

Invitation for Proposing a Scheme for Compromise or Arrangement under Section 230 of the Companies Act, 2013 by the Creditors and/or Members of Abhishek Corporation Ltd. (in Liquidation) under the Insolvency and Bankruptcy Code, 2016

Version : 1

Document Issue Date: January 2, 2020

1. Introduction

Background:

Abhishek Corporation Ltd. (“Company” or “Corporate Debtor” or “ACL”) was incorporated in 01st September 1993 as Abhishek Cotspin Mills Limited for undertaking the business of manufacturing cotton yarns. The Company went public in March 2007 with its securities listed on Bombay Stock Exchange and National Stock Exchange.

The commercial production of the spinning division commenced on December 21, 1999. Further, an expansion was carried out within the spinning division in 2002 and 2005 wherein the capacity was increased to 36144 spindles. Further, in 2005 as a forward integration plan the company planned to set up a yarn dyed shirting unit. All the manufacturing facilities of the company are located at Tamgaon, Kolhapur – Hupari road, Tal- Karveer, Dist:- Kolhapur. Both the units were established as a 100% Export Oriented Units. Both the units have since been de-bonded and converted for DTA from Export Oriented Units as per order dated 21 August, 2015 of Development Commissioner, SEEPZ Special Economic Zone, Government of India, Ministry of Commerce & Industry, Mumbai. The export obligation undertaken pursuant to the said debonding is not being complied with. The bidders are suggested to take an independent legal opinion on the same.

About the Plant

Lease hold Land: The plant is located at Block No. 148 & 149, village – Mouje Tamgaon, Kolhapur – Hupari road, Tal- Karveer, Dist:- Kolhapur. The land is owned by the family members of the promoters of the company. The Company has taken this land on lease from its owners for the tenure of 30 years from July 6, 2000 and October 10, 2008 respectively, the details of which are more particularly provided hereunder:-

Gat No	Leased Area	Name of Owner of Land	NA Order and Authority	NA Area	Date of Lease Deed	Lease Rent	Period of Lease
148	8H	Mr. Anasaheb Mohite Mrs. Anjali Mohite Mr. Abhishek Mohite Ms. Apurva Mohite Mr. Ramchandra Mohite Late Parvati Mohite	Dated 19-06-2000 and dated 17-04-2006 passed by Tahsildar Karveer	10600 square meters and 10000 square meters	06-07-2000	25,000 p.a.	30 years from 06-07-2000
149	17H 42R	Mr. Anasaheb Mohite Mr. Abhishek Mohite	Dated 17-05-2008 passed by Collector of Kolhapur	42895 square meters	10-10-2008	20,00,000 p.a.	30 years from 10-10-2008

Notes:-

- For both the above land parcels (Gat), the lease deed provides option to renew the lease for a further period of 30 years with mutual consent by Lessor and Lessee on terms and conditions to be agreed at the end of first 30 year period of lease.
- The title of Land and its mortgage is under Litigation. Through attachment order Civil Court Kolhapur has attached and has restrained transferability of both the land parcels (Gat numbers) provided above. Users are suggested to take an independent legal opinion on the same.
- Company is in default with the Land Owners for payment of lease rent since many years.
- Both the land parcels (Gat) are Class II land and have restrictions on transfer of the same.

Installed Capacity

Activity	Product	Capacity	Unit
Spinning	Cotton yarn	36144	Spindles
Yarn Dyeing	Dyed yarn	1620	Tonnes p.a.
Weaving	Grey Fabric	8.1 (96 looms)	Million Meters p.a.

Processing	Processed Fabric	21.6	Million Meters p.a.
------------	------------------	------	---------------------

Spinning Unit

Under this unit, cotton bales are converted into cotton yarn by undertaking the process of spinning.

The company has the capability to manufacture yarn up to 120 counts - super fine yarn (recently manufacturing 40-50 counts). Further, the spinning unit has add on facilities like Compact Spinning Yarn, Yarn Singeing, Combers, TFO Doubling and Soft Packing.

The company is operating the spinning unit on job work basis for over 4 years.

The unit is recently closed considering the huge losses incurred by the job worker during the floods in Kolhapur and Ichalkaranji Area. The unit remained closed for part of October and the entire month of November. The unit was restarted in December; however the unit is currently working at only 80-85% capacity utilisation levels. Efforts are being made to improve the utilisation.

Weaving Unit

In 2005, as a forward integration plan, the company envisaged a project to manufacture top end yarn dyed shirting fabric, to cater to European markets.

