

# LUNI POWER COMPANY PRIVATE LIMITED

(Under Corporate Insolvency Resolution Process vide Order of Hon'ble NCLT, Chandigarh, dated 23/12/2019)

## INVITATION FOR SUBMISSION OF EXPRESSION OF INTEREST



Issued by:-



**Shri Sachin Gopal Jathar**

Resolution Professional - Luni Power Company Private Limited

IBBI Reg. no.: IBBI/PA-002/IP-N00640/2018-2019/11968

*(Pursuant to the approval of the Committee of Creditors of Luni Power Company Private Limited)*



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## INVITATION OF EXPRESSION OF INTEREST

### 1. BACKGROUND

A brief overview of Luni Power Company Private Limited is set out below-

<b>Company Name</b>	<b>Luni Power Company Pvt. Ltd.</b>
<b>Listing Status</b>	Unlisted
<b>Corporate Identification Number</b>	U40101HP2001PTC028999
<b>Incorporation Date</b>	May 18, 2001
<b>Registered Office</b>	Near Chimbhaar Home Stay Chimbhaar, P.O Geetapeeth Palampur Kangra HP 176061 IN
<b>Address other than r/o where all or any books of account and papers are maintained</b>	22, Camac Street, Block A, 3rd Floor Kolkata 700016 WB

Luni Power Company Pvt. Ltd. (hereinafter referred to as “LPC” or “the Corporate Debtor” or “the Company” or “CD”) is a Non-Government company and it is registered with the Registrar of Companies of Himachal Pradesh (“HP”) with emphasis on Production, Collection and Distribution of electricity. The CD was incorporated under Companies Act, 1956 as Luni Power Company Private Limited on May 18, 2001. LPC project compose of a hydel plant of 4.5 MW capacity in Himachal Pradesh. LPC has entered into power purchase agreement with the authorities.

The project implementation is currently on hold.

The last financial statement available in this case pertains to financial year 2018-2019.



## 2. TRANSACTION PROCESS

The transaction process has been outlined below:

- a) Invitation for Expression of Interest (“EoI”);
- b) Confidentiality undertaking by the Resolution Applicants (RAs) along with the supporting documents annexed to the EoI;
- c) On receipt of declaration of eligibility from the RA and receipt of the executed confidentiality undertaking, the RA will be provided with:
  - The Information Memorandum prepared as per provisions of the Insolvency and Bankruptcy Code (“IBC”), 2016.
  - Access to the data-room to be provided for due diligence.
  - Request for Resolution Plan (“RFRP”) outlining the next steps along with the evaluation criteria.





### 3. SUBMISSION OF EXPRESSION OF INTEREST

- a) Expression of Interest (“Eol”) is invited in a **plain sealed envelope** superscripted as “**Eol for participating in CIRP of Luni Power Company Pvt. Ltd.**”, in the format as set out in **Annexure I** section.
- b) Applicants should meet the Eligibility Criteria as set out as **Annexure ‘A’** of Format for Eol.
- c) Applicants should submit the Eol along with relevant the supporting documents set out as **Annexure ‘B’** of Format for Eol.
- d) Applicant is also required to submit the following undertakings as set out in **Annexure C, Annexure D** and **Annexure E** of Format for Eol respectively along with the Eol.
- e) Please note EMD-1 Demand Draft/ Bankers cheque for INR 10 Lakh (INR Ten Lakh Only) in the favor of “**Luni Power Company Private Limited – CIRP A/c**” has to be alongwith the Eol
- f) All Potential Resolution Applicant provide the Eol on or before 02.10.2020 addressed to the RP at the following address in a sealed envelope through speed post or registered post or by hand delivery under proper acknowledgement.

The envelope should be super scribed:

**“Eol for participating in CIRP of Luni Power Company Pvt. Ltd.”**

**Shri Sachin Gopal Jathar**  
Resolution Professional  
AAA Insolvency Professionals LLP.  
Mousumi Co. Op. Housing Society  
15B, Ballygunge Circular Road, Kolkata - 700019

A soft copy of the Eol along with the required annexures must be emailed to [lunipower@aaainsolvency.com](mailto:lunipower@aaainsolvency.com) in a **password protected PDF format** and password must be shared in a separate email.

