

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

New Delhi BENCH-II, New Delhi

IN

CA No. 734 of 2018

IN

CP(IB) No. 525/ND/2017

UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016

AND

IN THE MATTER OF:

M/S SHIVKALA DEVELOPERS PRIVATE LIMITED (IN LIQUIDATION)

CIN: U45201DL2004PTC125222

E- AUCTION PROCESS DOCUMENT

Invitation for bids for sale of the Company namely, “Shivkala Developers Private Limited (In Liquidation)” as per the regulation 32 (e) & (f) of IBBI (Liquidation Process) Regulations, 2016 as a going concern under the provisions of Insolvency and Bankruptcy Code, 2016

DATE: 06.05.2022

Liquidator

Mr. Anup Kumar

Liquidator

Reg. No.: IBBI/IPA-002/IP-N00333/2017-18/10911

Communication Add: C-708, I-Thum Tower-C,

Plot No. A, Sector-62, Noida-201301

Contact No.: 8929015290

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DISCLAIMER

*This document is issued by Mr. Anup Kumar, Liquidator of M/s Shivkala Developers Private Limited for general information purposes, to provide general information only, without regard to specific objectives, suitability and the requirements of financial situations or particular person. The purpose of this document is to set out the process for submitting auction bids for the Company M/s Shivkala Developers Private Limited (in liquidation) (the “**Company**”) as a going concern Company in accordance with the Insolvency and Bankruptcy Code, 2016 (‘**IBC**’). Nothing herein or in materials relating to the E-Auction Process Document is intended to be construed as legal, financial, accounting, regulatory or tax advice by the Liquidator or his professional advisors. This E-Auction Process Document is personal and specific to each auction process participant. Neither this E-Auction Process Document nor anything contained herein shall form the basis of, or be relied upon in connection with any contract, agreement, undertaking, understanding or any commitment whatsoever.*

The information in this E-Auction Process Document and any information provided earlier or subsequently, whether verbally or in documentary or any other form by or on behalf of the Liquidator, which does not purport to be comprehensive, is provided by the Company and has not been independently verified by the Liquidator or his professional advisors. While this information has been prepared in good faith, no representation or warranty, expressed or implied, is or will be made and no responsibility or liability is or will be accepted by the Liquidator, his professional advisors, the Company or by any of their respective officers, employees or agents in relation to the accuracy, fairness, authenticity or completeness of this E- Auction Process Document or any other written or oral information made available to any Interested Bidder(s) or its advisers and any such liability is expressly disclaimed.

In so far as the information contained in this E-Auction Process Document and any information provided earlier or subsequently includes current or historical information, the accuracy, adequacy, authenticity, correctness, fairness, and completeness of such information cannot be guaranteed. The information provided to the Interested Bidder(s) may contain statements describing documents and agreements in summary form and such summaries are qualified in their entirety with reference to such documents and agreements. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as complete.

The Liquidator accepts no responsibility for the accuracy or otherwise for any statement contained in the E-Auction Process Document and any information provided earlier or subsequently and expressly disclaims any and all liability, which is based on the information and statements or any part thereof contained in / omitted from the E-Auction Process Document and any information provided earlier or subsequently. Cognizance should also be taken of the fact that the Liquidator does not give any assurance or warranty of the physical condition of assets and their suitability for any sort of operation that the Interested Bidder envisages. Each Interested Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information provided in this E-Auction Process Document and any information provided earlier or subsequently and obtain independent advice from appropriate sources.

By acceptance of this E-Auction Process Document and submission of the Bid (defined herein after in the document), the Interested Bidder(s) shall be deemed to have acknowledged that it has not relied upon any representation and warranty made by the Liquidator and / or his professional advisors. The submission of the Bid means and implies that the Interested Bidder has read carefully and unconditionally and irrevocably agreed to and accepted all the terms and conditions laid herein. This document has not been filed, registered or approved and will or may not be filed, registered, reviewed or approved by any statutory or regulatory authority in India or any other jurisdiction.

The Liquidator has no responsibility towards the authenticity of the trademark/brand used in relation to the products of the Company. Interested Bidder(s) is / are advised to conduct their own legal diligence towards continuing with the same name in the hands of the Successful Bidder (defined herein after in the document). The Liquidator does not constitute advice and should not be held responsible for any sort of claim on use of such trademark /brand by any constitution / party (including related party(s). The Liquidator hereby excludes any warranty, express or implied by any party on such trademark / brand name. No responsibility is taken by the Liquidator regarding any implications on the future usage of such trademark / brand name.

This E-Auction Process Document and information contained herein or disclosed pursuant to the terms of this E-Auction Process Document or any part of it does not constitute or purport to constitute any advice or information in publicly accessible media and should not be printed, reproduced, transmitted, sold, distributed, or published by the recipient without prior written approval from the Liquidator. Distributing or taking /sending /dispatching /transmitting this E-Auction Process Document in certain foreign jurisdictions may be restricted by law, and Persons in whose possession this E-Auction Process Document comes should inform themselves about, and observe, any such restrictions.

Neither the Liquidator, nor his professional advisors, affiliates, directors, employees, agents, representatives or managers of the process shall be liable for any damages, whether direct or indirect, incidental, special or consequential including loss of revenue or profits that may arise from or in connection with the use of this E-Auction Process Document, including for the Interested Bidder not being selected as a Successful Bidder or on account of any decision taken by the Liquidator.

The Liquidator and /or the Company give no undertaking to provide the recipient with access to any additional information or to update this E-Auction Process Document or any additional information, or to correct any inaccuracies in it which may become apparent, and they reserve the right, without giving reasons, at any time and in any respect, to amend or terminate the procedures set herein or to terminate negotiations with any Interested Bidder. The issue of this E-Auction Process Document shall not be deemed to be any form of commitment on the part of the Liquidator or the Company to proceed with any transaction.

In addition to the provisions set out in this E-Auction Process Document, the Interested Bidder shall be responsible for fully satisfying the requirements of the IBC and related Regulations as well as all laws in force that are or may be applicable to the Interested Bidder or the sale process and for obtaining requisite regulatory or other approvals, if any, that are or may be required under

applicable law and nothing contained in this E-Auction Process Document shall be deemed to relieve, wholly or partially, directly or indirectly, the Interested Bidder from compliance with the IBC and related Regulations as well as any other law in force, and / or any instrument having the force of law as may be applicable and nothing in this E-Auction Process Document shall be construed as, or operate either, wholly or in part, as exempting the Interested Bidder from complying with all such laws, as are or may be applicable.

By procuring a copy of this E-Auction Process Document, the recipient accepts the terms of this disclaimer notice, which forms an integral part of this E-Auction Process Document and all other terms and conditions of this E-Auction Process Document. Further, no Person, including the Interested Bidder shall be entitled under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise to claim for any loss, damage, cost or expense which may arise from or be incurred or suffered on account of anything contained in this E-Auction Process Document or otherwise, including the accuracy, adequacy, authenticity, correctness, completeness or reliability of the information or opinions contained in this E-Auction Process Document or any other information and any assessment, assumption, statement or information contained therein or deemed to form part of this E-Auction Process Document, and the Liquidator, his professional advisors, the Company, and their affiliates, directors, employees, agents, representatives or managers do not have any responsibility or liability for any such information or opinions and therefore, any liability or responsibility is hereby expressly disclaimed.

All expenses incurred towards movement / shifting of plant & machinery or any asset post the e-auction process should be borne and paid by the Successful Bidder. The Liquidator shall not be held responsible / liable to pay any expenses towards such movement of plant & machinery or any asset sold in the auction process.

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

All the assets /asset lots of the Company are to be sold on “As is where is basis”, “As is what is basis”, “Whatever there is basis” and “No Recourse” basis. The proposed sale of assets /asset lots of the Company does not entail transfer of any title except the title which the Company had on the assets as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the moveable /immoveable assets of the Company.

The Interested Bidder shall bear all its costs and charges associated with or relating to the preparation and submission of its bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Liquidator or any other costs incurred in connection with or relating to its bid.

This E-Auction Process Document is neither transferable nor assignable.

