjudication of the Consumer Complaint No. 23 of 2021 before the Hon’ble District Consumer Redressal Commission at Kakidana, East Godavari or any other appropriate legal forum, and shall be entitled to receive the appropriate amount of money as directed to be paid and / or any other appropriate relief as granted by such appropriate legal forum in the event of favourable outcome of the said insurance claim litigation. It is further clarified that the expenses incurred by the Successful Bidder in such litigation shall not be recoverable from the Liquidator or the creditors and shall be solely borne by the Successful Bidder. All the future benefits and / or

future liabilities arising out of such litigation, as the case may be, shall be availed or borne (as the case may be) by the Successful Bidder, and not the Liquidator and/or the creditors of the Corporate Debtor. Any stamp duty or other tax on the sale of the Assessed Insurance Claim shall be borne by the Successful Bidder.

14.13 Any deviations from Applicable Laws or this Process Memorandum including as to payment terms may be considered at the sole discretion of the Liquidator and subject to approval of the Hon'ble NCLT, if deemed necessary by the Liquidator, at his sole discretion.

14.14 All claims against the Corporate Debtor as on the liquidation commencement date shall be dealt with in accordance with the IBC and the Liquidation Process Regulations.

## **15. DECLARATION OF SUCCESSFUL BIDDER**

15.1 The Liquidator and/or SCC reserve the right to accept or reject any bid, negotiate with the any of the Eligible Bidders for increasing the value offered.

15.2 On completion of the auction, the Highest Bidder shall be called upon to negotiate with the Liquidator and SCC, if required and thereafter may be announced as the Successful Bidder and a Letter of Intent shall be issued to the Successful Bidder. Pursuant to the issuance of the Letter of Intent to the Successful Bidder, the Successful Bidder shall be required to comply with the terms and conditions in the manner and in accordance with the timelines, in each case as set out in the Letter of Intent or as may be specified by the Liquidator.

15.3 If the Highest Bidder does not agree to the terms and conditions set out in the negotiation process with the Liquidator and SCC within the timelines prescribed by the Liquidator, the next highest bidder shall be called upon for the negotiation process.

## **16. LETTER OF INTENT AND TRANSACTION DOCUMENTS**

16.1 Along with the declaration of the Successful Bidder, the Liquidator shall issue the Letter of Intent to the Successful Bidder by way of an e-mail to the e-mail address(es) provided in the Application Form.

16.2 The Successful Bidder shall be required to execute the Letter of Intent issued by the Liquidator and have the original hard copy of the LoI delivered to the Liquidator within 2 (two) days from the date of issuance of the Letter of Intent. The terms and conditions set out in the Letter of Intent shall be binding on the Successful Bidder. The Successful Bidder shall accept the Letter of Intent issued, without any condition and record such acceptance by providing the Liquidator with 1 (one) copy of the Letter of Intent with an endorsement stating that such Letter of Intent is 'Accepted Unconditionally', under the signature of the authorized signatory of the Successful Bidder, supported by the relevant authorization approving the acceptance of the Letter of Intent. This Letter of Intent cannot be assigned or transferred by the Successful Bidder, in any manner whatsoever, to any other person.

16.3 The Successful Bidder is required to deposit the entire sale consideration equivalent to the successful Bid within 30 (thirty) days from the date of issuance of the Letter of Intent to the Designated Bank Account of the Corporate Debtor. Provided that payments made after 30 (thirty) days from the date of issuance of the Letter of Intent shall attract simple interest at the rate of 12% p.a. on the successful Bid.

16.4 Provided further that the sale to the Successful Bidder shall stand cancelled if the payment is not received within maximum period of 90 (ninety) days from the date of issuance of the Letter of Intent.

