

## **PROCESS DOCUMENT**

(Invitation for a Scheme of Compromise or Arrangement Under Section 230 of Companies Act 2013 (18 of 2013) read with Regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations)

### **COMPANY IN LIQUIDATION CASE COLD ROLL FORMING LIMITED**

**Issued by:**  
**Sanjay Gupta**  
Liquidator-

Case Cold Roll Forming Limited-In Liquidation

Regn. No: IBBI/IPA-003/IP-N00047/2017-18/10354

E-mail id: casecold@primusresolutions.in; sanjay@sgaindia.in

Registered Address with Board: C4E/135, Janak Puri, New Delhi – 110058

**Regd. Office of Corporate Debtor: 74, Hemkunt Colony, Nehru Place,  
New Delhi-110048**

**Date: 25.03.2020**

**Invitation for Proposing a Scheme of Compromise or Arrangement under Section 230 of the Companies Act, 2013 by the Creditors and/or Members of Case Cold Roll Forming Limited (in Liquidation) under the Insolvency and Bankruptcy Code, 2016**

**1. Introduction**

**Background:**

Case Cold Roll Forming Ltd. -in liquidation (“the Corporate debtor” or “the company” or “CCRFL”) was incorporated as a Private Limited Company (established on 14.02.2000 having CIN Number U74899DL2000PLC103752).It got converted into closely held Public Limited company w.e.f. 24.04.2008. Company had set up a unit to manufacture Towers & Metal Crash Barrier (to be used for road furniture) at Kala Amb, Sirmour, Himachal Pradesh having 12000MT/PA capacity in Guardrail, 30000 MT/PA in Telecommunication, transmission, other towers and 3000MT/PA in all types of Fabricated Materials.

In 2018, an application was filed under Insolvency and Bankruptcy Code, 2016 (“Code”) for initiating the corporate insolvency resolution process (“CIRP”) against the Company by Oriental Bank of Commerce. The Principal Bench of the National Company Law Tribunal (“NCLT”), New Delhi by way of its order dated December 11, 2018 admitted the CIRP application filed against the Company and appointed Mr. Sanjay Gupta as the Interim Resolution Professional of the Company. The appointment of Mr. Sanjay Gupta as the Resolution Professional (“RP”) of the Company was approved by the Committee of Creditors (“CoC”) in its 1<sup>st</sup> meeting held on 10<sup>th</sup> January, 2019 for which voting results were declared on 17<sup>th</sup> January, 2019. The appointment was confirmed by Hon’ble NCLT vide order dated 27<sup>th</sup> February, 2019.

During the CIRP, one resolution plan for the corporate debtor was submitted by prospective resolution applicant, pursuant to the Expressions of Interest floated by the RP, as approved by CoC, from time to time. However, no resolution plan was found viable/satisfactory by the CoC and hence CoC in its 14<sup>th</sup> meeting held on 27<sup>th</sup> August, 2019, through E-Voting- results for which were declared on 31<sup>st</sup> August, 2019, approved liquidation of the Corporate Debtor and authorized the RP to file application before Hon’ble NCLT for liquidation of the corporate debtor.

On an application filed by the RP, Hon’ble NCLT, Principal Bench, New Delhi has passed an order of liquidation on 05<sup>th</sup> November, 2019 initiating liquidation proceedings of the company and has appointed the RP, Mr. Sanjay Gupta, as the Liquidator for the same. The Hon’ble NCLT vide this order has also directed the Liquidator to act in terms of the decision of Hon’ble Appellate Tribunal passed in Company Appeal (AT) (Ins.) No. 224 of 2018 in the matter of *Y. Shivram Prasad v. S. Dhanapal* decided on February 27, 2019 *inter alia* to ensure that the corporate debtor remains a going concern.

In compliance with the aforesaid direction, and as directed by Hon’ble NCLAT in its said decision dated 27.02.2019 in the matter of *Y. Shivram Prasad v. S. Dhanapal*, the Liquidator herein caused public announcement dated 25<sup>th</sup> March, 2020, inviting prospective bidders, i.e., Creditors and/or members of the corporate debtor, for submission of a scheme of Compromise

or Arrangement with creditors under Section 230 of the Companies Act, 2013 (“Scheme”) in the following newspapers:

- i. Tribune (English) in Himachal Pradesh Edition.
- ii. Ajit Samachar (Hindi) in Himachal Pradesh Edition.
- iii. Financial Express (English) in Delhi NCR Edition.
- iv. Jansatta (Hindi) in Delhi NCR Edition.

