



Expression of Interest Process Document for EMCO Ltd.  
Issued by Resolution Professional of EMCO Limited

IBBI Registration no. IBBI/IPA-001/IP-P00077/2017-18/10162  
Email: rpemco@bdo.in; sundareshbhat@bdo.in ; resolveemco@gmail.com



# EMCO LIMITED

(Under Corporate Insolvency Resolution Process since 22 July 2019)

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## INVITATION FOR EXPRESSION OF INTEREST TO SUBMIT A RESOLUTION PLAN FOR EMCO LIMITED

(Investment opportunity under the Insolvency and Bankruptcy Code 2016)

**Issued by:**

**Mr. Sundaresh Bhat, Resolution Professional of EMCO Limited**

IBBI Registration no. IBBI/IPA-001/IP-P00077/2017-18/10162  
Communications Email Address: [RPemco@bdo.in](mailto:RPemco@bdo.in) ; [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in)

Website: [www.emco.co.in](http://www.emco.co.in)

Phone: +91 9920977977

Insolvency Professional Entity: BDO Restructuring Advisory LLP





**PROCESS DOCUMENT FOR INVITATION FOR EXPRESSION OF INTEREST FOR SUBMISSION OF  
RESOLUTION PLANS FOR EMCO LIMITED ('EOI PROCESS DOCUMENT')**

**1. Introduction**

The Resolution Professional of EMCO Limited ('**EMCOL/Corporate Debtor**') invites Expression of Interest ('**EOI**') from interested bidders/lenders/investors/consortium of investors or any other persons having adequate financial and technical capabilities to submit of Resolution Plans (as per meaning under IBC) for EMCO Limited, which is under Corporate Insolvency Resolution Process ('**CIRP**') since 22 July 2019.

Founded in 1964, EMCOL was one of India's leading products and solutions providers up to 765 kV/ ± 800 kV for power generation, transmission, distribution utilities and industry. It has more than 15 offices and 4 state-of-the-art manufacturing plants across India which are accredited by Bureau Veritas for ISO: 9001, ISO: 14001, OHSAS: 18001 and ISO: 27001. EMCO has been supplying its products and solutions to its customers comprising electric utilities and Industries in India and abroad in more than 50 countries internationally in conformance with National and International Standards like IS, IEC, ANSI, etc. Details regarding EMCOL can be found on its website, [www.emco.co.in](http://www.emco.co.in)

EMCOL was admitted into CIRP vide order of the Hon'ble National Company Law Tribunal, Mumbai bench ('**NCLT**') dated 22 July 2019 (written order made available on 16 August 2019) ('**CIRP Commencement Order**'), under the provisions of the Insolvency and Bankruptcy Code, 2016 ('**IBC**'). Pursuant thereto, Mr. Kedarram Ramratan Ladda ('**IRP**') was appointed as the Interim Resolution Professional of EMCOL. In accordance with section 17(1)(b) read with section 23(2) of the IBC, the powers of the board of directors of the Corporate Debtor are suspended and such powers were vested with the IRP/RP from the date of the CIRP Commencement Order. The Committee of Creditors ('**CoC**') constituted by the IRP, resolved with requisite majority to replace the IRP with Mr. Sundaresh Bhat, Insolvency Professional having IBBI registration no. IBBI/IPA-001/IP-P00077/2017-18/10162 as the Resolution Professional ('**RP**') of EMCOL. The Hon'ble NCLT vide its order dated 14 October 2019 (written order made available on 11 November 2019), confirmed the appointment of Mr. Sundaresh Bhat as the Resolution Professional of EMCOL.

A public announcement under Regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ('**CIRP Regulations**') inviting EOI from Prospective Resolution Applicants ('**Prospective RA**') to submit resolution plans for EMCOL in accordance with IBC, was published on 31 October 2019 ('**Advertisement for EOI**').

This EOI Process Document sets out the detailed process for submission of EOI.