- 16.5 Upon receipt of the entire sale consideration for the asset(s) for which the successful bidder has placed his bid, the Liquidator shall provide certificate of sale to transfer such assets (and execute sale deed as required – Bidder to bear the stamp duty, registration charges etc) and the assets shall be delivered to Successful Bidder in the manner specified in the terms of sale.
- 16.6 Upon receipt of the entire sale consideration for the asset(s) for which the successful bidder had placed his bid the process for execution of a sale certificate, and/ or any other transfer documents for the Assets of the Corporate Debtor, in accordance with Applicable Laws, shall be initiated between the Successful Bidder and the Corporate Debtor.
- 16.7 The sale certificate, conveyance deed and/ or any other transfer documents as per Applicable Laws shall be executed within 90 days from the date of receipt of entire sale consideration by the Liquidator from the Successful Bidder to the Liquidator.

## 17. FRAUDULENT AND CORRUPT PRACTICES

- 17.1 The Applicant(s) shall observe the highest standard of ethics during the E-Auction process, including the process with respect to submission of the Application, and subsequently during the closure of the E- Auction and declaration of Successful Bidder. Notwithstanding anything to the contrary, contained in this Process Memorandum, or in the Letter of Intent, the Liquidator shall reject an Application, Bid or revoke the Letter of Intent, as the case may be, without being liable in any manner whatsoever to the Applicant, Auction Participant or Successful Bidder, if the Liquidator, at his discretion, determines that the Applicant, Auction Participant or Successful Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the auction process or has, undertaken any action in respect of such process which results in the breach of any Applicable Laws including the Prevention of Corruption Act, 1988. In such an event, the Liquidator may invoke the Earnest Money or Earnest Money BG without prejudice to any other right or remedy that may be available to the Liquidator under this Process Memorandum or Applicable Laws.
- 17.2 For the purposes of this clause the following terms shall have the meaning hereinafter respectively assigned to them:
- a. **Coercive Practice** shall mean impairing or harming, or threatening to impair or harm, directly or indirectly, any Person or property to influence any Person's participation or action in the E-Auction;
  - b. **Corrupt Practice** shall mean the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value (tangible or intangible) to influence the actions of any Person connected with the E - Auction;
  - c. **Fraudulent Practice** shall mean a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the E-Auction;
  - d. **Restrictive Practice** shall mean forming a cartel or arriving at any understanding or arrangement among the Applicant(s) / Auction Participant(s) with the objective of restricting or manipulating a full and fair competition in the E-Auction; and
  - e. **Undesirable Practice** shall mean (i) establishing contact with any Person connected with or employed or engaged by the Liquidator with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the E-Auction; or (ii) having a conflict of interest.

- 17.3 Applicant(s) or Bidder(s), as the case may be, shall not involve himself or any of his representatives in price manipulation of any kind directly or indirectly by communicating with other Bidder(s).
- 17.4 Bidder(s) shall not divulge either its Bid or any other details provided to it by the Liquidator or during the due diligence process in respect of the Assets to any other party.

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

- 18.1 The Eligible Bidder(s), Applicant(s), Bidder(s) and/ or Successful Bidder (as the case may be) shall be responsible for all the costs or expenses incurred by them on account of their participation in the E- Auction, including any costs associated with participation in meeting with the Liquidator, Site visit, etc. The Liquidator shall not be responsible in any way for such costs, regardless of the conduct or outcome of the E - Auction process.
- 18.2 Any costs, expenses and/ or tax implication on a Successful Bidder shall be in addition to the sale consideration for the Corporate Debtor.
- 18.3 All costs and expenses incurred in relation to the due diligence process, including Site visit or meetings, shall be borne by the Eligible Bidder(s). Also, the Eligible Bidder(s) are expected to make their own arrangements including accommodation for meetings or Site visit (if organised).
- 18.4 All expenses incurred towards movement/ shifting of plant and machinery (ies) or any asset of the Corporate Debtor post the E-Auction process shall be borne by the Successful Bidder. The Liquidator shall not be held responsible/ liable to pay any expenses towards such movement of plant and machinery(ies) or any other Asset.
- 18.5 The Applicant(s), Eligible Bidder(s), Bidder(s) and Successful Bidder shall not be entitled to receive re-imburement of any costs/ expenses which may have been incurred for any matter connected with the E-Auction including the due diligence process.
- 18.6 All taxes under Applicable Laws on sale of the assets of the Corporate Debtor would be borne by the Successful Bidder, which includes stamp duty and registration charges.
- 18.7 The Successful Bidder shall be responsible for obtaining requisite regulatory, statutory or third- party approvals, no-objections, permission or consents, if any, that are or may be required under Applicable Laws for purchasing the Corporate Debtor.
- 18.8 All statutory liabilities/ taxes/ demands/ claims/ maintenance fee/ electricity/ water charges etc., outstanding as on date or yet to fall due in respect of the Corporate Debtor shall be borne by the Successful Bidder.
- 18.9 The Applicant shall bear all its costs and charges associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Liquidator or any other costs incurred in connection with or relating to its Bid.

