

[On the letter head of Recipient]

UNDERTAKING

Date: August [●], 2023

To,
Swatantra Kumar Singh
Resolution Professional for XYZ Limited
P-6/90 (2F) Connaught Circus,
Connaught Place, New Delhi,-110001, India,

(the "Resolution Professional")

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

1. On 16th April 2023, the National Company Law Tribunal ("NCLT") has directed commencement of corporate insolvency resolution ("CIR") process against XYZ Limited under the Insolvency and Bankruptcy Code, 2016 ("IBC").
2. It is the duty of the Resolution Professional under the IBC to prepare an Information Memorandum ("IM") of the corporate debtor.
3. We require a copy of the IM of XYZ Limited and other additional information relating to XYZ Limited. We note, understand and acknowledge that:
 - (i) You have prepared an IM of XYZ Limited in terms of Section 29 of the IBC read with the relevant regulations framed under the IBC. We further note and understand that the information contained in the IM is confidential information and can be made available only after obtaining an undertaking of confidentiality as required under Section 29 of the IBC and Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations");
 - (ii) The IM is prepared on the basis of information provided by the management of XYZ Limited and its creditors. No representation or warranty, express or implied, is given by the Resolution Professional or the advisors appointed by the Resolution Professional or any of its partners, directors, officers, affiliates, employees, advisors or agents (unless specifically mentioned under the provisions of the IBC) as to the accuracy or completeness of the contents of this IM or any other document or information supplied, or which may be supplied at any time or any opinions or projections expressed herein or therein;
 - (iii) The IM is a dynamic document and may be updated from time to time till a resolution plan is approved by the CoC; and
 - (iv) Any additional or supplementary information or clarification besides the IM, including those provided by way of emails or on telephone or in meetings provided to us by the Resolution

Professional or his team members, including legal advisors are also confidential in nature and shall be construed as a part of the IM.

4. The IM, together with any additional or supplementary information (including the liquidation value of XYZ Limited as and when made available) or clarification, including those provided by way of emails or on telephone or in meetings by the Resolution Professional or his team members, including advisors is referred to as "**Confidential Information**".
5. We are executing this undertaking of confidentiality to maintain confidentiality in respect of the information contained in the IM as mandated by the IBC and CIRP Regulations.
6. In terms of Section 29 of the IBC and Regulation 36 of the CIRP Regulations we unconditionally and irrevocably agree and undertake:
 - (i) to maintain confidentiality of the Confidential Information and not to use such Confidential Information to cause an undue gain or undue loss to ourselves or any other person;
 - (ii) in terms of Section 29(2) of the IBC, to:
 - (a) comply with provisions of law for time being in force relating to confidentiality and insider trading in relation to such Confidential Information;
 - (b) protect any intellectual property of XYZ Limited we may have access to; and
 - (c) not share relevant information with any third party unless clauses (a) and (b) above are complied with.
 - (iii) Except as provided herein, we will not disclose the contents of Confidential Information, as updated from time to time, to any person other than to our affiliates, including, for avoidance of any doubt, our and their directors, officers, employees, agents or advisors, including, without limitation, financial advisors, attorneys, bankers, consultants and accountants, and potential financing sources (collectively, our "Representatives") who need to know such information for the purpose of the Transaction, provided that such Representatives are also bound by the same confidentiality obligations as us. We will be solely responsible for any breach of the provisions of this undertaking of confidentiality by any of our Representatives.
7. We accept and acknowledge that the Confidential Information has been developed or obtained by the Resolution Professional/ the management of XYZ Limited through investment of significant time, effort and expense, and that the Confidential Information is valuable, special and unique asset of XYZ Limited, which provides the Financial Creditor (undersigned) with a significant competitive advantage and needs to be protected from improper disclosures. We further understand and accept that the information contained in the Confidential Information, as updated from time to time, cannot be used for any purpose other than for the Transaction. Accordingly, we unconditionally and irrevocably agree and undertake to ensure that our Representatives agree to:
 - (i) maintain confidentiality of the Confidential Information, as provided from time to time, and not to use such Confidential Information to cause an undue gain to themselves / us or undue loss to any other person including XYZ Limited or any of its creditors and stakeholders;

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

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

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

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

Signature and official stamp

Name:

Designation: