

## INVITATION FOR EXPRESSION OF INTEREST FOR KSK MAHANADI POWER COMPANY LIMITED

### 1. BACKGROUND

KSK Mahanadi Power Company Limited (“**KSKMPCL**”) operates a Coal Based power project in the state of Chattisgarh. This is a 3,600 MW power project comprising 6 units of 600 MW each. The entire 3,600 MW project is being implemented through a turnkey EPC contract, which was executed on 1st April 2009 with Shandong Electric Power Construction Corporation, China (SEPCO) with amendments executed thereto as required from time to time. Currently the company has 3 operational units and the rest of the units are under various stages of construction. However, balance of plant (‘BOP’) is completed for 3,600MW.

**A brief overview KSKMPCL is set out below:**

<b>Company name</b>	<b>KSK Mahanadi Power Company Limited</b>
Listing status	Unlisted
Constitution	Public Limited Company
Corporate Identification number	U40300TG2009PLC064062
Incorporation date	19 June, 2009
Registered office	8-2-293/82/A/431/A, Road No.22 Jubilee Hills, Hyderabad, Telangana 500033 IN
Location of plants	Nariyara Village, Chattisgarh
Business operations	Coal fired Thermal Power Plant

### Details of the Power Plant

<b>Particulars</b>	<b>Details</b>
<b>Location</b>	Nariyara Village, Chattisgarh
<b>Factory Area</b>	Approx 2132 Acres
<b>Number of Units</b>	6 units of 600 MW each
<b>Operational Status</b>	3 units commissioned and operational

### EPC Agreement

The Project is being implemented through a turnkey contract. The EPC Contract was executed with Shangdong Electric Power Construction Corporation (SEPCO), a China based EPC Contractor on 1st April 2009. The Guaranteed performance parameters under the extended EPC contract are as below:

Technical Parameter	Generated Specification
Unit Output (Gross)	600MW. Total Output is 6 x 600MW = 3,600MW
Unit Heat Rate	2,240 Kcal/kWh
Auxiliary Power Consumption	7.017%
Boiler Steaming Capacity	2,068 tonne/hour
Un-burnt carbon in fly ash by weight (%)	1

## Coal Supply

### i. Linkage Coal

Currently, the company is securing coal from CIL, wherein the Government of India approved a new Transparent Coal Allocation Policy, 2017 called SHAKTI – [Scheme for Harnessing And Allocating Koyala (Coal) Transparently in India] to address the coal availability. KMPCL had participated in the SHAKTI auction corresponding to its PPAs' (wherein coal would be supplied at notified prices) and won quantities from South Eastern Coal Fields (SECL) and Mahanadi Coal Fields (MCL), quoting discounts in the existing PPAs with Andhra Pradesh, Uttar Pradesh, Tamil Nadu and Chhattisgarh State.

Following is the approximate break up of the tied-up Quantity and Quality of Coal from SECL and MCL per annum:-

Sources	Av. GCV (Kcal/Kg)	Quantity (in Tonnes)	Discount (Paisa/Unit)	Remarks
SECL (Korba and Mand Raigarh)	3700-4000 (G12)	45,00,000	4	Total Coal quantity 6,820,700* tonnes (Mixed of G13 to G6)
SECL (Korea Rewa)	5500-5800 (G6)	12,00,000	2	
MCL (Ib Valley and Basundhara)	3400-3700 (G13)	11,00,000	2	
MCL (Talcher)	3400-3700 (G13)	20,700	1	

- ii. **Non Linkage Coal/Imports:** Part of the aggregate coal requirement at the 1800 MW level being met from SHAKTI FSAs. Hence, with respect to the balance quantity required and as also to achieve the designed GCV of 3800 – 4000 kcal, the company needs to resort to alternate sources of coal procurement i.e. through participation in special forward e-auction conducted by subsidiaries of Coal India Limited/ Open market purchase of coal.

### Evacuation Facility

Power generated from the full 3600 MW station would be evacuated through two 400 kV double circuit lines to the under construction PGCIL's 800 kV HVDC/765 kV/400 kV Champa pooling station at village Taga, Tehsil Akaltara.

The Champa pooling station is being constructed by PGCIL and is commissioned. The phase I of 400 kV double circuit transmission line connecting the power plant switchyard to the Champa pooling station is commissioned and power is being transmitted. The transmission line has 99 towers along a length of 34 km.

