

**Patna Highway Projects Limited**

**Invitation of Expression of Interest for Submission of Resolution Plan**

16<sup>th</sup> September 2020

Invited by:

**Sutanu Sinha**

Resolution Professional for Patna Highway Projects Limited

IP registration no. IBBI/IPA-003 /IP-N00020/2017-18/10167

Email ID: [sutanusinha@bdo.in](mailto:sutanusinha@bdo.in)

Supporting IP entity: **BDO Restructuring Advisory LLP**

**DETAILED INVITATION FOR EXPRESSIONS OF INTEREST FOR SUBMISSION OF RESOLUTION  
PLAN IN PATNA HIGHWAY PROJECTS LIMITED**

## 1. INTRODUCTION

Patna Highway Projects Limited (“**Corporate Debtor**” or the “**Company**”) was incorporated on 22 December 2009 under the provisions of the Companies Act, 1956, with Corporate Identification Number (CIN) U74999DL2009PLC197265. The registered office of the Company is at Second Floor, Plot No. 360, Block B, Sector 19, Dwarka, New Delhi. The Corporate Debtor is a subsidiary company of Gammon Infrastructure Projects Limited. The Corporate Debtor had signed a Concession Agreement with NHAI for 4 laning of existing NH 77 highway from Hajipur to Muzaffarpur in the State of Bihar.

### SNAPSHOT OF THE RELEVANT INFORMATION ABOUT THE COMPANY

Name	Patna Highway Projects Limited
ROC Code	Registrar of Companies - Delhi
CIN	U74999DL2009PLC197265
Date of Incorporation	22 December 2009
Class of Company	Public Limited
Whether Listed or not	Unlisted
Industry	Infrastructure - road project
Registered Office	Second Floor, Plot No. 360, Block B, Sector 19, Dwarka, New Delhi
Authorized Capital	INR. 500,000,000 (Rupees Fifty Crore only)
Paid-up Capital	INR. 500,000,000 (Rupees Fifty Crore only)

Pursuant to an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) before the Hon’ble National Company Law Tribunal, Principal Bench, New Delhi (“**NCLT**”) by Union Bank of India (erstwhile Corporation Bank), in its capacity as the financial creditor of Corporate Debtor, the corporate insolvency resolution process (“**CIRP**”) of the Corporate Debtor was initiated by the NCLT vide its order dated 3 January 2020 (“**Order**”). By way of the Order, Mr. Sutanu Sinha was appointed as the Interim Resolution Professional (“**IRP**”). The said Order was intimated to the IRP on 7 January 2020. Mr. Sutanu Sinha was later confirmed as the Resolution Professional (“**RP**”) of the Corporate Debtor by the Committee of Creditors (“**CoC**”) on 31 July 2020.

In accordance with the Section 25(2)(h) of the Code read with Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), 2016 (“**CIRP Regulations**”), the RP hereby invites Expression of Interest (“**EOI**”) from the interested and eligible prospective resolution applicants

(“**Prospective Resolution Applicants**” or “**PRAs**”) to submit resolution plans for the Corporate Debtor.

This is the detailed invitation for expression of interest (“**IEOI**”) referred in Regulation 36 A (3) and (4) of the CIRP Regulations.

## **2. ELIGIBILITY CRITERIA UNDER SECTION 25 (2)(H)**

To be eligible to submit the EOI (and the resolution plan) for the Corporate Debtor, the PRAs must satisfy the following eligibility criteria, as approved by the CoC under Section 25 (2)(h) of the Code.

### **A. For Corporates including Limited Liability Partnerships (LLPs)/ any other Corporate PRA**

- Turnover: Minimum standalone / consolidated group turnover (i.e. gross income or gross revenue) of INR 500 Crores (Rupees Five Hundred Crore Only); OR
- Net-Worth: Minimum standalone / consolidated group net-worth of INR 150 Crores (Rupees One Hundred Fifty Crores Only).

### **B. For Financial Investors - Foreign Investment Institutions (FII) / Mutual Funds / Private Equity / Venture Capital Funds, Domestic / foreign Investment institutions, Non-Banking Finance Companies (NBFC), Asset reconstruction Companies, Banks and similar entities**

Minimum Assets under Management / Loan Portfolio / Capital Committed of INR 1000 Crores (Rupees One Thousand Crore Only) at the individual /group level

### **C. For High Net Worth Individuals:**

Net Worth of at least INR 150 Crores as evidenced by Certificate from Auditor / Chartered Accountant or equivalent certification in the jurisdiction of incorporation / registration of the PRA.

### **D. For Consortium:**

- In case of a consortium, the lead member/ at least one consortium member should meet any of the criteria as mentioned above in A, B or C (as applicable).

- However, the liability of consortium members would be joint and several.
- In addition, the consortium should satisfy requirements set out in paragraph 6 below.