#### **Note:**

- Any Eol submitted after the last date shall be rejected, provided that the Resolution Professional (“RP”) may extend the last date, with approval of the Committee of Creditors (“CoC”).
- Eols not fulfilling the above conditions are liable to be disqualified without any further communication.
- The RP/CoC reserves the right to cancel or modify the process and or reject/ disqualify any Resolution Applicant/ Eol/ bid/ offer at any stage of the bid process without assigning any reason.



- *This is not an offer document. Applicants should regularly visit the website(s) referred to above to keep themselves updated regarding clarifications, amendments, or extensions of time, if any.*
- *The format of EoI, EoI Undertaking and other necessary details will be available in the detailed invitation.*



#### 4. LAST DATE OF SUBMISSION OF EXPRESSION OF INTEREST

The last date for submission of EoI is **October 02, 2020**, which may be extended at the discretion of RP with the approval of the CoC.

In case EoI is not submitted by the specified time period, then the participation can only be allowed if the time period is extended by the RP.

**Note:**

- 1) *All Potential Resolution Applicants who are desirous of submitting a resolution plan in respect of the Corporate Debtor must read, understand and comply with all the requirements under IBC, CIRP Regulations and any other applicable regulations under IBC that are in force now or which may come into force subsequently, for resolution plan and all matters under, in pursuance of or in relation to, this invitation.*
- 2) *The Potential Resolution Applicants will be communicated further details related to the process and would also be required to (a) submit a duly executed non-disclosure agreement as per the requirements of IBC and CIRP Regulations as a condition for receiving the information memorandum and other relevant information in relation to the Corporate Debtor and (b) provide any other information as may be required by the RP.*
- 3) *The consideration, evaluation and approval of resolution plan submitted by RP to the committee of creditors is within the powers of committee of creditors under the provisions of the IBC and CIRP Regulations. The committee may specify evaluation criteria separately for evaluation of the resolution plans. The detailed process and timeline for submission of resolution plans shall be separately communicated to the Potential Resolution Applicants who meet the qualification conditions as mentioned above.*
- 4) *For submitting the EoI, or for any information on the Corporate Debtor or further clarifications with regards to inspections, terms and conditions and other details, kindly write to [lunipower@aaainsolvency.com](mailto:lunipower@aaainsolvency.com) or [sachinjathar@aaainsolvency.com](mailto:sachinjathar@aaainsolvency.com)*

Regards,

sd/-

**(Sachin Gopal Jathar)**

Resolution Professional - Luni Power Company Pvt. Ltd.  
IBBI Regn. No.: IBBI/IPA-002/IP-N00640/2018-2019/11968

**Address for Correspondence:**

C/o: AAA INSOLVENCY PROFESSIONALS LLP, Kolkata  
Office- Mousumi Co. Op. Housing Society, 15B, Ballygunge  
Circular Road, Kolkata - 700019  
E-mail: [lunipower@aaainsolvency.com](mailto:lunipower@aaainsolvency.com)  
[sachinjathar@aaainsolvency.com](mailto:sachinjathar@aaainsolvency.com)

**Registered Address:**

B-1/8, Samadrita, EKTP Phase-III, EKT, Kolkata,  
West Bengal – 700107  
email: [sgjathar@gmail.com](mailto:sgjathar@gmail.com)



## ANNEXURE - I

[On the letterhead of the Entity submitting the EoI]

**FORMAT FOR EXPRESSION OF INTEREST  
FOR RESOLUTION PLAN OF  
LUNI POWER COMPANY PRIVATE LIMITED**

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

To,

**Shri Sachin Gopal Jathar**

*Resolution Professional - Luni Power Company Pvt. Ltd.*

*IBBI Regn. No.: IBBI/IPA-002/IP-N00640/2018-2019/11968*

**C/o: AAA INSOLVENCY PROFESSIONALS LLP,**

Mousumi Co. Op. Housing Society,

15B, Ballygunge Circular Road, Kolkata - 700019

Dear Sir,

**Subject: Expression of Interest (“EoI”) for submitting of Resolution Plan for Luni Power Company Private Limited undergoing Corporate Insolvency Resolution Process (“CIRP”)**

In response to your public advertisement in the Business Standard [Kolkata and Chandigarh Edition – English], Punjab Kesari [Kangra Edition – Hindi] and Ekdin [Kolkata Edition - Bengali] dated September 15, 2020 inviting Expression of Interest (“**EoI**”) for submission of resolution plans (“**Resolution Plan**”) as per the provision of Insolvency and Bankruptcy Code, 2016 (“**Code**”), we confirm that we have understood the requirements and the terms and conditions for filing this EoI and make our EoI for submission a Resolution Plan in respect of **Luni Power Company Private Limited. (“LPC”)**

In this regard, we hereby submit our EoI.