## 2. Submission of EOI

2.1. Applicant must submit EOI both in soft and physical copy, strictly as per the format set out in "**Annexure-A**" along with all records required under "**Schedule-II**" hereunder along with the mandatory requirements set out below:

- (a) Duly executed affidavit-cum-undertaking required under CIRP Regulations 36A(7)(a), 36A(7)(c), 36A(7)(e) and 36A(7)(f) along with an complete list of connected persons as per IBC, strictly in the format set out in "**Annexure-B**" hereunder; and
- (b) Duly executed confidentiality undertaking as required under CIRP Regulation 36A(7)(g), strictly in the format set out in "**Annexure-D**" hereunder; and
- (c) EOI Applicant is required to deposit a refundable process participation fee of Rs. 2,00,000/- (Rupees Two Lacs only) ('**Participation Fee**'). The Participation Fee will be refunded in the event the EOI Applicant decides to withdraw from the process via a email to the RP or if the EOI Applicant is not on the final list of Prospective Resolution Applicants issued by the RP. In the event a Prospective Resolution Applicant decides to submit a resolution plan, the Participation Fee will be adjusted with the EMD amount as stipulated in the Request for Resolution Plan, which will be made available at a later stage. The Participation Fee may be deposited through demand draft/cheque drawn in favour of 'EMCO Limited' - payable at Mumbai or by NEFT/RTGS as per below details:

Beneficiary Name:	EMCO Limited
Bank Name:	Dena Bank (Now Bank of Baroda)
Branch:	Corporate Business Branch, Mumbai
Account Number:	116211021214
SWIFT Code No.:	BKDNINBBCBX
Type of Account:	Current
IFSC Code:	BKDN0461162
SWIFT:	BKDNINBBCBX
NOSTRO BANK:	STANDARD CHARTERED US
SWIFT CODE:	SCBLUS33
ACCOUNT NO:	3582039856001

(d) Evidence for deposit of Participation Fee, like UTR number, post remittance.

2.2. A sealed envelope containing a complete set of the original EOI in hard copy along with the original annexures and documents, to be sent to the following address, as per the requirements below:

**Envelope titled: Expression of Interest (Confidential)**

**Superscript:** **“Expression of Interest for EMCO Limited”**  
 Name of Applicant: [•]  
 Kind Attn: Mr. Sundaresh Bhat  
 Designation: Resolution Professional, EMCO Limited  
 Address: BDO Restructuring Advisory LLP  
 The Ruby – Level 9, NW Wing,  
 Senapati Bapat Marg,  
 Dadar West, Mumbai – 400028.  
 India  
 Email Address of Applicant: [•]

- 2.3. A soft copy of EOI along with annexures and documents stated above should be mailed to [RPEMCO@bdo.in](mailto:RPEMCO@bdo.in), and [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in)
- 2.4. The EOI applicant must meet the eligibility criteria set out in the Advertisement for EOI and under **“Schedule-I”** hereto and submit all records to evidence the same. Applicants to note that not meeting the eligibility criteria will lead to rejection of the EOI.
- 2.5. The annexures, schedules and exhibits required hereunder form an integral part of the EOI.
- 2.6. EOI submissions not fulfilling the above conditions are liable to be disqualified without any further communication, at any stage of the process.

### 3. Process Stages

Stages	Particulars	Last Date
Stage 1	<b>Submission of EOI by EOI Applicants</b> <i>(strictly as per requirements under EOI Process Document and IBC)</i>	15.11.19
Stage 2	<b>Issuance of provisional list of eligible prospective RA by RP</b> <i>(as mandated under Regulation 36A (10) of CIRP Regulations)</i>	20.11.19
Stage 3	<b>Observations (if any) on provisional list of eligible Prospective RA to be submitted to RP</b> <i>(as mandated under Regulation 36A (11) of CIRP Regulations)</i>	25.11.19
Stage 4	<b>Issuance of final list of Prospective RA's by RP</b> <i>(as mandated under Regulation 36A (12) of CIRP Regulations)</i>	30.12.19

<b>Stage 5</b>	<b>Issuance of Request for Resolution Plan, Information Memorandum, Evaluation Matrix to the Prospective RAs</b> <i>(as mandated under Regulation 36B of CIRP Regulations)</i>	25.11.19
<b>Stage 6</b>	<b>Last date for submission of Resolution Plans</b>	24.12.19
Note: The timelines and stages stated above may be modified/extended/altere d/abandoned by the Resolution Professional, at his discretion, without incurring any liability		