**NOTES:**

- For purpose of calculation of turnover / net-worth / AUM etc., the average of turnover / net-worth / AUM etc. as per the last 3 (three) available audited financial statements shall be considered. The latest audited financial statement should be as on 31 March 2020. In case, the audited financial statement as on 31 March 2020 is not available for justifiable reasons, then the audited financial statement as on 31 March 2019 will be considered as the latest. In case, audited financial statements are not available for justifiable reasons, Certificate from Auditor / Chartered Accountant or equivalent certification in the jurisdiction of incorporation / registration of the PRA may be considered.
- While providing the information and numbers for the turnover / net- worth / AUM etc. criteria, standalone turnover / net-worth / AUM etc. of the PRA along with the consolidated number with that of the promoter / promoter group and / or any of the group entities (in case reliance is placed on any group entity(ies)) should be provided.
- In case the PRA is a SPV / LLP, the eligibility criteria of the parent entity / promoters would be considered in proportion to their share in SPV / LLP and necessary documents of the parent entity / promoters needs to be provided.
- For foreign PRAs, all the financials would be considered at prevailing INR on the date of submission of the EOI.

**3. DISQUALIFICATION UNDER SECTION 29A**

Please note that a PRA will not be eligible to submit the EOI if she/it or any person acting jointly or in concert with her/it is disqualified under Section 29A of the Code (as amended from time to time). In case of a consortium, no member of the consortium should be disqualified under Section 29A of the Code. The PRA shall provide an affidavit in relation to Section 29A of the Code as set out in **Annexure 'C'**.

#### 4. LAST DATE OF SUBMISSION OF EOI

The last date for submission of EOI is 01 October 2020 up to 06.00 PM, which may be extended at the discretion of Resolution Professional with consent/approval/ratification of the CoC. In case the designated day happens to be a holiday; the next working day will be deemed as the last date for submission of EOI. In case EOI is not submitted by the specified time-period, then the participation in the process can only be allowed with CoC /approval/ratification.

All the EOIs received on or before the last date of submission of EOI will be reviewed by RP and members of the CoC and provisional and final lists of qualified and shortlisted PRA will be informed. Further, the PRAs will be provided with the evaluation matrix and request for resolution plans (**'RFRP'**) detailing the terms and conditions of submitting a resolution plan for the Company.

#### 5. SUBMISSION OF EOI

The EOI should be unconditional and should be submitted in the format attached as **Annexure 'A'**. It should be accompanied with the following documents/ information, as applicable:

- a) Profile of PRA in the form attached as **Annexure 'B'**
- b) Section 29A affidavit in the format attached as **Annexure 'C'**
- c) EOI Undertaking in the format attached as **Annexure 'D'**.
- d) Confidentiality Undertaking in the format attached as **Annexure 'E'**.
- e) Proof of address along with Copies of Certificate of Incorporation/ Registration and Constitutional Documents (MoA, AoA) or other equivalent organizational documents. Copy of PAN card, GST number or equivalent documents.
- f) Audited financial statements of the last three years, and/or its promoter/promoter group or any other group company as per eligibility criteria.
- g) A notarized declaration from the PRA in order to demonstrate that the promoter/promoter group or any other group company are part of the same group, in case the interested party is using such entities for meeting the eligibility criteria. Please note that the PRA shall provide all relevant documents for its promoter/promoter group or any other group company, if required to meet the eligibility criteria.
- h) A list of connected persons of the PRAs (including of each member of the

consortium), as defined under Section 29A of the Code.<sup>1</sup>

- i) A statement showing how the PRA meets the conditions laid down in the eligibility criteria along-with documents to substantiate the same.
- j) A statement giving details if the PRA or any of its related parties has withdrawn from or failed to implement or contributed to the failure of implementation of any other resolution plan
- k) In case of a consortium, the relevant documents will need to be provided by each member of the consortium.
- l) Any additional document/information asked by RP or CoC must be furnished by PRA
- m) EOI shall be submitted in the following manner:
  - i. Electronically at [sutanusinha@bdo.in/irpphpl@bdo.in](mailto:sutanusinha@bdo.in/irpphpl@bdo.in); and
  - ii. Hard copy EOI shall be submitted to following address in a sealed envelope superscripted as <Expression of Interest for submitting the resolution plan for Patna Highway Projects Limited undergoing the Corporate Insolvency Resolution Process.>. in the name of Sutanu Sinha, Resolution Professional for Patna Highway Projects Limited:

**Sutanu Sinha**

**Resolution Professional, Patna Highway Projects Limited**

**Floor No. 4, Duck Back House 41, Shakespeare Sarani, Kolkata-700017**

## **6. CONSORTIUMS**

Where the EOI is being submitted by a consortium of investors/ bidders (“**Consortium**”), the EOI, along with all undertakings submitted pursuant to this EOI shall be signed by each member of the Consortium. Please further note that:

- a) person cannot be part of more than 1 (one) Consortium submitting the EOI for the Company. Further a Person shall submit only 1 (one) EOI, either individually as a PRA or as a constituent of a Consortium;
- b) the Consortium shall submit the copy of consortium agreement/MOU, if any,