## 19. TIMETABLE

The indicative timelines are as provided below:

<b>Particulars</b>	<b>Due dates</b>
VDR Opening Date	11-06-2022
<b>Last date for receipt of expression of interest</b>	<b>21-06-2022</b>
Last date for submission of Earnest Money	21-06-2022
Obtaining Application forms for participating in E-Auction process along with Affidavits and other declarations per Process memorandum latest by	21-06-2022
Time given for seeking clarifications (if any), Due diligence, site visits etc	21-06-2022
Shortlisting Eligible Bidders for E-Auction after receipt of EoI and EMD	21-06-2022
VDR Closing date	22-06-2022
<b>Conducting E-Auction</b>	<b>23-06-2022</b>
Intimation to the Highest Bidder about his bid	23-06-2022
Issuing Letter of intent by Liquidator	27-06-2022
Acceptance of Letter of Intent by Successful Bidder	29-06-2022
Deposit of Purchase Consideration by Successful Bidder*	27-07-2022
Issue of Sale Certificate/Conveyance Deed (90 days from deposit of purchase consideration by Successful Bidder)	25-10-2022

\* Any payments made after 30 (thirty) days from the date of issuance of the Letter of Intent shall attract simple interest at the rate of 12% p.a. on the successful Bid.

Please note that the timelines mentioned above are only indicative and the liquidator reserves the right to revise the timelines and issue fresh Process Memorandums from time to time.

## 20. CLARIFICATIONS

- 20.1 All data/ information provided pursuant to this Process Memorandum, including the information contained the VDR, is in good faith. The Liquidator, their professional advisors, employees and officers shall not accept any responsibility or liability, whatsoever, in respect of any statements or omissions herein, or the accuracy, correctness, completeness or reliability of information provided, and shall incur no liability under any law, statute, rules or regulations, even if any loss or damage is caused to any Person including the Applicant(s).
- 20.2 The Liquidator reserves the right to issue clarifications and/ or amend the terms of the Process Memorandum as he deems fit and proper. Any clarification/ amendment to this Process Memorandum shall be uploaded by the Liquidator on the VDR, and such clarification/ amendment shall be deemed to form part of this Process Memorandum and will be binding on all Applicant(s).
- 20.3 The Liquidator reserves the right to induct a fresh bidder at any time before the date of conducting the E-Auction subject to the fulfillment of the criterias as set out in the process memorandum.



- 20.4 The Liquidator reserves the right to extend the deadlines set out in the Process Memorandum, including the last date for submission of the Application Form, by way of a notice uploaded on the website, at any time before or after the last date for submission of the Application Form. The Liquidator also reserve the right to extend the liquidation process timeline subject to approval of the NCLT.
- 20.5 No request for modifications of the Process Memorandum shall be entertained.
- 20.6 Any Applicant may request for a clarification on this Process Memorandum by way of an e-mail to [vvk.skliquidator@gmail.com](mailto:vvk.skliquidator@gmail.com).

