

## **Engagement of Forensic Auditor – Terms and Conditions**

Sealed bids are invited from experience and reputed Delhi & NCR based, IBA Empanelled Audit firms to conduct the Forensic Audit of a Corporate Debtor under section 43, 45, 50 and 66 of IBC Code, 2016.

The eligibility criteria, formats of Technical and Financial Bid can be downloaded from the website <http://www.llcairp.com/> The interested firms may apply in the sealed cover in the specified format by 2:00pm on 11.03.2019 to Astha Dwivedi, Sr. Manager, Luthra & Luthra Restructuring and Insolvency Advisors LLP, A-16/9, Vasant Vihar, New Delhi-110 057.

### **Scope of Work**

Forensic Auditor to conduct Forensic Audit of the Corporate Debtors covering transaction of 2 years including but not limited to:

1. Preferential transactions under section 43;
2. Undervalued transactions under section 45;
3. Extortionate credit transactions under section 50; and
4. Fraudulent transactions under section 66.

### **Deliverables:**

The successful bidder has to submit the final report within 4 (weeks) of date of award of work.

### **Eligibility Criteria:**

1. The firm should have established minimum 10 years back.
2. The firm should have at least 5 partners.
3. The firm should have conducted min 4 Forensic Audit in last 18 months.
4. The firm should have its office in Delhi/ NCR.
5. The firm should be empanelled with the IBA for conducting Forensic Audit under the regulation of 35A of IBC Code, 2016.
6. The firm should have minimum average turnover of Rs. 1 Cr. in last three financial years.
7. The firm will be required to submit a declaration that neither firm nor any of their partners have been blacklisted by IBBI/ IBA/ ICAI and any other Institutions.

### **Submission of bid**

The bidders are expected to submit their offers in two parts namely, "Qualification and Expertise Proposal" and "Financial Proposal".

S.N.	Particulars	Max. eligible marks for evaluation
1	Adequacy of Total partners in the firm - More than 07 Partners 10 - More than 5 partners but less than or equal to 7 partners 8 - Upto 5 Partners 6	10
2	Adequacy of partner having expertise in Forensic Audit (bidder will provide a list of partners as per eligibility criteria which will include qualification, designation, no. of years of experience, membership) - More than 07 Partners 15 - More than 5 partners but less than or equal to 7 partners 12 - More than 2 partners but less than or equal to 5 partners 10 - Upto 2 partners 8	15
3	Adequacy of firm experience to take care of requirements - 15 years 15 - More than 12 years but less than or equal to 15 years 10 - More than 10 years but less than or equal to 12 years 8	15
4	Conducted Forensic Audit under regulation 35A of IBBI regulation in last 18 months - More than 07 assignments 20 - More than 04 assignments but less than or equal to 07 assignments 15 - More than or equal to 04 assignments 10	20
5	Adequacy of relevant Manpower to take care of requirements - More than 10 full time qualified professional staff 15 - More than 07 but less than or equal to 10 full time qualified professional staff 10 - More than 04 but less than or equal to 07 full time qualified professional staff 8	15
6	Bidder having office in Delhi/ NCR	10
7	Turnover of the Bidder (average turnover of last three years) - More than Rs. 2 Cr. 15 - More than Rs. 1 Cr. But less than or equal to Rs. 2 Cr. 10 - More than or equal to Rs. 1 Cr. 8	15
	Total	100

### **Techno- Commercial Evaluation Criteria**

The eligible firms shall submit their bids containing their qualification and expertise in the prescribed format along with financial bids for the work as described in scope of work. The selection of firms will be done by Quality and Cost Based Selection (QCBS) method.