### Power Purchase Agreements

Particulars (net)	Capacity	Duration
AP Discoms	400 MW	8 years
TANGEDCO	500 MW	15 years
UP Discoms	1,000 MW	25 years
CSPDCL	225 MW	Project Life

The brief particulars of the invitation for Expression of Interest, pursuant to regulation 36B (7) of the Insolvency Resolution Process For Corporate Persons) Regulations, 2016, published in newspaper on January 8<sup>th</sup>, 2020 in relation to the timelines for submission of Expression of Interest are set out below:

Sn.	Particulars	Date
1	Insolvency Commencement Date for KSK Mahanadi Power Company Limited	3 <sup>rd</sup> October 2019
2	Date of publication of invitation for expression of interest	8 <sup>th</sup> January 2020
3	Date of issue of information memorandum, evaluation matrix and request for resolution plans to prospective resolution applicants	Earliest by 15 <sup>th</sup> April 2020 (within two days of receipt of documents)

		confirming RA's eligibility and confidentiality undertaking)
4	Last date of submission of Resolution Plans	15 <sup>th</sup> May 2020

*Note: The timeline set out hereinabove is indicative in nature.*

## **2. TRANSACTION PROCESS**

The transaction process has been outlined below:

1. Invitation for Expression of Interest (“EoI”)
2. Confidentiality undertaking by the Resolution Applicants (RAs) along with the supporting documents annexed to the EoI
3. On confirmation of eligibility of the RA and receipt of the executed confidentiality undertaking, the RA will be provided with-
  - a. The Information Memorandum prepared as per provisions of the Insolvency and Bankruptcy Code, 2016
  - b. Access to the data-room to be provided for limited due diligence.
  - c. Request for Resolution Plan (‘RFRP’) outlining the next steps along with the evaluation criteria.

## **3. INVITATION FOR RESOLUTION PLAN :**

- a. Expression of Interest are invited in a **plain sealed envelope** superscripted as “**Expression of Interest of KSKMPCL**”, in the format set out in Annexure ‘A’.
- b. Applicants should meet the Eligibility Criteria set out as Annexure ‘B’.
- c. Applicants should submit the EoI along with the supporting documents set out as Annexure ‘C’.
- d. The details to be provided by the applicant are set out in Annexure ‘D’.
- e. The undertaking set out in Annexure ‘E’ to be submitted in case of consortium.
- f. Applicant shall submit the sealed plain envelope containing a complete set of the documents for the EoI in hard copy stated above, to the below mentioned address by speed post/ registered post or by hand delivery.

Compliance with Section 29A of the Insolvency and Bankruptcy Code, 2016 by the RA shall be checked post the submission of the Resolution Plan.

### **Mahender Kumar Khandelwal**

Interim Resolution Professional for KSK Mahanadi Power Company Limited

### **Correspondence Address :**

PricewaterhouseCoopers Professional Services LLP

4<sup>th</sup> Floor, 252, Veer Savarkar Marg, Shivaji Park, Dadar (W), Mumbai - 400 028

- g. A soft copy of EoI along with annexures stated above should also be mailed to [ip.mk.ksk@in.pwc.com](mailto:ip.mk.ksk@in.pwc.com).
- h. EoIs not fulfilling the above conditions are liable to be disqualified without any further communication.

## NOTE

- 1) The Committee of Creditors “CoC” has 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, [www.ksk.co.in/kmpcl](http://www.ksk.co.in/kmpcl) to keep themselves updated on clarifications/ amendments/ time-extensions, if any.
- 2) The CoC reserve the right to withdraw the invitation for EoI and change or vary any part thereof at any stage and also reserve the right to disqualify any potential bidder, should it be so necessary at any stage.
- 3) No oral conversations or agreements with the Interim Resolution Professional/ resolution professional , advisor to the Interim Resolution Professional/ resolution professional or any official, agent or employee of the Interim Resolution Professional/ resolution professional , the Company or any member of the CoC shall affect or modify any terms of this invitation for EoI.
- 4) Neither the RAs nor any of representatives of the RAs shall have any claims whatsoever against the Interim Resolution Professional/ resolution professional or any member of the CoC or any of their directors, officials, agents or employees arising out of or relating to this invitation for EoI.
- 5) By submitting a proposal, each RA shall be deemed to acknowledge that (i) it has carefully read the entire invitation for EoI Plan and has fully informed itself as to all existing conditions and limitations; (ii) compliance with Section 29A of the Insolvency and Bankruptcy Code, 2016 by the RA shall be verified by the Interim Resolution Professional/ resolution professional post receipt of Resolution Plan; and (iii) disqualification of the RA due to noncompliance with Section 29A of the Insolvency and Bankruptcy Code, 2016 will not attract any litigation from RA

Sd/-

**Mahender Khandelwal**

Interim Resolution Professional for KSK Mahanadi Power Company Limited

IP Registration Number: IBBI/IPA-001/IP-P00033/2016-17/10086

Email: [ip.mk.ksk@in.pwc.com](mailto:ip.mk.ksk@in.pwc.com)

**Correspondence Address:**

PricewaterhouseCoopers Professional Services LLP

4<sup>th</sup> Floor, 252, Veer Savarkar Marg, Shivaji Park, Dadar (W), Mumbai - 400 028

## ANNEXURE A

### **Format of Expression of Interest**

[On the letter head of the company/ in case of consortium- the leader submitting interest in submission of Resolution Plan]

**Date:** \_\_\_\_\_

**MAHENDER KUMAR KHANDELWAL**

Interim Resolution Professional for KSK Mahanadi Power Company Limited  
252, Veer Savarkar Marg, Shivaji Park,  
Dadar (W), Mumbai - 400 028.

**E-mail ID:** ip.mk.ksk@in.pwc.com

**Subject:** Expression of Interest (“EoI”) for submitting Resolution Plan for KSK Mahanadi Power Company Limited (“**Corporate Debtor**”) undergoing Corporate Insolvency Resolution Process (“**CIRP**”).