#### 4. Terms & Conditions

- 4.1. This is not an offer document and is issued with no commitment or assurances. This intimation document does not constitute and will not be deemed to constitute any commitment or any representation of the RP or Corporate Debtor.
- 4.2. EOI Applicants should regularly visit the website of EMCOL i.e. [www.emco.co.in](http://www.emco.co.in) to keep themselves updated regarding clarifications/amendments/time-extensions etc., if any. Any notice of amendment/alteration/adjournment/postponement/cancellation of the EOI Process shall be published on the website [www.emco.co.in](http://www.emco.co.in) and no public notice thereof is required to be published.
- 4.3. For any clarifications on the process of submission of EOI, the RP can be contacted at [RPEMCO@bdo.in](mailto:RPEMCO@bdo.in). The EOI Applicant however acknowledges that the RP has no obligation to respond to the same and shall incur no liability in case no response is provided.
- 4.4. If EOI Applicant is bidding in consortium, each member of the consortium shall individually submit all documents/annexures required under this EOI Process Document. However, the documents of each member of the consortium shall be submitted to the RP collectively along with a cover letter stating the lead member of the consortium, who will be treated as the prospective resolution applicant and who has to meet the eligibility criteria.
- 4.5. The process for submission of resolution plans shall be subject to terms of a separate detailed process document and its terms and conditions.
- 4.6. It may be noted that the terms and conditions for inviting any EOI Applicants shall be determined by the RP, Committee of Creditors (where applicable) and as per IBC and may be changed/amended or modified at any stage without liability to the RP or Corporate Debtor.

- 4.7. RP and/or COC reserve the right to suspend/abandon/cancel/extend/alter /withdraw or modify the EOI Process or any of the terms/timelines/stages stated hereunder and/or reject or disqualify any EOI Applicant/Prospective Resolution Applicant/resolution plan/bidder/bid/offer at any stage without assigning any reason and without any notice or liability of whatsoever nature. Notwithstanding anything contained herein, the RP, in his sole discretion and without incurring any obligation or liability, reserves the right to at any time waive any term of this process, Advertisement for EOI, EOI Process Document and related processes.
- 4.8. The RP reserves the right to independently verify, disqualify, reject and / or accept any and all EOIs, without assigning any reasons thereof. The RP also reserves the right to call for any further information required to complete the evaluation of the EOI from the EOI Applicant. Confirming Prospective Resolution Applicants will be at the sole discretion of the RP.
- 4.9. No oral communication with the RP or any official, agent or representative of the RP, any creditor or any class of creditors, any member of EMCOL shall affect or modify any terms of this EOI Process Document or related process. Any modifications to this EOI Process Document shall be binding only if such modification/ amendment has been expressly published as a modification and made available to all by its publication on the website of the Corporate Debtor.
- 4.10. The RP may stipulate any additional requirement to meet any eligibility criteria.
- 4.11. Neither the EOI Applicant nor any of representatives of the EOI Applicant shall have any claims whatsoever against the RP or his advisors/ representatives or any of their officials, agents or employees arising out of or relating to the Advertisement for EOI or EOI Process Document.
- 4.12. Submission of an EOI shall render the EOI Applicant agreeable to participating at the current stage at which the resolution process of EMCOL's CIRP is at and participation in accordance with the provisions of EOI Process Document and any other process document.
- 4.13. EOI Applicants or prospective EOI Applicants shall not challenge nor seek extension or relaxation in timelines and/or terms and conditions of the EOI Process Document and Advertisement for EOI.
- 4.14. All EOI Applicants / bidders agree and accept that the RP has the right to accept or reject any EOI or bidder even after the deadline as prescribed herein or at any stage of the resolution process if it is in the best interest of the stakeholders.
- 4.15. By submitting an EOI, each EOI Applicant shall be deemed to acknowledge that it has carefully read the entire Advertisement for EOI and EOI Process Document and has



informed itself as to all existing conditions and limitations and understands that the same are binding on the EOI Applicant.

Sd/-

**SUNDARESH BHAT**

**Resolution Professional of EMCO Limited (in Corporate Insolvency Resolution Process)**

Communications Email Address: [RPEMCO@bdo.in](mailto:RPEMCO@bdo.in) ; [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in) ;  
[resolveemco@gmail.com](mailto:resolveemco@gmail.com)

Contact No.: +919920977977

IBBI Registration no. IBBI/IPA-001/IP-P00077/2017-18/10162

IBBI Registered Email: [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in)

IBBI Registered Address: BDO India LLP, Level 9, The Ruby, North West Wing, Senapati Bapat Road, Dadar (W), Mumbai 400028, INDIA

