

ELIGIBILITY CRITERIA

Minimum qualifications for applicants to approach the Resolution Professional of the Corporate Debtor for the purpose of participating in the process is as under:

1. Pursuant to Sub-Regulation (4) of Regulation 36A of the CIRP Regulations, the PRA must fulfill the following criteria as approved by the COC at its meeting held on 04.08.2020.

a) For Body Corporates (Any private limited company or public limited company registered under the Companies Act or Limited Liability Partnership (LLP)) /Individuals:

- Minimum consolidated net worth of INR 1 (one) Crores at group level for immediately preceding financial year.

For the purpose of Net worth, the net worth of both private limited company/public company limited and promoters to be included.

b) For Financial Institutions/ PE Funds / Trusts/ Asset Reconstruction Companies/ Non-Banking Finance Companies/ other financial investors:

- Minimum assets under management of INR 1 (one) Crores in immediately preceding completed financial year.

c) For Joint Investors:

- Net Worth of all investors acting jointly shall be added to ascertain the test of minimum net worth of INR 1 (one) Crores.
- The net worth of each joint investor shall not be less than INR 1 (one) Crores.
- The net worth of lead investor shall be not less than INR 1 (one) crores with minimum equity contribution of at least 25%.

The weighted average will be given on the basis of the net worth of each individual investor to calculate their equity contribution in the consortium.

a) EARNEST MONEY DEPOSIT:

- A refundable Earnest Money Deposit (EMD-1) of INR 5,00,000 (five lakhs) shall be paid along with the application for EOI by way of Demand Draft/Bankers cheque/ NEFT/RTGS in the favour of Hotline Glass Limited payable at par, which will be refundable:
 - (a) If the PRA is found to be ineligible to be a Resolution Applicant.
 - (b) If the PRA does not submit the Resolution Plan.
 - (c) If the Resolution Plan is rejected by the COC.

- A refundable Earnest Money Deposit (EMD-2) of INR 25,00,000/- (twenty five lakhs) shall be paid along with the submission of the Resolution Plan by way of Demand Draft/Bankers cheque/NEFT/RTGS in the name of Hotline Glass Limited payable at par, which will be refundable to all the PRAs within 1 month from the date of rejection (if plan is not approved) of Resolution Plan(s) by the Committee of Creditors.

- The amount of performance security will be 25% of the Resolution Plan Value in the form of Demand Draft/Bankers Cheque/NEFT/RTGS, in favour of Hotline Glass Limited or Bank Guarantee from a scheduled bank in favour of Hotline Glass Limited.

Exception: Where the Resolution plan of the resolution applicant is approved by COC, the process participation deposit provided by the said "Successful Resolution Applicant" shall be adjusted towards payment due as per the approved Resolution Plan.

- The refundable process participation deposit shall not bear any interest.

(a) For qualification, it would be mandatory for the bidders to submit:

- For all Bidders: Cover letter being the expression of interest with business profile.
- For Body Corporates / Individuals: Notarized Affidavit of “Net Worth certificate” along with supporting documents.
- For Body Corporates: Audited financial statements for the 3 preceding financial years.
- For Individuals: Income Tax Returns for the last three financial years.
- For Financial Institutions/ Funds/ Trusts/ PE investors: "AUM or Committed funds certificate” from an independent reputed CA firm or their statutory auditors or equivalent (for jurisdictions outside India) along with supporting documents

(b) For all Bidders: Certificate or Undertaking from a director or duly authorized signatory (along with proof of authority) that:

I. to the best of its knowledge, every information and records provided in the expression of interest is true and correct;

II. subject to applicable laws, to forthwith notify the RP of any factor that may make the applicant ineligible to participate in the corporate insolvency resolution process;

III. and to furnish further information or documents to the RP as may be reasonably required to verify that the applicant meets the criteria set out in the EOI.

In case the financial year end is different from 31 March 2020 then the applicant may provide financials of the immediately preceding financial year and provisional statements till March 31, 2020.

Board Resolution / letter of authority / power of attorney, as the case may be, authorizing the signatory to sign and submit the EoI documents.