Dear Sir,

In response to the public advertisement in [Insert name of newspaper], dated [ ] and/or [Insert name of newspaper.], dated [ ] (“**Advertisement**”) inviting EoI for submission of resolution plans for the Corporate Debtor undergoing corporate insolvency resolution process as per the provisions of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”), we confirm that we have understood the eligibility criteria mentioned in Annexure B to the EoI and meet the necessary threshold and criteria mentioned therein and submit our interest in EoI for submission of a Resolution Plan for the Corporate Debtor.

Along with our interest in EoI, we have also provided information as required in the prescribed format in Annexure C and Annexure D.

We further undertake that the information furnished by us in this EoI and Annexures is true, correct, complete, and accurate. Based on this information we understand you would be able to evaluate our preliminary proposal in order to qualify for the above-mentioned proposal. Further, we agree and acknowledge that:

- (a) the EoI will be evaluated by the Interim Resolution Professional/ resolution professional (“**IRP/RP**”) (on behalf of the Committee of Creditors (“**CoC**”) of KSK Mahanadi Power Company Limited based on the information provided in the Annexures and attached documents to determine whether we qualify to submit a proposal for the proposed transaction;
- (b) the IRP/RP/ CoC reserve the right to determine at their sole discretion, whether or not we qualify for the submission of the proposal and may reject the EoI submitted by us without assigning any reason/without any liability whatsoever;
- (c) the IRP/RP/ CoC reserve the right to request for additional information or clarification(s) from us for the purposes of the EoI and we shall promptly comply with such requirements.

Failure to satisfy the queries of IRP/RP/ CoC may lead to rejection of our submission pursuant to EoI;

- (d) Meeting the qualification criteria set out in EoI alone does not automatically entitle us to participate in the process;
- (e) We will continue to meet the eligibility criteria throughout the bid process, and any material adverse change affecting the consortium members ability to perform in consortium shall be intimated immediately;
- (f) In case of consortium, we would comply with the eligibility criteria pertaining to equity holding i.e. the lead member must hold at least 26% total equity participation in the consortium who shall be designated as the lead member. All other members would need to have a minimum stake of 10% each in the consortium;
- (g) We are not an ineligible person in terms of provisions of Section 29A of the IBC. We are a 'fit and proper' person and not under any legal disability to be a promoter entity of the Company under the applicable laws including listing agreements, stock exchange requirements and SEBI regulations and guidelines.

Yours Sincerely,

On behalf of [*Insert the name of the entity submitting the EoI*] 1 & 2

Signature:

\_\_\_\_\_

Name of Signatory:

Designation:

Company Seal/Stamp

1. *In case of Consortium Applicant, the EoI shall be signed by each member.*
2. *The person signing the EoI and other supporting documents should be an authorized signatory supported by necessary board resolutions/authorization letter.*

## ANNEXURE B

### Eligibility Criteria

*EoI would be subject to evaluation on the financial capacity of the RA*

#### **FINANCIAL CAPACITY**

1) Category A-Private/ Public Limited Company, LLP, Body Corporate, Government Organizations/Trusts/Individuals whether incorporated in India or outside India

- Minimum consolidated net worth of **INR 750 Crore** (Indian Rupees Seven Hundred and Fifty Crores) at group level.
- For fulfilling the Group criteria, the entities shown as part of Group either must have controlling interest or controlled by or under common control with the PRA. Control means at least 26% ownership.

2) Category B- Financial Institution (FI)/ Fund / Private Equity (PE) Investor / NBFCs /ARCs

- Minimum Asset Under Management (AUM) of **INR 1,500 Crores**, OR
- Committed funds available for investment/deployment in Indian Companies or Indian assets of **INR 1,000 Crore** or more.

3) Category C- Consortium

- At least one of the members must hold at least 26% total equity participation in the consortium who shall be designated as the lead member. All other members would need to have a minimum stake of 10% each in the consortium.
- The lead member shall meet the weighted average criteria of its category, and the overall consortium shall meet the threshold of **INR 750 Crore** on weighted average basis. For the members falling in:
  - Category A – Consolidated net worth at group level shall be used
  - Category B – Higher of AUM / committed funds shall be used
- All the members of the consortium shall be jointly and severally responsible for compliance with the terms of the invitation for EoI, the request for resolution plan and the resolution plan submitted by the consortium.
- Each member of the Consortium shall nominate and authorize a Lead Partner to represent and act on behalf of the members of the Consortium. Such Lead Partner shall be the single point of contact on behalf of the Consortium with the Interim Resolution Professional/ resolution professional and the CoC, their representative and advisors in connection with all matters pertaining to the Consortium.
- If any resolution applicant(s) from Category A or B or member of the Consortium is disqualified under Section 29A of the Code, then the entire Consortium or such Resolution Applicant or members of such Consortium shall stand disqualified.



- If one member is a part of any other category or any other consortium which is submitting Expression of Interest herein then that member cannot be a part of another group of consortium or category which is also submitting Expression of Interest for KSK Mahanadi.