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1. **INFORMATION ABOUT THE E - AUCTION:**

M/S Right2Vote Infotech Private Limited (“E-Auction Service Provider” or “Agency”) has been appointed as the E- Auction Service Provider. The sale of the Company will be on an “as is where is and as is what is without any recourse” basis and shall be undertaken by the Agency for and on behalf of the Liquidator through an e-auction platform provided on the website portal of the E- Auction Service Provider (“**Platform**”). Other details of the e – auction are as follows:

Type of Bid	E – Auction
Liquidator	Mr. Anup Kumar, Liquidator of M/s Shivkala Developers Private Limited (in liquidation)
Website of E- Auction Service Provider	https://right2vote.in
Address of E Auction Service Provider	M/S Right2Vote Infotech Private Limited B406, Hill Side, Raheja Vihar, Chandivali, Mumbai - 400072 Email: contact@right2vote.in & neeraj@right2vote.in Contact person name: Mr. Neeraj Gutgutiya Phone No. 91- 9920591306
Company	M/s Shivkala Developers Private Limited (In Liquidation)
Annexures	Annexure-1: <i>Notarized Affidavit certifying eligibility under Section 29A of IBC)</i> Annexure-2: Bid Application form <i>(to be duly filled in and signed by the Interested Bidder)</i> Annexure-3: Declaration by the interested bidder <i>(to be duly filled in and signed by the Interested Bidder)</i> Annexure-4: <i>Copy of resolution passed by the board of directors of the Interested Bidder.</i> Annexure-5: <i>Assets of the Corporate Debtor</i>
Special Instructions	The bidding is a serious matter and last-minute bidding may lead to mistake or lapses. Neither the E – Auction Service Provider nor the Liquidator will be responsible for any lapses /failure on the part of the bidder.

2. **E- Auction Schedule:**

- 2.1 Description of the Assets, manner of the sale, Inspection Date, Reserve Price, EMD amount & documents submission deadline and Bid Incremental value are as follows:

Description	Manner of Sale	Date and Time of Auction	Reserve Price (INR)	EMD Amount & Documents submission deadline	Bid Incremental value
Corporate Debtor as a going concern comprising of assets as mentioned in the E-Auction Process Memorandum.	As going concern	20 th May, 2022 @ 11:00 a.m. to 05:00 p.m.	43,98,10,628/- (INR Forty Three Crore Ninety Eight Lakh Ten Thousand Six Hundred Twenty Eight Only)	3,25,00,000/- (INR Three Crore Twenty Five Lakhs Only)	50,00,000/- (INR Fifty Lakhs Only)

Note: The Liquidator reserves the right to amend the key terms of the auction process including reserve price, earnest money deposit, bid incremental values and timelines at her sole discretion, to the extent permissible under the applicable laws and regulations. Any information about amendments /extension of any of the timelines will be available on the E-auction website and communicated to the Qualified Bidder. **Accepting/rejecting any or all the bids is at the sole discretion of the Liquidator without assigning any reason whatsoever.**

3. **Important Information:**

- 3.1 This E-Auction Process Document has been issued with the intent to carry out e-auction (**E-Auction**) of M/s Shivkala Developers Private Limited (In Liquidation) as a going concern under the provisions of the Insolvency and Bankruptcy Code, 2016 (**IBC**) and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Process Regulations**).
- 3.2 All information provided in this E-Auction Process Document should be read together with the provisions of the IBC and the Liquidation Process Regulations. In the event of a conflict between this E-Auction Process Document and the IBC or the Liquidation Process Regulations, the provisions of the IBC or the Liquidation Process Regulations, as the case may be, shall prevail.
- 3.3 This E-Auction Process Document is neither a prospectus, nor an offer document nor a letter of offer for sale of the Company as a going concern or an official confirmation of any transaction entered into by the Company or an agreement by the Liquidator to the Interested Bidders or any other person. The E-Auction Process Document purports to ascertain interest

of potential applicants and does not create any kind of binding obligation on the part of the Liquidator, his/her professional advisors or the Company to effectuate the sale of the assets of the Company.

- 3.4 The Liquidator may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this E-Auction Process Document.
- 3.5 The issue of this E-Auction Process Document does not imply that the Liquidator is bound to select an Interested Bidder as Successful Bidder for the company as a going concern and the Liquidator reserves the right to reject all or any of the Interested Bidders or bids without assigning any reason whatsoever.
- 3.6 Each Interested Bidder shall bear all its costs and charges associated with or relating to the preparation and submission of its bid and /or participation in the e-auction, including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Liquidator or any other costs incurred in connection with or relating to its bid.
- 3.7 All terms and conditions with respect to the sale of the company shall be governed by the directions of the Liquidator, National Company Law Tribunal (NCLT), New Delhi Bench and in accordance with the provisions of applicable laws. The Liquidator shall exercise all rights with respect to sale of the Company and it would be open to the Liquidator to appoint such experts, professionals or other persons, as the Liquidator might think necessary.
- 3.8 The Annexures to this E-Auction Process Document shall form an integral part hereof and this E-Auction Process Document shall always be read in conjunction with the Annexures hereto. In the event of any inconsistency between the terms contained in the E-Auction Process Document and that of the Annexures, the terms contained in the Annexures shall prevail.
- 3.9 The title documents relating to the asset(s), to the extent available, shall be provided on request to be made to the Liquidator at irp.shivkala@gmail.com

4. DEFINITIONS:

- 4.1 “**Adjudicating Authority**” or “**NCLT**” shall mean the Hon’ble National Company Law Tribunal, New Delhi Bench;
- 4.2 “**Affiliate**” in relation to a Person,
 - (a) Being a corporate entity, or limited liability partnership shall mean any entity or Person, which Controls, or is controlled by, or is under the common Control as such Person;

- (b) Being an individual shall mean any relative (as defined under the Companies Act, 2013) of such individual or any other Person which is controlled by such individual;
- (c) Being a partnership firm shall mean the partners of such partnership firm or the relatives (as defined under the Companies Act, 2013) of such partners (if any individual) or any other Person which is controlled by such firm or the partners;
- 4.3** “**Agency**” shall mean E-Auction Service Provider (M/S Right2Vote Infotech Private Limited)
- 4.4** “**Applicable Laws**” shall mean, all applicable laws, regulations, rules, guidelines, circulars, re-enactments, revisions, applications and adaptations thereto, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority, rules, regulations, orders and interpretations of any governmental authority, court or statutory or other body applicable for such transactions including but not limited to the IBC, Liquidation Process Regulations, Companies Act, 2013, Competition Act, 2002, Transfer of Property Act, 1882, Sale of Goods Act, 1930, Foreign Exchange Management Act, 1999, whether in effect as of the date of this E-Auction Process Document or thereafter and each as amended from time to time;
- 4.5** “**E-Auction Process Document**” shall mean this document including all the annexures hereto, for the purposes of setting out the process for submission of a bid and selection of Successful Bid in accordance with the provisions of the IBC and shall include all supplements, modifications, amendments, alterations or clarifications thereto issued in accordance with the terms hereof;
- 4.6** “**Associate Company**”, in relation to another company, means a company in which the Bidder has a significant influence in terms of the Companies Act of 2013, and includes an Affiliate of the Bidder having such influence and includes a joint venture company;
- 4.7** “**Bid**” shall mean any bid submitted by the Qualified Bidders as required in terms of this E-Auction Process Document and in accordance with the provisions of IBC read together with the Liquidation Process Regulations and the Applicable Laws;
- 4.8** “**Bidder**” shall mean a person or persons who submitted their bid as per this E-Auction Process Document and shall include a qualified bidder and successful bidder as the case may be and the context requires;
- 4.9** “**Bid Form**” shall mean the bid form required to be submitted by an Interested Bidder, as per Annexure 1;
- 4.10** “**Bid Incremental value**” shall mean the minimum amount over and above the last highest bid amount by which any participating Qualified Bidder will be required to increase the next bid on the auction portal;

- 4.11** “**Control**” together with its grammatical variations, when used with respect to any Person shall mean the power to direct the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, shareholders’ agreements, voting agreements, by contract or otherwise; provided that, in any event: (i) the direct or indirect ownership of more than 25% (twenty five per-cent) of the voting securities of a Person; or (ii) the right to appoint and/or remove the majority of the members of the board of directors or other governing body of a Person, shall be deemed to constitute Control of such Person;
- 4.12** “**Declaration**” shall mean the Interested Bidder’s declaration as per Annexure 3;
- 4.13** “**IBC**” shall mean Insolvency and Bankruptcy Code, 2016 and the related rules and regulations issued thereunder, as amended from time to time;
- 4.14** “**Interested Bidder**” shall mean any person or persons who have submitted the Request Letter for Participation along with signed Bid Form, notarized affidavit, signed Declaration, requisite Earnest Money and other necessary documents to complete the eligibility check formalities to the satisfaction of the Liquidator and who is not yet accepted by the Liquidator as a Qualified Bidder;
- 4.15** “**Liquidator**” shall mean an insolvency professional appointed as a liquidator in accordance with section 34 of the IBC;
- 4.16** “**Liquidation Process Regulations**” shall mean the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 as amended from time to time;
- 4.17** “**Person**” shall mean an individual, a partnership firm, an association, a corporation, a limited company, a trust, a body corporate, bank or financial institution or any other body, whether incorporated or not;
- 4.18** “**Qualified Bidder**” shall mean an Interested Bidder who completed the eligibility check formalities to the satisfaction of the Liquidator and who the Liquidator has notified as accepted by the Liquidator as a Qualified Bidder;
- 4.19** “**Reserve Price**” shall mean the minimum price at which a bid will be accepted on the auction portal from a participating Qualified bidder;
- 4.20** “**Successful Bidder**” shall mean the Qualified Bidder whose bid is approved and who is declared as such by the Liquidator at the end of the determined auction process;

Capitalized terms used herein but not defined otherwise shall have meaning prescribed to them under the provisions of the IBC and the rules and regulations thereunder.