## **2. Invitation from potential applicants:**

### **2.1 Eligibility**

Proposal for Scheme is invited from the following category of people:

- a. Member(s) or any class of members of the Company; or
- b. Creditor/s or any class of Creditors like Financial Creditors of the Company; or Operational Creditors of the Company.

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

### **2.2 Ineligible Persons:**

Regulation 2B of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“Liquidation Regulations”), provides as- **“A person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement”**. In terms of Section 29 A of the Code, 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 willful 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) 3 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 or completion of such transactions as may be prescribed, 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 or completion of such transactions as may be prescribed, 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 Organization 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 registered with the Reserve Bank of India under section 3 of the Securitization 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.

The interested applicants are required to submit the Undertaking to above effect in **Annexure E**.

### **2.3 Meeting cost of Scheme incurred by the Liquidator (Regulation 2B (3) of Liquidation Regulations)**

Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of Section 230 or the Companies Act, 2013. However, such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of Section 230.

### **2.4 Access to Information Memorandum**

To gain access to the Information Memorandum (IM), the prospective Applicant/s of the Scheme must submit/execute a confidentiality-cum non-disclosure agreement in the format prescribed in **Annexure D**. Additional details/information about the company, if any required, may be sought by sending e-mail at [casecold@primusresolutions.in](mailto:casecold@primusresolutions.in) or [sanjay@sgaindia.in](mailto:sanjay@sgaindia.in)

## **2.5 Submission of the Scheme**

The interested applicant(s) shall be required to provide the information sought in **Annexure A**, an 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 24<sup>th</sup> April, 2020 upto 6 p.m. to the Liquidator.

## **2.6 Shortlisting of Applicants**

All the proposals/schemes received by the Liquidator by the stipulated date/time shall be reviewed by the Liquidator and the Applicants shortlisted based on the documents submitted vide clause 2.5, shall be intimated about their shortlisting.

## **2.7 Manner of submission of the Scheme**

The Applicant shall submit the hard copy of the proposed Scheme in a sealed envelope along with the requisite annexures at the following address by post or in person:

**Mr. Sanjay Gupta,  
Liquidator  
Case Cold Roll Forming Limited-In  
Liquidation  
C4E/135, Janak Puri, New Delhi – 110058**

The Applicant shall also submit a soft copy of the proposed Scheme along with requisite annexures stated above vide email at [casecold@primusresolutions.in](mailto:casecold@primusresolutions.in) and [sanjay@sgaindia.in](mailto:sanjay@sgaindia.in)

## **2.8 Earnest Money Deposit**

Along with the submission of the Scheme, the Applicant shall also be required to submit an interest free deposit of **INR 1,00,00,000/- (Rupees One Crore only)** in a designated account under lien for implementation of the Scheme, with Oriental Bank of Commerce.

Account Number - 12371242000017

Guarantee Beneficiary Name- Case Cold Roll Forming Ltd in Liquidation

Bank Name - Oriental Bank of Commerce, Gurugram

Branch -Plot No.5, Sector - 32, Institutional Area, Gurgaon – 122 001, Haryana

IFSC Code - ORBC0101237

Except for the successful Applicant, the EMD from the remaining Applicants shall be returned within 30 days of the selection of the successful Applicant. In case the Scheme, once approved by Hon'ble NCLT, is not implemented by the Successful applicant within the stipulated timelines of the approved Scheme, the EMD amount shall be forfeited.

Please note that no Scheme shall be considered by the Liquidator unless the Scheme is accompanied by valid EMD.

## **2.9 Evaluation of the Scheme by CoC**

On receipt of the full Scheme(s), the Liquidator shall seek directions from Hon'ble NCLT to allow him to constitute a 'Committee of Creditors' ("CoC"), as constituted during the CIRP period of the Company, for its opinion to find out whether the Scheme is viable, feasible and having appropriate financial matrix. Thereupon the Scheme/s shall be put up before the CoC for their assessment and consideration. Only the Scheme approved by the Creditors/CoC, in terms of the provisions of Section 230 of the Companies Act, 2013 and directions of Hon'ble NCLT, shall be submitted before the Hon'ble NCLT for approval in terms of Section 230 of the Companies Act.

## **3. Last Date of Submission of Scheme**

The last date for submission of Scheme is 24<sup>th</sup> April, 2020 up to 6.00 p.m.