*Note: In the event of prospective resolution applicant being an SPV (where SPV doesn't meet the Net worth/AUM criteria on its own), the prospective resolution applicant to demonstrate group's support structure to the SPV applicant.*

**TECHNICAL CAPACITY (to be self-certified by the Potential RA ("PRA")):**

- The PRA, directly or through an Affiliate(s)/Group Company(s), should either have developed and/ or is currently operating aggregate thermal power plant capacity of at least 500 MW as on the date of submission of EoI. The Affiliate and Group Company for this purpose would be defined as under:

**"Affiliate"** with respect to any person shall mean any other person which, directly or indirectly: (1) Controls such person; or (2) is Controlled by such person; or (3) is Controlled by the same person who, directly or indirectly, Controls such person

**"Control"** shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. The term "Controlled" shall be read in accordingly.

**"Group Company"** shall in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and shall include (i) a joint venture company; (ii) an Affiliate; (iii) an associate company; and (iv) a person or company which is not eligible to submit a resolution plan in terms of Section 29A of the Insolvency and Bankruptcy Code, 2016,

OR

- In case where the PRA does not have the experience in developing or operating a thermal power project, such PRA may enter into a tie-up with a technical partner who meets the above technical criteria (with a minimum of 26% (twenty six per cent) equity shareholding in such joint venture/consortium) or engage an operations and management (O&M) contractor who is operating aggregate thermal power capacity of at least 500 MW and who meets the above technical criteria, for a period of at least 2 (two) years.

OR

- The PRA shall submit an undertaking stating and demonstrating the methodology to be adopted by the PRA to run the operations of KSKMPCL.

**ANNEXURE C**  
Documents to be submitted along with EoI

S. No.	Private/Public Limited Company, LLP, Body Corporate whether incorporated in India or outside India [Category A]	Financial Institutions (FI)/ Funds / Private Equity (PE) Investors/ Any other applicant [Category B]	Sole Individual investor [Category A]
1	Profile of the RA (As per Annexure D)	Profile of the RA(As per Annexure D)	Profile of the RA (As per Annexure D)
2	Copies of Certificate of Incorporation/ Registration and Constitutional Documents (MoA, AoA)	Copies of Certificate of Incorporation/ Registration and Constitutional Documents (MoA, AoA)	Government ID proofs
3	Audited financial statement at the end of the immediately preceding completed financial year, but not earlier than March 31, 2019	Audited financial statement at the end of the immediately preceding completed financial year, but not earlier than March 31, 2019	Income tax returns for preceding 3 (three) years.
4		Relevant statement of funds availability of the RA and/ or promoter/ promoter group or any other group company, as per the eligibility criteria.	
5	Certificate from Statutory Auditor or Chartered Accountant or Company Secretary or equivalent in the jurisdiction of incorporation of the Company certifying NW as at end of last 3 financial years	Certificate from Statutory Auditor or Chartered Accountant or Company Secretary or equivalent in the jurisdiction of incorporation of the Company certifying AUM as at end of last 3 financial years and Committed funds not earlier than as at 30th November 2019.	Certificate from Chartered Accountant certifying net worth as at end of last 3 financial years
6	Confidentiality Undertaking duly executed on stamp paper of Rs. 100 (As per Annexure F)	Confidentiality Undertaking duly executed on stamp paper of Rs. 100 As per Annexure F)	Confidentiality Undertaking duly executed on stamp paper of Rs. 100 (As per Annexure F)
7	Declaration under 29A of IBC duly executed on stamp paper of Rs.200 (As per Annexure G)	Declaration under 29A of IBC duly executed on stamp paper of Rs.200 (As per Annexure G)	Declaration under 29A of IBC duly executed on stamp paper of Rs.200 (As per Annexure G)

- The above documents including certificates are required for each of the consortium members
- The relevant documents of the consortium agreement shall also be attached

## ANNEXURE D

### Details of Potential Resolution Applicant

[Note: In case of consortium, the details set out below are to be provided for each of the members]

**1. Name and Address:**

- a. Name of the Firm/ Company/ Organization/ sole individual:
- b. Address:
- c. Telephone No:
- d. Fax:
- e. Email:

**2. Name and Address (with proof) of the firm/company/organization/sole individual**

**3. Date of Establishment/ Date of Birth (for sole individual) :**

**4. Core Area of Expertise:**

**5. Contact Person:**

- a. Name:
- b. Designation:
- c. Telephone No:
- d. Email:

**6. Company/FI Profile:**

Company Financial Profile (consolidated / standalone as applicable):

(INR in Crores)

Company profile	Private/ Public Limited Company, LLP, Body Corporate, whether incorporated in India or outside India	Financial Institutions (FI)/ Funds / Private Equity (PE) Investors/ Any other applicant	Sole Individual Investor
As at 31 Mar 17	NW	AUM	Net Worth
As at 31 Mar 18	NW	AUM	Net Worth
As at 31 Mar 19	NW	AUM and Committed Funds	Net Worth

*In case of consortium, the above details are to be shared for each of the consortium members. Further, the fulfilment of qualification criteria must be clearly identified/ certified herein.*