5. INTRODUCTION:

- 5.1 The Hon'ble National Company Law Tribunal, New Delhi, Special Bench ("NCLT") has, vide its order dated 24th November, 2021 passed in CA No. 734 of 2018 in CP (IB) NO. 525/ND/2017 under Insolvency and Bankruptcy Code, 2016 in the matter of M/s Shivkala Developers Private Limited ("Order"), appointed Mr. Anup Kumar, to act as Liquidator under Insolvency and Bankruptcy Code, 2016 for liquidating M/s Shivkala Developers Private Limited ("Company").
- 5.2 The Liquidator intends to sell the Company as a going concern to get maximum value of the assets of the Company in its capacity as a liquidator as provided under Regulation 32A of the Liquidation Process Regulations and (where applicable and permitted by the Adjudicating Authority), by E- Auction conducted in the manner specified in Schedule I and in the manner specified in this E-Auction Process Document.
- 5.3 The E-Auction service provider will provide User ID & Password to the qualified bidders after due verification of requisite documents submitted by the Interested Bidders as stated herein to the satisfaction of the Liquidator.
- 5.4 The E-Auction / bidding would be conducted exactly on the scheduled date & time as mentioned above by way of *inter-se* bidding amongst the Qualified Bidders. A Qualified Bidder may improve its offer in multiple of amount mentioned under the column "Bid Incremental Value". In case a bid is placed within the last 5 minutes of the closing time of the E-Auction, the closing time will be automatically extended for 5 minutes.
- 5.5 The Qualified Bidders are encouraged to acquaint themselves with the provisions of the IBC and the Liquidation Process Regulations and any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations as the case may be, and also UP RERA, 2016 and by Laws of Noida Development Authority, rules made thereunder.

6. TERMS AND CONDITION OF THE E-AUCTION ARE AS UNDER:

The sale of the company as a going concern mentioned in this E-Auction Process Document and the notice of sale dated 06th May, 2022 published by the Liquidator pursuant to the appointment by the Hon'ble NCLT New Delhi, Bench-II, shall be subject to the following conditions and the conditions set out in ANNEXURES.

ELIGIBILITY CRITERIA : The bidder who is eligible for participate in the E-Auction Process having available net worth for rupees more than 50Cr. for last three years.

6.1 Nature and object of the E-Auction:

The online e-auction sale is with the object of facilitating a free, fair and transparent sale of the Company and for achieving best-possible recovery for the Company.

6.2 Cautions to Bidders:

- a. The auction is being conducted strictly on an “**as is where is basis**”, “**As is what is basis**”, “**Whatever there is basis**” and “**No Recourse Basis**”.
- b. Bidders are advised to go through all the terms and conditions of sale given in this E-Auction Process Document and also in the Notice of Sale before participating in the online bidding/auction.
- c. The e-auction shall entitle the Successful Bidder to all the rights of the incumbent holder in respect of the properties. Details of the assets as stated in Annexure 5 of this E-Auction Process Document are as per the details available with the Liquidator and neither the Liquidator nor the Agency shall, in any way, be responsible for any variation in the extent of the properties due to any reason.

6.3 Inspection of the Assets Buyers Beware:

- a. Bidders are requested to inspect the Properties and satisfy themselves regarding the area, physical nature, condition, extent etc., of the Properties prior to submission of their online bids. All costs incurred in connection with such inspection shall be borne by the Bidders.
- b. Bidders advised / cautioned to verify with the sub-registrar’s office as well as obtain and analyze the revenue records with respect to the Properties and to satisfy themselves regarding the existence, title, nature, description, condition, existing encumbrances, liens, charges, statutory dues, etc., over the Properties before submitting their bids.
- d. The Agency / the Liquidator shall not be responsible for rendering any assistance to the Bidder in connection with its independent inspection of the Properties.
- e. Bidders are bound by the principle of Caveat Emptor (buyers beware).
- f. Bidders are requested to submit their bids only after conducting their own independent due diligence exercise with respect to their title to the properties.

6.4 Documents to be submitted:

- a. The auction shall be conducted through the process of an e-auction facilitated by the Liquidator. The Liquidator/ E-Auction Service Provider shall inform the Bidders *via* email of the procedure for obtaining access to the Platform for the purposes of uploading necessary forms and documents thereat and making bids thereon.

- b. Each intending bidder shall, pursuant to gaining access to the Platform, provide such details as may be required by the E-Auction Service Provider.
- c. Thereafter, the Bidders would be required to upload or may submit to the Liquidator in person the following documents along with their latest audited financial statements.
 - (I) Individual Bidders or Bidders in the nature of Hindu Undivided Families (“HUFs”) would be required to upload the following:
 - i. Copy of the valid passport or voter’s ID or valid driving license or Aadhar card or photo identity card issued by Govt./ PSU; and
 - ii. Copy of the permanent account number (“PAN”) card and in case the copy of the PAN card is not available with the Bidder, an affidavit stating the reason for not holding a valid PAN card on a stamp paper of Rs. 100/- (Rupees One Hundred only) in lieu of the PAN card shall be submitted.

It is clarified that in the case of an HUF, the Karta of the HUF would have to upload his own passport/ voter ID/ driving license/ Aadhar card/photo identity card issued by Govt. / PSU.

- (II) Non-Resident Indian(s) would be required to upload the following documents:
 - i. their passport and residence visa copies duly attested by foreign offices or notary public or the Indian embassy; and
 - ii. a copy of the PAN card and in case the copy of the PAN card is not available with the Bidder, an affidavit stating the reason for not holding a valid PAN card on a stamp paper of Rs. 100 (Rupees One Hundred only) in lieu of the PAN card shall be submitted.
- (III) Proprietary concerns shall upload any two documents evidencing the identity and address proof of the proprietor and proprietorship concern. The proprietor should also provide a copy of the permanent account number (“PAN”) card and in case the copy of the PAN card is not available, an affidavit stating the reason for not holding a valid PAN card on a stamp paper of Rs. 100 (Rupees One Hundred only) in lieu of the PAN card shall be submitted.
- (IV) Partnership firms and limited liability partnerships shall be required to submit any two documents providing the identity and address proof of the partnership or limited liability partnership, as applicable, any 2 (two) documents evidencing the identity and address proof the partner authorized to act on behalf of the partnership or limited liability partnership, as the case may be, and the following documents:

- i. Registration certificate or incorporation certificate, if any, as applicable;
- ii. Partnership deed or limited liability partnership agreement, as applicable;
- iii. Audited Balance Sheet and Profit & Loss Account for last two years.
- iv. Net worth certificate certified by the statutory auditor.
- v. An officially valid document in respect of the person holding a power of attorney to transact on behalf of the partnership or copy of the resolution passed by the partners of the limited liability partnership or other valid document evidencing authority of the designated partner to transact on behalf of the limited liability partnership; and
- vi. Copy of the permanent account number (“PAN”) card of the partnership firm/ limited liability partnership and in case the copy of the PAN card is not available, an affidavit stating the reason for not holding a valid PAN card on a stamp paper of Rs. 100/- (Rupees One Hundred only) in lieu of the PAN card shall be submitted.

(V) Companies shall be required to submit any two documents evidencing the identity and address proof of the company and the following documents

- i. Certificate of Incorporation;
- ii. Audited Balance Sheet and Profit & Loss Account for last two years.
- iii. Net worth certificate certified by the statutory auditor.
- ii. A resolution from the shareholders/ Board of Directors granted to its managers, officers or employees to transact on its behalf with respect to the matters contemplated herein; and
- iii. Copy of the permanent account number (“PAN”) card of the company and in case the copy of the PAN card is not available, an affidavit stating the reason for not holding a valid PAN card on a stamp paper of Rs. 100/- (Rupees One Hundred only) in lieu of the PAN card shall be submitted.