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<sup>1</sup> It is clarified that for purposes of this IEOI and documents required to be submitted hereunder, in case of Resolution Applicants which are registered as FII/ FPI (and involve fund structures), the ultimate entity which provides investment advice to the Resolution Applicant or which is the general partner of the Resolution Applicant may be considered as the promoter or in the management/ control of the Resolution Applicant.

entered into between the Consortium members; each member of the Consortium shall nominate and authorize one member (“**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 Resolution Professional and the CoC, their representative and advisors in connection with all matters pertaining to the Consortium;

- c) the members of the Consortium shall be jointly and severally liable in respect of all obligations under the EOI/ undertakings/ resolution;
- d) under the EOI/ undertakings/ resolution plan submitted to the Resolution Professional; if any 1 (one) member of the Consortium is disqualified under Section 29A of the Code, then the entire Consortium i.e., all the members of such Consortium shall stand disqualified;
- e) The EOI must detail the members of the Consortium, the Lead Partner and the holding/ proposed percentage holding of each member;
- f) In case any EOI applicant wishes to add/remove members to form or change a consortium, the same shall be allowed subject to consent / approval of the CoC.

#### **7. OTHER TERMS AND CONDITIONS:**

- a) This is not an offer document and is issued with no commitment.
- b) The terms and conditions for inviting EOIs and Resolution Plan is determined with the approval of CoC of the Corporate Debtor and may be changed or amended at any stage with CoC approval. CoC has the right to cancel, amend or modify the invitation process without assigning any reason and without any liability whatsoever nature.
- c) EOIs not fulfilling the above conditions are liable to be disqualified without any further communication.
- d) CoC / RP reserves the right to cancel or modify the process and / or reject / disqualify any RA / EOI / bid / offer at any stage of the process without assigning any reason and without any liability.
- e) RA should regularly visit PHPL website at <http://patnahighwayprojects.com> to keep themselves updated regarding clarifications/ amendments/ modifications/ time-extensions, if any.
- f) CoC / RP reserve the right to withdraw EOI and/or RFRP and/or evaluation matrix and change or vary any part thereof at any stage and also reserve the right to disqualify any RA, should it be so necessary at any stage.

- g) No oral conversations or agreements with RP or any official, representative, affiliates, associate, advisor, agent, director, partner or employee of the RP and Corporate Debtor or any member of the CoC shall affect or modify any terms of this EOI.
- h) Neither the RA nor any of the RA's representatives shall have any claims whatsoever against the RP or Corporate Debtor or any member of the CoC or any of their official, representative, affiliates, associate, advisor, agent, director, partner or employee arising out of or relating to this EOI.
- i) By submitting a proposal, each RA shall be deemed to acknowledge that it has carefully read the entire EOI, its terms and conditions and has fully informed itself as to all existing conditions and limitations. Ignorance of law/s will not be treated as any excuse.
- j) The consideration, evaluation and approval of the resolution plans submitted by the RP to the CoC is within the power of the CoC under provisions of the Code and the CIRP Regulations. The CoC may separately specify evaluation / other criteria for resolution applicants for evaluation of the resolution plans. The CoC shall have the right to approve or reject any resolution plan presented by the RP.
- k) EOIs of only those interested parties who meet the eligibility and other criteria specified herein shall be considered. Resolution Professional/ CoC reserve their right to reject, without being bound to do so, the EOI of any PRA and not include them in the provisional or final list of eligible PRAs in case:
  - i. The PRA does not meet the eligibility criteria set out herein;
  - ii. If the EOI submitted by the PRA is incomplete or the PRA does not submit the documents as required under this IEOI or does not submit such further documents or information as requested by the Resolution Professional for conducting due diligence on the PRA;
  - iii. If any information/record provided is false, incorrect, inaccurate or misleading;
  - iv. If in the opinion of the CoC, the PRA is undesirable or not credible or if the PRA fails to provide information, if requested, to establish its credibility, eligibility or ability to implement a resolution plan.
  - v. If the PRA has or any of its related parties has withdrawn from or failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Hon'ble NCLT at any time in the past.



- l) Subject to the approval of the CoC, a PRA may submit a resolution plan either by itself or through an affiliate or a group entity or along with any financial strategic partner as it may deem fit. Notwithstanding the above, the PRA and such other entity/ affiliate/ partners as mentioned above should not be ineligible to submit a resolution plan as per the Code and shall be jointly and severally liable for all their duties, liabilities and obligations
- m) For any other further clarifications, kindly write to [irpphpl@bdo.in](mailto:irpphpl@bdo.in) and / or to the following address:

**Issued by:**

**Sutanu Sinha**

**Resolution Professional for Patna Highway Projects Limited**

**Floor No. 4, Duck Back House 41, Shakespeare Sarani, Kolkata- 700017**

The RP may seek any clarification and additional information or document, in addition to material on record, from prospective resolution applicant for conducting due-diligence to ensure compliance with respect to eligibility and qualifications in accordance with the applicable provisions of the Code