For urgent queries related to this Process, a Bidder may contact any of the following personnel from the team assisting the Liquidator

- Mr. Aditya Viswanathan: +91 9940184031 [aditya.vishwanathan@in.ey.com](mailto:aditya.vishwanathan@in.ey.com)
- Mr. Aditya Agarwal: +91 96767 77322 [aditya8.agarwal@in.ey.com](mailto:aditya8.agarwal@in.ey.com)
- Mr. Nipun Agarwal: +91 93310 11212 [nipun.agarwal@in.ey.com](mailto:nipun.agarwal@in.ey.com)

## **21. APPLICABLE LAW AND JURISDICTION**

This Process Memorandum, liquidation process and any Application/ Bid submitted hereunder shall be governed by and construed in accordance with the laws of Republic of India and the Amaravati Bench of NCLT shall have the exclusive jurisdiction over all disputes, question of law or fact arising under, pursuant to or in connection with this Process Memorandum or sale of the assets of the Corporate Debtor under the liquidation process as per the IBC and the Liquidation Process Regulations.

## ANNEXURES

### Annexure A Format for EOI

{On the Letterhead of the Prospective Bidder i.e., either entity or lead member submitting the EOI along with a INR 500 stamp paper}

Date: [●]

To,  
**Mr. Vedagiri Venkata Krishnamurthy**  
**Liquidator –**  
**Sembmarine Kakinada Limited**  
#197 Sai Kripa, 6<sup>th</sup> A Main JP Nagar  
4<sup>th</sup> Phase Bengaluru, Karnataka 560078

E-mail Id: [vvk.skliquidator@gmail.com](mailto:vvk.skliquidator@gmail.com)

**Subject: Expression of Interest (“EOI”) by prospective bidder (“Bidder”) for purchase of asset(s) owned by Sembmarine Kakinada Limited (“SKL”) under Liquidation in terms of Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016**

Dear Sir,

With reference to the invitation dated 09<sup>th</sup> June 2022 (“**Invitation**”) inviting Expression of Interest (“**EOI**”) for sale of asset(s) owned by SKL by the Liquidator 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 purchase of asset(s) owned by Sembmarine Kakinada Limited. [I/We] understand that the details of asset(s) are enlisted in the Bid Application Form which forms Exhibit A of the EOI.

[I/We] confirm that [I/we] have understood the requirements and the terms and conditions (including the eligibility criteria) for submitting EOI for submission of bid for purchase of asset(s) owned by Sembmarine Kakinada Limited.

Further, [I/we] agree, undertake, acknowledge and confirm as follows:

- a. This EOI shall be evaluated by the Liquidator 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 [I/we] are eligible to participate in the bid process in relation to the Corporate Debtor;
- b. The Liquidator reserves the right to request for any additional information(s) or clarification(s) from us for the purposes of evaluating the EOI and [I/we] shall promptly comply with such requirements. Failure to satisfy/address/respond to the queries of Liquidator to his satisfaction may lead to rejection of our submission pursuant to EOI;
- c. 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 Liquidator. Allowing such change will be at the sole discretion of the Liquidator, 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 expression of interest by the consortium;

- d. Meeting the eligibility criteria set out in the Process Memorandum for sale of the asset(s) of Sembmarine Kakinada Limited, as more particularly enlisted in the Bid Application Form which forms Exhibit A of the EOI, alone does not automatically entitle us to participate in the next state of the bid process;
- e. [I/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 B**” of the Process Memorandum 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.
- f. [I/We] shall continue to adhere to the eligibility criteria throughout the bid process and any material change effecting our/consortium’s (or any of its members) eligibility or ability to submit a Bid shall be informed to the Liquidator immediately (i.e., not later than 3 working days from happening/occurrence of material change)
- g. [I/We] shall intimate the Liquidator forthwith if [I/we] become ineligible at any time during the bidding process;
- h. 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 [me/us] ineligible to submit bid and attract penal action under IBC;
- i. [I/We] shall maintain confidentiality of the information provided to us in connection with the Corporate Debtor and shall not use such information to cause an undue gain or undue loss to itself or any other person.
- j. [I/We] shall indemnify and hold harmless the Liquidator and his representatives and advisors, unconditionally and irrevocably in the event of any losses, claims or actions, costs or expenses which may arise against the Liquidator or his advisors for reasons attributable to [me/us] in relation to EOI or on account of breach of the confidentiality obligations or any other obligations arising hereunder.
- k. [I/We] further undertake and confirm that the EOI submitted by us is unconditional.