It is clarified that no power of attorney would be accepted, and the person authorized to act on behalf of a company must be so authorized only by means of a resolution of the board or shareholders of the company.

(d) Upon submitting the relevant documents in accordance with the above referred Clause, the intending bidders are required to fill up the form / physical form as per

the format prescribed in *Annexure 2* with respect to each auction for which the intending bidder proposes to submit a bid and take a print out of the filled form, sign the same and thereafter upload it on the Platform along with

- (i) Notarized affidavit as per the format set out in *Annexure 1* and
 - (ii) A duly signed declaration as per the format set out in *Annexure 3*, on or before the last date and time given in the Notice of Sale. The intending bidder would also be required to make payment of the EMD in accordance with Clause 6.5 prior to uploading the Form. The Form should be duly filled in and complete with all the relevant details.
- (e) Any queries can be addressed to Mr. Neeraj Gutgutiya
At B-406, Hill Side, Raheja Vihar, Chandivali,
Mumbai – 400072,
Contact No. +91- 9920591306
Email: contact@right2vote.in & neeraj@right2vote.in
- (f) Bidders can participate in the e-auction from anywhere. Therefore, any intending Bidder who is an individual/Non-Resident Indian or Karta of HUF, shall participate in the e-auction on his own behalf and shall not be allowed to participate in the e-auction through any third party such as an authorized agent/ representative.

6.5 Earnest Money Deposit:

- a. In order to become a Qualified Bidder and participate in the E-Auction process, an Interested Bidder is, *inter alia*, required to provide as interest free earnest money (“**Earnest Money**”) before 15th May, 2022 an amount as specified in Clause 2.1 of this document and shall be paid by either mode as specified below.
1. Either by remittance of funds to the bank account of the Company through RTGS/ NEFT to the Account as per the details given below

Name	Shivkala Developers Private Limited (In Liquidation)
Account Number	081605011953
Bank Name	ICICI Bank
Branch	H-1A/34, Sector-63, Noida, UP-201301
IFSC Code	ICIC0000816

2. By way of a Demand Draft issued by any scheduled commercial bank in India in favour of M/s Shivkala Developers Private Limited (In Liquidation), payable at Noida.
3. The details of the remittance made in this regard shall be entered in the form submitted by the bidder and shall be intimated to the Liquidator through

email along with the scanned copy of the remittance challan. The Bidders shall preserve the remittance challan and shall produce the same as and when demanded. The entire Earnest Money amount shall be remitted by the Interested Bidder (s) from one bank account only and to be owned by the Interested Bidder.

b. Return of Earnest Money Deposit

- i. Subject to the first proviso below, the Earnest Money without interest shall be returned to unsuccessful Qualified Bidder(s) within 7 (seven) days of the date of closure of the E-Auction process or cancellation of the E-Auction process, except that the Liquidator may retain the Earnest Money of the next highest Qualified Bidder for up to 30 (thirty) days from the date of conclusion of the E-Auction (where a Successful Bidder has been identified) in order to consider that bid (at the discretion of the liquidator) in the event the original Successful Bidder is disqualified or fails to adhere to the terms of the Letter of Intent.
- ii. Provided that, in the event, the Liquidator proposes to cancel the E-Auction process on the scheduled date or decides to not accept any of the bids submitted during the E-Auction process, and in both the instances, proposes to follow up the same with another E-Auction process, then if a Qualified Bidder indicates in writing its desire to receive refund of its Earnest Money deposit, then the Earnest Money shall be returned to the Qualified Bidder, within 7 (seven) days of giving notice requesting for the return of the Earnest Money deposited.
- iii. Provided further that, failure to participate in a round of E-Auction or requesting refund of the Earnest Money shall not debar a Qualified Bidder from participating in any subsequent round(s) of E-Auction.
- iv. The Earnest Money without interest shall also be returned to a Qualified Bidder, within 7 (seven) days of a demand being raised by such Qualified Bidder on the basis of any of the following grounds:
 - (a) Any increase in the Reserve Price or minimum incremental value;
 - (b) Any increase in EMD amount by more than 10% of the immediately previous specified EMD;
 - (c) Any reduction on the timelines within which the balance sale proceed is required to be paid;
 - (d) Change in eligibility requirement post the submission of the Earnest Money, such that the Interested Bidder becomes ineligible. However,

imposition of additional compliance requirements (such as requirement of providing additional undertakings) shall not be considered as change in eligibility norm;

- (e) Postponement of the date of the scheduled auction beyond 30 (thirty) days, except on account of any direction from Adjudicating Authority; or

c. **Forfeiture of Earnest Money:**

- i. The Earnest Money, paid by bank transfer will be forfeited, upon the occurrence of any of the following events:
 - if any of the conditions under this E-Auction Process Document are breached by the Qualified Bidder or in case the Qualified Bidder is found to have made any misrepresentation; or
 - if the Qualified Bidder or any person acting jointly or in concert with such Qualified Bidder is found to be ineligible to submit a bid under Section 29A of the IBC (as amended from time to time) or is found to have made a false or misleading declaration of eligibility under Section 29A of the IBC (as amended from time to time); or
 - if the Successful Bidder does not accept the Letter of Intent issued by the Liquidator within the period and in the manner specified or
 - if the Successful bidder fails to pay the balance sale consideration (plus any applicable taxes, if any, on 100% of the bid sum) before the expiry of the period for payment of the same for reasons other than specified in Clause 6.5 b of this E-Auction Process Document.

6.6 Declaration of Eligible Bidder

The Liquidator shall

- a. verify the details mentioned in the Forms based on the documents submitted in person or uploaded pursuant to the terms and conditions mentioned herein and
- b. ascertain submission of the EMD, and also the adherence of timelines specified in Clause 2.1
- c. Pursuant to such verification, the Agency shall notify the Bidders (via email) regarding their eligibility to participate in the e-auction.
- d. such Bidders shall hereinafter be referred to as the “**Eligible Bidders**”. It is clarified that an Eligible Bidder shall be entitled to submit a bid only with respect to the

specified auction for which he has submitted the Form and in respect of which he has paid the EMD.

6.7 Bidding Process:

- a. Bidding will be through the E – Auction.
- b. Bidders are cautioned to be careful while entering the bid amount.
- c. The Liquidator and the Agency shall not have any liability towards bidders for any interruption or delay in access to the Platform irrespective of the cause, issues relating to the Platform, failure of internet connections, server problems, etc.
- d. Any problem arising out of the e – auction shall be decided by the Liquidator, whose decision shall be final and binding
- e. A training manual has been uploaded on the website of the E – Auction Service Provider at <https://right2vote.in>. The intending bidder may avail online training/demonstration on the e-auction process from the E – Auction Service Provider.
- f. The reserve price shall be as per the details set out in clause 2.1 hereof. The Incremental bids shall be in multiples of amount given in clause –2.1 hereof and the eligible bidders shall increase their bids in multiples of that amount.

6.8 Duration of Auction Sale

- a. The auction will be conducted via an electronic auction platform.
- b. Online e-auction sale will commence and be carried out as per the timelines set out in clause 2.1.
- c. The e-Auction shall commence strictly at the scheduled time and at a price equal to reserve price. The closing time of the auction is system controlled; the time will get automatically extended by 10 (ten) minutes if any bid is received during the last 5 (five) minutes, i.e. while an active bid is in process and kept open till the auction-sale concludes.
- d. If any market-leading bid (bid higher than the highest at the point in time) is received within the last 10 (ten) minutes of closing time, the bidding time will be extended automatically by 5 (five) minutes and if no bid higher than last quoted highest bid is received within the said extended 5 (five) minutes, the auction sale will automatically get closed at the expiry of the extended 5 (five) minute period. There will thus be an extension of bidding-time, each of 5 (five) minutes duration, till auction is concluded.

- e. Eligible Bidders are advised to enter their bid accordingly keeping in mind the 5 (five) minute duration as specified above.
- f. No complaint on the time-factor for bidding or paucity of time for bidding will be entertained by the Agency and/ or the Liquidator.