This will be techno commercial evaluation and accordingly the Technical evaluation will have 50% weightage and Financial Evaluation shall have 50% weightage. These weightages shall be taken into consideration for shortlisting the successful firm. Based on the weightage of Technical and Financial Evaluation, the assignment will be awarded to the bidder who scores the highest marks. The detailed procedure is elaborated as under:-

- i) The Technical and Financial proposal would be given 50% & 50% weightage respectively.
- ii) The evaluation of Financial Bid will be as under:-  
 $SF = (100/FP) \times FP_{min}$   
SF=Financial Score of proposal under consideration  
FPmin= Price of Lowest Financial Proposal  
FP= Price of proposal under consideration
- iii) The proposal would be ranked according to their combined technical and financial scores using the weightage mentioned above as per following formula:-  
 $S = ST \times 0.50 + SF \times 0.50$   
S = Final Combined Score  
ST = Technical Score  
SF = Financial Score
- iv) The Applicant achieving the highest combined technical and financial score would be considered for award of consultancy work.

In case of substantial variation in the fee quoted by qualified firms, the advertiser has the right to fix the fee on its own.

If more than one applicant secures the same highest score, the one having longest vintage will be short-listed.

**Clarification:-**

During evaluation of the Tenders, Advertiser, at its discretion, may ask the Bidder for clarification in respect of its tender. The request for clarification and the response shall be in writing, and no change in the substance of the tender shall be sought, offered, or permitted.

Advertiser reserves the right to accept or reject any tender in whole or in parts without assigning any reason thereof. The decision of Advertiser shall be final and binding on all the Bidders to this document and Advertiser will not entertain any correspondence in this regard.

**Price Bids**

The bidder is expected to quote Price in Indian Rupees for the professional services including all expenses and GST. It may be noted that Advertiser will not pay any other amount and any other expenses like travel and accommodation etc. except the agreed professional fee at the time of making payment. The TDS amount at prevailing rate shall be deducted from the payments of fee. The bidder shall take into account all conditions and difficulties that may be encountered during the course of assignment while quoting their fee.

## **Terms and conditions**

Advertiser expects the selected Bidder to adhere to the terms of this document and would not accept any deviations to the same.

All responses received after the due date/ time as mentioned in “**in this document**” would be considered late and would be liable to be rejected.

All responses should be in English language. All responses by the Bidders to this document shall be binding on such Bidder for a period of 90 days after opening of the bids.

All bid responses would be deemed to be irrevocable offers/proposals from the Bidders and may be accepted by Advertiser to form part of final contract between Advertiser and the selected Bidder(s). Unsigned responses would be treated as incomplete and are liable to be rejected.

The bids once submitted cannot be withdrawn/ modified after the last date for submission of the bids unless specifically permitted by Advertiser.

It is mandatory to submit duly filled in details in the formats provided along with this document. Advertiser reserves the right not to allow/ permit changes in the technical requirements and not to evaluate the offer in case of non-submission of the technical details in the required format or partial submission of technical details.

The Bidders at no point in time can excuse themselves from any claims by Advertiser whatsoever for their deviations in conforming to the terms and conditions and other schedules as mentioned in the document circulated by Advertiser. The Bidder shall be fully responsible for deviations to the terms & conditions etc. as proposed in the document.

If related bidders (as defined below) submit more than one bid then both /all bids submitted by related bidders are liable to be rejected at any stage at Advertiser's discretion:

- a) Bids submitted by the holding company and its subsidiary
- b) Bids submitted by two or more companies having common director/s
- c) Bids submitted by two or more firms / LLPs having common partners
- d) Bids submitted by two or more companies in the same group of promoters/ management

Any other bid in the sole discretion of Advertiser is in the nature of multiple bids.

Responses to this document should not be construed as an obligation on the part of Advertiser to award a purchase contract for any services or combination of services. Failure of Advertiser to select a Bidder shall not result in any claim whatsoever against Advertiser. Advertiser reserves the right to reject any or all bids in part or in full, without assigning any reason whatsoever.