**7. Experience of the Company in the relevant sector.**

**ANNEXURE E  
UNDERTAKING**

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**(To be executed on stamp paper)**

To,

Dear Sir,

**SUBJECT: UNDERTAKING FOR EQUITY PARTICIPATION**

This is in relation to the corporate insolvency resolution process of KSK Mahanadi Power Company Limited. In response to the public advertisement in [Insert name of newspaper], dated [ ] and/or [Insert name of newspaper.], dated [ ] (“**Advertisement**”) for invitation for Expression of Interest for the Corporate Debtor undergoing corporate insolvency resolution process as per the provisions of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”), we have submitted an EoI as a consortium. The members of the consortium are as follows:

*[Insert names of the members along with their share in the consortium and indicate the lead member]*

As required in terms of the EoI, we agree and undertake that we will hold at least [26% / 10% (lead member to choose 26% and other to choose 10%)] equity participation in the consortium. We further agree and undertake that all the members of the consortium shall be jointly and severally responsible for compliance with the terms of the EoI, the request for resolution plan and the resolution plan submitted by the consortium.

SIGNED AND DELIVERED by [insert]

## ANNEXURE F

*[To be on non-judicial stamp paper of Rs. 100 for Delhi. The stamp duty will depend on the state of execution of the confidentiality undertaking. In case the confidentiality undertaking is executed outside India, such confidentiality undertaking is required to be apostilled / consularized (as may be applicable) and stamped at the place of receipt of the undertaking within India before submission to RP.]*

*The execution of the confidentiality undertaking must be authorized by a duly passed resolution of the board of directors of the prospective resolution applicant or any sub-committee of the board (if so authorized by the board).*

*Each page of the confidentiality undertaking is required to be signed by the prospective resolution applicant at the bottom of the page and on the execution page, the authorized signatory must affix his/her full signature and additionally affix the rubber stamp seal of the prospective resolution applicant.*

*Where the Resolution Applicant is a consortium, said undertaking shall be furnished by each member of the consortium.]*

**MAHENDER KUMAR KHANDELWAL**

**[Dated]**

Interim Resolution Professional for KSK Mahanadi Power Company Limited  
252, Veer Savarkar Marg, Shivaji Park,  
Dadar (W), Mumbai - 400 028.

### **UNDERTAKING UNDER SECTION 29 OF THE INSOLVENCY AND BANKRUPTCY CODE 2016 REGULATIONS 36(4) OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016 TO MAINTAIN CONFIDENTIALITY**

1. On 3<sup>rd</sup> October 2019, the Hyderabad Bench of National Company Law Tribunal (“NCLT”) has directed commencement of corporate insolvency resolution process (“CIRP”) against KSK Mahanadi Power Corporation Limited (“KSKMPCL”) under the Insolvency and Bankruptcy Code, 2016 (“IBC”). Mr. Mahender Kumar Khandelwal, a licensed Insolvency Professional, was appointed as the Interim Resolution Professional of KSKMPCL by the NCLT by order dated 3<sup>rd</sup> October, 2019.
2. On passing of the Order dated 3<sup>rd</sup> October, 2019 by the NCLT, the powers of the board of directors of KSKMPCL stood suspended and the powers of its board of directors now vest in Mr. Mahender Kumar Khandelwal.
3. It is the duty of the Resolution Professional under the IBC to prepare an Information Memorandum (“IM”) of the corporate debtor and invite the resolution applicants to submit a resolution plan.

4. Pursuant to the invitation for resolution plans from potential resolution applicants by the Interim Resolution Professional, we are interested in submitting a resolution plan to the Interim Resolution Professional/ resolution professional.
5. We require a copy of the IM of KSKMPCL and other additional information relating to KSKMPCL and its subsidiaries that may be necessary to prepare a resolution plan of KSKMPCL by us, either directly or through our affiliates, for submission to the Interim Resolution Professional/ resolution professional (“**Transaction**”). We note, understand and acknowledge that:
  - (i) You have prepared an IM of KSKMPCL in terms of Section 29 of the IBC read with the relevant regulations framed under the IBC. We further note and understand that the information contained in the IM is confidential information and can be made available to a resolution applicant only after obtaining an undertaking of confidentiality as required under Section 29 of the IBC and Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) only for the purpose of the Transaction;
  - (ii) IM is prepared on the basis of information provided by the management of KSKMPCL and its creditors. No representation or warranty, express or implied, is given by the Interim Resolution Professional/ resolution professional or the advisors appointed by the Interim Resolution Professional/ resolution professional or any of its partners, directors, officers, affiliates, employees, advisors or agents (unless specifically mentioned under the provisions of the IBC) as to the accuracy or completeness of the contents of this IM or any other document or information supplied, or which may be supplied at any time or any opinions or projections expressed herein or therein;
  - (iii) The IM is a dynamic document and may be updated from time to time till a resolution plan is approved by the CoC;
  - (iv) Other additional information relating to KSKMPCL and its subsidiary company, if any, may be necessary for the Transaction;
  - (v) Any additional or supplementary information or clarification besides the IM, including those provided by way of emails or on telephone or in meetings provided to us by the Interim Resolution Professional/ resolution professional or his team members, including legal advisors are also confidential in nature and shall be construed as a part of the IM.
6. The IM, together with any additional or supplementary information (including the liquidation value of KSKMPCL as and when made available) or clarification, including those provided by way of emails or on telephone or in meetings by the Interim Resolution Professional/ resolution professional or his team members, including advisors is referred to as “**Confidential Information**”.
7. We are executing this undertaking of confidentiality to maintain confidentiality in respect of the information contained in the IM as mandated by the IBC and CIRP Regulations.
8. In terms of Section 29 of the IBC and Regulation 36 of the CIRP Regulations we unconditionally and irrevocably agree and undertake :