The unit can be divided into 3 broad heads:-

- a. Yarn Dyeing – Wherein the yarn from the spinning unit is dyed (colored)
- b. Preparatory and Weaving – The weaving unit comprises of warping, wefting, sizing and looms. Wherein the dyed yarn is rolled into beams and the yarn is weaved into fabric.
- c. Processing – The processing unit consists of batching, desizing, mercerizing and calendaring machines. The raw fabric received from the weaving division is processed and finished in this unit.

The unit has been closed since 2011, however the preparatory and weaving department was restarted in October 2017. The said operational departments of the Fabric Unit are presently running at 70-80% capacity utilization level.

Owing to the financial problems of the corporate debtor for over a decade, the maintenance of the machineries of the corporate debtor could be over due and thus, is subject to the independent assessment by the prospective applicants.

Human Resources:

At present there are around 700 workers and employees at various levels including permanent, temporary, trainees and contractual workmen/employees.

Corporate Insolvency and Resolution and Liquidation Process, so far

In 2017, an application was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) for initiating the corporate insolvency resolution process (“**CIRP**”) of the Company by an operational creditor. The National Company Law Tribunal (“**NCLT**”), Mumbai Bench by its order dated November 10, 2017 admitted the CIRP application filed against the Company and appointed Mr. Sandeep Singhal as the interim resolution professional of the Company. Mr. Sameer Kakar was subsequently appointed as Resolution Professional (RP) of Abhishek Corporation Limited by Hon’ble NCLT, Mumbai Bench, on 8th March, 2018 vide order in MA/94 in CP(IB)-1499/I&BC/MB/2017 and communicated to him on the 15th March, 2018.

During the CIRP of the Company, 4 resolution plans were received. The highest resolution plan was put for vote and couldn’t garner the required votes of 66% of the COC and thereby was rejected. The said rejection was litigated by the Resolution Applicant, certain COC members and the workers union before the Hon. NCLT, Hon. NCLAT and finally before the Hon. Supreme Court. The summary of the outcome of the said litigations and the major actions taken by the Liquidator are mentioned below:-

Sr No	Action / Order by	Dated	Particulars
1	NCLT*	11 th March 2019	All the pending applications of the Resolution Applicants, certain Financial Creditors, Workers and Resolution Professional were disposed off and the corporate debtor was ordered to be liquidated as going concern within 6 months.
2	NCLT	02 nd April 2019	Since the liquidator appointed in the order dated 11 th March 2019 did not take charge of

			the corporate debtor and based on the application of the Resolution Professional, the Hon. NCLT appointed Mr. Kshitiz Gupta as the liquidator of the Corporate Debtor.
3	Liquidator	13 th April 2019	After taking charge, Paper publication was made for submission of claims from the stakeholders of the corporate debtor.
4	NCLAT	01 st May 2019	Vide the applications filed by the Resolution Applicant and certain financial creditors, the Hon. NCLAT set aside the order dated 11 th March 2019 of the Hon. NCLT.
5	Supreme Court	09 th August 2019	Vide the applications filed by certain financial creditors, the apex court ordered to reinstate the order of the Hon. NCLT dated 11 th March 2019 and the order of Hon. NCLAT order dated 01 st May 2019 was set aside
6	Liquidator	21 st August 2019	Pursuant to the order of the Apex Court, the liquidator made another public announcement to invite claims from the stakeholders of the corporate debtor.

*NCLT means National Company Law Tribunal, Mumbai Bench

Subsequently, the liquidator also made an application before the Hon. NCLT and then before the Hon. NCLAT for exclusion of certain period, while calculating the said limit of 180 days.

The Hon'ble NCLAT, vide the said order has directed the Liquidator to proceed in terms of the decision passed by NCLAT in *Y. Shivram Prasad v. S. Dhanapal*.

In compliance with the aforesaid direction, the Liquidator herein caused a public announcement dated January 2nd, 2020 inviting prospective bidders for submission of a scheme of compromise and arrangement with creditors under Section 230 of the Companies Act, 2013 ("**Scheme**") in Business Standard (*All India edition*) and Lokmat (*Mumbai and Pune Edition*).

2. Invitation from potential applicants:

2.1 Eligibility

In accordance with the directions and Hon'ble NCLAT and as per the provisions of the Section 230 of the Companies Act, 2016, proposal for Scheme is invited from the following category of people:

- a. Member(s) of the Company;
- b. Financial Creditors of the Company; and
- c. Operational Creditors of the Company.

The expressions *financial creditor* and *operational creditor* shall have the meaning ascribed to them in IBC.

Further, applicant shall not be eligible to submit a scheme for the Company if it fails to meet the eligibility criteria set out in Section 29A of the IBC (as amended from time to time).

As on date, Section 29 A of the IBC reads as under:

"29A. Persons not eligible to be resolution applicant. -

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

- (a) *is an undischarged insolvent;*
- (b) *is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);*
- (c) *at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:*

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

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

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

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

then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

- (d) has been convicted for any offence punishable with imprisonment –
- (i) for two years or more under any Act specified under the Twelfth Schedule; or
 - (ii) for seven years or more under any law for the time being in force:

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

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

- (e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013):

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

- (f) is prohibited by the 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, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

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

- (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 this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;
- (i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
- (j) has a connected person not eligible under clauses (a) to (i).

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

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

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

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related

party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date:

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

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

2.2 Access to Data Room

To gain access to the Data Room (DR), the prospective Scheme Applicant must execute the non-disclosure agreement in the format prescribed at **Annexure D**. The physical data room shall be made available at the factory premises of the corporate debtor on prior intimation of minimum 24 hrs during any working day from January 4, 2020 to January 31, 2020. The liquidator shall have the full right to restrain the prospective Scheme Applicant to take copies of any of the documents of the corporate debtor, which the liquidator believes to be confidential and making copies of which shall be detrimental to the business of the corporate debtor. Further, even if copies of certain documents would be required to be provided the same shall be at the cost of the prospective Scheme Applicant and in the manner as may be decided by the liquidator.

Visit to the registered office and manufacturing unit of the corporate debtor can be arranged during the aforementioned period upon specific request and availability of requisite personnel for facilitating the visit. The interested applicants to provide a written intimation to the liquidator regarding the

number of persons for the proposed visit, their relation with the interested applicant and their KYC on or before 48 hrs of the proposed date of visit.

2.3 Submission of the Scheme

The interested applicant shall be required to provide the information sought in **Annexure A**, the Affidavit in format prescribed in **Annexure B** and copy of the proposed Scheme as per Companies Act, 2013 alongwith executive summary of the Scheme in **Annexure C** not later than February 3, 2020 upto 6 PM to the Liquidator.

2.4 Shortlisting of Applicants

All the proposals received by the Liquidator shall be reviewed by the Liquidator and the Applicants shortlisted on the basis of documents submitted vide clause 2.3, shall be intimated about their shortlisting.

2.5 Manner of submission of the Scheme

The Applicant shall submit the hard of the proposed scheme in a sealed envelope along with the requisite annexures to the following address by post or deliver in person:

Mr. Kshitiz Gupta,

Liquidator of Abhishek Corporation Limited

Flat No-C/104, Lotus CHSL, Gundecha Valley of Flowers,

Thakur Village, Kandivali East, Mumbai- 400101

The Applicant shall also submit a soft copy of the proposed Scheme along with requisite annexures stated above vide email to abhishek.liquidation@gmail.com.

2.6 Earnest Money Deposit

Along with the submission of the Scheme, the shortlisted Applicant shall also be required to submit an interest free deposit of **INR 4.50 Crore (Rupees Four Crores Fifty lakhs only)** or bank guarantee for the said amount from a scheduled bank in India with a claim period of one (1) year. The EMD can be paid by way of Through DD/NEFT/RTGS in the Account of "Abhishek

Corporation Limited – In Liquidation”, having Account No. 50200023159047, HDFC Bank, 7th Lane, Gandhi Road, Jaysingpur Branch (IFSC : HDFC00002124)

Except for the successful Applicant, the EMDs from the rest of the Applicants shall be returned within 30 (thirty) days of the selection of the successful Applicant.

Please note that, no Scheme shall be considered by the Liquidator unless the Scheme is accompanied by valid EMD or proof of deposit of EMD.

2.7 Evaluation of the Scheme by Secured Creditors as per Section 230

On receipt of the full Scheme(s), the same shall be put before the Secured Creditors of the Corporate Debtor on the basis of claims received and admitted by the Liquidator for their assessment and opinion of whether the arrangement of Scheme is viable, feasible and having appropriate financial matrix. Only the Scheme approved by the requisite majority of such secured creditors shall be submitted before the Hon'ble NCLT in terms of Section 230 of the Companies Act, 2013.

3. Last Date of Submission of Scheme

The last date for submission of Scheme along with EMD is February 3, 2020 up to 6 PM.