We have attached necessary information requested and further undertake that the information furnished by us in this EoI is true, correct and accurate to the best of our knowledge.

Based on this information we understand you would be able to evaluate our preliminary proposal / eligibility to shortlist us for the above-mentioned proposal.

Further, we agree and acknowledge that:

- (a) The fulfillment of eligibility conditions in the EoI does not automatically entitle us to participate in the CIRP of LPC, which will be subject to applicable laws and further conditions stipulated by the RP or the Committee of Creditors (“**CoC**”), in their sole discretion, including those in relation to access to virtual data room (“**VDR**”) or as may be stipulated under the Request for Resolution Plan (“**RFRP**”) document. Further, the RP and CoC reserve the right to issue clarifications, amendments and modification to



the Eol 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.;

- (b) The Eol will be evaluated by the RP of Corporate Debtor (“CD”) along with the CoC, based on the information provided by us in this Eol and attached documents to determine whether we meet eligibility criteria to submit the Resolution Plan for CD;
- (c) The RP/ CoC reserve the right to determine at their sole discretion, whether or not we qualify for the submission of the Resolution Plan for LPC and may reject the Eol submitted by us without assigning any reason whatsoever and not include us in the provisional or final list of eligible prospective resolution applicants;
- (d) The RP/ the CoC reserve the right to conduct due-diligence on us and/or request for additional information or clarification from us for the purposes of the Eol and we shall promptly comply with such requirements. Failure to satisfy the queries of RP/ CoC timely may lead to rejection of our submission pursuant to Eol;
- (e) We, including any connected persons of ours, singly or jointly, are not ineligible or disqualified in terms of provisions of Section 29A of the Code as amended till date;
- (f) meeting the qualification criteria set out in Invitation for Eol alone does not automatically entitle us to participate in the next stage of the bid process;
- (g) along with our Eol, we have also enclosed information/documents as required in the Invitation for Eol; and
- (h) If any false information or record has been submitted by us, it will render us ineligible to participate in the process.
- (i) The Signatory to this Eol is duly authorised by the Board of \_\_\_\_\_ <<Name of the Entity>> to sign this Eol. *(Kindly attach copy of authorization i.e. Board Resolution or Power of Attorney)*

Sincerely yours,

On behalf of *(Insert name of the entity submitting the Eol)*

Signature:

Name of Signatory:

Designation:

Company Seal/Stamp



**Enclosures:**

- *Annexure A: Eligibility Criteria*
- *Annexure B: Supporting documents to be attached with EoI*
- *Annexure C: Section 29A of IBC*
- *Annexure D: Format of Undertaking*
- *Annexure E: Format of Confidentiality Undertaking*



## ANNEXURE – A: ELIGIBILITY CRITERIA

Minimum qualifications for applicants to approach the RP of the CD for the purpose of participating in the process are as under:

### A. Net Worth

**For Individual/ Group of Individuals / Firm/ Body Corporates** [Any private limited company or public limited company registered under the Companies Act or Limited Liability Partnership (LLP)]

- Minimum consolidated Net Worth of INR 5,00,00,000/- (INR Five Crore Only) for immediately preceding financial year \*

**For Firm/ Body Corporates** [Any private limited company or public limited company registered under the Companies Act or Limited Liability Partnership (LLP)/ Joint Venture / Consortium /SPV] / **Group of Companies**

- Minimum consolidated Net Worth of INR 5,00,00,000/- (INR Five Crore Only) for immediately preceding financial year \*

\* Given the specialised nature of the business activity, Individuals or Companies related to the Power sector or having such relevant experience could prefer to apply.

### B. Refundable Process Participation Deposit

The Potential Resolution Applicant (“PRA”) shall submit a refundable process participation deposit (EMD-1) of INR 10 Lakh (Rupees Ten Lakh Only) along with the application for EoI by way of Demand Draft/ Bankers cheque in the favor of “**Luni Power Company Private Limited – CIRP A/c**” payable at par, which will be refundable:

- if the PRA is found to be ineligible to be a Resolution Applicant.*
- if the PRA does not submit the Resolution Plan.*
- if the Resolution Plan is rejected by the CoC.*

CoC shall indicate the Refundable Earnest Money Deposit (EMD-2) required to be paid by a resolution applicant at the time of submission of the resolution plan. The amount for EMD-2 shall be disclosed in the RFRP to be shared with the PRAs.