6.9 Declaration of Successful Bidder:

- a. The Liquidator shall determine and at her sole discretion (which discretion shall not be used arbitrarily), declare at the end of the E-Auction, the Successful Bidder(s). Determination of the Successful Bidder(s) shall be done on the basis of highest bid received via the E-Auction, unless the Liquidator determines, acting reasonably, that the highest bidder shall not be identified as the Successful Bidder.
- b. After the conclusion of the e-auction for each bid, the Eligible Bidder submitting the highest bid (“**Successful Bidder**”) shall be informed through a message generated automatically by the Platform, of the outcome of the e-auction. A separate intimation shall also be sent to the Successful Bidder via e-mail (“**Intimation**”) and the results of the e-auction would also be displayed through publication on the Platform. The Platform shall also generate an auction outcome report for each bid which will be sent to the Agency and the Liquidator. Date of sending the e-mail will be considered as the date of receipt of the Intimation i.e. Date of Intimation.
- c. Where the Earnest Money has been provided by means of a remittance to the Company’s bank account, such funds will be retained by the Liquidator as part payment of the consideration that the Successful Bidder has agreed to pay.
- d. The Liquidator is not bound to accept the highest offer and has the absolute right to accept or reject any or all offer(s) or adjourn / postpone / cancel the e-Auction or withdraw thereof from the E-Auction proceedings at any stage without assigning any reason there for.

6.10 Issuance of Letter of Intent:

- a. The Liquidator shall, as soon as reasonably possible following the end of the E-Auction, issue to the Successful Bidder a letter of intent (“**LoI**”/ “**Letter of Intent**”), inviting the Successful Bidder to provide balance sale consideration (plus any applicable GST/taxes, if any, on 100% of the bid sum) within 30 days or within 90 days provided that the payment made after 30 days will attract interest at the rate of 12% of the date of issuance of the LoI. This LoI *per se* does not confirm sale in favour of the Successful Bidder. Confirmation of sale is subject to the fulfilment of conditions stated hereunder and the approval of the Liquidator.
- b. The Successful Bidder shall, within a period of 2 (two) days from the date of issuance of the LoI, unconditionally accept the LoI, and record such acceptance by providing the Liquidator with 1 (one) copy of the LoI with an endorsement stating that such

LoI is, “Accepted Unconditionally”, under the signature of the authorized Director / Authorized Signatory of the Successful Bidder

- c. Failure to accept the LoI within the time period specified may result in the disqualification of the Successful Bidder along with cancellation of the LoI and forfeiture of the Earnest Money.
- d. In case of disqualification of a Successful Bidder, the Qualified Bidder who had submitted the next highest bid, may be asked to match the Successful Bidder's bid and be considered the new Successful Bidder. If the latter is unwilling to match the bid submitted by the earlier Successful Bidder, the Liquidator, at his sole discretion, may decide to carry out a fresh auction, withdraw the Auction or sell the Company to the next highest Qualified bidder at its bid amount.

6.11 Balance Sale Consideration:

- a. Except for reasons specified in Clause 6.5 b of this E-Auction Process Document, the Successful Bidder shall be required to provide balance sale consideration within 30 (thirty) days of the date of issuance of the LoI in a single tranche payment.
- b. The successful bidder can make the payment after 30 days (but not later than 90 days from the date of issuance of LoI) with interest at the rate of 12% provided that the sale shall be cancelled if the payment is not received within ninety days.
- c. Where the Successful Bidder has provided Earnest Money by remittance of cash to the bank account of the Company the balance sale consideration shall be an amount equal to the bid sum (plus any applicable GST/Taxes, if any, on 100% of the bid sum) as reduced by the Earnest Money already paid.
- e. All the payments of the bid amount made by the Successful Bidders shall be made through RTGS/ NEFT to the Account number mentioned in Clause 6.5 above. The payments of the bid amounts shall be made by the Successful Bidder from the same bank account from which he has made payment of the EMD amounts.
- f. The Successful Bidders would be required to provide the Liquidator, at any time within a period of 15 (Fifteen) days from the date of the auction, originals of all the documents whose copies they have uploaded under clause 6.4 above for verification purposes.

6.12 Default in Payment:

- a. Default in payment of the balance sale consideration and any applicable GST/Taxes, if any, on 100% of the bid sum by the Successful Bidder will result in disqualification of the Successful Bidder including forfeiture of Earnest Money, unless such default in payment is pursuant to any event stipulated under Clause 6.5 b of this E-Auction

Process Document. The company may be put to re-auction or sold to the next highest Qualified Bidder and the defaulting Successful Bidder shall have no claim/right in respect of such auction.

6.13 Confirmation of Sale

- a. On payment of the full amount of sale consideration, and any applicable GST /Taxes (if any), the sale shall stand completed, and the Liquidator shall execute Certificate of sale or Sale deed.
- b. It is expressly stipulated that there are no implied obligations on the part of the Liquidator to do all acts, things and deeds whatsoever for the completion of the sale.
- c. The sale shall be subject to conditions prescribed under the IBC and provisions and regulations thereunder.
- d. The sale attracts stamp duty, registration charges, GST and other applicable taxes. as per relevant laws.
- e. The Successful Bidder shall bear all the necessary expenses like applicable stamp duties/ additional stamp duty / transfer charges, registration expenses, fees, etc., for transfer of the Property (ies) in his / her name
- f. The payment of all statutory / non-statutory dues, taxes, rates, assessments, charges, fees, etc., owed by the Company to anybody in respect of the Properties shall be the sole responsibility of Successful Bidder only.

6.14 Issue of Sale Certificate:

- a. The sale certificate will be issued, within 30 (thirty) days from date of last date of payment of full bid amount subject to compliance of all terms and conditions of sale, unless cancelled by the Liquidator for any reason as per applicable law and the assets shall be delivered to the Successful Bidder in the manner specified in the terms of sale.
- b. The Certificate of sale or Sale deed will be issued and /or transaction / sale documents will be executed in the name of the Successful Bidder only and will not be issued in any other name(s).
- c. Sale certificate shall be collected in person by the Successful Bidder or through an authorized person with submission of appropriate authority.

6.15 Stay / Cancellation of the Sale:

- a. In case of stay of further proceedings by the Competent Authority, the e-auction may either be deferred or cancelled and persons participating in the sale shall have no right to claim damages, compensation or cost for such postponement or cancellation.
- b. In case the Successful Bidder has not paid the balance sale consideration stipulated herein within the due date the entire amount paid by the Successful Bidder (including EMD amount) shall be forfeited and the sale shall stand cancelled.
- c. The Liquidator shall also have the right to postpone/ cancel the sale of the company for reasons to be recorded in the proceedings. In case of adjournment of sale for any reason, no fresh notice of sale will be given. However, the new date of sale will be informed through e-mail and the adjournment dates and time for submission of tenders will also be informed through e-mail.

6.16 Delivery of Title Deeds:

- a. The Successful Bidder, on receipt of sale certificate, shall contact the Liquidator for delivery of title deeds and other documents related to the Properties as available with the Liquidator.
- b. The Liquidator shall ensure that title deeds and other documents are handed over to the Successful Bidder subject post issuance of the sale certificate in accordance with the Order and the Subsequent Orders.

6.17 Delivery of possession:

- a. Delivery of possession of the Properties sold shall be as per the directions of the authorities, Codes, Rules, Regulation, as the case may be.
- b. After obtaining the sale certificate and getting the sale registered with appropriate authorities under applicable laws, the Successful Bidder is entitled to obtain possession of the Property. Possession will be given separately.
- c. All expenses and incidental charges thereto shall be borne by the Successful Bidder.

6.18 Other terms and conditions:

- a. The Qualified Bidder(s) shall be responsible for all the costs incurred by it on account of its participation in the E-Auction process, including any costs associated with participation in the discussion meeting (if any), site visit, etc. The Liquidator shall not be responsible in any way for such costs, regardless of the conduct or outcome of the E-Auction process.

- b. All expenses incurred towards movement / shifting of plant & machinery or any Assets post the E- Auction process should be borne by the Successful Bidder. The Liquidator shall not be held responsible / liable to pay any expenses towards such movement of plant & machinery or any Assets sold in the E- Auction process. For the avoidance of doubt, it is hereby clarified that, all the aforesaid costs shall be payable over and above the bid offered during the E-Auction process.
- c. Qualified / Successful Bidder(s) shall not be entitled to receive re-imbursement of any expenses which may have been incurred in carrying out of the due diligence, search of title to the assets and matters incidental thereto or for any purpose in connection with the E-Auction process.
- d. It is expressly stated that the Liquidator does not take or assume any responsibility for any dues, statutory or otherwise, of the Company, including such dues, if any, which may affect transfer of the asset lots to the Successful Bidder and such dues, if any, will have to be borne/ paid by the Successful Bidder.
- e. The Qualified Bidder(s) shall be responsible for fully satisfying the requirements of the IBC and related Liquidation Process Regulations as well as all Applicable Laws that are relevant for the sale process. The Successful Bidder shall be responsible for obtaining requisite regulatory or statutory or third-party approvals, no-objections, permission or consents, if any, that are or may be required under Applicable Law for purchasing the relevant asset.
- f. In the interest of the liquidation process of the Company, the Liquidator reserves the right to alter, modify or relax any of the terms and conditions mentioned in this E-Auction Process Document. Any such alteration, modification or relaxation, to the terms and conditions contained in this document, subject to provisions contained in Clause 6.5 b of the E-Auction Process Document, shall be binding on all the Interested/ Qualified Bidders.
- g. It shall be deemed that by submitting the bid, the Bidder agrees and releases the Agency/ the Liquidator, its employees, subsidiaries, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the e-auction process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- h. This E-Auction Process Document and any information provided earlier or subsequently, the auction process and the other documents pursuant to the E-Auction Process Document shall be governed by the laws of India and any dispute arising out of or in relation to the E-Auction Process Document or the auction process shall be subject to the exclusive jurisdiction of the Adjudicating Authority (NCLT, New Delhi Bench).