By submitting a proposal, the Bidder agrees to promptly contract with Advertiser for any work awarded to the Bidder's organization. Failure on the part of the awarded Bidder to execute a valid contract with Advertiser, will relieve Advertiser of any obligation to the Bidder, and a different Bidder may be selected based on the selection process.

The terms and conditions as specified in the document and addendums (if any which will be notified on Advertiser's website thereafter are final and binding on the Bidders. In the event the Bidder is not willing to accept the terms and conditions of Advertiser, the Bidder may be disqualified. Any

additional or different terms and conditions proposed by the Bidder would be rejected unless expressly accepted by Advertiser in writing.

The Bidder must strictly adhere to the delivery dates or lead times identified in their proposal and as agreed by Advertiser. Failure to meet these delivery dates, unless it is due to reasons entirely attributable to Advertiser, may constitute a material breach of the Bidder's performance. In the event that Advertiser is forced to cancel an awarded contract (relative to this document) due to the Bidder's inability to meet the established delivery dates or any other reasons attributing to the Bidder then that Bidder will be responsible for any re-procurement costs suffered by Advertiser. The liability in such an event could be limited to the differential excess amount spent by Advertiser.

All terms and conditions, payments schedules, time frame for expected service levels as per this document will remain unchanged unless explicitly communicated by Advertiser in writing to the Bidder. Advertiser shall not be responsible for any judgments made by the Bidder with respect to any aspect of the Service. The Bidder shall at no point be entitled to excuse themselves from any claims by Advertiser whatsoever for their deviations in confirming to the terms and conditions, payments schedules, expected service levels etc. as mentioned in this document.

Advertiser reserves the right to accept / reject any or all the offers without assigning any reason whatsoever therefore.

Overwriting/correction/erase and/or use of white ink should be avoided in the offer. However, if any overwriting/correction/erase is inevitable, the same should be authenticated with the signature & seal of authorised person of applicant Firms/LLPs.

Advertiser shall deduct TDS/any other tax/levy as per prevailing rules/rates.

All the pages of this EOI document and documents submitted along-with the offer shall have to be authenticated by the authorised signatory of the applicant Firms/LLPs along with the Firms/LLPs seal.

The EOI should be submitted strictly as per the terms and conditions laid down in the document.

Incomplete bids or bids without having required documents will be treated as deemed cancelled.

**Performance Security:**

Successful bidder shall be requested to submit 10% of the fee as performance security in the form of a demand drafts (DDs) within three working days from the date of intimation of being successful bidder. The performance security will be refunded along with payment of professional fee. The performance security is liable to be forfeited in case there is a delay/ deviation in scope of work/ incomplete work/ dissatisfactory performance of the successful bidder.

**FORM OF TECHNICAL BID**

**(on the firm Letter head)**

<b>S.NO</b>	<b>PARTICULARS</b>	<b>DOCUMENTS</b>
<b>1</b>	Total experience of Firm/ establishment of firm	Supporting documents need to be attached
<b>2</b>	Details of offices	Supporting documents need to be attached
<b>3</b>	PAN and GST of Firm	Supporting documents need to be attached
<b>4</b>	Total no. of Partner/ Director in firm along with their qualification, experience, membership	Supporting documents need to be attached
<b>5</b>	Total no. of Forensic Auditors as permanent staff of the firm along with their qualification, experience, membership	Supporting documents need to be attached
<b>6</b>	No. of assignments handled in last 18 months	Supporting documents need to be attached
<b>7</b>	Firm should be empanelled with the IBA for conducting Forensic Audit under the regulation of 35A of IBC Code, 2016	Supporting documents need to be attached
<b>8</b>	Firm should have minimum of average turnover of Rs. 1 Cr. in last three financial years	Supporting documents need to be attached
<b>9</b>	Firm should have to submit a declaration that firm pr/and no partner of the firm have been blacklisted by IBBI/ IBA/ ICAI or any other Institutions.	Self attested Declaration