- (i) that the Confidential Information shall be kept confidential by the Resolution Applicant and shall be used solely as allowed under the Code;
  - (ii) to maintain confidentiality of the Confidential Information and not to use such Confidential Information to cause an undue gain or undue loss to ourselves or any other person;
  - (iii) in terms of Section 29(2) of the IBC, to
    - (a) comply with provisions of law for time being in force relating to confidentiality and insider trading in relation to such Confidential Information;
    - (b) protect any intellectual property of KSKMPCL and its subsidiary companies which we may have access to;
    - (c) not share this information with any third party unless it is shared on a strict need-to-know basis and clauses (a) and (b) above are complied with;
  - (iv) Except as provided herein, we will not disclose the contents of Confidential Information, as updated from time to time, to any person other than to our affiliates, including, for avoidance of any doubt, our and their directors, officers, employees, agents or advisors, including, without limitation, financial advisors, attorneys, bankers, consultants and accountants, and potential financing sources (collectively, our “**Representatives**”) who need to know such information for the purpose of the Transaction, provided that such Representatives are also bound by the same confidentiality obligations as us. We will be solely responsible for any breach of the provisions of this undertaking of confidentiality by any of our Representatives.
9. We accept and acknowledge that the Confidential Information has been developed or obtained by KSKMPCL through investment of significant time, effort and expense, and that the Confidential Information is valuable, special and unique asset of KSKMPCL, which provides KSKMPCL with a significant competitive advantage, and needs to be protected from improper disclosures. We further understand and accept that the information contained in the Confidential Information, as updated from time to time, cannot be used for any purpose other than for the Transaction. Accordingly, we unconditionally and irrevocably agree and undertake to ensure that our Representatives agree to:
- (i) maintain confidentiality of the Confidential Information, as provided from time to time, and not to use such Confidential Information to cause an undue gain to themselves /us or undue loss to any other person including KSKMPCL or any of its creditors and stakeholders;
  - (ii) keep the Confidential Information safe in a secure place and protected against theft, damage, loss and unauthorized access and undertakes to keep all documents and other materials reproducing or incorporating confidential information separate from its own confidential information;
  - (iii) protect any intellectual property of KSKMPCL that they may have access to;
  - (iv) use Confidential Information solely for the purpose of the Transaction and not for any other purpose; and

- (v) be responsible for any breach of obligations under this confidentiality undertaking (including any breach of confidentiality obligations by any Representative of the Resolution Applicant) and shall indemnify and hold harmless the Interim Resolution Professional/ resolution professional for any loss, damages and costs incurred by the Interim Resolution Professional/ resolution professional due to such breach of obligations by the Resolution Applicant or any person acting on its behalf.
10. Notwithstanding anything to the contrary contained herein, the following information shall however not be construed as Confidential Information:
- (i) information is or becomes publicly available to us or our Representatives without breach of obligations as set out herein; or
  - (ii) prior to its disclosure in connection with the Transaction, was already in our or our Representatives' possession (other than such information made available by the Interim Resolution Professional/ resolution professional at any time during the CIR process of KSKMPCL, which information shall be construed as Confidential Information and shall be bound by the terms of this confidentiality undertaking); or
  - (iii) is or has been developed independently by us or our Representatives without reference to or reliance on the Confidential Information disclosed under this undertaking of confidentiality; or
  - (iv) information was or becomes available on a non-confidential basis from a source that is not known by us or our Representatives to be prohibited from disclosing such information by any contractual, legal, or fiduciary obligation; or
  - (v) prior consent by the Interim Resolution Professional/ resolution professional is provided for disclosure in writing; or
  - (vi) information that is required to be disclosed by us (to the extent required to be disclosed) by any applicable law for the time being in force or by any applicable regulatory authority or regulation or professional standard or judicial process, order of a judicial, regulatory or administrative authority (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar process) or the guidelines of regulatory/administrative authority or stock exchange.
11. This undertaking also applies to Confidential Information accessed through the electronic data room and supersedes any 'click through' acknowledgement or agreement associated with any such electronic data room.
12. We agree to keep the Confidential Information safe in a secure place and protected against theft, damage, loss and unauthorized access and undertake to keep all documents and other materials reproducing or incorporating Confidential Information separate from our own confidential information.
13. We understand and undertake, in the event of abandonment of the resolution plan submission process and non-submission of the resolution plan; or not being shortlisted for the submission of the resolution plan; or our resolution plan not qualifying for being placed before the CoC; or the CoC rejecting our resolution plan; or the NCLT not approving our



resolution plan; or in the event the Interim Resolution Professional/ resolution professional calls upon us in writing to do so, we shall immediately return or destroy the Confidential Information including the IM and other information provided by the Interim Resolution Professional/ resolution professional or its representatives, without retaining a copy thereof, in electronic or any other form. Notwithstanding anything stated therein, we are permitted to retain information pursuant to our automatic archiving and back-up procedures; provided however, that the copy/information retained by us shall not be used by us in any manner to cause an undue gain to us or undue loss to any other person including KSKMPCL or any of its creditors and stakeholders and shall be bound to the confidentiality obligations under this undertaking.