**Note:**

1. 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 IPE i.e. <http://primusresolutions.in/case-cold-roll-forming-limited.html> to keep themselves updated regarding clarifications/amendments/time-extensions, if any.
2. 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.
3. 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.
4. Neither the Applicant/s nor any of representatives of the Applicant/s 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.
5. 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.
6. The Applicant acknowledges that the investment in the Company shall be made by the Applicant on an **“As is, Where is”**; **“As is, What is”**; **“Whatever there is”** and **“Without Recourse”** 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 mail at [casecold@primusresolutions.in](mailto:casecold@primusresolutions.in) or [sanjay@sgaindia.in](mailto:sanjay@sgaindia.in)



## **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.]*

### **1. Name and Address:**

- a. Name of the Firm/Company/Organisation:
- b. Address:
- c. Telephone No:
- d. Email:
- e. PAN/CIN:

### **2. Date of Establishment:**

### **3. Core Area of Expertise:**

### **4. Contact Person:**

- a. Name:
- b. Designation:
- c. TelephoneNo:
- d. MobileNo:
- e. Email:

### **5. Applicant's Profile:**

- a. 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.]*

- b. Names & DIN of Directors including Independent Directors
- c. Experience of the Company in the relevant sector.
- d. Names of key lenders, if any, to the Company or its affiliates
- e. 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'.
- f. 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 and to be duly notarised)*

I, *[name of the Individual/ chairman/ managing director/director/authorized person 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 Case Cold Roll Forming Limited-In Liquidation that I/we am/are meeting the qualification criteria as required for submission of Scheme vide advertisement dated 25<sup>th</sup> March, 2020 as disclosed in the information and records with me/us.

I, *[name of the Individual/chairman/managingdirector/ director/authorized person 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 person of Applicant, authorised by the Board of the Applicant for giving such affidavit]* state that I/we have attached necessary information requested by the Liquidator. The information furnished by me/ us is true, correct and accurate to the best of my/our knowledge. Based on this information, I/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 is 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; other creditors and employees/workers;
- (d) The treatment of statutory liabilities;
- (e) Any restructuring of the capital of the Company or hiving off 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

**1. Case Cold Roll Forming Limited-In Liquidation ("CCRFL")**, 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 74, Hemkunt Colony, Nehru Place, New Delhi-110048 acting through **Mr. Sanjay Gupta, the Liquidator**, appointed for the Company under the order of the National Company Law Tribunal (NCLT), New Delhi Bench, dated 05th November, 2020 (hereinafter referred to as "**CCRFL**" / "**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**

**2. [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**

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

#### **WHEREAS:**

A. CCRFL is primarily engaged in the business of manufacture of Towers & Metal Crash Barrier (to be used for road furniture). It is a public listed company.

Pursuant to the order dated 05<sup>th</sup> November, 2019 ("**Order**") of the Hon'ble National Company Law Tribunal, New Delhi bench ("**NCLT**"), CCRFL has been admitted into a liquidation process under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). Pursuant to the Order, Mr. Sanjay Gupta, an insolvency professional (bearing IP Registration number IBBI/IPA-003/IP-N00047/2017-18/10354) has been appointed as the Liquidator ("**Liquidator**") in respect of the Company.

B. The Applicant intends to submit its Proposal of Scheme for Compromise and Arrangements under Section 230 of the Companies Act, 2013 in terms of the Expression of Interest issued by the Liquidator on 25<sup>th</sup> March, 2020.

C. To enable the Applicant to submit scheme of compromise and arrangement under section 230 of the Companies Act, 2013 ("**Transaction**"), CCRFL 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.

D. 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, CCRFL 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 CCRFL, 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 New Delhi bench of the NCLT dated 05<sup>th</sup> November, 2019, the NCLT had commenced the Liquidation process of the Company and appointed Mr. Sanjay Gupta as Liquidator. 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 CCRFL 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 CCRFL.