Insolvency Professional Entity: BDO Restructuring Advisory LLP, Level 9, The Ruby, North West Wing, Senapati Bapat Road, Dadar (W), Mumbai 400028, INDIA

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## **“SCHEDULE-I”**

### **ELIGIBILITY CRITERIA FOR SUBMISSION OF RESOLUTION PLAN FOR EMCOL**

Only those EOI Applicants who meet the eligibility criteria specified below may be considered/short listed by the RP in the resolution process. EOI Applicants which do not meet the aforementioned criteria shall be rejected at the discretion of the RP, without providing any reason or incurring any liability. The RP and CoC reserve the right to revise eligibility criteria at any time. Please refer the detailed eligibility criteria hereinafter:

#### **A. Financial & Technical Capacity**

EOI Applicant must meet the criteria as applicable, as per details below:

- 1) Category A - Private/Public Limited Company, LLP, Body Corporate ('Body Corporates'), whether incorporated in India or outside India
  - Minimum standalone Net worth (NW) of **INR 50 Crore** as on 01 November 2019

- 2) Category B - Financial Institutions (FI)/ Funds / Private Equity (PE) Investors

- Minimum deployable funds of Rs 250 crore as on 30 October 2019

- **In addition to the above, the following shall be considered as an added advantage:**

- a. Experience of the applicant in transformer and power transmission business;
- b. Experience of the applicant in acquisition / turnaround of stressed assets; and
- c. Applicants' overall management strength

- B. EOI Applicant should not have any negative track-record/history for instance, EOI Applicant should not have defaulted on any resolution plan/liquidation sale under IBC or any other restructuring mechanism.

- C. In case of EOI Applicant being a consortium, at least one member of the consortium must meet the eligibility criteria to be considered for qualification and such member meeting eligibility criteria will be treated as the lead bidder and will be required to fulfil all the criteria and requirements under the Advertisement for EOI, EOI Process Document and its amendments.

- D. Any person submitting an EOI shall not be a person ineligible to be a resolution applicant in terms of the IBC including Section 29A of the Code.



**“SCHEDULE-II”**

**MANDATORY DETAILS OF EOI APPLICANT TO BE SUBMITTED**

1. Name and address:  
  
Name of the EOI Applicant:  
Address:  
Telephone No:  
Fax:  
Email:
2. Ownership Structure and Composition of the EOI applicant
3. Date of establishment of EOI Applicant
4. Core area of expertise of the EOI Applicant:
5. Contact Person:  
  
Name:  
Designation:  
Telephone No:  
Email:
6. PAN No. or equivalent details of EOI Applicant
7. Current Address-Proof:
8. Valid e-mail ID:
9. Landline and Mobile Phone number:
10. Authorization to the Signatory (in case the bidder is a legal entity):
11. Bank details of EOI Applicant:
12. Business Profile of the EOI Applicant
13. Legal Documents: Copies of Certificate of Registration and Constitutional Documents of the EOI Applicant
14. Passport copies of EOI applicant’s directors/partners/individual
15. Preceding 3 (three) years audited financial results of the EOI Applicant
16. Demonstration of fund availability, Bank certificate substantiating funds availability of the EOI Applicant. In case of Asset Reconstruction Company or the like, a CA certificate confirming funds deployable will have to be provided – with a view evidencing meeting eligibility criteria set out



in the Advertisement for EOI and EOI Process Document Schedule-I and any other records deemed necessary to evidence eligibility.

17. Board Resolution / Power of Attorney authorizing the submission of EOI and authorizing a person to act on behalf of the EOI Applicant and submit this EOI.
18. Statement giving details if the EOI Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved by the Adjudicating Authority at any time in the past.
19. Details of consortium members and all details as per the paras above in respect of each of the consortium members along with a consortium agreement, if submitting in consortium.