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

- i. Undertaking of no disqualification under Section 29A of IBC required in the format set out in ‘**Annexure B**’ of the Process Memorandum. 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.
- ii. Details of Deposit of Earnest Money Deposit of INR \_\_\_\_\_ lakhs in the Corporate Debtor’s Designated Bank Account along with ‘**Annexure C**’ in case of EMD through BG, if applicable.

[I/We] further undertake that the information furnished by us in this EOI and Annexures hereto is true, correct, complete, and accurate. [ I / 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 bid for purchase of abovementioned asset of SKL 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 Process Memorandum, then I/We are liable to be disqualified from submitting a bid for purchase of abovementioned asset of Sembmarine Kakinada Limited, 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 Liquidator, 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 Bidder, 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.*

**EXHIBIT A (TO EOI)**

**BID APPLICATION FORM**

Date: Dear Sir,

I/ we are desirous in participating in the E-Auction announced by you in the newspaper/website publication dated [*INSERT DATE*] in [*INSERT NAME OF MEDIA JOURNAL/Website*].

We would be participating in the E-Auction process for the following blocks / assets:

Particulars	Please tick the relevant boxes
Travelling Luffing Crane 70 Ton Capacity	
Deck Barge	
Aerial Platform – 1	
Aerial Platform – 2	
Shearing Machine	
Rolling Machine	
Frame Bender	
CNC Machine	
Pipe Bender	
Crawler Crane – Kobelco 1 – 250-ton capacity	
Crawler Crane – Kobelco 2 – 250-ton capacity	
Rights for insurance claim assessed at a value of ~ INR 32.6 cr	
Bobcat	
Inventory - Lot	
Doosan Forklift 9 Ton	
Doosan Forklift 6 Ton	
Doosan Forklift 3 Ton	
Ace Forklifts - 6 tons and 3 tons each	
Escorts Hydra 1 - 14 ton	
Escorts Hydra 2 - 14 ton	
EOT crane 1 - 25 tons	
EOT crane 2 - 25 tons	
EOT crane 3 - 25 tons	
EOT crane 4 - 25 tons	
EOT crane 1 - 16 tons	
EOT crane 2 - 16 tons	
EOT crane 1 - 10 tons	
EOT crane 2 - 10 tons	
EOT crane 3 - 10 tons	
Air Compressors - Lot	
Hydraulics Hoses - Lot	
Water Bags - Lot	
Hydraulic jack cylinders - Lot	
Blasting Loose tools - Lot	
Lathe Machine	
Portable Gas Detectors - Lot	
Ventilation Fans - Lot	
500 KVA DG Set (YDG-1)	

500 KVA DG Set (YDG-2)	
125 KVA DG Set (YDG-4)	
Generator 400 KW/60 HZ GEN SET (YDG-8)	
Generator 400 KW/60 HZ GEN SET (YDG-9)	
Generator 380 KW/50 HZ GEN SET (YDG-6)	
Generator 380 KW/50 HZ GEN SET (YDG-7)	
Generator 725KVA (YDG-3)	

**Details of Designated Bank Account of Corporate Debtor:**

Name	Sembmarine Kakinada Limited (In Liquidation)
Account Number	922020002053432
Bank Name	Axis Bank
Branch	Kakinada
IFSC Code	UTIB0000076

**Details of Applicant**

Name of the Applicant	
Contact No.	
Email ID	
PAN No.	
Address	

**Details of Co-Applicant** (if two or more Applicant are submitting the Application Form jointly)

Name of Co-Applicant	
Contact No.	
Email ID	
PAN No.	
Address	

I/We also enclose copies of the documents required as per Note 1 below. We request you to kindly verify the same and arrange with the E-Auction Service Provider for issue of a user ID and password to enable us to take part in the E-Auction.