Note:

- a. The Liquidator reserves the right to cancel or modify the process without assigning any reason and without any liability. This is not an offer document and is issued with no commitment. Applicants should regularly visit the website of the Company i.e. www.abhishekkorporation.com/forinvesters.html to keep themselves updated regarding clarifications/amendments/time-extensions, if any.
- b. The Liquidator reserves the right to withdraw the invitation for submission of Scheme under section 230 of the Companies Act, 2013 and change or vary any part thereof at any stage, should it be so necessary at any stage.
- c. No oral conversations or agreements with the Liquidator or any official, agent or employees of the Liquidator, any creditor or class of creditors, any member or class of members shall affect or modify any terms of the invitation for submission of Scheme.
- d. Neither the Applicants nor any of representatives of the Applicants shall have any claims whatsoever against the Liquidator or its advisors or any of their officials, agents or employees arising out of or relating to this Scheme.
- e. By submitting the Scheme, each Applicant shall be deemed to acknowledge that it has carefully read the document and has fully informed itself as to all existing conditions and limitations. Ignorance of law/s will not be treated as any excuse.
- f. The Applicant acknowledges that the investment in the Company shall be made by the Applicant on an “as is, where is” basis and the Liquidator will not be providing any representations or warranties for the Company.

For any clarifications on the process of submission of Scheme, please contact on abhishek.liquidation@gmail.com.

Annexure A

[Note: In case of joint applicants, the details set out below are to be provided for each of the entities / groups submitting each joint applicant.]

a. Name and Address

- i. Name of the Firm/Company/Organisation:
- ii. Address:
- iii. Telephone No:
- iv. Email:
- v. PAN/CIN:

b. Date of Establishment**c. Core Area of Expertise:****d. Contact Person:**

- i. Name:
- ii. Designation:
- iii. TelephoneNo:
- iv. MobileNo:
- v. Email:

e. Company/FI Profile

- i. Company Financial Profile (consolidated / standalone as applicable):
[Note: The Company profile should necessarily include net worth and revenue numbers of the preceding three years. Where the entity submitting the Scheme is a financial creditor, please provide details pertaining to 'assets under management' and/or "committed funds" for the preceding five years or the committed funds available as on March 31, 2019, for investment.]
- ii. Names & DIN of Directors including Independent Directors
- iii. Experience of the Company in the relevant sector.
- iv. Names of key lenders, if any, to the Company or its affiliates
- v. History if any, of the Company or affiliates of the Company being declared a 'willful defaulter', 'non-cooperative borrower', 'non-impaired asset' or 'non-performing asset'.
- vi. Any other relevant details which would be useful for the Liquidator to be aware of in respect of the Scheme

Annexure B**AFFIDAVIT BY THE APPLICANT**

(To be executed on non-judicial stamp paper of appropriate stamp duty value relevant to the place of execution)

I, *[name of the Individual / chairman / managing director / director / authorized per son of Applicant, authorised by the Board of the Applicant for giving such affidavit]*, son of *[•]*, aged about *[•]* years, currently residing at *[Address to be inserted]* and having Aadhaar/ Passport number *[•]*, on behalf of *[name of the Applicant]* having registered office at *[•]*, do solemnly affirm and state to the Liquidator of Abhishek Corporation Limited that we are meeting the qualification criteria as required for submission of Scheme vide advertisement dated January 2, 2020 as disclosed in the information and records with us.

I, *[name of the Individual/ chairman/ managing director/ director/ authorized per son of Applicant, authorised by the Board of the Applicant for giving such affidavit]*, further acknowledge that I have carefully read the entire document and am aware of all existing conditions and limitations in relation to the same.

I, *[name of the Individual/ chairman/ managing director/ director/ authorized per son of Applicant, authorised by the Board of the Applicant for giving such affidavit]* state that we have attached necessary information requested by the Liquidator. The information furnished by us is true, correct and accurate to the best of our knowledge. Based on this information, we understand that you would be able to evaluate our proposed scheme.

Solemnly affirmed at *[•]*

on the *[•]* day of *[•]* 2020

Before me,

DEPONENT

Notary/Oath Commissioner

VERIFICATION:

I, *[name of the Individual/chairman/managing director/director/authorised person of Applicant, authorised by the Board of the Applicant company (in case of a company) for giving such affidavit]*, the deponent above named, on behalf of *[name of the Applicant]*, currently residing at *[•]*, do hereby solemnly state on oath and declare and verify that the contents of the above affidavit are true, correct and complete to the best of my knowledge and nothing material has been concealed therein.