**Signature of Authorized signatory with firm seal**

**Date:**

**FORM OF FINANCIAL BID**

**(on the firm Letter head)**

**The interested firm may quote their professional fees (all inclusive) in the following format:-**

**Forensic Audit**

<b>S.No</b>	<b>Particulars</b>	<b>Amount (in Rs.)</b>
<b>1</b>	Consolidated Professional fee for Forensic Audit*	

**Total Professional fees – in words**

**(\*) The above fees shall be inclusive of applicable taxes and all expenses whatsoever. Payment of fee shall be made after satisfactory completion of assignments in all respect.**

**Signature of Authorized signatory with firm seal**

**Date:**



## MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is made and entered into as of the last date signed below (the "Effective Date") by and between **Luthra & Luthra Restructuring & Insolvency Advisors LLP** having office situated at A-16/9, Vasant Vihar, New Delhi-110 057, India ((here after called Luthra & Luthra) and....., having its registered office situated at ----- (the "Second Party").

WHEREAS Luthra & Luthra and the Second Party (the "Parties") have an interest in participating in discussions wherein either Party might share information with the other that the disclosing Party considers to be proprietary and confidential to itself ("Confidential Information"); and

WHEREAS the Parties agree that Confidential Information of a Party might include, but not be limited to that Party's: any technical, commercial and financial information, improvement, inventions, know how, innovations, technology, trade secrets, professional secrets, technical specifications, copyrights and any other intellectual property, discoveries, ideas, concepts, papers, software in various stages of development, techniques, models, data, source code, object code, documentation, manuals, flow charts, research, process, procedures, functions, customer names and other information related to customers, price lists and pricing policies and designated as confidential in writing by the disclosing Party, whether by letter or an appropriate proprietary stamp or legend, prior to or at the time such information is disclosed by the disclosing Party to the receiving Party;

NOW, THEREFORE, the Parties agree as follows:

1. Either Party may disclose Confidential Information to the other Party in confidence provided that the disclosing Party identifies such information as proprietary and confidential either by marking it, in the case of written materials, or, in the case of information that is disclosed orally or written materials that are not marked, by notifying the other Party of the proprietary and confidential nature of the information, such notification to be done orally, by e-mail or written correspondence, or via other means of communication as might be appropriate.
2. When informed of the proprietary and confidential nature of Confidential Information that has been disclosed by the other Party, the receiving Party ("Recipient") shall, for a period of three (3) months from the date of disclosure, refrain from disclosing such Confidential Information to any contractor or other third party without prior, written approval from the disclosing Party and shall protect such Confidential Information from inadvertent disclosure to a third party using the same care and diligence that the Recipient uses to protect its own proprietary and confidential information, but in no case less than reasonable care. The Recipient shall ensure that each of its employees, officers, directors, or agents who has access to Confidential Information disclosed under this Agreement is informed of its proprietary and confidential nature and is required to abide by the terms of this Agreement. The Recipient of Confidential Information disclosed under this Agreement shall promptly notify the disclosing Party of any disclosure of such Confidential Information in violation of this Agreement or of any subpoena or other legal process requiring production or disclosure of said Confidential Information. The Recipient of Confidential Information will reasonably cooperate with the disclosing Party's efforts to seek appropriate injunctive relief or otherwise to prevent or curtail such threatened or actual breach, or to recover its Confidential Information. The Recipient of Confidential Information shall ensure that all copyright or other proprietary notice or indication of confidentiality contained on or included in any item of Confidential Information shall be reproduced by the Recipient on any reproduction, modification or translation of such Confidential Information amongst the Parties. If requested the Recipient shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the disclosing Party, as the disclosing Party shall direct.
3. All Confidential Information disclosed under this Agreement shall be and remain the property of the disclosing Party and nothing contained in this Agreement shall be construed as granting or conferring any representation, warranty, assurance, guarantee or inducement by either party to the other of any kind, including with respect to the non-infringement of intellectual property or other rights of either party or of third parties. The disclosing