## ANNEXURE 'A'

### FORMAT OF EXPRESSION OF INTEREST

[On the Letterhead of the Lead Partner/Prospective Resolution Applicant Submitting the EOI]

Date: [●]

To,

**Mr. Sutanu Sinha**

**Resolution Professional**

**Patna Highway Projects Limited**

(IP Registration No. IBBI/IPA-003/IP-N00020/2017-2018/10167)

**Address:** BDO Restructuring Advisory LLP, Floor No. 4, Duck Back House 41, Shakespeare Sarani, Kolkata- 700017

**Email ID:** [irpphpl@bdo.in](mailto:irpphpl@bdo.in)

**Registered email ID with IBBI:** [sutanusinha@bdo.in](mailto:sutanusinha@bdo.in)

**Subject: Expression of Interest ("EOI") for submitting Resolution Plan for Patna Highway Projects Limited ("Corporate Debtor" or "Company") undergoing Corporate Insolvency Resolution Process ("CIRP")**

Dear Sir,

In response to the invitation for submission of expression of interest dated 16 September 2020 ("**IEOI**") inviting expression of interest ("**EOI**") for submission of resolution plans ("**Resolution Plan**") for the Company as per the provisions of the Insolvency and Bankruptcy Code, 2016 ("**Code**"), we confirm that we have understood the eligibility and other criteria mentioned in the IEOI and meet the necessary threshold and criteria mentioned therein and are submitting our EOI for submission of a Resolution Plan for the Company.

We understand and confirm that:

- a) the EOI will be evaluated by the Resolution Professional ("**RP**") of the Company along with the Committee of Creditors ("**CoC**"), based on the information provided in this EOI and attached documents to determine whether we qualify to submit the Resolution Plan for the Company;
- b) the RP/ CoC reserve the right to determine at their sole discretion, whether or not we qualify for the submission of the Resolution Plan for the Company and may reject the EOI submitted by us and not include us in the provisional or final list of eligible prospective resolution applicants;
- c) the RP/ the COC reserve the right to conduct due-diligence on us and/or request for additional information or clarification from us for the purposes of the EOI and we shall promptly comply with such requirements. Failure to satisfy the queries of RP/ COC may lead to rejection of our EOI;
- d) meeting the qualification criteria set out in IEOI alone does not automatically entitle

- us to participate in the next stage of the bid process;
- e) We/ our related parties have not withdrawn from or failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Hon'ble NCLT at any time in the past;
  - f) If any false information or record has been submitted by us then it will render us ineligible to participate in the bidding process;
  - g) along with our EOI, we have also enclosed information/documents as required in the IEOI.

For further information/ queries, please contact: \_\_\_\_\_

Yours Sincerely,

On behalf of [Insert the name of the entity submitting the EOI] Signature: \_\_\_\_\_

**Name of Signatory:**

**Designation:**

**Company Seal/Stamp**

**NOTE:** The person signing the EOI and other supporting documents should be authorized signatory supported by necessary board resolutions certified /power of attorney letter (notarized).

**ANNEXURE 'B'**  
**PROFILE OF THE PRA**

**1. Name and address**

- Name of the Applicant:
- Address:
- Telephone No:
- Fax:
- Email:

**2. Date of establishment of Resolution Applicant / Promoter Group and copies of documents:**

**3. Core area of expertise of the Applicant:**

**4. Contact Person:**

- Name:
- Designation:
- Telephone No:
- Email:

**5. PAN No. or equivalent details of Applicant / or CIN No. and / or Aadhaar No. or equivalent details of Resolution Applicant and copies of documents:**

**6. PRA Profile**

Please include a write up about the PRA.

- In case of corporates, the profile should necessarily include tangible net worth and revenue numbers of the preceding three years as mentioned under the eligibility criteria. Where the entity submitting the EOI is a financial investor / fund etc. please provide details pertaining to "assets under management", "loan portfolio" and "capital committed" for the preceding three years as mentioned under the eligibility criteria . Further the fulfilment of eligibility criteria must be clearly identified / certified herein.
- Experience of the Company in the relevant sector.
- Details of promoter/ promoter group, subsidiaries/ affiliates, parent company and ultimate parent company, key managerial personnel and board of directors
- History if any, of the Company or affiliates of the Company being declared a 'wilful defaulter' or 'non-cooperative borrower' or 'non-impaired asset' or 'non-performing asset'.
- In case of consortium, the details set out above are to be provided for each of the member of the consortium. Further, details re: consortium including share of each member, lead member etc. should be provided.