14. This undertaking of confidentiality, except for the provisions stated in the clause 8 above, shall remain valid for a period of two (2) years after it is executed, notwithstanding whether the resolution plan submitted by us is placed before the CoC or not or whether it is approved by the CoC or not and even after completion of the corporate insolvency resolution process of KSKMPCL.
15. We understand that if we or our Representatives disclose (or threaten to disclose) Confidential Information in violation of this undertaking of confidentiality, the Interim Resolution Professional/ resolution professional or KSKMPCL shall be entitled to pursue remedies including legal recourse to safeguard its interest under undertaking of confidentiality. We further hereby acknowledge and agree that in the event of breach or threatened breach of the terms of this confidentiality undertaking, the Interim Resolution Professional/ resolution professional shall be entitled to all remedies available under law or equity.
16. Nothing in this confidentiality undertaking shall have the effect of limiting or restricting any liability arising as a result of fraud or willful default.
17. We hereby represent and warrant that we have the requisite power and authority to execute, deliver and perform our obligations under this confidentiality undertaking.
18. This confidentiality undertaking and any dispute, claim or obligation arising out of or in connection with it shall be governed by and construed in accordance with Indian laws and the courts at New Delhi shall have exclusive jurisdiction over matters arising out of or relating to this confidentiality undertaking.

Signed for and on behalf of [*insert name of entity*]

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Signature and official stamp

## ANNEXURE G

### DECLARATION UNDER SECTION 29A OF IBC

*Execution instructions:*

*[To be on non-judicial stamp paper of Rs. 200. Foreign companies submitting expression of interest / resolution plan are required to follow the applicable law in their country and ensure that the documents submitted as part of the expression of interest / resolution plan are appropriately apostilled, and stamp duty paid in India before submission to Interim Resolution Professional/ resolution professional.]*

*The execution of this affidavit must be authorized by a duly passed resolution of the board of directors of the prospective resolution applicant or any sub-committee of the board (if so authorized by the board).*

*Each page of the affidavit is required to be signed by the prospective resolution applicant at the bottom of the page and on the execution page, the deponent must affix his/her full signature and additionally affix the rubber stamp seal of the prospective resolution applicant.*

*Where the resolution applicant is a consortium, said affidavit shall be furnished by each member of the consortium.*

*Kindly fill in the requisite details in each of the items where information is left blank or has been sought.]*

### AFFIDAVIT

I, [name of the chairman/managing director/director/authorized person of resolution applicant, authorized by the Board of the resolution 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 resolution applicant] having registered office at [\_\_\_\_] ("**Resolution Applicant**", a term which also includes any person acting jointly with the Resolution Applicant), do solemnly affirm and state to the committee of creditors ("**CoC**") of KSK Mahanadi Power Corporation Limited ("**KSKMPCL**" or "**Company**") and the interim resolution professional/ resolution professional of the Company ("**IRP/RP**") as follows:

1. That I am duly authorized and competent to make and affirm the instant affidavit for and on behalf of the Resolution Applicant in terms of the [resolution of its board of directors/ power of attorney- to provide other necessary details of such authorization]. The said document is true, valid and genuine to the best of my knowledge, information and belief.
2. I hereby unconditionally state, submit and confirm that the Resolution Applicant is not disqualified from submitting an expression of interest in respect of the Company, pursuant to the provisions of the Code.
3. That neither the Resolution Applicant, nor any other person acting jointly or in concert with the Resolution Applicant, nor any 'connected person' (as defined under Section 29A of the Insolvency and Bankruptcy Code, 2016, as amended from time to time ("**Code**") of (a) the

Resolution Applicant or (b) any person acting jointly or in concert with the Resolution Applicant ) and nor any other person covered under Section 29A of the Code:

- (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;
- (c) is at the time of submission of the expression of interest and / or resolution plan a person who, (i) has an account which has been classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, or (ii) controls or manages or is the promoter of a corporate debtor whose account has been, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force; and such classification has continued for a period of one year or more from the date of such classification till the date of commencement of the corporate insolvency resolution process of the Company and all such overdue amounts along with interest, costs and charges thereon have not been fully repaid at the time of submission of expression of interest and / or resolution plan;<sup>1</sup>
- (d) has been convicted for any offence punishable with imprisonment –
  - (i) for two years or more under any statute specified under the Twelfth Schedule of the Code and two years have not passed from the date of release from such imprisonment; or
  - (ii) for seven years or more under any law for the time being in force and two years have not passed from the date of release from such imprisonment;
- (e) is disqualified to act as a director under the Companies Act, 2013;
- (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 of or control of a corporate debtor in which any preferential transaction or undervalued transaction or extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Hon'ble National Company Law Tribunal (or its appellate tribunal / court) under the Code (other than a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction which has taken place without any contribution by the Resolution Applicant in an entity acquired by the Resolution Applicant, prior to such acquisition by way of a resolution plan approved under the Code or pursuant to a scheme or plan approved by a financial sector regulator or court);

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<sup>1</sup> If the resolution applicant is a financial entity and is not a related party of the corporate debtor, taking into consideration the Explanation I to Section 29A(c) of the Code, such person may delete this provision.