EoI Undertaking (format of which is annexed as **Annexure‘D’**)

(c) Other Terms and Conditions

- If any false information or record has been submitted by the Potential Resolution Applicant, it will render the Potential Resolution Applicant ineligible to participate in the process;
- The fulfillment of eligibility conditions in the EoI does not automatically entitle the applicant to participate in the corporate insolvency resolution process which will be subject to applicable laws and further conditions stipulated by RP or Committee of Creditors (“COC”), in their sole discretion, including those in relation to access to Information or as may be stipulated under the Request for Resolution Plan document. Further, RP and COC reserve the right to issue clarifications, amendments and modification to the EOI document or to waive or relax any term or condition or its application in any particular case, in each case as they may deem fit in their sole discretion. The RP and COC reserve the right to reject any and all applications in their sole discretion without assigning any reasons
- A Potential Resolution Applicant (RA) must be eligible to submit a Resolution Plan in accordance with the provision of Section 29A of IBC. For this purpose, the Potential RA should give a declaration supported by an affidavit hereto stating that it does not suffer from any of the disqualifications provided under Section 29A of IBC. In case of any Resolution Applicants submitting a joint Resolution Plan, the declaration and affidavit needs to be submitted by each such Resolution Applicant. However, a Resolution Applicant(s) suffering from a disqualification under Section 29A(c) of IBC may submit a resolution plan, provided that it undertakes to make payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan and that it will submit a written acknowledgement of such payment at least three days before the last day for submission of resolution plan
- A Prospective Resolution Applicant must be a fit and proper person, should not suffer from any legal disability to be a promoter under the applicable laws.
- No oral conversations or agreements with the RP or any official, agent or employee of the RP, or any member of the COC shall affect or modify any terms of this EoI.
- Neither the Potential Resolution Applicant nor any of representatives of the Potential Resolution Applicant shall have any claims whatsoever against the RP or its advisors or any member of the COC or any of their directors, officials, agents or employees arising out of or relating to this EoI.

- By submitting a proposal, each prospective Potential Resolution Applicant bidder shall be deemed to acknowledge that it has carefully read the entire EoI and has fully informed itself as to all existing conditions and limitations. Ignorance of law/s will not be treated as any excuse.
- The Potential Resolution Applicant acknowledges that the investment in the Corporate Debtor shall be made by the Potential Resolution Applicant on an “as in, where is” basis and the RP or the COC will not be providing any representations or warranties for the Corporate Debtor.
- All the EOIs received will be reviewed by RP in consultation with its advisors and COC and a provisional list of eligible Potential Resolution Applicants shall be shared in accordance with IBC and CIRP Regulations.

Joint Investors:

Where the EoI is being submitted by a Joint Investors of joint bidders (“Joint Investors”), the EoI, along with all undertakings submitted shall be signed by each member of the Joint Investors. Please further note that:

- a) A Person cannot be part of more than 1 (one) Joint Investors submitting the EoI for the Company. Further a Person shall submit only 1 (one) EOI, either individually as a Prospective Resolution Applicant or as a constituent of a Joint Investors;
- b) The Joint Investors shall submit the copy of Joint Investors agreement/MOU, if any, entered into between the Joint Investors members, setting out the respective obligations of the Joint Investors members;
- c) Each member of the Joint Investors shall nominate and authorize a Lead Partner to represent and act on behalf of the members of the Joint Investors. Such Lead Partner shall be the single point of contact on behalf of the Joint Investors with the Resolution Professional and the CoC, their representative and advisors in connection with all matters pertaining to the Joint Investors;
- d) The members of the Joint Investors shall be jointly and severally liable in respect of obligations under the EOI/ undertakings given to the Resolution Professional;

e) If any member of the Joint Investors is disqualified under Section 29A of the Code, then the entire Joint Investors; i.e., all the members of such Joint Investors shall stand disqualified;

f) The EOI must detail the members of the Joint Investors, the Lead Member and the proposed percentage holding of each member;

g) Lead Member of the Joint Investors shall be identified at the time of submission of EOI and shall hold at least 26%; and

h) No change of Lead Member or any member whose financials have been considered towards the eligibility criteria may be permitted post submission of EOI (except with approval of the COC).

INELIGIBILITY CRITERIA

SECTION 29A of IBC

A Prospective Resolution Applicant will not be eligible to submit the EoI if he/she/it or any person or in concert with him/her/it:

1. is an undischarged insolvent;
2. is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
3. at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I- For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II.— For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under 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;

4. 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:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I.

5. Is disqualified to act as a director under Companies Act, 2013;

Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I.

6. Is prohibited by the Securities Exchange Board of India from trading in securities or accessing the securities market;
7. Has been a promoter or in the management or control of the Company 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;

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

8. has executed a guarantee in favor of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part
9. is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
10. has a connected person not eligible under clauses (a) to (i).

Explanation I — For the purposes of this clause, the expression "connected person" means—

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;

Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely: —

- a) a scheduled bank;
- b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);
- d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- e) an Alternate Investment Fund registered with Securities and Exchange Board of India;
- f) such categories of persons as may be notified by the Central Government.

Sec 29A Undertaking has to be in the form of an affidavit on a stamp paper of appropriate amount as per the stamp act applicable to the state of execution