Place:

Signature:

Name:

Designation (if applicable):

(In case of company / firm, the signature must be of the company / firm's authorised representative and the company's stamp / seal should be affixed)

**Note 1: List of documents to be submitted**

***I. If the Applicant is an individual:***

1. Proof of identity (Aadhar card, passport, PAN card).
2. Proof of residence (Election Id, passport, Aadhar card).
3. Copy of PAN card.
4. Earnest Money BG, if applicable.
5. Proof of payment of Earnest Money, such as UTR number, if applicable.

*II. If the Applicant is a firm, association, corporation, limited company, trust, body corporate, bank or financial institution:*

1. Copies of Certificate of Registration / Incorporation and Constitutional Documents (Memorandum and Articles of Association, etc.) or other equivalent organizational documents
2. Copy of a board resolution or equivalent document authorising the signatory of the application Form to submit the Application Form on behalf of the Applicant.
3. Copy of PAN card.
4. Earnest Money BG, if applicable.
5. Poof of payment of Earnest Money, such as UTR number, if applicable.

Note 2: *If two or more Applicant are submitting an application jointly, each Applicant is required to submit the Application Form along with the supporting documents in Note 1 above.*

*Note 3: All the documents submitted by an Applicant are to be self-attested with the stamp or seal (if applicable).*

*Note 4: Applicant may use additional sheets to submit the information for its detailed response*

**ANNEXURE B - 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. Vedagiri Venkata Krishnamurthy**  
**Liquidator –**  
**Sembmarine Kakinada Limited**  
#197 Sai Kripa, 6<sup>th</sup> A Main JP Nagar  
4<sup>th</sup> Phase Bengaluru, Karnataka 560078

E-mail Id: [vvk.skliquidator@gmail.com](mailto:vvk.skliquidator@gmail.com)

Dear Sir,

**Sub: Bidder'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 invitation for expression of interest dated 09<sup>th</sup> June 2022 ("**Expression of Interest**") in relation to sale of assets owned by Sembmarine Kakinada Limited ("**Corporate Debtor**"). In furtherance of the Expression of Interest, [I/ We], *[Insert name]*, the prospective bidder ("**Bidder**" / "**Applicant**") hereby confirm that we are not ineligible bidder(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 bid for purchase of sale of the assets of the Sembmarine Kakinada Limited on standalone basis<sup>1</sup>, 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 Bidder 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 bid 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 bid if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of a bid. 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*
-



- bid.*
- ii. *This clause shall apply to a bidder which 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 bidder 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;
  - (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 the following meaning:

- (a) "**connected person**" means:
  - i. any person who is the promoter or in the management or control of the 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 bid process; 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 an 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 C

**EARNEST MONEY – BANK GUARANTEE**

[To be on non-judicial stamp paper of appropriate stamp duty value relevant to place of execution]

To

Mr. Vedagiri Venkata Krishnamurthy

Liquidator –Sembmarine Kakinada Limited

#197, Saikrupa, 6<sup>th</sup> A Main JP Nagar 4<sup>th</sup> Phase Bengaluru, Karnataka – 560078

E-mail: [vvk.skliquidator@gmail.com](mailto:vvk.skliquidator@gmail.com)