Verified at *[•]*, on this the *[•]* day of *[•]* 2020

DEPONENT

Annexure C

The executive summary of the scheme are as under:

- a. Total funds proposed to be brought in for implementation of the Scheme;
- b. Timeline for disbursement of the funds subject to approvals and permissions from NCLT;
- c. Brief note on the proposed settlement of secured and unsecured financial creditors, operational creditors and employees;
- d. The treatment of statutory liabilities;
- e. Any restructuring of the capital of the Company or hiving off of the existing units of the Company and treatment of such hived off units.

Annexure D**CONFIDENTIALITY AND NON - DISCLOSURE AGREEMENT**

[To be executed on stamp paper of Rs. 200 by the Applicant. Please insert the notice details and the Applicant's name and description in the array of parties before execution.]

This **CONFIDENTIALITY AND NON - DISCLOSURE AGREEMENT** (hereinafter referred as "**Agreement**") is made on this _____ day of _____, 2020 (hereinafter referred as "**Effective Date**")

amongst

Abhishek Corporation Limited- in Liquidation ("ACL"), a company incorporated under the provisions of the Companies Act, 1956, and an existing company under the Companies Act, 2013, and having its registered office at Gat No 148, Kolhapur Hupari Road, Tamgaon, Kolhapur, Maharashtra, 416234 acting through **Mr. Kshitiz Gupta, the Liquidator**, appointed for the Company under the order of the National Company Law Tribunal (NCLT), Mumbai Bench, dated 02nd April 2019 (hereinafter referred to as "**ACL**" / "**Company**", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors and assigns), of the **FIRST PART**;

AND

[Insert name of Applicant], [a company incorporated under the Companies Act, 1956 and existing under Companies Act, 2013/ a company to be incorporated under Companies Act, 2013/ a body corporate or corporation] [**Note to Applicant: Please retain/insert appropriate description**] having its registered office at _____ (hereinafter referred to as the "**Applicant**", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors), of the **SECOND PART**

(ACL, acting through the Liquidator shall hereinafter be referred to as the "**Disclosing Party**", ACL and the Applicant shall hereinafter individually be referred to as "**Party**" and collectively as the "**Parties**").

WHEREAS:

ACL primarily engaged in manufacture and sale of cotton yarn and fabric. The integrated yarn dyed shirting fabric plant of the company consists of spinning, dyeing, sizing, weaving and processing facilities along with auxiliaries and supporting facilities. The Company has its manufacturing units located at Gat no 148, Kolhapur-Hupari Road, Tamgaon, Kolhapur, Maharashtra – 416234.

Pursuant to the order dated 11th March, 2019 (“**Order**”) of the Hon’ble National Company Law Tribunal, Mumbai bench (“**NCLT**”), ACL has been admitted into a liquidation process under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”). Pursuant to the Order dated 02nd April 2019, Mr. Kshitiz Gupta, Insolvency Professional has been appointed as the Liquidator (“**Liquidator**”) in respect of the Corporate Debtor.

To enable the Applicant to submit scheme of compromise and arrangement under section 230 of the Companies Act, 2013 (“**Transaction**”), ACL may (including through any officers, and/or advisors including, without limitation, duly authorized attorneys, accountants, legal advisors and financial advisors), from time to time, disclose certain “Confidential Information” (*hereinafter defined*) to the Applicant.

The Applicant agrees to enter into this Agreement to, *inter alia*, keep confidential all Confidential Information that may be disclosed to it and/or its Representatives (*hereinafter defined*), in the manner set out hereinafter.

NOW, THEREFORE, in consideration for the mutual promises and covenants hereunder, ACL and the Applicant agree as follows:

1. DEFINITIONS

- 1.1. “**Confidential Information**” means any and all information disclosed or submitted to the Receiving Party by or on behalf of Disclosing Party (including by any officers, and/or advisors including, without limitation, duly authorized attorneys, accountants, legal advisors and financial advisors of a Disclosing Party) in written, representational, electronic, verbal or other form and includes (i) all data, materials, prices, debts, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial

information, human resource information and any other information; (ii) all technical, commercial, operational, financial, accounting, legal and administrative information, and any notes, analyses, compilations, studies, forecasts, interpretations, memoranda, summaries, reports and other materials which contain, reflect or are based upon, in whole or in part, any of such information; (iii) information about the Transaction, or the terms or conditions or any other facts relating thereto, including, without limitation, the status thereof, that discussions or negotiations are occurring or have occurred, the existence of this Agreement, (iv) information and details regarding the terms, conditions and structure of, and other facts relating to, the Company and/or the Transaction, including the status thereof, whether oral, on paper or computer disk or in electronic format; whether prepared by the Disclosing Party, its advisors or other third party on behalf of the Disclosing Party; and/or (v) all reports, analyses, studies, compilations, interpretations or other documents or materials (whether on paper or computer disk or in electronic format) prepared by the Receiving Party or its Representatives which contain, refer to, reflect, enhance, modify, improve, quote or are based upon, in whole or in part, the information mentioned in (i), (ii), (iii) and/or (iv) which is provided to the Receiving Party and/or its Representatives in connection with the Transaction.