**"ANNEXURE-A"**

**FORMAT FOR EXPRESSION OF INTEREST**

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Date: [●]

To,

**Mr. Sundaresh Bhat**

**Resolution Professional, EMCO Limited**

IBBI Registration no. IBBI/IPA-001/IP-P00077/2017-18/10162

BDO Restructuring Advisory LLP

Level 9, The Ruby, North West Wing,

Senapati Bapat Road,

Dadar (W),

Mumbai 400028, INDIA

Email: [RPEMCO@bdo.in](mailto:RPEMCO@bdo.in) ; [resolveemco@gmail.com](mailto:resolveemco@gmail.com) ; [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in)

**Sub: Expression of Interest ("EOI") for submitting a resolution plan for EMCO Limited ("EMCOL/Company")**

Dear Sir/Madam,

In response to your public advertisement in [*Insert the names of the newspaper and/or website*] on [*Insert date of the advertisement*] and EOI Process Document for submitting of Expression of Interest for submission of resolution plans for EMCOL dated 15 November 2019 (**'EOI Process Document'**), EMCOL being under corporate insolvency resolution process (**'CIRP'**) as per the provisions of the Insolvency and Bankruptcy Code 2016 (**'IBC'**) with effect order of NCLT Mumbai dated 22 July 2019, we, [*insert Name of the Company/ entity*], having registration number [●], at [*Registered Address*] hereby submit our EOI for submitting a resolution plan for EMCOL, along with proof of deposit of an amount of INR 2,00,000/- (Rupees Two Lakh only) towards Participation Fees.

We have enclosed the necessary information and documents required to be submitted along with EOI, as stipulated in the EOI Process Document.

The information furnished by us in this EOI and all supporting/enclosed documents is true, correct and accurate to the best of our knowledge.

We confirm that we meet the eligibility criteria specified in the Advertisement for EOI and EOI Process Document and have submitted all relevant records to evidence meeting of the eligibility criteria and based on this information we understand that the Resolution Professional would be able to evaluate our EOI in order to pre-qualify us for submitting a resolution plan for EMCOL. We confirm that we have understood the eligibility criteria and confirm that we meet the necessary threshold for submission of EOI for EMCOL.

We further confirm that we do not suffer from any ineligibility under section 29A of IBC and have submitted relevant information and records to enable an assessment of ineligibility under Section 29A of IBC and we shall forthwith intimate the resolution professional if we becomes ineligible at any time during the corporate insolvency resolution process of EMCOL.

We hereby agree, acknowledge and undertake that:

- (a) We have reviewed the entire EOI Process Document and are aware of the terms and conditions contained therein and hereby accept the same.
- (b) We agree and acknowledge that the RP does not provide any representation, warranty in relation to the Corporate Debtor and the expression of Interest and the resolution plan proposed to be submitted is based on our own independent verification and diligence.
- (c) We acknowledge that the RP has the sole right to determine at his discretion, whether or not we qualify for the submission of resolution plan and may reject the EOI submitted by us without assigning any reason/without any liability whatsoever;
- (d) The RP reserves the right to request for additional information or clarification(s) from us for the purposes of the EOI and we shall promptly comply with such requirements. Failure to satisfy the queries of RP may lead to rejection of our EOI;
- (e) Meeting the qualification criteria set out in EOI alone does not automatically entitle us to participate in the next stage of the resolution process.
- (f) We will continue to meet the eligibility criteria throughout the resolution process, and any adverse change affecting us, the consortium members or the consortium members ability to perform in consortium (as applicable) shall be intimated within 3 (three) business days to the RP.
- (g) We are not an ineligible person to be a resolution applicant in terms of provisions of the IBC. We are a 'fit and proper' person and not under any legal disability to be a promoter entity of the Company under the applicable laws including listing agreements, stock exchange requirements and SEBI regulations and guidelines and eligible to be a resolution applicant under IBC.
- (h) The enclosures and supporting documents submitted herewith form an integral part of the EOI Submission and that EOI Applicant has submitted all annexures and exhibits required under the EOI Process Document, strictly as per the formats set out therein.

Please see enclosed herewith:

- (1) Details of my firm/company/organization as prescribed under Schedule-II of the EOI Process Document.
- (2) Affidavit-cum-Undertaking under CIRP Regulations 36A(7)(a), 36A(7)(c), 36A(7)(e) and 36A(7)(f) as prescribed in Annexure-B of the EOI Process Document
- (3) Confidentiality Undertaking as per Annexure-C of the EOI Process Document

Sincerely,

**On behalf of the firm/company/organization:**

**Signature:** \_\_\_\_\_

**Name of authorised signatory:**

**Designation:**

Company Seal/stamp

Enclosures: (Annexures)

*[The authorised signatory shall be duly authorised by Board resolution and/or duly executed power of attorney and the expression of interest shall be accompanied with the said resolution/power of attorney authorising the signatory to execute and submit the expression of interest. In case of Consortium Applicant, the EOI shall be signed by each member]*

**“ANNEXURE-B”**

**FORMAT FOR AFFIDAVIT-CUM-UNDERTAKING**

(as required under CIRP Regulations 36A(7)(a), 36A(7)(c), 36A(7)(e) and 36A(7)(f))

<<to be mandatorily executed on Rs. 100 stamp paper and notarize>>

<<please insert all details required in the placeholders [●]>>

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Date: [●]

**Mr. Sundaresh Bhat**  
**Resolution Professional, EMCO Limited**  
**IBBI Registration no. IBBI/IPA-001/IP-P00077/2017-18/10162**

BDO Restructuring Advisory LLP  
Level 9, The Ruby, North West Wing,  
Senapati Bapat Road,  
Dadar (W),  
Mumbai 400028, INDIA  
Email: [RPEMCO@bdo.in](mailto:RPEMCO@bdo.in) ; [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in)

Sub: Affidavit and Undertaking by [●name of person] on eligibility of [●name of EOI Applicant] under Section 29A of the Insolvency and Bankruptcy Code, 2016 and other undertakings required under CIRP Regulations 36A

Dear Sir,

I [●Insert name of the authorized person of the EOI Applicant], son of/ daughter of [●], aged about [●] years, currently residing at [Address to be inserted] and having Aadhaar / Passport number [●], an authorised officer of [●name of the EOI Applicant] having [registered] office at [●] (“**EOI Applicant**”, a term which also includes any person acting jointly with the EOI Applicant), on behalf of the EOI Applicant, do solemnly affirm and state to Mr. Sundaresh Bhat, the Resolution Professional (“**RP**”) of EMCO Limited (“**Company/Corporate Debtor/EMCOL**”) as follows:

1. That the EOI Applicant and any person acting jointly with the EOI Applicant or in concert with EOI Applicant or any person who is a ‘connected person’ (as defined under the Insolvency and Bankruptcy Code, 2016 (“**Code**”)), listed herein as ‘**Exhibit-A**’:
  - a) Is eligible to be a resolution applicant as per its meaning under the Code;
  - b) Is not an un-discharged insolvent;
  - c) Is not a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);
  - d) at the time of submission of the EOI and the bid, does not have an account or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force and at least a period of one year has lapsed from the date of such classification till the date of commencement of the CIRP process of the corporate debtor:

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

Provided further that nothing in this clause shall apply to EOI 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 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 non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such bidder for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under the Code.

- e) Has not 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*;

- f) is not disqualified to act as a director under the Companies Act, 2013 (18 of 2013): Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of *Explanation I*;
- g) Is not prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- h) Has not been a promoter or in the management 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;  
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 bidder pursuant to a resolution plan approved under the Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such EOI Applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;
- i) Has not 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 this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

- j) Is not subject to any disability, corresponding to clauses (b) to (i), under any law in a jurisdiction outside India; or
- k) does not have a connected person not eligible under clauses (a) to (j).

*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 e-auction process applicant; or
- II. Any person who shall be the promoter or in management or control of the assets of the Company pursuant to sale thereof as part of the CIRP of the Company; 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 this Explanation I shall apply to EOI 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."
- 2. That the EOI Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.
  - 3. I declares that the EOI Applicant it is not ineligible to be a Resolution Applicant as per the its meaning and definition under the Code.
  - 4. That in the event any of the above statements are found to be untrue, incomplete or incorrect, then the EOI Applicant unconditionally agrees to indemnify and hold harmless the RP against

any losses, claims or damages incurred by the RP on account of such ineligibility of the EOI Applicant.

5. That the list of the connected persons of the EOI Applicant / or the person acting jointly with it or any of the connected person(s) set out in Exhibit-A hereto is exhaustive and complete in all respects and the names of all the connected persons of the EOI Applicant have been set out thereunder without any omission whatsoever
6. I declare and undertake that in case [*●insert name of EOI Applicant/ or the person acting jointly with it or any of the connected person(s)*] or the person acting jointly with it or any of the connected person(s) becomes ineligible at any stage during the CIRP of the Company, it would inform the RP forthwith on becoming ineligible.
7. I undertake that the EOI Applicant meets the eligibility criteria specified by the committee of creditors of EMCOL (set out in the Advertisement for EOI and EOI Process Document) and EOI Applicant has submitted all relevant records in evidence of meeting the eligibility criteria set out in the EOI Process Document.
8. I undertake that the EOI Applicant has submitted all relevant information and records to enable an assessment of ineligibility to submit a resolution plan under Code/IBC; and the EOI Applicant shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process of the Company;
9. I undertake that every information and records provided in expression of interest by the EOI Applicant is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the Code/IBC;
10. I undertake that the EOI Applicant shall maintain confidentiality of any information received pursuant to the resolution process of EMCOL and information provided by the RP and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29 of the Code.
11. I am duly authorized to submit this declaration by virtue of [*●*]. The said document is true, valid and genuine to the best of my knowledge, information and belief.