1. In consideration of and pursuant to the [Insert name of the Applicant with address] agreeing to undertake the obligations under the Process Memorandum dated \_\_\_\_\_(as amended from time to time) and any other documents, issued by the Liquidator on behalf of Sembmarine Kakinada Limited (In Liquidation) (**Corporate Debtor**), the [Insert name and address of the bank issuing the guarantee and address of the head office] (**Guarantor Bank**) hereby agrees unequivocally, irrevocably, without demur and unconditionally to pay to the Liquidator of the Corporate Debtor, (hereinafter referred to as **Beneficiary**) forthwith on demand in writing from the Bank or any officer authorised by it in this behalf, any amount not exceeding INR \_\_\_\_\_/- (**Earnest Money Bank Guarantee**) on behalf of [Insert name of the Applicant] (**Applicant**).
2. This Earnest Money Bank Guarantee shall be valid and binding on the Guarantor Bank up to and including \_\_\_\_\_ and shall in no event be terminable, by notice or for any change in the constitution of the Guarantor Bank and/or the Beneficiary or for any other reasons whatsoever. The liability of the Guarantor Bank hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between the Bidder and the Beneficiary.
3. Our Bank Guarantee shall remain in force until [■], with an additional claim period 30 (thirty) days thereafter. The Beneficiary shall be entitled to invoke this Earnest Money Bank Guarantee as per the terms of the Process Memorandum.
4. The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Beneficiary (made in any format) raised at the above-mentioned address of the Guarantor Bank, in order to make the said payment to the Beneficiary.
5. The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by [Insert name of the Applicant] and / or any other person. The Guarantor Bank shall not require the Beneficiary to justify the invocation of this Earnest Money Bank Guarantee, nor shall the Guarantor Bank have any recourse against the Beneficiary in respect of any payment made hereunder.
6. This Earnest Money Bank Guarantee shall be interpreted in accordance with the laws of India and the courts at Amaravati shall have exclusive jurisdiction. The Guarantor Bank represents that this Earnest Money Bank Guarantee has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

7. This Earnest Money Bank Guarantee shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.
8. This Earnest Money Bank Guarantee shall be a primary obligation of the Guarantor Bank and accordingly the Beneficiary shall not be obliged before enforcing this Earnest Money Bank Guarantee to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder or to exercise, levy or enforce any distress, diligence or other process against the Bidder.
9. The Guarantor Bank hereby agrees and acknowledges that the Beneficiary shall have a right to invoke this Earnest Money Bank Guarantee either in part or in full, as it may deem fit.
10. The Guarantor Bank further unconditionally agrees with the Beneficiary that the Beneficiary shall be at liberty, without Bank's consent and without affecting in any manner the Bank's obligations under this Guarantee, from time to time:
  - i. Vary and/or modify any of the terms of the Document;
  - ii. Extend and/or postpone the time of performance of the obligations of the Bidder under the Document; or
  - iii. Forbear or enforce any rights exercisable by the Beneficiary against the Bidder under the terms of the Document
 and the Guarantor Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Beneficiary or any indulgence by the Beneficiary to the Bidder or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Guarantor Bank of its obligations under the Guarantee.
11. Notwithstanding anything contained hereinabove, our liability under this Bank Guarantee is restricted to INR \_\_\_\_\_/- and it shall remain in force until [■], with an additional claim period of 30 (thirty) days thereafter. This Earnest Money Bank Guarantee shall be extended from time to time for such period, as may be desired by the Bidder. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee forthwith on demand only if the Beneficiary or its authorised representative serves upon us a written claim or demand.
12. Failure to re-issue or extend this Guarantee as requested by the Beneficiary shall entitle the Beneficiary to invoke this Guarantee.
13. All claims under this Earnest Money Bank Guarantee shall be payable at Kakinada.

**Designation with Bank Stamp Name and**

**Address:** Attorney as per power of attorney No

..... For:

..... *[Insert Name of the Bank]*

**Banker's Stamp and Full Address:**

Dated this ..... day of ..... 2022

Notes: The stamp paper should be in the name of the Guarantor Bank.