- (h) has executed a guarantee in favour of a creditor, in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under the Code and such guarantee has been invoked by the creditor and remains unpaid in full or in part; and
  - (i) is subject to any disability, corresponding to the aforesaid conditions under any law in a jurisdiction outside India.
4. That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as required under Regulation 38(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as applicable to the corporate insolvency resolution process of the Company.
  5. That neither the Resolution Applicant, nor any other person acting jointly or in concert with the Resolution Applicant, nor any 'connected person' (as defined under Section 29A of the Code) has:
    - (a) withdrawn or sought any deviation to its resolution plan in any corporate insolvency resolution process, or avoided or delayed or defaulted in the implementation of the resolution plan approved by the committee of creditors / Adjudicating Authority; or delayed or failed to implement any conditions as contained in the process document / note issued under any corporate insolvency resolution process (including the submission of any guarantee / security documents as envisaged under the process document / note of any corporate insolvency resolution process);
    - (b) had any resolution plan filed by it withdrawn / rejected or applied to be withdrawn / rejected from the Adjudicating Authority / committee of creditors owing to any non-compliance / default by it;
    - (c) failed to implement its resolution plan approved by committee of creditors / Adjudicating Authority in accordance with its terms; or
    - (d) in order to avoid the obligations under its resolution plan approved by committee of creditors / Adjudicating Authority, challenged the process document / note or process thereunder issued by a resolution professional / committee of creditors with respect to a corporate insolvency resolution process, in any court of law or sought any deviation from the resolution plan submitted by it which is not acceptable to the committee of creditors of the relevant matter.
  6. That the Resolution Applicant unconditionally and irrevocably represents, warrants and confirms that it is eligible under the terms and provisions of the Code (read with the relevant regulations framed there under) to submit an expression of interest and a resolution plan and it shall provide all documents, representations and information as may be required by the IRP/RP or the CoC to substantiate that the Resolution Applicant is eligible under the Code and the rules and regulations thereunder to submit a resolution plan in respect of the Company.
  7. That the Resolution Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.

8. That the Resolution Applicant understands that the IRP/RP and the CoC may evaluate the expression of interest and / or resolution plan to be submitted by the Resolution Applicant or any other person acting jointly with it and such evaluation shall be on the basis of the confirmations, representations and warranties provided by the Resolution Applicant under this affidavit.
9. That the Resolution Applicant agrees that each member of the CoC and the IRP/RP are entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the resolution plan submitted by the Resolution Applicant.
10. That in the event any of the statements contained herein are found to be untrue or incorrect, then the Resolution Applicant unconditionally agrees to indemnify and hold harmless the IRP/RP and each member of the CoC against any losses, claims or damages incurred by the IRP/RP and / or the members of the CoC on account of such ineligibility of the Resolution Applicant.
11. That the Resolution Applicant agrees and undertakes to disclose/inform forthwith, to the IRP/RP and the members of the CoC, if the Resolution Applicant 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 of the corporate insolvency resolution process of the Company, after the submission of this affidavit.
12. That if, at any time after the submission of this affidavit and before the approval of the Resolution Applicant's resolution plan by the Hon'ble National Company Law Tribunal under the Code, the Resolution Applicant becomes ineligible to be a resolution applicant as per the provisions of the Code (and in particular Section 29A of the Code), the fact of such ineligibility shall be forthwith brought to the attention of the IRP/RP and the CoC.
13. That this affidavit shall be governed in accordance with the laws of India and the NCLT New Delhi /Courts of New Delhi shall have the exclusive jurisdiction over any dispute arising under this affidavit.

SOLEMNLY AFFIRMED AT \_\_\_\_\_

ON THIS THE [\_\_\_\_\_] DAY OF [\_\_\_\_\_] 2019

**DEPONENT**

**Before me,  
Notary/ Oath Commissioner**

**VERIFICATION:**

I, *[name of the chairman/managing director/director/authorized person of resolution applicant, authorised by the Board of the resolution applicant company (in case of a company)]*

*for giving such affidavit*], the deponent above named, on behalf of *[name of the resolution applicant]*, having registered office at [\_\_\_\_\_], do hereby verify and state that the contents of the above affidavit are true to the best of my knowledge and nothing material has been concealed therein.

Verified at [\_\_\_\_\_], on this the [\_\_\_\_\_] day of [\_\_\_\_\_] 2019.

**DEPONENT**