- 1.2. **“Disclosing Party”** shall mean ACL, the Liquidator or any of their authorized representatives.
- 1.3. **“Receiving Party”** shall mean the Applicant, receiving confidential information from the Disclosing Party or from any person acting on behalf of the Disclosing Party.
- 1.4. In relation to the Receiving Party, its **“Representative”** shall mean any agent, officer, employee, director, legal or financial advisor, affiliate, investor, counsel, potential financing source who (i) needs to know such information for the sole purpose of the Transaction; (ii) who agrees to keep such information confidential in accordance with the provisions of this Agreement; (iii) who is provided with a copy of this Agreement; (iv) who agrees to be bound by the terms contained in this Agreement to the same extent as if it was a party hereto; and (v) who has confirmed that it has no conflict with the Disclosing Party, and the term “Representatives” shall be construed accordingly. In

relation to any Disclosing Party, its “Representative” shall mean any agent, officer, employee, director, consultant, legal or financial advisor, authorized attorney, accountant and/or any other person duly authorized in this regard.

2. USE OF CONFIDENTIAL INFORMATION

- 2.1. The Confidential Information divulged by (or on behalf of) the Disclosing Party to the Receiving Party and/or its Representatives will be received and treated by the Receiving Party and/or its Representatives as – (i) strictly confidential; (ii) in accordance with applicable law. The Receiving Party and its Representatives shall not, without the prior written consent of the Disclosing Party or as expressly permitted herein, disclose, disseminate, reproduce, quote, share with, refer to, use or make available to any other person, or use or permit others to disclose or use, the Confidential Information in any manner whatsoever other than for the sole purpose as described in Clause 2.2 below. Without prejudice to the above, the Receiving Party and its Representatives shall comply with all provisions of law applicable to confidential information.
- 2.2. Notwithstanding the provisions of Clause 2.1 above, the Receiving Party may disclose the Confidential Information received under this Agreement to its Representatives (as defined in Clause 1.4 above) in accordance with applicable laws in relation to confidentiality on a strict "need-to-know" basis, and *solely* for the purpose of enabling assessment and evaluation of the Transaction (“**Purpose**”).
- 2.3. The Receiving Party and its Representatives shall exercise the same standard of care in respect of the security and safekeeping of the Confidential Information disclosed hereunder as the Receiving Party and its Representatives exercise in respect of its own confidential information.
- 2.4. The Receiving Party understands and acknowledges that pursuant to the order of the Mumbai bench of the NCLT dated 11th March, 2019, the NCLT had commenced the Liquidation process of the Company and appointed Mr. Kshitiz Gupta as Liquidator vide separate order dated 02nd April 2019. None of the Disclosing Party nor the Liquidator makes any representation or warranty or inducement, expressed or implied, now or in the future, as to the accuracy, correctness, completeness, fairness or relevance of the Confidential Information.

Neither the Receiving Party nor any of its Representatives shall be entitled to rely on the accuracy, correctness, completeness, fairness or relevance of the Confidential Information, whether for the purpose of formulation of the Transaction and/or otherwise in relation to the Company. Further, none of the Disclosing Party nor the Liquidator shall, now or in future, have any liability to the Receiving Party or any other person resulting from Receiving Party's or its Representative's use of the Confidential Information.

- 2.5. Receiving Party shall indemnify and hold harmless the Disclosing Party against all direct losses, damages and liabilities including but not limited to all legal fees and expenses on a solicitor and client basis arising from or connected with any unauthorized disclosure, use or misuse of the Confidential Information whether by itself or its Representatives. The Receiving Party further agrees and undertakes, at its sole cost and expense, to take any and all reasonable measures (including but not limited to court proceedings) to restrain any person to whom it has disclosed Confidential Information, directly or indirectly, from disclosing or using the Confidential Information in violation of this Agreement.
- 2.6. The Receiving Party acknowledges that it shall be responsible for any breach of this Agreement by the Receiving Party and/or any of its Representatives, employees or employees of its Representatives.
- 2.7. The Receiving Party shall not, without prior written consent of the Disclosing Party, engage any advisor, whether professional, legal or otherwise, who are already engaged by the Disclosing Party in relation to the Liquidation process of the Company.
- 2.8. If the Receiving Party decides to not proceed with the Transaction, it will promptly notify the Liquidator in writing of that decision. The Receiving Party shall immediately, upon the earlier of (a) the conclusion of the Transaction; or (b) termination of this Agreement as per Clause 11 below; or (c) a notification by the Disclosing Party, for any reason or for no reason, surrender and return to the relevant Disclosing Party, all Confidential Information in its possession, or destroy the same in accordance with the directives of the Disclosing Party.
- 2.9. The Receiving Party shall not publish any news release or make any announcements or denial or confirmation in any medium concerning this