CoC shall also indicate the performance security payable by the resolution applicant at the time of approval of the resolution plan in form of bank guarantee to the financial creditors in the resolution plan. The performance security will be payable within 15 days from the date of intimation by RP about approval by CoC to the Successful Resolution Applicant. The amount of performance security will be disclosed in the RFRP to be shared with the PRAs.



- # 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.

Further the said process participation deposit shall not bear any interest.

The PRA is not required to pay any fee or any non-refundable deposit for submission of EoI.

**C. 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: Notorised Affidavit of "Net Worth certificate" along with supporting documents.
- For Body Corporates: audited financial statements for the financial years ("FY") end on March 31, 2020, March 31, 2019, and March 31, 2018. *(In case audited financial statements for financial year ended on March 31, 2020 are not available, then provisional accounts certified by a Chartered Accountant would suffice. Then please also provide the audited financial statements for FY ended on March 31, 2017)*
- For Individuals: Income Tax Returns ("ITR") for the last two FYs ended on March 31, 2020, and March 31, 2019. *(In case the ITR for March 31, 2020 are yet to be filed kindly provide the ITR for FY ended on March 31, 2018.)*
- 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

**D. 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 CIRP;
- 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 20\_\_ then the applicant may provide financials of the immediately preceding financial year and provisional statements till March 31, 20\_\_.

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’**)

#### **E. 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 (PRA) 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 CoC, in their sole discretion, including those in relation to access to Virtual Data Room (“VDR”) or as may be stipulated under the Request for Resolution Plan (RFRP) 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. Further, the expression of interest is subject to the outcome of the pending application before the Hon’ble National Company Law Appellate Tribunal, New Delhi and may be cancelled, amended or changed at any stage based on the said proceedings.
- A PRA must be eligible to submit a Resolution Plan in accordance with the provision of Section 29A of IBC. For this purpose, the PRA 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 PRA 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 PRA nor any of representatives of the PRA 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 PRA 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 PRA acknowledges that the investment in the CD shall be made by the PRA on an “as in, where is” basis and the RP or the CoC will not be providing any representations or warranties for the CD.
- All the EoIs received will be reviewed by RP in consultation with its advisors and CoC and a provisional list of eligible PRA 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 1 (one) 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).

Regards,

sd/-

**(Sachin Gopal Jathar)**

*Resolution Professional - Luni Power Company Pvt. Ltd.*

*IBBI Regn. No: IBBI/IPA-002/IP-N00640/2018-2019/11968*

**C/o: AAA INSOLVENCY PROFESSIONALS LLP,**

Kolkata Office- Mousumi Co. Op. Housing Society,

15B, Ballygunge Circular Road, Kolkata- 700019

**E-mail: [sachinjathar@aaainsolvency.com](mailto:sachinjathar@aaainsolvency.com)**



## ANNEXURE – B:

### SUPPORTING DOCUMENTS TO BE ATTACHED WITH EOI

- For all Bidders: cover letter on the letter head of the company/ Body Corporate/ Financial institutions being the expression of interest with business profile.
- For Body Corporates / Individuals: Notorised Affidavit of “Net Worth certificate” along with supporting documents.
- For Body Corporates: Audited financial statements for the financial years i.e. March 31, 20\_\_, *(in case audited financial statements for financial year March 31, 20\_\_ are not available, then provisional accounts certified by a Chartered Accountant will suffice)*, March 31, 20\_\_, and March 31, 20\_\_.
- For Individuals: Income Tax Returns for the last two financial years i.e. March 31, 20\_\_, and March 31, 20\_\_.
- 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
- For all Bidders: Certificate or Undertaking from a director or duly authorized signatory executed on a stamp paper<sup>1</sup> (along with proof of authority) that:
  - to the best of its knowledge, every information and records provided in the expression of interest is true and correct;
  - 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; 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 2019 then the applicant may provide the latest audited financials plus provisional financial statements initialed by directors.

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<sup>1</sup> The stamp paper should be executed in India or outside India in case of foreign entity, as the case may be.



