

FAQs

[Invitation of Expression of Interest for Sale Assets]

Note: The questions and their answers appearing hereinbelow have been put by the Liquidator's office for guidance of potential applicants. In case of any discrepancy between these FAQs and the Invitation for Expression of Interest (Invitation), the Invitation shall override.

[The FAQ has been revised as on 21.04.2018, and 23.04.2018 – all revisions are in blue]

Concept of Invitation for Expression of interest

1. What is the concept of invitation of expression of interest?

The invitation of Eols is akin to the preliminary step in pre-bid qualification. The invitation is for any eligible potential applicant to submit an Eol for the assets on slump sale basis. An applicant who passes the stage of Eol (see below) gets qualified for submission of bids at the auction sale.

2. Is the Invitation an offer for sale of the assets?

No. The Invitation is not an offer for sale. It seeks expression of interest of those applicants who wish to acquire one or more of the Sale Assets of the Company.

3. If I am expressing my interest, does it mean that there is a justiceable right to participate in the sale process?

No. The submission of Eol by itself does not give the applicant a justiceable or enforceable right to participate in the sale process. The Liquidator reserves the right to enquire into the eligibility or otherwise of an applicant to participate in the sale process.

4. Having expressed my interest, if the sale is not done by the Liquidator at all, or the terms of the sale are varied, do I have any justiceable right?

The Liquidator reserves the right to cancel the sale, or add, alter or vary the terms of the sale.

5. Do I have to give any offer price while expressing my interest?

No. There is no need for any applicant to give any offer price. The offers will be made by way of e-auction only.

However, one of the pre-requisite while obtaining EOI is payment of a non-refundable fee – please see below.

6. Does the expression of interest imply that I have to bid at the auction?

No. You may put up an EOI and later not submit a bid. However, please note that EMD shall be paid before commencement of the auction sale.

7. Does someone who has not put up an EOI has a right to bid at the auction?

No. Submission of EOI is a pre-bid qualification, as noted above; however, it is not the only qualifying condition.

Expression of Interest/Sale of Assets

8. How is the Liquidator proposing to sell the assets of Company?

As per section 35 (1) (f) of the Code, the Liquidator has option to sell the assets of the company in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels. The Liquidator, based on discussions he had at the meeting of the Monitoring Committee of stakeholders, decided to offer the assets of the Company on slump sale basis, that is, all the assets forming part of the liquidation estate of the Company. However, such offer failed to evince interest; as such the assets have been put up for sale on standalone basis.

The applicants wishing to submit EOI have 2 option –

- (i) Submit EOI for a single Sale Asset
- (ii) Submit EOI for more than one Sale Asset, i.e. an applicant may furnish EOI for two or more Sale Assets together.

9. What is the present Invitation of Expression of interest for?

The Liquidator is inviting expression of interest from potential applicants who may be interested to bid for the Sale Assets of the Company.

10. If I am not submitting EOI at this stage, does that mean in future I will not be entitled to bid for any of the assets?

The same will depend on the success of this Invitation. It is possible that some of the assets will attract ready buyers and be sold during this proposed sale.

11. I am not interested in the entire manufacturing unit, but I am interested in certain machineries which the manufacturing units may have. Shall I go ahead with submission of EOI?

Currently, the manufacturing units have been put up for sale on composite basis. For the time being, the invitation does not pertain to machineries separately.

12. Please explain the entire process in brief.

The proposed sale shall follow the steps as under –

- (i) The Liquidator publishes invitation on websites and in newspapers
- (ii) The applicant submits EOI along with all relevant papers and required non-refundable fee
- (iii) The Liquidator examines whether the applicant is eligible or ineligible
- (iv) If the applicant is found eligible, he is provided with Information Sheet
- (v) On getting the information sheet, the applicant can conduct due diligence on the Sale Assets for which he has furnished EOI
- (vi) The eligible applicants who wish to proceed with the auction, shall furnish required EMD (refundable/adjustable).
- (vii) Auction will be conducted and the bidders will submit their bids
- (viii) Bidder with the highest bid becomes the successful bidder.

Non-Refundable Fee

13. What is the purpose of the Non-refundable fee (NRF)? What rights do I have on payment of the NRF?

The NRF is being charged with multiple objectives. The Monitoring Committee was also of the view that the process of sale of the assets of the Company may be kept limited to serious applicants. Also see further in the Invitation for Expression of Interests.

The payment of the NRF is a precondition for a potential applicant to get a copy of the Information Sheet (containing details of the Sale Assets), and to submit EOI. Only those applicants who have submitted their Eois and have got confirmation as being eligible, will be able to participate in the auction.