(DEPONENT)

#### **VERIFICATION**

I, the deponent above, do hereby solemnly declare and affirm that the above statement given by me is true and correct to the best of my knowledge and belief and nothing stated above is false or misrepresentation or misleading.

(DEPONENT)

[enclose Exhibit-A (List of Connected Persons to EOI Applicant as per meaning under IBC)]





**“ANNEXURE-C”**

**FORMAT FOR CONFIDENTIALITY UNDERTAKING/NON-DISCLOSURE AGREEMENT**  
(as required under CIRP Regulation 36A(7)(g))

<<to be mandatorily executed on Rs. 100 stamp paper and notarize>>  
<<please insert all details required in the placeholders [●]>>

---

Date: [●]

To,  
**Mr. Sundaresh Bhat (‘RP’)**  
**Resolution Professional, EMCO Limited**  
**IBBI Registration no. IBBI/IPA-001/IP-P00077/2017-18/10162**

BDO Restructuring Advisory LLP  
Level 9, The Ruby, North West Wing,  
Senapati Bapat Road,  
Dadar (W),  
Mumbai 400028, INDIA  
Email: [RPEMCO@bdo.in](mailto:RPEMCO@bdo.in) ; [sundareshbhat@bdo.in](mailto:sundareshbhat@bdo.in)

**Sub: Confidentiality Undertaking**

Dear Sir,

1. This acknowledgement and undertaking (“**Undertaking**”) is being furnished by [●insert full name of EOI Applicant] (“**Recipient**”, which term where relevant includes all directors, employees and consultants, successors and assigns of the Recipient), in respect of the Confidential Information (as defined herein) provided / to be provided to us in relation to EMCO Limited (the “**Corporate Debtor**” or the “**Company**”) including in respect of its assets, and is further to the confidentiality obligations of the RP under the provisions of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) which term includes all rules and regulations made thereunder).
2. I/We understand, acknowledge and agree that any and all information supplied, whether by you, the Corporate Debtor or anyone else on your or the Corporate Debtor’s behalf, to us or to any other person on our behalf, including any third parties (“**Secondary Recipient**”) in relation to E-Auction Sale Process including submission of an Expression of Interest, or any information provided pursuant to any request made by us and in each case information whether in written form, electronically or orally shall constitute “**Confidential Information**” for the purposes of this Undertaking.

Confidential Information shall also include information or documents generated or derived by the recipients of Confidential Information that contains, reflects or is derived from any Confidential Information.

However, Confidential Information shall not include:

- (a) information which, at the time of disclosure to the Recipient or Secondary Recipient(s), is in the public domain through no violation of the provisions of the Code or a breach of this