## ANNEXURE – C: SECTION 29A OF IBC

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

1. is an undischarged insolvent;
2. is a willful 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 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 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 promote\_\_\_\_\_ (the "Recipient/ Resolution Applicant", which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its successors, transferees and permitted assigns) of the **SECOND PART**.*

(The Disclosing Party/Resolution Professional and the Recipient/Resolution Applicant hereinafter also referred to individually as a "**Party**" and collectively as the "**Parties**")

#### **WHEREAS:**

- A. Pursuant to an invitation for expressions of interest dated September 15, 2020 published by the RP in the Business Standard [Kolkata and Chandigarh Edition – English], Punjab Kesari [Kangra Edition – Hindi] and Ekdin [Kolkata Edition - Bengali] on September 15, 2020, the RP had invited expressions of interest ("**Eoi**") from potential resolution applicants



for the purpose of submission of resolution plans for the Company in accordance with the provisions of the Code. The Resolution Applicant, has accordingly, submitted its EoI to the RP on \_\_\_\_\_.

- B. The Resolution Applicant proposes to submit a resolution plan in respect of the Company (“**Resolution Plan**”) to the RP, in accordance with the Code. For the purpose of such preparation, submission and negotiation of the Resolution Plan (“**Purpose**”), the RP may provide the Resolution Applicant with access to relevant information in that respect, provided that the Resolution Applicant provides a confidentiality undertaking to the RP with respect to such information provided.
- C. In view of the above, the RP will be sharing the relevant information, comprising/ containing certain Confidential Information (*as defined in Clause 1 below*) with the Resolution Applicant and accordingly the Parties have agreed to enter into this Agreement and be bound by the terms and conditions hereinafter set forth governing, *inter-alia*, the disclosure, use and protection of such Confidential Information.

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

1. “**Confidential Information**” shall mean all information, whether in written, oral, pictorial, electronic, visual or other form, including information in the virtual data room (“**VDR**”), relating, in any manner whatsoever, to the Company or to any group entity (including any holding, subsidiary, associate, joint venture or related entity) of the Company or in relation to the resolution plan process. Without prejudice to the generality of the foregoing, Confidential Information includes, without limitation:
  - (i) any information which relates to the business, sales and marketing, operations, pricing arrangements, suppliers, customers, network, finance, technology, corporate, organization, management, strategic initiatives and plans, policies and reports, financial position of the Company;
  - (ii) any drawing, calculation, specification, instruction, diagram, catalogue, manual, data, templates, models, prototypes, samples, presentations, proposals, quotations, computer programs, software, belonging to or vested in the Company or in which Company has an interest of any kind;
  - (iii) any unpatented invention, formula, procedures, method, belonging to or vested in the Company or in which Company has an interest of any kind;
  - (iv) any unregistered patent, design, copyright, trademark including any pending applications and any intellectual or industrial proprietary right, belonging to or vested in the Company or in which Company has an interest of any kind;



- (v) any information belonging to identified third parties with whom the Company has business dealings;
  - (vi) any proposed business deals, contracts or agreements to which Company is party;
  - (vii) the Information Memorandum in respect of the Company prepared under the provisions of the Code by the RP and information contained in VDR;
  - (viii) contents of its Resolution Plan;
  - (ix) particulars of any negotiations conducted with the Committee of Creditors on its Resolution Plan; and
  - (x) financial terms or scores of any other resolution applicant (if disclosed to the Recipient) in the course of or as process of negotiation with the Recipient.
2. The Recipient shall at all times observe the following terms:
- (i) it shall hold in trust and in confidence the Confidential Information provided to the Recipient by the Disclosing Party;
  - (ii) it shall not, directly or indirectly use the Confidential Information for any purpose other than for the Purpose or for causing an undue gain or undue loss to itself or any other person;
  - (iii) it shall not disclose or reveal (or permit the disclosure or revelation of) any Confidential Information to any person or party whatsoever (save and except as provided below) without the prior consent of the Disclosing Party;
  - (iv) it may disclose the Confidential Information to its employees, advisors, directors and/or its Affiliates (together the “**Representatives**”), strictly on a need to know basis and solely for the Purpose, provided always that, each of these Representatives shall, in the course of their duties be required to receive, observe and consider the confidentiality obligations set out hereunder when working towards the Purpose and shall be bound by confidentiality obligations that are at least as stringent as the obligations set out in this Agreement. The Recipient acknowledges that any agreement (written or otherwise) entered into between the Recipient and the Representatives would not discharge the Recipient from its confidentiality obligations under this Agreement. In any event, the Recipient shall remain liable and responsible for any confidentiality breaches by its Representatives and breach by any Representative of the Recipient shall be deemed as breach of this Agreement by the Recipient. For the purposes of this Agreement, the term “**Affiliate**” shall mean, with respect to the Recipient, any person or entity who is directly or indirectly Controlling, or is Controlled by, or is under the direct common