However, the payment of the NRF itself is not to imply the right to submit an EOI or to participate in the auction.

14. What is the amount of NRF?

The amount of NRF will depend upon the Sale Asset you choose to submit EOI for. See table below –

S. No.	Sale Asset	Non-Refundable Fee (Rs.)
1.	Shyamnagar Manufacturing Unit	1,00,000.00
2.	Baripada Manufacturing Unit	25,000.00
3.	Office Space in Nicco House	2,00,000.00
4.	Office Space in Vikhroli, Mumbai	10,000.00
5.	Guest House in Powai, Mumbai	10,000.00
6.	Investment in NPRL Shares	2,50,000.00
7.	Investment in NESL Shares and other	50,000.00

	investments of Nicco	
8.	Single lot of 14 Cars	5,000.00

NRF is computable asset-wise. Say, for example, if an applicant chooses to submit EOI for Asset Nos. (1) and (3), the NRF would be Rs. (100000+200000) = Rs. 300000/-.

15. How do I pay the NRF?

NRF may be paid in any of the following ways –

- RTGS/NEFT
- Demand Draft

16. Where is the Non-refundable fee going? Is it going into the regular Liquidation account of the Company?

The NRF goes to the credit of the Liquidation account of the Company.

17. Say the liquidator cancels the sale or the invitation of EoI. Will I get the NRF back?

No. The fee is non-refundable in any circumstance.

Reserve Price

18. What is the basis for fixation of the reserve price?

The reserve prices have been fixed based on liquidation values in accordance with Regulation 34 of the IBBI (Liquidation Process) Regulations, 2016.

19. I am of the view that the reserve price is too high, and I am not interested in bidding at the reserve price. Should I still be submitting my expression of interest?

If the Liquidator does not receive bids in the auction meeting the reserve price, the Liquidator reserves the right to reduce the reserve price in accordance with the provisions of Schedule I of the IBBI (Liquidation Process) Regulations, 2016. Therefore, a potential applicant may not be deterred from submitting an EoI merely on the basis of the reserve price.

20. Will Liquidator accept a bid which is below the reserve price?

Though at the first instance, a bid below the reserve price may not be accepted; yet as stated above, where an auction fails, the Liquidator reserves the right to revisit the reserve price and the applicants may bid accordingly.

Earnest Money Deposit (EMD)

21. Can I participate in auction sale without the EMD?

No.

22. What is the amount of EMD I have to deposit?

The amount of EMD shall be calculated at the rate of 10% of the reserve price. For reserve prices, see the applicants shall refer to Information Sheets provided to them on submission of EOI.

23. What are the options of EMD? Does it necessarily have to be actual provision of cash?

EMD may be put up in any of the following ways –

- RTGS/NEFT/Demand Draft
- Bank Guarantee
- Surety bond

24. What is the concept of surety bond? Who gives a surety bond?

Surety bond is provided by entities/companies that provide surety bonds. A surety bond is a bond that guarantees a particular payment in the event the bond is invoked. The bond will be invoked if there is a failure on the part of the bidder to make payment for the price in an auction. There are additional circumstances in which the surety bond may be encashed. Please refer to the format of surety bond given in **Annexure V**.

25. Who are the recognized surety bond providers?

Entities with Indian ratings of AA or above, or entities with international ratings of BBB or above, are considered eligible for issue of surety bonds.

26. Will I get interest on my EMD?

No. No interest is payable on EMD.

27. I submitted an EOI and paid EMD. However, due to some reasons, I do not want to participate in the auction sale. Will I get back my EMD?

Yes, EMD is refundable or adjustable, as the case may be.

28. When is EMD adjusted?

When an applicant becomes a successful bidder and pays 25% of the sale price, the EMD paid by the applicant is adjusted against the said amount.

29. Under what circumstances is EMD refundable?

EMD is refundable –

- if the invitation or sale is cancelled, and
- to the unsuccessful bidders

Auction methodology

30. How does the auction take place?

The auction shall take place on an electronic platform as decided by the Liquidator. Presently, the e-auction platform is bankauctions.in

31. Will I be notified about the auction date or amended auction date?

The auction date is 13th April, 2018. Any change in the date may not be notified individually, but shall be notified through the webpages www.niccogroup.com or www.vinodkothari.com/nicco-liquidation.

NPRL shares

32. The terms of the EoI provide that the sale of NPRL shares is subject to rights, if any, of WBIDC and WBTDC. How can an acquirer be making an offer if the shares are already subject to the right of first refusal with the said entities?