- i. No counter offer /conditions by the Bidder, Eligible Bidder and/or Successful Bidder will be entertained.
- j. The Liquidator shall have liberty to amend/ modify/ delete any of the conditions of the Tender Document or Notice of Sale as may be deemed necessary in the light of facts and circumstances of each case.
- k. The Liquidator shall have the right to accept or reject all or any bid or bids as well as to postpone or cancel the sale for reasons to be recorded in the proceedings.
- l. Bidders shall be deemed to have read and understood all the conditions of sale, the E-Auction Process Document and the Notice of Sale and are bound by the same.
- m. The above terms and conditions are general in nature, subject to change and are in addition to other specific conditions given in the Tender Document and Notice of Sale.
- n. Bidders are advised to preserve the EMD documents and documents pertaining to other deposits/ payments made by it and also a copy of the terms and conditions of the application Form downloaded from the portal and other document uploaded by it on the Platform for future reference.

7. FRAUDULENT AND CORRUPT PRACTICES:

- 7.1** The Qualified Bidder shall observe the highest standard of ethics prior to and during the E- Auction process and subsequently during the closure of the E-Auction process and declaration of Successful Bidder. Notwithstanding anything to the contrary contained in this E-Auction Process Document, or in the Letter of Intent, the Liquidator shall reject an auction bid and/or revoke the Letter of Intent, as the case may be, without being liable in any manner whatsoever to the Qualified / Successful Bidder, if the Liquidator, in his sole discretion, determines that the Qualified / Successful Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the E-Auction process or has, undertaken any action in respect of such process which results in the breach of any Applicable Law including the Prevention of Corruption Act, 1988. In such an event, the Liquidator may invoke the Earnest Money without prejudice to any other right or remedy that may be available to the Liquidator under this E-Auction Process Document or Applicable Law.
- 7.2** For the purposes of this Clause the following terms shall have the meaning hereinafter respectively assigned to them:

- a. **“coercive practice”** shall mean impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the auction process;
- b. **“Conflict of Interest”** shall mean an event or circumstance, determined at the discretion of the Liquidator, where a Qualified/ Successful Bidder is found to be in a position to have access to information about, or influence the bid of another Qualified Bidder pursuant to a relationship of such Qualified/ Successful Bidder (excluding any commercial relationship pursuant to the ordinary course of business) with the other Qualified Bidder or Company, group companies of the Company, or affiliates of the Company, directly or indirectly, or by any other means including colluding with other Qualified Bidder(s), the Company, or group companies of the Company;
- c. **“corrupt practice”** shall mean
 - 1) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the auction process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Liquidator or the Company, who is or has been associated or dealt in any manner, directly or indirectly with the auction process or arising there from, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Liquidator or the Company, shall be deemed to constitute influencing the actions of a person connected with the auction process); or
 - 2) engaging in any manner whatsoever, during the auction process or thereafter, any person in respect of any matter relating to the Company, who at any time has been or is a legal, financial or technical adviser of the Liquidator or the Company, in relation to any matter concerning the auction process;
- d. **“fraudulent practice”** shall mean a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the auction process;
- e. **“restrictive practice”** shall mean forming a cartel or arriving at any understanding or arrangement among the Interested / Qualified Bidder(s) with the objective of restricting or manipulating a full and fair competition in the auction Process; and
- f. **“undesirable practice”** shall mean

- 1) Establishing contact with any person connected with or employed or engaged by the Liquidator with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the auction process; or
- 2) Having a Conflict of Interest.

7.3 The Qualified Bidder shall not involve itself or any of his representatives in price manipulation of any kind directly or indirectly by communicating with other Qualified Bidders.

7.4 The Qualified Bidder shall not divulge either his bid or any other details provided to him by the Liquidator or during the due diligence process in respect of the assets to any other party, other than to his professional advisors and financiers, who are in each case required in the course of their duties to receive and consider the same for the purpose of advising in relation to the transaction and who are bound by confidentiality obligations that are at least as stringent as the obligations that the Qualified Bidder is subject to.

8. Verification of Information by the Bidder:

It shall be deemed that by participating in the e-auction process, the Bidder has:

- 8.1** made a complete and careful examination of the E-Auction Process Document and Notice of Sale and unconditionally and irrevocably accepted the terms thereof;
- 8.2** familiarized itself with the Order of the Competent Authority;
- 8.3** familiarized itself with the UP RERA, 2016 and by Laws of Noida Development Authority, rules made thereunder;
- 8.4** reviewed all relevant information provided by the Agency/ the Liquidator, as may be relevant to the e-auction process;
- 8.5** satisfied itself about all matters regarding the e-auction process required for submitting an informed bid in accordance with this Tender Document and performance of all its obligations hereunder;
- 8.6** acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the E-Auction Process Document or ignorance of any of the matters related to the e-auction process or the Properties shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc., from the Liquidator/ the Agency; and
- 8.7** agreed to be bound by the undertakings provided by it under and in terms hereof.

9. Verification of Documents and Disqualification:

- 9.1** The Liquidator reserves the right to verify (in accordance with the provisions of this E-Auction Process Document all statements, information and documents submitted by the Bidder in response to the E-Auction Process Document and the Bidder shall, when so required by the Liquidator, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by the Liquidator shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Agency/ the Liquidator thereunder.
- 9.2** Without prejudice to any other right or remedy that may be available to the Liquidator under this, E-Auction Process Document Liquidator reserves the right to disqualify the Bidder, cancel the sale and to appropriate the entire EMD and other amounts paid, if:
- 1) at any time, a misrepresentation on part of the Bidder is made or uncovered;
 - b. the Bidder does not provide, within the time specified by the Agency/ the Liquidator, the supplemental information/ documentation sought by the Agency/ the Liquidator, or
 - c. any act or omission of the Bidder results in violation of or non-compliance with the Tender Document and/ or any other document referred herein or issued pursuant thereto or any applicable law relevant for the e-auction process.
- 9.3** The Liquidator, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to
- 2) consult with any Bidder in order to receive clarification or further information;
 - b. retain any information and/ or evidence submitted to the Liquidator/ the Agency by, on behalf of, and/ or in relation to any Bidder; and/ or
 - c. independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 9.4** Any person who participated in E-Auction, if found disqualified u/s 29A of Insolvency & Bankruptcy Code, 2016, or regulation thereunder, EMD of such disqualified bidder shall be forfeited.