Agreement in any manner nor advertise or publish the same in any medium;
and

- 2.10. The Receiving Party shall promptly notify the Disclosing Party of any Confidential Information which has been lost or disclosed or used by any unauthorized third party provided that such notification shall not relieve the Receiving Party from any liability arising from its breach of this Agreement.
- 2.11. The Receiving Party shall protect any intellectual property of ACL which it may have access to which is provided or made available to by the Disclosing Party.
- 2.12. The Receiving Party shall not utilize the Confidential Information to avail any undue gain or undue loss to itself or any other person and shall comply with the provisions of the IBC and the rules and regulations prescribed thereunder.

3. EXCEPTIONS

The Receiving Party's obligations hereunder, shall not apply to Confidential Information which:

- 3.1. at the time of its disclosure, is in public domain or which after disclosure becomes part of public domain through no fault or wrongful act of the Receiving Party or its Representatives; or
- 3.2. was known to the Receiving Party, as evidenced by written documentation, prior to its disclosure in connection with the Transaction provided that the source of such information was not known by the Receiving Party or any of its Representatives, after reasonable inquiry and investigation, to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party or any other party with respect to such information; and
- 3.3. is or has been developed independently by the Receiving Party without reference to or reliance on the Disclosing Party's Confidential Information.

4. NON- DISCLOSURE OF TRANSACTION

- 4.1. It is agreed that without the prior written consent of the Disclosing Party, the Receiving Party shall not disclose and shall ensure that its Representatives do not disclose to any person or entity (a) that the Confidential Information has

been made available to it or its Representatives, (b) that discussions or negotiations are taking place concerning a possible Transaction between the Parties, or (c) any terms, conditions or other facts with respect to any such possible Transaction, including the status thereof.

4.2. The Parties agree that unless and until a definitive agreement(s) regarding a Transaction between the Parties has been executed, neither Party will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this Agreement except for the matters specifically agreed to herein. The Parties further acknowledge and agree that each Party reserves the right, in its sole discretion, to reject any and all proposals made by the other Party or any of its Representatives with regard to a Transaction between the Parties and to terminate discussions and negotiations at any time.

5. NOTICE

The Receiving Party further agrees that all communications (both written and oral) regarding the Confidential Information and/or the Transaction, requests for additional information, and discussions or questions regarding procedures related to the Transaction, will be sent only to ACL through and/or authorized representatives of the Liquidator (who are assisting Liquidator in discharging his duties as an liquidator) as authorized by Liquidator and not directly to any of the Company's affiliates or any of their respective directors, officers or employees.

All notices, statements or other communication required or permitted to be given or made under this Agreement shall be in writing in the English language and delivered by hand, or through a reputed international courier company or through speed post to the address set forth below, or by sending it by email (with delivery of a notification with return receipt requested) to the email address set forth below:

Notice Details for ACL (Liquidator):

Mr. Kshitiz Gupta

Liquidator

(IBBI/IPA-002/IP-N00721/2018-19/12140)

Abhishek Corporation Ltd. (In Liquidation)

Flat No-C/104, Lotus CHSL, Gundecha Valley of Flowers, Thakur Village, Kandivali East, Mumbai- 400101

Email: abhishek.liquidation@gmail.com

Registered Address of Liquidator with IBBI (for information only):

Flat No-C/104, Lotus CHSL, Gundecha Valley of Flowers, Thakur Village, Kandivali East, Mumbai- 400101

E: Kshitiz.ca@gmail.com

Notice Details for Applicant:

[to be inserted by the Applicant]

6. COMPELLED DISCLOSURE

In the event that the Receiving Party or any of its Representatives are required by applicable law, regulation or any competent judicial, supervisory or regulatory body to disclose any of the Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, however in the opinion of the counsel of the Receiving Party, the Receiving Party or its Representatives are nonetheless, in the absence of such order or waiver, compelled to disclose such Confidential Information, then the Receiving Party may disclose only such portion of the Confidential Information which, in the opinion of its counsel, the Receiving Party is compelled to disclose. The Receiving Party will not oppose any action by the Disclosing Party to obtain reliable assurance that confidential treatment will be accorded the Confidential Information. The Receiving Party and its Representatives will reasonably cooperate with the Disclosing Party in their efforts to obtain a protective order or other appropriate remedy that the Disclosing Party elects to seek to obtain, in their sole discretion.