- Party disclaims any and all liability that may be based on the Confidential Information (including any errors or omissions with respect thereto).
4. The Recipient shall honor any request from the disclosing Party to promptly return or destroy all copies of Confidential Information disclosed under this Agreement and all notes related to such Confidential Information. The Parties agree that the disclosing Party will suffer irreparable injury if its Confidential Information is made public, released to a third party, or otherwise disclosed in breach of this Agreement and that the disclosing Party shall be entitled to obtain injunctive relief against a threatened breach or continuation of any such breach and, in the event of such breach, an award of actual and exemplary damages from any court of competent jurisdiction.
  5. The terms of this Agreement shall not be construed to limit either Party's right to develop independently or acquire products without use of the other Party's Confidential Information. The disclosing party acknowledges that the Recipient may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Nothing in this Agreement will prohibit the Recipient from developing or having developed for its products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that the Recipient does not violate any of its obligations under this Agreement in connection with such development.
  6. Notwithstanding the above, the Parties agree that information shall not be deemed Confidential Information and the Recipient shall have no obligation to hold in confidence such information, where such information:
    - (a) Is already known to the Recipient, having been disclosed to the Recipient by a third party without such third party having an obligation of confidentiality to the disclosing Party; or
    - (b) Is or becomes publicly known through no wrongful act of the Recipient, its employees, officers, directors, or agents; or
    - (c) Is independently developed by the Recipient without reference to any Confidential Information disclosed hereunder; or
    - (d) Is approved for release (and only to the extent so approved) by the disclosing Party; or
    - (e) Is disclosed pursuant to the lawful requirement of a court or governmental agency or where required by operation of law.
  7. This Agreement shall remain in effect for a period of twelve (12) months from the Effective Date unless otherwise terminated by either Party giving one month prior written notice to the other of its desire to terminate this Agreement.
  8. Construction Clauses:
    - a. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one instrument.
    - b. **Governing Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of India without regard to conflict of law principles. The Parties hereto irrevocably consent to the jurisdiction of the courts and tribunals at **New Delhi** to settle any disputes, which may arise out of or in connection with this Agreement.
    - c. **Severability:** The Parties acknowledge that the provisions of this Agreement are reasonable and waives any defense to the strict enforcement thereof by either Party. If any provision of this Agreement is invalid or unenforceable under applicable law, that provision shall be enforced to the maximum extent possible and the remaining provisions shall remain in full force and effect.
    - d. **Complete Understanding; Modification; No Waiver; Survival.** This Agreement contains the full and complete understanding of the parties with respect to the subject matter hereof, and supersedes all prior representations and understandings, whether oral or written. This Agreement may be modified only by a written instrument that specifically purports to do so and that is signed by a duly authorized representative of each Party. No failure or delay by either party in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial waiver preclude any other exercise of such right, power or privilege hereunder. The provisions of this Agreement that, by their nature and content, are intended to survive the termination of this Agreement shall so survive and continue to bind the Parties.
      - e. **Definitions.** The word "including", as used herein, means "including without limitation."
      - f. **Subsequent Dealings.** Each Party's obligations under this Agreement will apply to all Confidential Information that is furnished or made accessible to the Receiving Party during the term of the Engagement (if established), unless the subject matter of this Agreement is superseded

by the provisions of the definitive documentation that establishes the Engagement. Neither this Agreement nor the disclosure of Confidential Information shall obligate either party (i) to establish the Engagement, (ii) to enter into any other agreements or negotiations with the other party hereto, or (iii) to refrain from entering into agreements or negotiations with any other Party.

- g. Assignment. Neither party may assign all or any of its rights or interests hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF: the parties hereto, through their duly authorized officers, have executed this Agreement as of the date first above written in page 1.

\_\_\_\_\_  
LUTHRA & LUTHRA RESTRUCTURING & INSOLVENCY  
ADVISORS LLP

Signature

Signature

Date

Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title