ANNEXURE 1

AFFIDAVIT

(ON RS 100/- STAMP PAPER AND TO BE NOTARIZED)

I, [insert the name of the authorized signatory of the Bidder, aged about [●] years, being the authorized signatory of [insert name of the Bidder/member of consortium] having its registered office at [insert address] [(“Bidder”)], do hereby solemnly affirm and state as under:

- 3) That I am duly authorized and competent to make and affirm the instant affidavit for and on behalf of the Bidder in terms of the [resolution of its board of directors/ power of attorney to provide other necessary details of such authorization]. The said document is true, valid and genuine to the best of my knowledge, information and belief.
2. I acknowledge that Bidder is aware of that, in terms of proviso to sub-section (f) of Section 35(1) of Insolvency and Bankruptcy Code, 2016 (“IBC”), read with Section 29A of IBC, certain persons/category of persons have been specified as ineligible for the purposes of participation in an auction to acquire immovable and movable property and actionable claims of a Company in liquidation.
3. On behalf of the Bidder, I confirm, that it is eligible to participate in the auction process (“Bid”) of M/s Shivkala Developers Private Limited – in Liquidation (“Company”) in accordance with IBC and related rules and regulations issued thereunder, and any other applicable law.
4. I state that the present affidavit is sworn by me on behalf of the Bidder in compliance of section 29A of the IBC.
5. I on behalf of the Bidder and any other person acting jointly or in concert with the Bidder hereby confirm that:
 - 4) The Bidder and any connected person as per the Explanation I provided under section 29A of the IBC is not an un discharged insolvent; or
 - ii. The Bidder and any connected person as per Explanation I provided under section 29A of the IBC, is not identified as a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949; or
- 5) At the time of submission of the bid, the account of the Bidder and any connected person as per Explanation I provided under section 29A of the IBC or an account of the Company under the management or control of such person of whom such person is a promoter, IBC is not classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or guidelines of a financial sector regulator issued under any other law at the time being in force and at least a period of one year or more has lapsed from the date of such classification till the date of commencement of corporate insolvency resolution process (12th February, 2018) of the Company and that I

have not failed to make the payment of all overdue amounts with interest thereon and charges relating to non-performing asset before submission of the Bid; or

- 6) The Bidder and any connected person as per Explanation I provided under section 29A of the IBC have not been convicted for any offence punishable with imprisonment for 2 years or more under any Act specified in the Twelfth Schedule or for seven years or more under any law for the time being in force or a period of two years has expired from the date of release of such imprisonment; or
- 7) The Bidder and any connected person as per Explanation I provided under section 29A of the IBC have not been disqualified to act as a director under the Companies Act 2013; or
- 8) The Bidder and any connected person as per Explanation I provided under section 29A of the IBC have not been prohibited by the Securities and Exchange Board of India from trading in securities or assessing the securities markets; or
- 9) The Bidder and any connected person as per Explanation I provided under section 29A of the IBC have not indulged in preferential transaction or undervalued transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under the IBC; or
- 10) The Bidder and any connected person as per Explanation I provided under section 29A of the IBC have not executed a guarantee in favor of a creditor, in respect of a Company against which an application for insolvency resolution made by such creditor has been admitted under the IBC and no such guarantee has been invoked by the creditor or remains unpaid in full or part; or

ix. The Bidder and any connected person as per Explanation I provided under section 29A of the IBC are not subject to any disability, corresponding to clauses mentioned above under any law in a jurisdiction outside India.

6. On behalf of the Bidder, I acknowledge that the Liquidator reserves the right to verify the authenticity of the information and/or the documents submitted by it pursuant to the communication and the Liquidator may request, at his own discretion, for any additional information or documents, as may be required by the Liquidator, for the purposes of verifying the information so submitted by us. On behalf of the Bidder, I unconditionally and irrevocably undertake, that we shall provide all data, documents and information as may be required to verify the statements made under this affidavit.

7. On behalf of the Bidder, I confirm that the information and/or documents submitted by us to the Liquidator in accordance with the past communications are true, correct, accurate and complete in all respects and we have not provided any information, data or statement which is inaccurate or misleading in any manner. I further confirm that, in the event the Liquidator determines that we have made any misrepresentation, concealed material information, made a wrong statement or submitted information which is misleading in nature, the Liquidator shall have the right to take any

action as he deems fits in accordance with the applicable law, including pursuant to IBC and related rules and regulations.

8. On behalf of the Bidder, I undertake that if during the interim period on and from the date of this Affidavit until the date of completion of the sale of company in terms of the auction process, it becomes ineligible to become a qualified bidder under applicable law, including under Section 29A of IBC, it shall immediately and in no event later than two days of such ineligibility, disclose to the Liquidator of its ineligibility in writing with reasons for the same (“Disclosure”). I agree, acknowledge and confirm on behalf of the Bidder, that upon being informed of such Disclosure, the Liquidator shall have the right to reject the bid submitted by it and shall have the right to undertake any action as it deems fit in accordance with the Complete E-Auction Process Document, including forfeiture of Earnest Money submitted by it (as defined in the Complete E-Auction Process Document).

(Deponent)

V E R I F I C A T I O N

Verified at _____ on this _____ (day, month & year), that the above contents of this affidavit are true & correct to the best of my knowledge and belief and nothing has been concealed there from. (Deponent)

(Deponent)

Notes:

- 11) Please note that in case of the Bidder being an unlimited liability partnership firm under the Indian Partnership Act, 1932, the affidavit is required to be furnished separately by each partner of the partnership firm.
2. Please note that in case of the Bidder being a limited liability partnership (“LLP”) incorporated under the Limited Liability Partnership Act, 2008, the affidavit will be provided by the “designated partners” of the LLP on behalf of the LLP and also by each partner of the LLP for itself, acting in its capacity as partner of the LLP.

For further reference to Sections & Provisions related to the Insolvency and Bankruptcy Code, 2016. Kindly refer to <http://ibbi.gov.in>

Annexure II

BID Application Form

(Please fill up separate Bid application forms
for each property)

Date:

Mr. Anup Kumar
The Liquidator,
M/s Shivkala Developers Private Limited-in Liquidation
Reg. No.: IBBI/IPA-002/IP-N00333/2017-18/10911
C-708, I-Thum Tower-C, Plot No. A40,
Sector-62, Noida-201301(UP)

Dear Sir,

I am desirous in participating in the E-Auction announced by you in the newspaper publication dated

..... In (name of media journal).

Details of Corporate Debtor:

Name of the Corporate Debtor	M/s Shivkala Developers Pvt. Ltd.
CIN No.	U45201DL2004PTC125222
Regd Add:	26-C-2, East Arjun Nagar, Pole No. 13, Shahdara, New Delhi-110032

Details of Bidder/Bid Price Offered:

Name of the Interested Bidder	
Constitution of Interested Bidder	
Contact No.	
Email ID	

PAN No.	
Address	

Details of Division / Asset:

Sale notice for which EMD deposited	
Description of division	
Reserve Price of Division as per Sales Notice	

I/We/M/s. also enclose copies of the required KYC documents. We request you to kindly verify the same and arrange with the auction portals for issue of an ID and password for us to enable us to take part in the E- Auction.

Date:

Signature

Place:

STAMP

Terms and Condition of the E-auction are as under:

1. E-Auction will be conducted on “Going Concern”, “AS IS WHERE IS BASIS”, “AS IS WHAT IS BASIS”, “WHATEVER THERE IS BASIS” and “NO RECOURSE BASIS” through approved service provider M/S Right2Vote Infotech Pvt. Ltd.
2. The intending bidders, prior to submitting their bid, should make their independent inquiries and inspect the Location of Industrial Plot/Land and entire assets of the Company at their own expenses and satisfy themselves. The Industrial Plot/Land and entire assets of the Company can be inspected by the prospective bidders at the site between 10:00 a.m. to 05:00 p.m. on any day before 15th May, 2022 and/or with prior appointment, contacting Liquidator.
3. The Complete E-Auction process document containing details of the Assets, online e- auction Bid Form, Declaration and Undertaking Form, General Terms and Conditions of online auction sale are available on website <https://right2vote.in> Contact: Mr. Neeraj Gutgutiya at +91- 9920591306 E-mail: contact@right2vote.in & neeraj@right2vote.in.
4. The intending bidders are required to deposit Earnest Money Deposit (EMD) amount either through DD/NEFT/RTGS in the Account of “Shivkala Developers Private Limited-In Liquidation, Account No.: 081605011953, ICICI Bank, H 1A/34, Sector-63, Noida, UP-201301, IFSC Code – ICIC0000816, drawn on any Scheduled Bank or give a EMD Amount as per Format A or Format B as given in the Complete E-Auction process document.
5. The intending bidder should submit the evidence for EMD Deposit or/and Request Letter for participation in the E- Auction along with Self attested copy of (1) Proof of Identification (2) Current Address- Proof (3) PAN card (4) Valid e-mail ID (5) Landline and Mobile Phone number (6) Affidavit and Undertaking, as Per Annexure 1 (7) Bid Application Form as per Annexure II (8) Declaration by Bidder, as per Annexure III, the formats of these Annexures can be taken from the Complete E-Auction process document. These documents should reach the office of the liquidator or by E-mail, at the address given below **before 5:00 PM of 15th May, 2022**. Interested bidders will have to upload their KYC documents along with the EMD submission details **before 5:00 PM of 15th May, 2022**.
6. The Name of the Eligible Bidders will be identified by the Liquidator to participate in e-auction on the portal (<https://right2vote.in>). The e-auction service provider Auction tiger) will provide User id and password by email to eligible bidders.

7. In case, a bid is placed in the last 5 minutes of the closing time of the e-auction, the closing time will automatically get extended for 5 minutes with unlimited extension. The bidder who submits the highest bid amount (not below the reserve price) on closure of e-Auction process shall be declared as the Successful Bidder and a communication to that effect will be issued through electronic mode which shall be subject to approval by the Liquidator.
8. The EMD of the Successful Bidder shall be retained towards part sale consideration and The EMD of unsuccessful bidders shall be refunded. The EMD shall not bear any interest. The Liquidator will issue a Letter of Intent (LOI) to the Successful Bidder and the Successful Bidder shall have to deposit the balance amount (Successful Bid Amount – EMD Amount) within 30 days or 90 days with interest @12% from the date of LOI. Default in deposit of the balance amount by the successful bidder within the time limit as mentioned in the LOI would entail forfeiture of the entire amount deposited (EMD + Any Other Amount) by the Successful Bidder.
9. The Successful Bidder shall bear the applicable stamp duties/transfer charge, fees etc. and all the statutory / non- statutory dues, taxes, rates, assessment charges, fees etc. in respect of the property put on auction.
10. The Liquidator has the absolute right to accept or reject any or all offer(s) or adjourn/postpone/cancel the e- Auction or withdraw any property or portion thereof from the auction proceeding at any stage without assigning any reason thereof.
11. The sale certificate/agreement will be issued in the name of the successful bidder only and will not be issued in any other name.
12. The sale shall be subject to provisions of Insolvency and bankruptcy code 2016 and regulations made thereunder.
13. The Eligible Bidders, participating in the E-Auction, will have to bid for at least the Reserve Price, and increase their bid by a minimum incremental amount of Rs. 50,00,000/- Rupees Fifty Lakh Only for or in multiples of these amounts.

Sd/-

Name: Anup Kumar

Designation: Liquidator

IBBI Regn No: IBBI/IPA-002/IP-N00333/2017-18/10911

Date:
Place: New Delhi

Notes:

For further details on the proposed sale please refer to the Bid Document available on the website: (<https://right2vote.in>)

Annexure III
Affidavit and Undertaking by Bidders

To

Mr. Anup Kumar
The Liquidator,
Shivkala Developers Private Limited-in Liquidation
Reg. No.: IBBI/IPA-002/IP-N00333/2017-18/10911
C-708, I Thum Tower-C, Plot No. A40, Sector-62,
Noida-201301 (UP)

Dear Madam,

- 12) I/We, (*insert name and address of the Interested Bidder*) aforesaid do hereby state that, I/We have read the entire terms and conditions for the sale of the Company as specified and have understood them fully. I/We, hereby unconditionally agree to confirm with and to be bound by the said terms and conditions and agree to take part in the e-auction process.

2. I/We declare that the Earnest Money has been made by me/us as against my/our bid and that the particulars of remittance and all other information given by me/us in the form are true and correct.

3. I/We further understand and agree that if any of the statement / information revealed by me/us is found to be incorrect and / or untrue, the bid submitted by me/us is liable to be cancelled and in such case, the Earnest Money and / or any monies paid by me/us is liable to be forfeited by the Liquidator and the Liquidator will be at liberty to annul the offer made to me/us at any point of time.

4. I/We also agree that after my/our offer given in my/our bid for purchase of the company is accepted by the Liquidator and if, I/We, fail to accept or act upon the terms and conditions of the sale or am/are not able to complete the transaction within the time limit specified for any reason whatsoever and/or fail to fulfil any/all the terms and conditions of the auction, except as otherwise permitted in para 6.5 b of E-Auction Process Document dated **06th May, 2022** issued by the Liquidator seeking submission of bids for M/s Shivkala Developers Private Limited (in liquidation) (“E-Auction Process Document”), the offer letter and/or the Letter of Intent, the Earnest Money and other monies paid by me/us thereafter, are liable to be forfeited in case final sale consideration and any applicable GST/taxes, if any is not paid within the specified timeline, the Liquidator shall forfeit Earnest Money.

5. I/We also understand that the Earnest Money Deposit shall be retained by the Liquidator and returned only in accordance with the timelines and circumstances specified in the E-Auction Process Document. I/We, state that I/We, have fully understood the terms and conditions therein and agree to be bound by the same.

6. I/We confirm that our participation in the e-auction process, submission of bid or acquisition of the company pursuant to the provisions of the E-Auction Process Document will not conflict with, or result in a breach of, or constitute a default under (i) our constitutional documents; or (ii) any applicable laws applicable to me/us; or (iii) any authorization or approval of any government agency or body applicable to me/us; or (iv) any judgement, order, injunction, decree, or ruling of any court or governmental authority, domestic or foreign binding on me/us; or (v) any agreement to which I am / we are a party or by which I am / we are bound.

7. That the Liquidator reserves the right to request for additional information or clarification from us in relation to our proposal and we shall promptly comply with such requirements. Failure to satisfy the queries of the Liquidator within the given timelines may lead to rejection of our proposal.

8. That submission of our proposal alone does not automatically entitle us to participate in the next stage of the bid process. The decision taken by the Liquidator with respect to the selection of the qualified Bidder and communicated to us shall be binding on me/us. We acknowledge that the Liquidator reserve the right to determine at his/her sole discretion, whether or not we qualify for the submission of the proposal and may reject our proposal without assigning any reason whatsoever.

9. Subject to the provisions contained in Clause 6.5 b of the E-Auction Process Document, I/We also undertake to abide by the additional conditions if announced during the e-auction including any announcement (s) on correction of and/or additions or deletions to the time of auction portal and company being offered for sale.

10. I/We confirm that the Liquidator and his/her professional advisors along with employees/agents/advisors, shall not be liable and responsible in any manner whatsoever for my/our failure to access and bid on the e-auction portal due to any unforeseen circumstances etc. before or during the auction event.

11. I/We hereby confirm that I/we are not ineligible to purchase the company or units of the Company under Section 29A of the Insolvency and Bankruptcy Code, 2016.

(Signature with SEAL)

Name:

Address:

Email

Mobile:

ANNEXURE 4

Board Resolutions

(On the letter head of the Interested bidder)

CERTIFIED TRUE COPY OF RESOLUTION PASSED BY THE BOARD OF DIRECTORS (“BOARD”) OF [Insert name of the Interested bidder] (“COMPANY”) IN THE MEETING HELD ON [Insert Date], AT [Insert Time] AT [Insert Place]

WHEREAS pursuant to the E- Auction Sale Notice dated [●] (“**EOI**”), and subsequent to the E-Auction Process Document dated [●] (“**EAPD**”), issued by the Liquidator on behalf of M/s Shivkala Developers Private Limited (In Liquidation) in relation to the acquisition of the Company as a going concern, the Company has been shortlisted by the Liquidator, for the purpose of participating in the auction process.

In view of the above, the Board has resolved as follows:

“RESOLVED THAT any of the directors of the Company, be and is hereby authorized to take all the steps required to be taken by the Company for participating and bidding in the auction process in accordance with the terms of the E-Auction Process Document, including the following:

- (a) participating in the auction process and submit and sign other requisite documents, in accordance with the terms of the EAPD;
- (b) execute all other agreements, deeds, writings and LOI as may be required in relation to the auction process, including any amendments or modifications as may be suggested by the Liquidator;
- (c) to generally do or cause to be done all such acts, matters, deeds and things as may be necessary or desirable in connection with or incidental or for the purpose of implementation and giving effect to the above resolutions for and on behalf of the Company, and to comply with all other requirements in this regard.”

RESOLVED FURTHER THAT a certified copy of the foregoing resolution be furnished as may be required, under the signature of [the Company Secretary / any two of the Directors of the Company].”

Certified to be true
For the Company

Director(s) / Company Secretary

Notes:

- 13) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
- 14) In case of the Board Resolution being provided by a company incorporated in India, the Board Resolution shall to be notarized by a notified notary. In the event the Board resolution is from a company incorporated outside India, the same shall be duly notarized in the jurisdiction of incorporation of the company.
- 15) This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act 2013 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an opinion issued by the legal counsel of such foreign entity, stating that the board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.
- 16) The Board Resolution is to be certified by the Company Secretary / Directors, in accordance with applicable law and the constitutional documents of the Company.

ANNEXURE 5

DETAILS OF THE ASSETS

The Corporate Debtor as a going concern comprising of assets as per the Balance Sheet as well as record of registry only commercial property situated at **Plot No. 2, Block-H1A, Sector-63, Noida-201301 UP (measuring area 1250 sq. mtr.)** is the assets which are under auction as per the provision of regulation 32A Read With 32 (e) & (f) of IBBI (Liquidation Process) Regulations, 2016.