The rights, if any, of WBIDC and WBTDC is subject to the provisions of the IBC and other applicable laws. The said companies may, if they so choose, decline the right, and permit the Liquidator to cause a sale of the NPRL shareholding also, along with the rest of the assets of the Company.

Presently, the invitation of EoI is for ascertaining potential investor interest in the assets of the Company, including NPRL shares.

33. If my interest in the assets of the Company is primarily or solely on NPRL shares, should I be submitting my EoI at all?

The potential applicant may apply discretion and take a view. However, assuming that the Liquidator has clearance for sale of NPRL shares through the IBC process, the Liquidator may decide to conduct the auction with such applicants who have expressed interest at this stage. In other words, the Liquidator may not invite EoIs again.

34. Assuming that WBIDC/WBTDC have the right to acquire the shares of NPRL, and they decide to acquire such shareholding, does it mean the Liquidator will not be able to sell NPRL shares to the potential applicant?

Yes.

34A. It has been mentioned that the sale of NPRL shares is subject to the rights of WBIDC and WBTDC. What does that mean?

As already stated in the Invitation, such rights arise under the Joint Sector Agreement dated 23.02.1990 which was entered into between NCL and the Corporations. Therefore, any disposal of shares of NPRL is subject to right of first refusal with WBIDC/WBTDC.

34B. Has the Company already offered the NPRL shares to WBIDC/WBTDC?

Necessary communication has been made to the Corporations. Relevant details have been incorporated in the Information Sheet. However, the offer period of 6 months has not expired yet.

34C. Will the period of 6 months as you have stated above, expire before the proposed auction date?

No.

34D. I am paying non-refundable fee while submitting EoI for NPRL shares. Without obtaining no-objection from the Corporations, how will you conduct the auction?

If no NOC is received from the Corporations until the auction date as fixed as of now, the auction will be postponed to a date after the requisite notice period of 6 months expires. There may be no further invitation of EoIs if the sale is postponed as above. The applicants who have expressed their interest in pursuance of the present invitation will be eligible to participate in such postponed sale.

34E. Meanwhile, if the Corporations exercise their rights and accept the offer, what are the rights available to me?

If the Corporations exercise their rights and accept the offer or for similar reasons, the proposed sale of the asset fails, the non-refundable fee for NPRL shares will be refunded.

34F. Will I get a copy of the Joint Sector Agreement referred above?

Yes. An unabridged copy of the Joint Sector Agreement will be provided with the Information Sheet.

34G. I have heard that the land of NPRL is a leasehold land. Will I get a copy of the lease agreement?

The Liquidator currently does not have the lease agreement. However, important terms of the then purported lease agreement have been incorporated in the Joint Sector Agreement.

Due Diligence

35. When do I get the right to conduct due diligence?

The applicant gets the right to conduct due diligence on submission of EOI and being declared an eligible applicant by the Liquidator.

36. Is it compulsory for me to conduct due diligence?

Due diligence is not compulsory under any law; it is a precautionary step taken by a potential acquirer before taking over any asset.

37. What if I choose not to conduct due diligence?

Conduct of due diligence by the applicant is optional. Whether or not the applicant conducts due diligence, entire risk shall be borne by the applicant. Therefore, if the applicant chooses NOT to conduct due diligence, it will be presumed that the applicant has satisfied himself as to the sale assets and therefore, no complaint/ claim against the same shall be entertained in this regard by the Liquidator after the submission of the bid.

38. Will the Liquidator assist me in conducting due diligence?

The Liquidator encourages the applicants to conduct their own due diligence. The Liquidator's office or the retained staff of the Company will provide cooperation feasible at their end.

39. Who bears the cost and expenses of due diligence?

The applicant who gets due diligence conducted.

General

40. I understand that the Liquidator has the right to amend the terms of the Invitation. However, how will I get to know if any such amendment is made? Will you put it in newspaper?

Any corrigendum/update/amendment in the terms and conditions of the Invitation will not be published in the newspaper and not be intimated to the applicants individually. Any such corrigendum/update/amendment shall be uploaded on www.niccogroup.com and/or www.vinodkothari.com/nicco-liquidation. The applicants are advised to follow the webpages for further developments.

41. Is there a possibility of change in timelines? If yes, how will I be notified?

The Liquidator reserves the right to alter the timelines. If timelines are changed, then as stated above, no individual notification shall be sent and no re-publication will be issued. The applicants should keep a track of the developments on the webpages stated above.