## ANNEXURE 'C'

### SECTION 29A AFFIDAVIT

I, [name of the chairman/managing director/director/authorized person of prospective resolution applicant], son of [●], aged about [●] years, currently residing at [●] and having Aadhaar / Passport number [●], do solemnly affirm and say as follows:

1. That I am a director/designated partner/authorized signatory of [Name of the Prospective Resolution Applicant] ("**Applicant**").
2. That the Applicant is a [●], duly incorporated and registered under [●], having CIN/Registration Number/Identification Number: [●] and having its registered office at [●].
3. That I have been authorized to sign and submit the expression of interest ("**EOI**") and the present affidavit on behalf of the Applicant for purpose of submission of a resolution plan for Patna Highway Projects Limited ("**Corporate Debtor**" or the "**Company**"), presently undergoing Corporate Insolvency Resolution Process ("**CIRP**") under the provisions of the Insolvency and Bankruptcy Code, 2016 ("**Code**"). As such I am conversant with the contents of the EOI and competent to swear this affidavit and depose to its contents.
4. That neither the (i) Applicant nor (ii) any person acting jointly or in concert with the Applicant nor (iii) any person who is a connected person (as defined under the provisions of the Code) of (a) the Applicant or (b) any person acting jointly or in concert with the Applicant):
  - 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 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 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.

*Note:*

- 1) *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 non-performing asset before submission of resolution plan.*
- 2) *Clause (c) shall not apply in the event the Applicant is a financial entity and is not a related party to the Company (for the purposes of this provision, the*

*expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the Company and is a related party of such Corporate Debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date of such Corporate Debtor).*

- 3) *Clause (c) shall not apply in the event the Applicant has an account, or is in management or control or is the promoter of a corporate debtor that has an account, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under the Code, and a period of three years has not elapsed since from the date of approval of such resolution plan by the Adjudicating Authority.*
- d. has been convicted for any offence punishable with imprisonment -
- i. for two years or more under any Act 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

*Note: This clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I to Section 29A (j) of the Code.*

- e. has been disqualified to act as a director under Companies Act, 2013;

*Note: This clause shall not apply in relation to Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I to Section 29A(j) of the Code.*

- f. is prohibited by the Securities Exchange Board of India from trading in securities or accessing the securities market;
- g. has been a promoter or in the management or control of the Company 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 the Code (other than a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction which has taken place prior to the acquisition of the corporate debtor by the Applicant pursuant to a resolution plan approved under the Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and the 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; or
- i. is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India.

5. That the Applicant is eligible under the terms and provisions of the Code and the rules and regulations thereunder to submit an expression of interest and that it shall provide all documents, representations and information as may be required by the RP or the CoC to substantiate to the satisfaction of the RP and the CoC that the Applicant is eligible under the Code and the rules and regulations thereunder to submit an expression of interest/resolution plan in respect of the Company.
6. That each member of the CoC and the 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 EOI submitted by the Applicant.
7. That in the event any of the above statements are found to be untrue or incorrect, the Applicant shall unconditionally indemnify and hold harmless the RP and each member of the CoC against any losses, claims or damages incurred by the RP and / or the members of the CoC on account of such ineligibility of the Applicant.
8. That the contents of this affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

DEPONENT

#### **VERIFICATION**

I, [Name of the Deponent], the Deponent abovenamed, do hereby verify that the contents of foregoing affidavit are true and correct to the best of my knowledge. No part of it is false and nothing material has been concealed therefrom.

Verified at [Place] dated this [Date] of [Month], 2020

DEPONENT

#### **NOTE:**

- (a) The Affidavit should be stamped on a stamp paper of INR 200.
- (b) The person signing the Affidavit should be an authorized signatory supported by necessary board resolutions (certified) /authorization letter (notarized).
- (c) The Affidavit should be duly notarized/ apostilled or duly legalized and authenticated as per laws applicable to the Applicant
- (d) For PRAs who are not Indian Residents, the affidavit can be submitted on their letter heads instead of stamp paper."

## ANNEXURE 'D'

### EOI UNDERTAKING

To,  
**Mr. Sutanu Sinha**  
**Resolution Professional**  
**Patna Highways Projects Limited**  
(IP Registration No.: IBBI/IPA-003/IP-N00020/2017-2018/10167)  
**Address:** BDO Restructuring Advisory LLP, Floor No. 4, Duck Back House 41,  
Shakespeare Sarani, Kolkata- 700017  
Email ID: [irpphpl@bdo.in](mailto:irpphpl@bdo.in)  
Registered email ID with IBBI: [sutanusinha@bdo.in](mailto:sutanusinha@bdo.in)

**Subject: Undertaking in relation to submission of the Expression of Interest ("EOI") for Patna Highways Projects Limited ("Corporate Debtor" or "Company"), currently undergoing Corporate Insolvency Resolution Process ("CIRP")**

Dear Sir,

This is in relation to the ongoing corporate insolvency process of Patna Highways Projects Limited. In terms of Section 25(2)(h) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") and Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional of the Company ("**RP**") has issued an invitation for expression of interest dated 16 September 2020 for inviting expressions of interest from prospective resolution applicants. One of the requirements of this invitation is that the prospective resolution applicants are required to submit the undertakings contained herein at the time of submission of the expression of interest.

