

ANNEXURE II: FORMAT OF AFFIDAVIT UNDER 29A OF THE IBC 2016

[To be submitted by each Prospective Bidder and in case the Prospective Bidder is a consortium, then to be submitted by each member of such consortium]

[To be stamped with adequate value under the Stamp Act applicable to the particular state and duly attested by Notary Public]

AFFIDAVIT

I, [name of the chairman/managing director/director/authorized person of Prospective Bidder], son of [____], aged about [____] years, currently residing at [Address to be inserted] and having Aadhaar / Passport number [____], on behalf of [name of the Prospective Bidder] having registered office at [____] ("**Prospective Bidder**") pursuant to [authorization of the Board of Directors/Power of Attorney] of the Prospective Bidder dated [____] (as enclosed herewith), do solemnly affirm and state to the liquidator ("**Liquidator**") of Beta Infratech Private Limited (In Liquidation) ("**Corporate Debtor**") as follows:

- a. That I am duly authorized and competent to make and affirm this affidavit for and on behalf of the Prospective Bidder in terms of [resolution of its board of directors/ power of attorney dated [____]]. I hereby unconditionally state, submit and confirm that the document is true, valid and genuine.
- b. I hereby unconditionally state, submit and confirm that the Prospective Bidder is not disqualified from submitting the expression of interest ("**EOI**") in respect of the Corporate Debtor, pursuant to the provisions of the Insolvency and Bankruptcy Code, 2016 ("**Code**").
- c. That neither the (i) Prospective Bidder nor (ii) any person acting jointly or in concert with the Prospective Bidder nor (iii) any person who is a connected person (as defined under the provisions of the Code) of (a) the Prospective Bidder or (b) any person acting jointly or in concert with the Prospective Bidder:
 - a) is an un discharged insolvent;
 - b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
 - c) is, at the time of submission of this EOI¹, a person who (i) has an account which has been 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, or (ii) controls or manages or is the promoter of a corporate debtor whose account has been, 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 such classification has continued for a period of one year or more from the date of such classification till the date of commencement of the corporate insolvency resolution process of the Corporate Debtor and all such overdue amounts along with interest, costs and charges thereon has not been paid;

¹ In the event:

- (1) the Applicant is a financial entity and is not a related party to the Corporate Debtor; or
- (2) the Applicant has an account, or is in management or control or is the promoter of a corporate debtor that has an account,

- d) has been disqualified to act as a director under The Companies Act, 2013;
 - e) has been convicted of any offence punishable with imprisonment:
 - i. for two years or more under any statute specified under the Twelfth Schedule of the Insolvency and Bankruptcy Code, 2016 and two years have not passed from the date of release from such imprisonment; or
 - ii. for seven years or more under any law for the time being in force and two years have not passed from the date of release from such imprisonment;
 - f) is prohibited by Securities and Exchange Board of India from trading in securities or accessing the securities markets;
 - g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction or undervalued transaction or extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Hon'ble National Company Law Tribunal (or its appellate tribunal / court) under the Insolvency and Bankruptcy Code, 2016 (other than a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction which has taken place prior to the acquisition of the corporate debtor by the Prospective 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 the Prospective Bidder has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction);
 - h) has executed a guarantee in favour of a creditor, in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under the Insolvency and Bankruptcy Code, 2016 where such guarantee has been invoked by the creditor and remains unpaid in full or part; and
 - i) is subject to any of the aforesaid conditions under any law in a jurisdiction outside India.
- d. That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons.
- e. That the Prospective Bidder unconditionally and irrevocably represents, warrants and confirms that it is eligible under the terms and provisions of the Insolvency and Bankruptcy Code, 2016 and the rules and regulations thereunder to submit an EOI for participating in the sale process of the Corporate Debtor/ its assets, and that it shall provide all documents, representations and information as may be required by the Liquidator to substantiate to the satisfaction of the Liquidator that the Prospective Bidder is eligible under the Code and the rules and regulations thereunder to submit an EOI for participating in the sale process of the Corporate Debtor/ its assets.

classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under the Code, and a period of three years has not elapsed since from the date of approval of such resolution plan by the Adjudicating Authority (as defined under the Code),
the following clause shall be substituted as para (c) herein:

"is disqualified by the terms of S.29A(c) of the Code since at the time of submission of the resolution plan is a person who is exempted under Explanation I and II of Section 29A (c) of the Code".

- f. That the Prospective Bidder 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.
- g. That the Prospective Bidder understands that the Liquidator may evaluate the EOI submitted by the Prospective Bidder or any other person acting jointly with it and such evaluation shall be on the basis of the confirmations, representations and warranties provided by the Prospective Bidder under this affidavit.
- h. That the Prospective Bidder agrees that the Liquidator is entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the EOI submitted by the Prospective Bidder.
- i. That in the event any of the above statements are found to be untrue or incorrect, then the Prospective Bidder unconditionally agrees to indemnify and hold harmless the Liquidator against any losses, claims or damages incurred by the Liquidator on account of such ineligibility of the Prospective Bidder.
- j. That the Prospective Bidder agrees and undertakes to disclose/inform forthwith, to the Liquidator, if the Prospective Bidder becomes aware of any change in factual information in relation to it or its connected person (as defined under the Code) which would make it ineligible under the provisions of Section 29A of the Code at any stage of the sale process.
- k. That if, at any time during the sale process, the Prospective Bidder becomes ineligible to acquire the Corporate Debtor/ its assets as per the provisions of the Code (and in particular Section 29A of the Code), the fact of such ineligibility shall be forthwith brought to the attention of the Liquidator.
- l. That this affidavit shall be governed in accordance with the laws of India and the Adjudicating Authority shall have the exclusive jurisdiction over any dispute arising under this affidavit.

Any capitalized and undefined term shall have the meaning assigned to it in the detailed invitation for expression of interest dated [●].

SOLEMNLY AFFIRMED AT _____
ON THIS THE [_____] DAY OF [_____] 2021.

DEPONENT

VERIFICATION:

I, [name of the chairman/managing director/director/authorized person of Prospective Bidder, authorised by the Board of the Prospective Bidder (in case of a company) for giving such affidavit], the deponent above named, on behalf of [name of the Prospective Bidder], having registered office at [_____] , do hereby verify and state that the contents of the above affidavit are true to the best of my knowledge and nothing material has been concealed therein.

Verified at _____, on this the [_____] day of [_____] 2021.

DEPONENT