

## Expression of Interest for Forensic Audit of

### EMC Limited

## under Corporate Insolvency Resolution Process (IBC 2016)

Pursuant to the order of the Hon'ble National Company Law Tribunal, Kolkata Bench, dated 12.11.2018 ("Order"), EMC Limited ("Corporate Debtor") is undergoing Corporate Insolvency Resolution Process and in this regard, the undersigned vide order dated: 07.02.2019 has been appointed as the Resolution Professional of the Corporate Debtor by Hon'ble National Company Law Tribunal, Kolkata Bench.

#### **Intent of appointing Forensic Auditor:**

The Resolution Professional is desirous of appointing Forensic Auditor for conducting the forensic audit of the Corporate Debtor, in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Accordingly, Expression of Interest (EOI) is hereby invited from interested parties for undertaking the aforementioned valuation.

#### **Expression of Interest Submission:**

The EOI should contain the following:

1. A profile of the firm containing the firm's/ company's experience (experience in forensic audit under the Corporate Insolvency Resolution Process ); and
2. An all-inclusive quote for valuation, *inter alia*, containing the professional fees, taxes, conveyance charges and such like.

#### **Scope of Services:**

A. To carry out forensic audit for the financial years 2015-2016,2016-2017,2017-2018 and for the period 01/04/2018 to 12/11/2018 i.e. insolvency commencement date.

#### **B. To identify and report:**

- i. Preferential Transactions under section 43 of the Insolvency and Bankruptcy Code, 2016 as amended till date (hereinafter referred to as Code)
- ii. Undervalued Transactions under section 45 of the Code
- iii. Extortionate Credit Transactions under section 50 of the Code
- iv. Fraudulent Transactions under section 66 of the Code

Detail scope of work of Forensic audit is attached with the EOI.

#### **The following persons/ firms/ companies shall not be eligible for this assignment, namely:**

- a) A relative of the resolution professional;
- b) A related party of the corporate debtor;

- c) An auditor of the corporate debtor at any time during the five years preceding the insolvency commencement date; or
- d) A partner or director of the insolvency professional entity of which the resolution professional is a partner or director.

**Other Terms & Conditions:**

- a) The RP reserves the right to reject or accept any quotations in this regard without any recourse to the quotation provider.
- b) The Report should be detailed in terms of findings with supporting data being captured in the report. Report should clearly state the assumptions made, if any, for arriving at the findings.
- c) The Auditors should be empanelled with the Indian Bank Association.

**Timelines for completion of the assignment:**

The draft report is to be submitted to the RP within 30 days from the date of allotment of assignment.

The final report is to be submitted to the RP within 15 days from the date of issue of draft report.

**Terms:**

1. The credentials and the best quote shall be considered for selecting the Auditor.
2. The quotation stated in the EOI will be considered final and non-negotiable.

The EOIs must be submitted in soft format through email with subject *"EXPRESSION OF INTEREST FOR FORENSIC AUDIT OF EMC LIMITED"* addressed to: CA. Kannan Tiruvengadam Resolution Professional of EMC Limited at the email id: rp.emcltd@gmail.com

3. The EOIs must be submitted by 21/02/2019 at 15:00 hours. Any submission after the last date shall not be accepted.

Please note that no personal calls will be entertained in this regard. In case of any clarifications, please feel free to mail at the aforementioned email id.

  
CA Kannan Tiruvengadam  
Resolution Professional  
EMC Ltd.

IBBI/IPA-001/IP-P00253/2017-18/10482  
Netaji Subhas Villa  
18, Karunamoyee Ghat Road (Tollygunge Area), Flat 3C,  
Kolkata 700082, West Bengal, India



**Scope for forensic audit will be as under:**

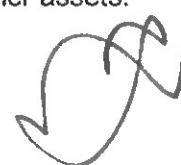
- i) Ascertaining money trail and end use of funds disbursed by lenders.
- ii) Tracing the source and genuineness of contribution by promoters by analysing equity/debt/infused by promoters/partners.
- iii) Verifying revenue from operations including checking sale order, invoices and controls in the billing process. The focus should be on unearthing inflated turnover / fictitious sales and/or Sales on Return (SOR) basis where profit has been booked and sales returned in the subsequent accounting period leading to writing off of stocks/debtors and reversal of booked profits.
- iv) Commenting on transactions of substantial amount, which seem not to be normal trade transactions at arms' length.
- v) Commenting on adherence to Escrow/Trust and Retention Account (TRA) arrangements made with various Banks. Details of all transactions with banks outside the consortium/other than nominated account.
- vi) Concentrating transactions- sole customer, sole supplier, and major transactions with related parties/group companies. Analysis of relationship in two-way deals with the same party or indirect payments made by customers of the borrower to the vendors of borrower.
- vii) Movements in unsecured loans during the specified period.
- viii) Analysis of findings of Special Audit if any.
- ix) Details of substantial debts raised in sister/associate/group companies either through corporate guarantee of borrower or against security of promoters or promoter's family assets.
- x) Verifying receivables- Receivables should be verified thoroughly with a view to unearth 1) reciprocal receivables against each other in case of related parties 2) fictitious debtors 3) inflated debts 4) already realised debts 5) disputed debts 6) unacknowledged debts.
- xi) Finding details of assets of unit/ its promoter/ partners to ensure recovery of loans and advances granted by banks as there would be cases where some assets are not reported in financials of the unit/promoters /partners.
- xii) Examining, discreetly chain of transactions pertaining to unit/promoters/partners to ensure genuineness of the dealings as there could be cases of bogus/family/other settlement transactions.
- xiii) Examination of all transactions/dealings of the account from fraud angle.
- xiv) Submit status on project at Italy & Sweden.