In view of the above, [name of the prospective resolution applicant], having registered office at [ ] ("**Applicant**"), hereby undertakes and confirms, represents and warrants that:

- a) the Applicant has understood the eligibility and other criteria mentioned in the Invitation for submission of EOI issued by the RP of the Company on 16 September 2020 ("**IEOI**");
- b) The Applicant has and meets the necessary threshold and eligibility criteria mentioned in the EOI;
- c) The Applicant shall provide all documents, representations and information as may be required by the RP or the Committee of Creditors ("**CoC**") to substantiate to the satisfaction of the RP and the CoC that the Applicant is eligible in terms of the eligibility criteria set out in the Invitation for EOI and is also eligible under the Code and the rules and regulations thereunder to submit an EOI/resolution plan in respect of the Company;
- d) The Applicant is not an ineligible/disqualified person in terms of provisions of Section 29A of the Code;
- e) If, at any time after the submission of this EOI, the 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 RP and the CoC within 24 hours of such ineligibility
- f) All information and records provided by the Applicant to the RP in EOI or otherwise,



are correct, accurate, complete and true and no such information, data or statement provided by us is inaccurate or misleading in any manner. The Applicant shall be solely responsible for any errors or omissions therein. Based on this information, the Applicant understands you would be able to evaluate our EOI in order to pre-qualify for the above- mentioned proposal

- g) The Applicant acknowledges that in case any information/record provided by interest is false, incorrect, inaccurate or misleading, we shall become ineligible to submit the Resolution Plan, the Applicant's refundable deposit shall be forfeited, and the Applicant shall also attract penal action under the Code.
- h) The Applicant has read and understood the important notices provided in Paragraph 7xx of the IEOI and the Applicant confirms their unconditional acceptance thereto.

This undertaking shall be governed in accordance with the laws of India and the courts/tribunals of New Delhi shall have the exclusive jurisdiction over any dispute arising under this undertaking.

Yours Sincerely,

On behalf of [Insert the name of the entity submitting the EOI]

**Signature:** \_\_\_\_\_ Name of Signatory:

**Designation:**

Company Seal/Stamp

**NOTE:**

- (a) The Undertaking should be stamped on a stamp paper of INR 200.
- (b) The person signing the Undertaking should be an authorized signatory supported by necessary board resolutions (certified) /authorization letter (notarized).
- (c) For PRAs who are not Indian Residents, the undertaking can be submitted on their letter heads instead of stamp paper.

## ANNEXURE 'E'

### FORMAT OF CONFIDENTIALITY UNDERTAKING

To,

**Mr. Sutanu Sinha**

**Resolution Professional**

**Patna Highways Projects Limited**

(IP Registration No.: IBBI/IPA-003/IP-N00020/2017-2018/10167)

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**Subject: Confidentiality Undertaking in relation to Patna Highways Projects Limited ("Corporate Debtor" or the "Company"), currently undergoing Corporate Insolvency Resolution Process ("CIRP")**

Dear Sir,

This is in relation to the ongoing corporate insolvency process of Patna Highways Projects Limited.

Vide an invitation for expressions of interest dated 16 September 2020, the RP had invited expressions of interest ("**EOI**") from prospective resolution applicants for submission of resolution plans for the Company in accordance with the provisions of the Code. The Prospective Resolution Applicant, has accordingly, submitted its EOI to the RP on [ ], in relation to submission of a resolution plan in respect of the Company ("**Resolution Plan**").

For the purpose of such preparation, submission and negotiation of the Resolution Plan ("**Purpose**"), the RP ("**Disclosing Party**") may provide the Resolution Applicant with access to relevant information. Regulation 36A (7) requires that the EOI shall be accompanied with an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of Section 29 of the Code.

In view of the above, [name of the prospective resolution applicant], having registered office at [ ] ("**Recipient**") is providing this confidentiality undertaking, relating to protection and disclosure of 'Confidential Information' and certain matters incidental thereto.

The Recipient hereby undertakes and confirms, represents and warrants as follows:

1. it shall hold in trust and in confidence the Confidential Information provided to the Recipient by the Disclosing Party. The term "**Confidential Information**" shall mean all information, whether in written, oral, pictorial, electronic, visual or other form, including information in the virtual data room ("**VDR**"), relating, in any manner whatsoever, to the Company or to any group entity (including any holding, subsidiary, associate, joint venture or related entity) of the Company or in relation to the resolution plan process. Without prejudice to the generality of the foregoing,

Confidential Information includes, without limitation:

- a) any information which relates to the business, sales and marketing, operations, pricing arrangements, suppliers, customers, network, finance, technology, corporate, organisation, management, strategic initiatives and plans, policies and reports, financial position of the Company;
- b) any drawing, calculation, specification, instruction, diagram, catalogue, manual, data, templates, models, prototypes, samples, presentations, proposals, quotations, computer programs, software, belonging to or vested in the Company or in which Company has an interest of any kind;
- c) any unpatented invention, formula, procedures, method, belonging to or vested in the Company or in which Company has an interest of any kind;
- d) any unregistered patent, design, copyright, trademark including any pending applications and any intellectual or industrial proprietary right, belonging to or vested in the Company or in which Company has an interest of any kind;
- e) any information belonging to identified third parties with whom the Company has business dealings;
- f) any proposed business deals, contracts or agreements to which Company is party;
- g) any information relating to disputes, litigations, proceedings filed by or against the Company;
- h) the Information Memorandum in respect of the Company prepared under the provisions of the Code by the RP and information contained in VDR;
- i) contents of its Resolution Plan;
- j) particulars of any negotiations conducted with the Committee of Creditors on its Resolution Plan;
- k) financial terms or scores of any other resolution applicant (if disclosed to the Recipient) in the course of or as process of negotiation with the Recipient.

2. The Recipient shall at all times observe the following terms:

- i. it shall not, directly or indirectly use the Confidential Information for any purpose other than for the Purpose or for causing an undue gain or undue loss to itself or to any other person;
- ii. it shall not disclose or reveal (or permit the disclosure or revelation of) any Confidential Information to any person or party whatsoever (save and except as provided below) without the prior consent of the Disclosing Party;
- iii. it may disclose the Confidential Information to its employees, advisors, directors and/or its Affiliates (together the "**Representatives**"), strictly on a need to know basis and solely for the Purpose, provided always that, each of these Representatives shall, in the course of their duties be required to receive, observe and consider the confidentiality obligations set out hereunder when working towards the Purpose and shall be bound by confidentiality obligations that are at least as stringent as the obligations set out in this Undertaking. The Recipient acknowledges that any agreement (written or otherwise) entered into between the Recipient and the Representatives would not discharge the Recipient from its confidentiality obligations under this Undertaking. In any event, the Recipient shall remain liable and responsible for any confidentiality breaches by its Representatives and breach by any Representative of the Recipient shall be deemed as breach of this Undertaking by the Recipient. For the purposes of this Agreement, the term "Affiliate" shall mean, with respect to the Recipient, any person or entity who is directly or indirectly Controlling, or is Controlled by, or is under the direct common Control of the Recipient and the term "Control" means a person who has the power to direct the management and

policies of any person or entity, directly or indirectly, whether by ownership of voting securities, board control, by contract or otherwise. The terms "**Controlling**" and "**Controlled by**" or "**under common Control**" shall have corresponding meanings;

- iv. it shall use the same degree of care to protect the Confidential Information as the Recipient uses to protect its own confidential information but no less than a reasonable degree of care to prevent the unauthorized access, use, dissemination, copying, theft and/or republication of the Confidential Information;
  - v. it shall at no time, discuss with any person, the Confidential Information or any other matter in connection with, or arising out of, the discussions or negotiations in relation to the Purpose (other than to the extent permitted hereunder);
  - vi. it shall immediately, upon the earlier of (a) the conclusion of the Purpose; or (b) termination of this Agreement as per Clause 10 below; or (c) a notification by the Disclosing Party, surrender and return to the Disclosing Party, all Confidential Information and any notes, memoranda or the like, including any copies or reproductions in its possession, or destroy the same in accordance with the directives of the Disclosing Party, in each case, except to the extent, retention of such Confidential Information is required under applicable law, provided that the Recipient in these cases, shall notify the Disclosing Party of the information that has been retained as a result of such applicable law along with the corresponding details of the applicable law which warranted such retention;
  - vii. it shall not publish any news release or make any announcements or denial or confirmation in any medium concerning this Undertaking or its proposal to prepare/ submit the Resolution Plan or contents of Resolution Plan in any manner nor advertise or publish the same in any medium, without the prior written consent of the Disclosing Party;
  - viii. it 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 Recipient from any liability arising from its breach of this Undertaking;
  - ix. it shall protect against any unauthorized disclosure or use, any Confidential Information of the Company that it may have access to in any manner.
3. The Recipient shall not be liable for disclosure or use of the Confidential Information in the event and to the extent that such Confidential Information:
- i. is or becomes available to the public domain without breach of this Undertaking by the Recipient; or
  - ii. is disclosed with the prior written approval of the Disclosing Party; or
  - iii. was in the possession of the Recipient prior to its disclosure to them under this Undertaking from another source not under any obligation of confidentiality to the provider; or
  - iv. is disclosed pursuant to any law or a court order or the stock exchange requirement provided that in the event the Recipient is required to make such disclosure pursuant to a court order / stock exchange announcement, then in that case the Recipient shall only disclose the Confidential Information to the extent required and to the extent permissible, promptly notify the Disclosing Party in advance, so that the Disclosing Party has the opportunity to object to such disclosure or discuss the extent of disclosure by the Recipient.
4. The Recipient agrees that the Disclosing Party, by the disclosure of the Confidential Information to the Recipient, does not grant, express or implied, any right or license

to use the Confidential Information for any purpose other than the Purpose contemplated under this Undertaking or vest any intellectual property rights or legal or beneficial interest in the Confidential Information so disclosed to the Recipient.