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

- (v) it shall use the same degree of care to protect the Confidential Information as the Recipient uses to protect its own confidential information but no less than a reasonable degree of care to prevent the unauthorised access, use, dissemination, copying, theft and/or republication of the Confidential Information;
  - (vi) it shall at no time, discuss with any person, the Confidential Information or any other matter in connection with, or arising out of, the discussions or negotiations in relation to the Purpose (other than to the extent permitted hereunder);
  - (vii) it shall immediately, upon the earlier of (a) the conclusion of the Purpose; or (b) termination of this Agreement as per Clause 10 below; or (c) a notification by the Disclosing Party, surrender and return to the Disclosing Party, all Confidential Information and any notes, memoranda or the like, including any copies or reproductions in its possession, or destroy the same in accordance with the directives of the Disclosing Party, in each case, except to the extent, retention of such Confidential Information is required under applicable law, provided that the Recipient in these cases, shall notify the Disclosing Party of the information that has been retained as a result of such applicable law along with the corresponding details of the applicable law which warranted such retention;
  - (viii) it shall not publish any news release or make any announcements or denial or confirmation in any medium concerning this Agreement or its proposal to prepare/ submit the Resolution Plan or contents of Resolution Plan in any manner nor advertise or publish the same in any medium, without the prior written consent of the Disclosing Party;
  - (ix) it shall promptly notify the Disclosing Party of any Confidential Information which has been lost or disclosed or used by any unauthorised third party provided that such notification shall not relieve the Recipient from any liability arising from its breach of this Agreement;
  - (x) it shall protect against any unauthorised disclosure or use, any Confidential Information of the Company that it may have access to in any manner.
3. The Recipient shall not be liable for disclosure or use of the Confidential Information in the event and to the extent that such Confidential Information:



- (i) is or becomes available to the public domain without breach of this Agreement by the Recipient; or
  - (ii) is disclosed with the prior written approval of the Disclosing Party; or
  - (iii) was in the possession of the Recipient prior to its disclosure to them under this Agreement from another source not under any obligation of confidentiality to the provider; or
  - (iv) is disclosed pursuant to any law or a court order or the stock exchange requirement provided that in the event the Recipient is required to make such disclosure pursuant to a court order / stock exchange announcement, then in that case the Recipient shall only disclose the Confidential Information to the extent required and to the extent permissible, promptly notify the Disclosing Party in advance, so that the Disclosing Party has the opportunity to object to such disclosure or discuss the extent of disclosure by the Recipient.
4. The Recipient agrees that the Disclosing Party, by the disclosure of the Confidential Information to the Recipient, does not grant, express or implied, any right or license to use the Confidential Information for any purpose other than the Purpose contemplated under this Agreement or vest any intellectual property rights or legal or beneficial interest in the Confidential Information so disclosed to the Recipient.
5. For the avoidance of doubt, nothing in this Agreement shall compel the Disclosing Party to disclose to the Recipient, any or all the Confidential Information requested by the Recipient and the Disclosing Party shall, at all times during the subsistence of this Agreement, reserve the right to determine, in its sole discretion, whether it shall disclose such Confidential Information (in whole or part).
6. The Disclosing Party makes no representation, warranty or inducement, whether express or implied, as to the accuracy or completeness of the Confidential Information and shall not be liable to the Recipient for any damage arising in any way out of the use of, or termination of the Recipient's right to use the Confidential Information. The Disclosing Party has not verified or audited the information and the information so provided is based on books and records available with the Company. The Disclosing Party does not take any responsibility for any decisions made by Recipient based on the information provided. The Recipient shall exercise its own diligence before making any conclusion or decision.
7. The Recipient acknowledges that the Confidential Information is valuable to the Disclosing Party and that damages (including, without limitation, all legal fees and expenses on a solicitor and client basis) may not be a sufficient remedy for any breach of its obligations under this Agreement and the Recipient further acknowledges and agrees that the remedies of specific performance or injunctive relief (as appropriate)



without the necessity of posting bond, guarantees or other securities, are appropriate remedies for any breach or threatened breach of its obligations under this Agreement, in addition to and without prejudice to, any other remedies available to the Disclosing Party at law or in equity.