**The scope of works/audit should also include aspects as below:**

- 1) Availing of credit facilities by overstating assets, sale, income & profit by submitting false / manipulated financial statements.
- 2) Drawing from cash credit accounts by submitting false / inflated / manipulated stock and book debt statements.



- 3) Assets to be financed not purchased / created and funds borrowed from the Bank mis-utilised / misappropriated for purposes other than for which the Bank had released the funds.
- 4) Availing of Bank finance by lodging bogus bills discount by the Bank.
- 5) Offering securities of immovable properties for loan by submitting forged title deeds / revenue records.
- 6) Availing of finance from several banks against with the same securities without disclosing finance taken from other bank(s) or misrepresenting that the property or security is free from encumbrances.
- 7) Disposal / removal of other securities pledged / hypothecated / mortgaged assets financed by the bank without knowledge / consent of the Bank and not depositing or routing the sale proceeds in the accounts maintained with the branch.
- 8) Position of joint documentation consequent upon amalgamation and its impact on lenders.
- 9) Disposal / removal of other securities pledged / hypothecated / mortgaged to the Bank without consent / knowledge of the Bank and proceeds mis-utilised.
- 10) Borrowing funds from the Bank by impersonation.
- 11) Falsifying or fabricating books of accounts, entries vouchers or financial statements.
- 12) Forging signatures of professionals, such as Chartered Accountant / Valuer on certificates or reports.
- 13) Dishonour of cheques/invocation of Bank Guarantee/Devolvement of Letter of Credit for insufficiency, etc of funds in the account with **specific emphasis of Foreign Bank Guarantees, Foreign Letter of Credits and LOUs/SBLCs/LOCs.**
- 14) Furnishing an affidavit/undertaking/statement containing false, incorrect or misleading information.
- 15) Utilization of short-term working capital for long term purpose not in conformity of with the terms of sanction.
- 16) Deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned.
- 17) Transferring borrowed funds to the subsidiaries / Group companies or other corporate by whatever modalities.
- 18) Routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender.
- 19) Investment in other companies by way of acquiring equities / debt instruments without approval of lenders.
- 20) Non utilization of the fund for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.



21) To identify transactions falling within the purview of sections 43 to 46,50 and section 66 of the Insolvency and Bankruptcy Code, 2016 as per provisions contained therein.

22) Information regarding disinvestment or efforts initiated for disinvestment if any, during this period.

**a) Identifying preferential transactions as per the section 43 of the Insolvency and Bankruptcy Code, 2016 as amended till date (hereinafter referred to as Code) ,if any (subject to allowable exceptions):**

- i. Where there has been transfer of property or an interest thereof of the Corporate Debtor for benefit of a creditor or a surety or a guarantor for or on account of an existing financial debt or operational debt or other liabilities owed by the Corporate Debtor, and
- ii. Where such transfer has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of distribution of assets being made in accordance with Section 53 of the Code.
- iii. Where such transfer fulfils all other conditions under Section 43 of the Code and is not saved by any exceptions under Section 43 (3) of the Code

**b) Identifying undervalued transactions as per the section 45 of the Insolvency and Bankruptcy Code, 2016 as amended till date (hereinafter referred to as Code), if any as per the following conditions:**

- i. Where the Company made any gifts to a person, or entered into a transaction with a person which involved transfer of one or more assets by the Company for a consideration the value of which is significantly less than the value of the consideration provided by the Company.
- ii. For the purpose of valuation of assets (if material), determination may be required to be made by an independent third party valuer and reliance would need to be placed on the report submitted by such valuer.
- iii. Where such transfer fulfils all other conditions under Sections 45 and 46 of the Code.

**c) Identifying any transactions fulfilling Section 49 of the Code, being undervalued transactions where such transaction was deliberately entered into by the Company with an objective of defrauding creditors by:**



i. Keeping the assets beyond the reach of any person who is entitled to make a claim against the Corporate Debtor; or

ii. To adversely affect the interest of such person in relation to the claim

**d) Conduct background checks on select entities involved in these transactions to identify any undisclosed relation with the Company**

Examining and analysing transactions involving receipts of financial or operational debt by the Company during the period within two years preceding Insolvency Commencement date to identify any extortionate credit transactions as per the section 50 of the Insolvency and Bankruptcy Code, 2016 and

a) The underlying documents and arrangements of such financial or operational debt will be examined to identify if any exorbitant payments are/were required to be paid by the Corporate Debtor.

b) Conduct background checks on the select entities involved in these transactions of receipts of financial or operational debt to identify any undisclosed relation with the Corporate Debtor

Review of business and transaction of the corporate debtor to identify transactions carried out with intent to defraud creditors of the corporate debtor or for any fraudulent purpose as per section 66 of the Insolvency and Bankruptcy Code, 2016

A handwritten signature or set of initials, possibly 'S' or 'S', written in dark ink.