5. The Recipient agrees that nothing in this Undertaking shall compel the Disclosing Party to disclose to the Recipient, any or all the Confidential Information requested by the Recipient and the Disclosing Party shall, at all times during the subsistence of this Undertaking, reserve the right to determine, in its sole discretion, whether it shall disclose such Confidential Information (in whole or part).
6. The Recipient agrees that the Disclosing Party makes no representation, warranty or inducement, whether express or implied, as to the accuracy or completeness of the Confidential Information and shall not be liable to the Recipient for any damage arising in any way out of the use of, or termination of the Recipient's right to use the Confidential Information. The Disclosing Party has not verified or audited the information and the information so provided is based on books and records available with the Company. The Disclosing Party does not take any responsibility for any decisions made by Recipient based on the information provided. The Recipient shall exercise its own diligence before making any conclusion or decision.
7. The Recipient 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 Undertaking and the Recipient 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 Undertaking, in addition to and without prejudice to, any other remedies available to the Disclosing Party at law or in equity.
8. The Recipient shall indemnify and hold harmless the Disclosing Party against all losses, damages and liabilities, including but not limited to all legal fees and expenses, arising from or connected with any breach of this Undertaking, including but not limited to any gross negligence or willful misconduct in respect of the Confidential Information, by the Recipient and/or its Representatives.
9. The Recipient shall not, without prior written consent of the Disclosing Party, engage an advisor, whether professional, legal or otherwise, where a conflict of interest exists with the Company or the Disclosing Party in relation to the corporate insolvency resolution process of the Company.
10. This Undertaking shall be effective and shall stay in force for a period of three (3) years from the date first stated above or the date of completion of CIRP of the Company (whichever is later). Provided that payment obligations if any that may arise under this Undertaking (including under the indemnity Clause 8 above) shall survive the termination of this Undertaking.
11. All notices and other communications provided for hereunder shall be: (i) in writing; and (ii) hand - delivered, sent through an overnight courier (if for inland delivery) or international courier (if for overseas delivery) to a party hereto or sent by electronic mail, at its address specified below or at such other address as is designated by such party in a written notice to the other parties hereto.

**For Disclosing Party/RP**

Postal Address: \_\_\_\_\_  
: \_\_\_\_\_ Contact Person: \_\_\_\_\_ Email : \_\_\_\_\_

**For Recipient/Resolution Applicant**

Postal Address: \_\_\_\_\_  
: \_\_\_\_\_ Contact Person: \_\_\_\_\_ Email : \_\_\_\_\_

All such notices and communications shall be effective: (i) if hand-delivered, when delivered; (ii) if sent by courier, (a) one (1) business day after its deposit with an overnight courier if for inland delivery; and (b) 5 (five) calendar days after its deposit with an international courier if for an overseas delivery; and (c) if sent by registered letter, when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not; and (iii) if sent by electronic mail, when actually received in readable form.

12. If any provision of this Undertaking is invalid or illegal, then such provision shall be deemed automatically adjusted to conform to the requirements for validity or legality and as so adjusted, shall be deemed a provision of this Undertaking as though originally included. If the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted from this Undertaking as though the provision had never been included, in either case, the remaining provisions of this Undertaking shall remain in full force and effect.
13. No amendments, changes or modifications of any provision of this Undertaking shall be valid unless made by a written instrument signed by a duly authorised representative of each of the Parties.
14. No failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other exercise thereof or the exercise of any other right, power or privilege hereunder.
15. This Undertaking cannot be assigned or transferred without the prior written consent of the Disclosing Party.
16. This Undertaking shall be governed by and construed in all respects according to the laws of the India and, the Parties hereto agree to submit to the exclusive jurisdiction of the courts and tribunals of Delhi.
17. In the ordinary course of business, the Recipient may be engaged through separate platforms in the origination of loans (including the provision of debt financing for transactions similar to the transactions contemplated herein) and syndicated bank debt, and nothing in this Undertaking shall restrict such activities of such other platforms, provided that none of the Confidential Information is used or disclosed in connection therewith and such transactions are not in contravention of the Code or with the corporate insolvency resolution process of the Company. This Undertaking shall be governed in accordance with the laws of India and the courts/ tribunals of New Delhi shall have the exclusive jurisdiction over any dispute arising under this undertaking.

On behalf of [Insert the name of the entity submitting the EOI]

**Signature:** \_\_\_\_\_ Name of Signatory:

**Designation:**

Company Seal/Stamp

**NOTE:**

- (a) The Undertaking should be stamped on a stamp paper of INR 200.
- (b) The person signing the Undertaking should be an authorized signatory supported by necessary board resolutions (certified) /authorization letter (notarized).
- (c) For PRAs who are not Indian Residents, the undertaking can be submitted on their letter heads instead of stamp paper.