8. The Recipient shall indemnify and hold harmless the Disclosing Party against all losses, damages and liabilities, including but not limited to all legal fees and expenses, arising from or connected with any breach of this Agreement, including but not limited to any gross negligence or willful misconduct in respect of the Confidential Information, by the Recipient and/or its Representatives.
9. The Recipient shall not, without prior written consent of the Disclosing Party, engage any advisor, whether professional, legal or otherwise, where a conflict of interest exists with the Company or the Disclosing Party in relation to the corporate insolvency resolution process of the Company.
10. This Agreement shall be effective and shall stay in force for a period of three (3) years from the date first stated above. Upon expiry of this Agreement, the confidentiality obligations of the Parties herein shall cease, provided that payment obligations if any that may arise under this Agreement (including under the indemnity Clause 8 above) shall survive the termination of this Agreement.
11. All notices and other communications provided for hereunder shall be: (i) in writing; and (ii) hand - delivered, sent through an overnight courier (if for inland delivery) or international courier (if for overseas delivery) to a party hereto or sent by electronic mail, at its address specified below or at such other address as is designated by such party in a written notice to the other parties hereto.

**For Disclosing Party/Resolution Professional**

Postal Address: **AAA Insolvency Professionals LLP**, Mousumi Co. Op. Housing Society, 15B, Ballygunge Circular Road, Kolkata- 700019

Contact Person: **Shri Sachin Gopal Jathar**

email: lunipower@aaainsolvency.com;  
sachinjathar@aaainsolvency.com

**For Recipient/Resolution Applicant**

Postal Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

email: \_\_\_\_\_



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

12. If any provision of this Agreement is invalid or illegal, then such provision shall be deemed automatically adjusted to conform to the requirements for validity or legality and as so adjusted, shall be deemed a provision of this Agreement as though originally included. If the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted from this Agreement as though the provision had never been included, in either case, the remaining provisions of this Agreement shall remain in full force and effect.
13. No amendments, changes or modifications of any provision of this Agreement shall be valid unless made by a written instrument signed by a duly authorised representative of each of the Parties.
14. No failure or delay by any Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other exercise thereof or the exercise of any other right, power or privilege hereunder.
15. Neither Party may assign or transfer its rights or obligations contained in this Agreement or any interest therein without the prior written consent of the other Party.
16. This Agreement shall be governed by and construed in all respects according to the laws of the India and, the Parties hereto agree to submit to the exclusive jurisdiction of the courts of Kolkata.
17. This Agreement comprises the full and complete agreement of the Parties hereto as at the date hereof with respect to the disclosure of Confidential Information and supersedes and cancels all prior communications, understandings and agreements, if any, between the Parties hereto, whether written or oral, expressed or implied.
18. The Disclosing Party acknowledges that, in the ordinary course of business, the Recipient may be engaged through separate platforms in the origination of loans (including the provision of debt financing for transactions similar to the transactions contemplated herein) and syndicated bank debt, and nothing in this Agreement shall restrict such activities of such other platforms, provided that none of the Confidential Information is used or disclosed in connection therewith and such transactions are not in contravention of the Code or with the corporate insolvency resolution process of the Company.



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

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

Signed by/

for and on behalf of

the Disclosing Party/RP

\_\_\_\_\_

Name:

Designation:

in the presence of

\_\_\_\_\_

Name:

Designation:

Signed by

for and on behalf of

the Recipient/Resolution Applicant

\_\_\_\_\_

Name:

Designation:

in the presence of

\_\_\_\_\_

Name:

Designation:



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**Contact:**



**Shri Sachin Gopal Jathar**

Resolution Professional - Luni Power Company Private Limited  
IBBI Reg. no.: IBBI/IPA-002/IP-N00640/2018-2019/11968

Partner, **AAA Insolvency Professional LLP., Kolkata**

Mousumi Co. Op. Housing Society, 15B, Ballygunge Circular Road, Kolkata - 700019

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