- Undertaking or any similar undertakings executed by the other Stakeholders (which term shall have the meaning in the IBC/Code) of the Corporate Debtor and their respective advisors; or
- (b) information which, after disclosure to the Recipient or Secondary Recipient(s), becomes publicly available and accessible through no violation of the provisions of the Code or a breach of this Undertaking or any similar undertakings executed by the other Stakeholders (which term shall have the meaning in the Code) of the Corporate Debtor and their respective advisors; or
  - (c) information which was, lawfully and without any breach of this Undertaking or any similar undertakings executed by the other Stakeholders (which term shall have the meaning in the Code) of the Corporate Debtor and their respective advisors, known to, or in the possession of, the Recipient or Secondary Recipient(s) prior to its disclosure, as evidenced by the records of the Recipient or Secondary Recipients; or
  - (d) information which is permitted by you or your authorized nominees/ persons to be disclosed solely for legal or regulatory requirements, provided that the obligation upon the Recipient to maintain confidentiality of such information permitted to be disclosed shall continue for all other purposes under this Undertaking;
  - (e) information which was independently developed by any party (including the Recipient and the Secondary Recipient) without breach of this Undertaking, and not on the basis of Confidential Information, that is required to be disclosed on account of an order of a court or due to any requirement of law, regulation or any competent judicial, supervisory, regulatory or administrative authority/ body including the directions of any regulatory authority applicable to, or having jurisdiction over, the Recipient and the Secondary Recipient, or in any other legal proceedings (including the National Company Law Tribunal, Insolvency and Bankruptcy Board of India, any other court, tribunal or government authority) or pursuant to the guidelines of regulatory/administrative authority or stock exchange. The Recipient shall disclose such information only with prior intimation to the RP or the Corporate Debtor or any person authorised on their behalf.
3. The Recipient hereby acknowledges, agrees and undertakes that:
- (a) the Confidential Information provided by the RP (which term shall have the meaning in the Code) in relation to the CIRP of the Corporate Debtor has been accepted by the Recipient and shall be utilized only in accordance with the Code;
  - (b) this undertaking shall be valid in perpetuity.
  - (c) the Confidential Information shall be kept secret and confidential by the Recipient and shall be used solely as allowed under the Code;
  - (d) the Recipient shall not use Confidential Information to cause an undue gain or undue loss to itself or any other person;
  - (e) the Recipient shall comply with the provisions of law from time to time in force relating to confidentiality and insider trading;
  - (f) the Confidential Information may only be disclosed to and shared with third parties (the "Secondary Recipients"), in accordance with applicable laws, including in relation to confidentiality and insider trading, and terms of this Undertaking on a strict need-to-know basis and only to the extent necessary for and in relation to participation in the CIRP process of the Corporate Debtor, provided that the Recipient shall ensure that such Secondary Recipients shall strictly be bound by obligations that are at least as restrictive as those stated in this Undertaking. The Recipient shall be liable for any breach of this Undertaking due to any action or omission of any Secondary Recipient and in this regard this Undertaking would be read as if the Secondary Recipient were a party hereto with all references to Recipient being a reference to Secondary Recipient;

- (g) it shall immediately disclose to the RP, if so required by the RP, the names and details of any and all Secondary Recipients;
  - (h) it shall ensure that all Confidential Information is kept safe and secured at all times and is properly protected against theft, damage, loss or unauthorised access, hacking, etc.;
  - (i) by virtue of this Undertaking, it has not acquired, does not and shall not acquire at any time hereafter any right, title or interest of any nature whatsoever in the Confidential Information including any intellectual property;
  - (j) the Recipient shall protect any intellectual property of the Corporate Debtor it may have access to;
  - (k) no representation or warranty has been provided in relation to the authenticity or adequacy of the information provided, including Confidential Information, for the purposes for which the same has been received /sought by the Recipient and the Recipient shall not have any claim against the Corporate Debtor or the RP in relation to any information provided. Further the Recipient merely because of receipt of any information or execution of this Undertaking shall not have any rights or entitlement against the RP for undertaking any action/transaction in connection with the CIRP of the Corporate Debtor.
4. Recipient acknowledges and agrees that in the event of breach or threatened breach of the terms of this Undertaking, the Corporate Debtor shall suffer irreparable damages, for which monetary compensation may be an inadequate remedy. Accordingly, it is agreed that in addition to any other remedy to which they jointly or severally may be entitled to at law or in equity, the RP and the Corporate Debtor jointly or severally shall be entitled to seek an injunction to prevent a breach or threatened breach of this Undertaking and/ or specific performance of the terms of this Undertaking and/or any other remedies available at law. The Recipient shall indemnify you and the Corporate Debtor on demand in respect of any type of liability, loss, damage, claims and expenses (including legal/attorney fees) arising out of or in connection with breach of this Confidentiality Undertaking by the Recipient.
5. This Undertaking and any dispute, claim or obligation arising out of or in connection with it shall be governed by and construed in accordance with Indian law and the courts and tribunals at Mumbai shall have exclusive jurisdiction over matters arising out of or relating to this undertaking.

IN WITNESS WHEREOF I/We have set our hands hereunder on this \_\_\_\_\_day of \_\_\_{Month}, 2019 at \_\_\_\_\_.

SIGNED AND DELIVERED BY:

For and on behalf of \_\_\_\_\_

WITNESS:

(Signature)  
(Name)  
(Address)

(Signature)  
(Name)  
(Address)