7. OWNERSHIP OF MATERIALS / NO WARRANTY

Ownership of the Confidential Information, including all intellectual property rights and related rights in the Confidential Information or arising out of the use of the Confidential Information shall at all times remain with the Disclosing Party, in perpetuity and throughout the world. All improvements, derivatives, enhancements,

modifications and recommendations to the Confidential Information will also belong exclusively to the Disclosing Party, and the Receiving Party agrees to specifically convey and assign, and hereby do convey and assign to the Disclosing Party all right, title and interest in and to the same in perpetuity and throughout the world. The Receiving Party covenants and agrees to sign any papers and do all acts necessary to secure for the Disclosing Party and/or its successors or assigns, any and all rights, titles and interest in any such improvements, derivatives, enhancements, modifications and recommendations, including rights to any patent and copyright in any jurisdictions, during the term of this Agreement, or any time thereafter.

8. INJUNCTIVE RELIEF

The Receiving Party acknowledges that the Confidential Information is valuable to the Disclosing Party and that damages (including, without limitation, all legal fees and expenses on a solicitor and client basis) may not be a sufficient remedy for any breach of its obligations under this Agreement and the Receiving Party further acknowledges and agrees that the remedies of specific performance or injunctive relief (as appropriate) without the necessity of posting bond, guarantees or other securities, are appropriate remedies for any breach or threatened breach of its obligations under this Agreement, in addition to and without prejudice to, any other remedies available to the Disclosing Party at law or in equity.

9. INDEMNITY

The Receiving Party hereby agrees to indemnify and hold each of the Disclosing Party and their Representatives harmless, from and against all claims, demands, liabilities, losses, damages, costs and/or expenses (including all legal costs and expenses) suffered or incurred by such other Party or their Representatives due to a breach by the Receiving Party or its Representatives of the provisions of this Agreement.

10. NO LICENSE

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. The Receiving Party and its

Representatives shall not use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

11. TERM

This Agreement shall remain valid and binding on the Parties until 24 months from the Effective Date of this Agreement or such earlier date as may be mutually agreed by Parties in writing. Upon expiry of this Agreement, the confidentiality obligations of the Parties herein shall cease, provided that payment obligations if any that may arise under this Agreement (including under the indemnity Clause 9 above) shall survive the termination of this Agreement.

12. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of India. With respect to any action, suit or proceeding relating to this Agreement, the Receiving Party agrees to submit to the non-exclusive jurisdiction of the courts of Kolkata. The Parties agree that the aforesaid is for the benefit of the Disclosing Party only, and the Disclosing Party shall not be prevented from taking any action, suit or proceeding relating to this Agreement in any other court or tribunal of competent jurisdiction, if and to the extent permitted under Applicable Laws.

13. MISCELLANEOUS

13.1. This Agreement constitutes the entire agreement amongst the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and understandings, whether written or oral, except obligations imposed by law which shall be deemed a part of this Agreement. This Agreement may not be amended except in writing signed by all the Parties hereto. No failure or delay by any Party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or preclude any other or further exercise of any rights hereunder. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. Nothing in this Agreement shall be implied, except as required under statute.

- 13.2. This Agreement may not be amended or terminated except pursuant to a written agreement duly executed between the Parties.
- 13.3. If any term or provision of this Agreement is determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the Parties contemplate that the court making such determination shall reduce such extent, duration, scope or other provision and enforce such term or provision in its reduced form for all purposes contemplated by this Agreement.
- 13.4. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. The Disclosing Party reserves the right to assign all of its rights, powers and privileges under this Agreement (including, without limitation, the right to enforce all of the terms of this Agreement) to any person who enters into the Transaction contemplated by this Agreement. The Receiving Party shall not assign this Agreement.
- 13.5. Any breach of provisions of this Agreement by any Party hereto shall not affect the other Party's non-disclosure and non-use obligations under this Agreement.
- 13.6. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

This Agreement has been executed by, ACL and the Applicant on the date mentioned hereinabove as follows:

Signed and Delivered

For **Abhishek Corporation Limited (in Liquidation)**

Kshitiz Gupta

(Liquidator)

Signed and Delivered

For **Applicant**