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 CCRFL (Liquidator):**  
**Mr. Sanjay Gupta,**  
**Liquidator**  
**Case Cold Roll Forming Limited-In Liquidation**  
**C4E/135, Janak Puri, New Delhi – 110058**  
**E Mail: casecold@primusresolutions.in or sanjay@sgaindia.in**

**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 New Delhi. 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, CCRFL and the Applicant on the date mentioned hereinabove as follows:

**Signed and Delivered**  
**For, Case Cold Roll Forming Limited-In Liquidation**  
**the Liquidator**

**Signed and Delivered**  
**For, Applicant**

## **Annexure E**

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

**Undertaking about eligibility under Section 29 A of the  
Insolvency and Bankruptcy Code, 2016  
(In case of joint applicants, undertaking to be submitted individually for all the persons)**

I,.....(Name of Authorized Representative of Prospective Scheme Applicant in case of company or LLP) son of/ daughter of ....., aged about ..... years, currently residing at .....and having Aadhaar / Passport number....., on behalf of .....(Prospective Scheme Applicant or “PSA” in case of company or LLP), having registered office at ....., pursuant to authorization of the Board of Directors of the PSA dated ..... (as enclosed herewith) undertake as follows:

1. That I am duly authorized and competent to make the undertaking for and on behalf of the PSA in terms of resolution of its board of directors/ power of attorney dated ..... The said document is true, valid and genuine to the best of my knowledge, information and belief.
2. That the Prospective Scheme Applicant (hereinafter referred to as “PSA”) or any person acting jointly with the PSA or in concert with PSA or any person who is a ‘connected person’ (as defined under the Insolvency and Bankruptcy Code, 2016 (“Code”)
  - i. is not an undischarged insolvent;
  - ii. is not a willful defaulter in accordance with the guidelines of Reserve Bank of India (“RBI”) issued under the Banking Regulation Act, 1949 (the “BR Act”);
  - iii. at the time of submission of the Expression of Interest for Scheme u/s 230 of Companies Act, 2013, does not: (i) have an account which has been classified as non-performing asset in accordance with the guidelines of the RBI under the BR Act or the guidelines of a financial sector regulator issued under any other law for the time being in force, and (ii) controls or manages or is the promoter of a corporate debtor whose account has been, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force; and such classification has continued for a period of one year or more from the date of such classification till the date of commencement of the corporate insolvency resolution process of the Corporate Debtor;
  - iv. has not been convicted for any offence punishable with imprisonment:
    - a. for 2 (two) years or more under any Act specified under the twelfth schedule ; or
    - b. for seven years or more under any other law for the time being in force.
  - v. has not been disqualified to act as a director under the Companies Act, 2013;
  - vi. has not been prohibited by Securities and Exchange Board of India from trading in securities or accessing the securities markets;
  - vii. has not 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 National

Company Law Tribunal or any other bench of the National Company Law Tribunal under the provisions of the Code;

- viii. has not executed a guarantee in favour of creditor(s), in respect of a corporate debtor (as per the Code) which is under insolvency resolution process or liquidation under the Code and such guarantee has been invoked by the creditor (s) and remains unpaid in full or part;
  - ix. has not been subject to any disability, corresponding to clauses (i) to (viii) above, under any law in a jurisdiction outside India.
  - x. does not have a connected person who is not eligible under clause (i) to (ix)
- 
- 3. That the PSA unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as per the provisions of the Code/Companies Act 2013 and the rules and regulations framed thereunder to submit the Scheme and also while submitting a scheme and that it shall provide all documents, representations and information as may be required by the Liquidator or the CoC to substantiate to the satisfaction of the Liquidator and the CoC that the PSA is eligible under the Code/Companies Act 2013 and the rules and regulations thereunder to submit the scheme in respect of the Corporate Debtor.
  - 4. That the PSA unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this undertaking.
  - 5. That the PSA agrees that the Liquidator is entitled to rely on the statements and affirmations made in this undertaking for the purposes of determining the eligibility of the PSA.
  - 6. That in the event any of the above statements are found to be untrue or incorrect, then the PSA unconditionally agrees to indemnify and hold harmless the Liquidator against any losses, claims or damages incurred by the Liquidator on account of such ineligibility of the PSA.
  - 7. That the PSA agrees and undertakes to disclose/inform forthwith, to the Liquidator, if the PSA becomes aware of any change in factual information in relation to it or its connected person (as defined under the Code) which would make it ineligible under any of the provisions of Section 29A of the Code at any stage during the approval and implementation of the Scheme of compromise or arrangement, after the submission of this undertaking.
  - 9. That this undertaking shall be governed in accordance with the laws of India and the courts of Delhi shall have the exclusive jurisdiction over any dispute arising under this undertaking.

**SIGNED BY/ON BEHALF OF**

(Name and Designation)  
Authorized Signatory

Solemnly affirmed  
at [ ] on the [ ] day of

[ ] 2020

**Before me,**

**DEPONENT**  
**Notary/Oath Commissioner**