

## **PROCESS MEMORANDUM**

Invitation for bids for auction of assets of Usher Agro Limited (“in liquidation”) under the provisions of Insolvency and Bankruptcy Code, 2016 (“Code’) by an order of Honorable National Company Law Tribunal (“NCLT”) with effect from March 7, 2019.

October 12, 2020

Issued by -

**Krishna Chamadia**  
**Liquidator**

IBBI Reg. No: IBBI/IPA-001/IP-P00694/2017-18/11220  
Usher Agro Limited  
(a company under liquidation process vide NCLT order dated March 7, 2019)  
212 Laxmi Plaza, Laxmi Industrial Estate, New Link Road,  
Andheri West, Mumbai- 400053, Maharashtra, India  
Email: [krishnachamadia@gmail.com](mailto:krishnachamadia@gmail.com)

*Krishna Chamadia has been granted a certificate of registration to act as a Liquidator by the Insolvency and Bankruptcy Board of India, his Registration No. is IBBI Reg. No: IBBI/IPA-001/IP-P00694/2017-18/11220. The affairs, business and property of Usher Agro Limited (‘UAL’) are being managed by the Liquidator, Krishna Chamadia, who acts as agent of UAL only and without personal liability.*

*IP registration details as under:*

*IP Registration no. IBBI Reg. No: IBBI/IPA-001/IP-P00694/2017-18/11220  
B-1804, Raheja Heights, Off Gen. A. K. Vaidya Marg, Dindoshi, Malad (E), Mumbai – 400 097  
Email: [krishnachamadia@gmail.com](mailto:krishnachamadia@gmail.com)*

Issued to All Prospective Bidders

Terms and conditions, deadlines etc. for participating in the electronic auction are provided in the Process Memorandum. Process Memorandum is non-transferable.

Timelines, notifications, updates and other details for the e-auction process are available on the website of the company [www.usheragro.com](http://www.usheragro.com)

## DISCLAIMER

*This document is issued by Mr. Krishna Chamadia, the Liquidator for general information purposes, to provide general information only, without regard to specific objectives, suitability, financial situations and the requirements of any particular person. The purpose of this document is to set out the process for submitting auction bids for the Assets (as defined herein) of Usher Agro Limited (in liquidation) (the “Company” or “UAL”) in accordance with the Insolvency and Bankruptcy Code, 2016 (‘IBC’). Nothing herein or in materials relating to the Process Memorandum is intended to be construed as legal, financial, accounting, regulatory or tax advice by the Liquidator. This Process Memorandum is personal and specific to each auction process participant. Neither this Process Memorandum nor anything contained herein shall form the basis of, or be relied upon in connection with any contract, agreement, undertaking, understanding or any commitment whatsoever. This Process Memorandum does not solicit any action based on the material contained herein.*

*The information in this Process Memorandum, which does not purport to be comprehensive, is provided by the Company and has not been independently verified by the Liquidator. While this information has been prepared in good faith, no representation or warranty, expressed or implied, is or will be made and no responsibility or liability is or will be accepted by the Liquidator, the Company or by any of its officers, employees or agents in relation to the accuracy, fairness, authenticity or completeness of this Process Memorandum or any other written or oral information made available to any interested party or its advisers and any such liability is expressly disclaimed. In so far as the information contained in this Process Memorandum includes current or historical information, the accuracy, adequacy, authenticity, correctness, fairness, and completeness of such information cannot be guaranteed. By acceptance of this Process Memorandum, the auction process participant shall be deemed to have acknowledged that it has not relied upon any representation and warranty made by the Liquidator. This document has not been filed, registered or approved and will or may not be filed, registered, reviewed or approved by any statutory or regulatory authority in India or by any stock exchange in India or any other jurisdiction. This Process Memorandum has not been approved, reviewed or recommended by SEBI.*

*This Process Memorandum and information contained herein or disclosed pursuant to the terms of this Process Memorandum or any part of it does not constitute or purport to constitute any advice or information in publicly accessible media and should not be printed, reproduced, transmitted, sold, distributed, or published by the recipient without prior written approval from the Liquidator. Distributing or taking/sending/dispatching/transmitting this Process Memorandum in certain foreign jurisdictions may be restricted by law, and Persons into whose possession this Process Memorandum comes should inform themselves about, and observe, any such restrictions. Neither the Liquidator, nor his professional advisors, affiliates, directors, employees, agents, representatives or managers of the process shall be liable for any damages, whether direct or indirect, incidental, special or consequential including loss of revenue or profits that may arise from or in connection with the use of this Process Memorandum, including for the Auction Participant not being selected as a Successful Auction Participant or on account of any decision taken by the Liquidator.*

*The Liquidator and/or the Company give no undertaking to provide the recipient with access to any additional information or to update this Process Memorandum or any additional information, or to correct any inaccuracies in it which may become apparent, and they reserve the right, without giving reasons, at any time and in any respect, to amend or terminate the procedures set herein or to terminate negotiations with any Auction Participant (as defined herein). The issue of this Process Memorandum shall not be deemed to be any form of commitment on the part of the Liquidator or the Company to proceed with any transaction.*

*In addition to the provisions set out in this Process Memorandum, the Auction Participant shall be responsible for fully satisfying the requirements of the IBC and related Regulations as well as all laws in force that are or may be applicable to the applicant or the sale process and for obtaining requisite*

*regulatory or other approvals, if any, that are or may be required under applicable law and nothing contained in this Process Memorandum shall be deemed to relieve, wholly or partially, directly or indirectly, the Auction Participant from compliance with the IBC and related Regulations as well as any other law in force, and/ or any instrument having the force of law as may be applicable and nothing in this Process Memorandum shall be construed as, or operate either, wholly or in part, as exempting the Auction Participant from complying with all such laws, as are or may be applicable.*

*By procuring a copy of this Process Memorandum, the recipient accepts the terms of this disclaimer notice, which forms an integral part of this Process Memorandum and all other terms and conditions of this Process Memorandum. Further, no Person, including the Auction Participant shall be entitled under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise to claim for any loss, damage, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Process Memorandum or otherwise, including the accuracy, adequacy, authenticity, correctness, completeness or reliability of the information or opinions contained in this Process Memorandum and any assessment, assumption, statement or information contained therein or deemed to form part of this Process Memorandum, and the Liquidator, Company, and their advisors, affiliates, directors, employees, agents, representatives or managers do not have any responsibility or liability for any such information or opinions and therefore, any liability or responsibility is hereby expressly disclaimed. All expenses incurred towards movement / shifting of plant & machinery (ies) or any asset of the Company post the e-auction process should be borne by the successful auction applicant. The Liquidator shall not be held responsible / liable to pay any expenses towards such movement of plant & machinery (ies) or any asset of the Company.*

*In no circumstances shall the Auction Participant or its officers, employees, agents and professional advisers make any contact, direct or indirect, by any mode whatsoever, with the management, employees, customers, agents or suppliers of the Company until the Liquidator gives permission to do so in writing.*

*The assets of the Company are proposed to be sold on “As is where is basis”, “As is what is basis”, “Whatever there is basis” and “No recourse” basis and the proposed sale of assets of the Company does not entail transfer of any title except the title which the Company had on its assets as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the moveable/immoveable assets of the Company.*

*The Auction Participant shall bear all its costs and charges associated with purchase of the assets and / or relating to the preparation and submission of its bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Liquidator or any other costs incurred in connection with or relating to its bid or purchase of assets.*

*This Process Memorandum is neither transferable nor assignable.*

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## 1. IMPORTANT INFORMATION

1.1 This Process Memorandum has been issued with the intent to carry out e-auction (**E-Auction**) of assets of Usher Agro Limited (in liquidation) (the “**Company**” or “**UAL**” or “**Corporate Debtor**”) under the provisions of the Insolvency and Bankruptcy Code (**IBC**), 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Process Regulations**).

1.2 All information provided in this Process Memorandum should be read together with the provisions of the IBC and the Liquidation Process Regulations. In the event of a conflict between this Process Memorandum and the IBC or the Liquidation Process Regulations, the provisions of the IBC or the Liquidation Process Regulations, as the case may be, shall prevail.

1.3 The information contained in this Process Memorandum or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Liquidator, is provided to Bidder(s) on the terms and conditions set out in this Process Memorandum.

1.4 This Process Memorandum is neither an agreement nor an offer by the Liquidator to the prospective Bidders or any other person. The purpose of this Process Memorandum is to provide interested parties with information that may be useful to them in making their bids pursuant to this Process Memorandum. The assumptions, assessments, statements and information contained in the Process Memorandum may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this Process Memorandum and obtain independent advice from appropriate sources.

1.5 Information provided in this Process Memorandum to the Bidder(s) has been collated from several sources. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as complete. The Liquidator accepts no responsibility for the accuracy or otherwise for any statement contained in the Process Memorandum.

1.6 The Liquidator, makes no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Process Memorandum or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Process Memorandum and any assessment, assumption, statement or information contained therein or deemed to form part of this Process Memorandum or arising in any way from participation in this auction process.

1.7 The Liquidator has no responsibility towards the authenticity of the trademark registration of the brand / name ‘Usher Agro Limited’. Successful auction applicant (s) is/are advised to conduct their own legal diligence towards continuing with the same name. This Process Memorandum does not constitute advice and the Liquidator should not be held responsible for any sort of claim on the name Usher Agro Limited by any constitution / party. The Liquidator hereby excludes any warranty, express or implied by any party, on the name Usher Agro Limited. No responsibility is taken by the Liquidator regarding any implications of the future usage of the name Usher Agro Limited.

1.8 The Liquidator also accepts no liability of any nature howsoever caused arising from reliance of any Bidder upon the statements contained in this Process Memorandum

1.9 The Liquidator may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this Process Memorandum.

1.10. The issue of this Process Memorandum does not imply that the Liquidator is bound to select a Bidder or to appoint the Preferred Bidder as Successful Bidder for the assets of the company and the Liquidator reserves the right to reject all or any of the Bidders or bids without assigning any reason whatsoever.

1.11. Each Bidder shall bear all its costs and charges associated with or relating to the preparation and submission of its bid and/or participation in the e-auction, including but not limited to preparation,

copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Liquidator or any other costs incurred in connection with or relating to its bid.

1.12. Details with respect to the e-auction are as follows:

<b>Type of Bid</b>	<b>E-Auction</b>
Seller	Krishna Chamadia (as Liquidator for Usher Agro Limited)
Annexures	<p><b>1. Annexure 1</b> – Bid form (to be duly filled in and signed and submitted by the Bidder to Liquidator)</p> <p><b>2. Annexure 2</b> – Declaration by the Bidder (to be duly filled in and signed and submitted by the Bidder to Liquidator)</p> <p><b>3. Annexure 3</b> – Technical Terms and Conditions of E-Auction</p>
Special Instructions	This bidding is a serious matter and last minute bidding may lead to lapses. Neither the E-Auction Service Provider nor the Liquidator will be responsible for any lapses on part of the Bidders.

1.13 All terms and conditions with respect to the sale of the Properties shall be governed by the directions of the Liquidator, Hon'ble National Company Law Tribunal (**NCLT**) and in accordance with the provisions of applicable laws. As mandated by the NCLT, the Liquidator shall exercise all rights with respect to sale of the Assets and it would be open to the Liquidator to appoint such experts, professionals or other persons, as the Liquidator might think necessary, in consultation with NCLT, so as to enable the sale of the Properties.

1.14. This Process Memorandum is neither transferable nor assignable.

1.15. The Annexures to this Process Memorandum shall form an integral part hereof and this Process Memorandum shall always be read in conjunction with the Annexures hereto.

1.16. The title documents relating to the Properties shall be available on request to be made to the Liquidator at [krishnachamadia@gmail.com](mailto:krishnachamadia@gmail.com)

## 2. DEFINITIONS

**“Adjudicating Authority”** or **“NCLT”** shall mean the Hon’ble Mumbai Bench of the National Company Law Tribunal;

**“Applicable Laws”** means, all applicable laws, regulations, rules, guidelines, circulars, re-enactments, revisions, applications and adaptations thereto, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority, rules, regulations, orders and interpretations of any governmental authority, court or statutory or other body applicable for such transactions including but not limited to the IBC, Liquidation Regulations, Companies Act, 1956 / 2013 (as applicable), Competition Act, 2002, Transfer of Property Act, 1882, Sale of Goods Act, 1930, Foreign Exchange Management Act, 1999, whether in effect as of the date of this Process Memorandum or thereafter and each as amended from time to time;

**“Assets”** means the assets of the Corporate Debtor as specified in Clause 8 of this Process Memorandum;

**“Associate Company”**, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

*Explanation* — for the purposes of this definition, “significant influence” means control of at least twenty per cent of total share capital, or of business decisions under an agreement;

**“Auction Participant”** or **“Bidder”** mean, Person or Persons who submitted a bid as per the Process Memorandum; and shall include a Qualified Bidder or the Successful Bidder, as the case may be, and as the context requires;

**“Control”** shall mean a Person holding more than 26% (twenty six percent) of the voting share capital in a company or the ability to appoint majority of the directors on the board of another company or the ability of a company to direct or cause direction of the management and policies of another company, whether by operation of law or by contract or otherwise;

**“Eligible Bidder(s)”** shall mean Bidder(s) who are eligible in terms of this Process Memorandum, provisions of IBC and provisions of the Liquidation Process Regulations;

**“IBC”** shall mean Insolvency and Bankruptcy Code, 2016 and the related rules and regulations issued thereunder, as amended from time to time.

**“Liquidation Process Regulations”** means, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 as amended from time to time;

**“Liquidator”** means an insolvency professional appointed as a liquidator of the Company in accordance with section 34 of the IBC;

**“Liquidation Process Regulations”** means the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, as amended from time to time;

**“Person”** shall mean an individual, a partnership firm, an association, a corporation, a limited company, a trust, a body corporate, bank or financial institution or any other body, whether incorporated or not;

**“Process Memorandum”** means this document including all the appendices hereto, for the purposes of setting out the process for submission of a bid and selection of Successful Bid in accordance with

the provisions of the IBC and shall include all supplements, modifications, amendments, alterations or clarifications thereto issued in accordance with the terms hereof.

**“Qualified Bidder(s)”** shall mean a Bidder whose bid fulfils the eligibility criteria listed out in the Process Memorandum

**“Bid”** means, any bid submitted by the Bidders as required in terms of this Process Memorandum and in accordance with the provisions of IBC read together with the Liquidation Process Regulations and the Applicable Laws;

**“Seller”** means, Usher Agro Limited *in Liquidation* acting through the Liquidator;

**“Successful Bidder” or “Successful Auction Participant”** means, the Qualified Bidder whose bid is approved and who is declared successful by the Liquidator after the auction

Capitalized terms used herein but not defined otherwise shall have meaning prescribed to them under the provisions of the IBC and the rules and regulations thereunder.



### **3. INTRODUCTION**

3.1 The liquidation process for the Company has been initiated under the provisions of the IBC and the Liquidation Process Regulations by an order of the NCLT with effect from 7<sup>th</sup> March 2019. As per the said order, Krishna Chamadia has been appointed as the Liquidator.

3.2 The Liquidator endeavours to sell these assets comprising the liquidation estate of the Company in the manner specified under Regulation 32 of the Liquidation Process Regulations, any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be, and as per directions, if any, of the Adjudicating Authority in respect of the liquidation process of the Company and in the manner specified in this Process Memorandum.

3.3. The E-Auction would be conducted in the manner specified in Schedule I as provided under Regulation 33 of the Liquidation Process Regulations, any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be, and as per directions, if any, of the NCLT or NCLAT in respect of the liquidation process of the Company and in the manner specified in this Process Memorandum.

3.4 The Bidders are encouraged to acquaint themselves with the provisions of the IBC and the Liquidation Process Regulations and any other rules, regulations, orders, circulars, directions or notifications or the like, issued pursuant to or under the IBC or the Liquidation Process Regulations, as the case may be.

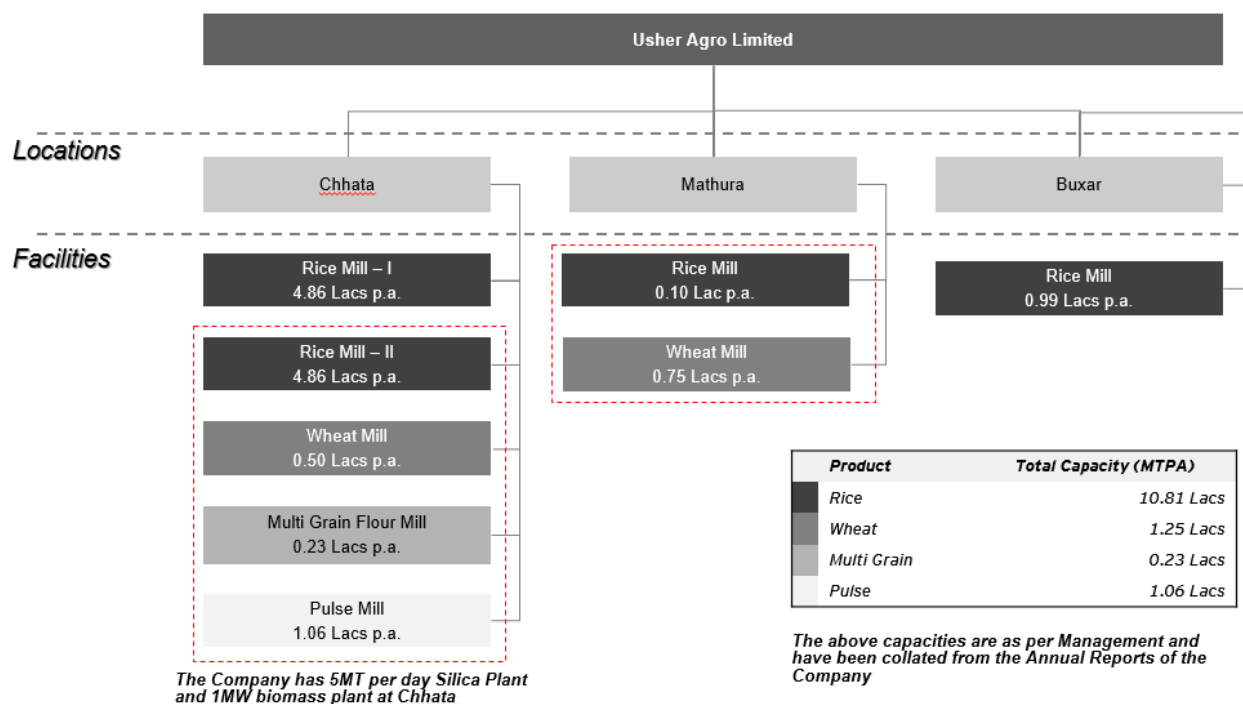
#### 4. OVERVIEW OF THE COMPANY

Brief background:

Usher Agro Limited, a company incorporated in 1996 is engaged in milling basmati and non-basmati rice, wheat and its related products and pulses. The company further ventured into power generation and manufacturing of green silica by investing in its subsidiary UEPL.

The company had eight milling units (4 rice, 2 wheat and 2 pulses) spread across three locations i.e. Mathura, Chhata (U.P) and Buxar (Bihar), with overall milling capacity of more than 13 lac MTPA. **The Building, Plant & Machinery at Chhata Unit 1, Mathura and Buxar units have been sold in earlier auctions.**

A snapshot of various facilities owned by UAL at various locations is as below:



## 5. ELIGIBILITY

An Auction Participant shall not be eligible to submit a bid for purchase of assets of the Company if it fails to meet the eligibility criteria set out in Section 29A of the IBC (as amended from time to time).

The following forms, documents and authorizations are required to be submitted by the Bidder along with the Bid Application Form by the bidder (s):

- a. Composition and Ownership Structure of the Bidder
- b. Authorization
- c. Undertaking by the Bidder

A bidder may use additional sheets to submit the information for its detailed response.

On submission of the bid and the Earnest Money in the manner enlisted in this Process Memorandum, the Bidder shall have to demonstrate the **financial capabilities to fulfil the commitment towards the proposed bid value.**

### **Documents to be submitted by Eligible Bidders**

An Eligible Bidder shall submit the duly filled and signed **Bid Application Form** attached vide **Annexure I ("Bid Form")**, and the duly filled and signed **Declaration by Bidders** attached vide **Annexure II ("Declaration")**, along with the aforementioned demonstration of the financial capabilities of the bidder.

**It is to be noted that only Eligible Bidders will gain access to documentation, additional information required for due diligence, after submission of the Bid Form and Declaration. Further, site visits will also be arranged only for Eligible Bidders.**

## 6. SITE VISIT AND DISCUSSION MEETINGS

If requested by the Auction Participant, the Liquidator may arrange a discussion meeting at any time prior to the closure of the auction process. The details with respect to the discussion meeting shall be communicated to the Auction Participant in advance. The Liquidator reserves the right to not arrange a discussion meeting for any reason whatsoever, irrespective of the request of the Auction Participant.

If requested by an Auction Participant, the Liquidator may arrange a site visit for such applicant at any time prior to the closure of the auction process. The details, terms and conditions with respect to the Site Visit shall be communicated to the relevant Auction Participant in advance. The Liquidator reserves the right to not arrange a site visit for any reason whatsoever, irrespective of the request of the Auction Participant. Auction Participant considering site visit shall be provided a prior notification of date and time 3 (three) days in advance by Liquidator.

## 7. DUE DILIGENCE

The Liquidator shall provide assistance necessary for the conduct of due diligence by interested buyers. The information and documents shall be provided by the Liquidator in good faith. The bidders may note that the Liquidator would not have verified any of the information, data or documents shared and shall not accept any responsibility or liability, whatsoever, in respect of any statements or omissions contained in the shared data.

The assets of the Company are proposed to be sold on "As is where is basis", "As is what is basis", "Whatever there is basis" and "No recourse" basis and the proposed sale of assets of the Company does not entail transfer of any title except the title which the Company had on its assets as on date of transfer. All statutory liabilities / taxes / demands/ claims/ maintenance fee / electricity / water charges

etc., outstanding as on date or yet to fall due in respect of the relevant asset should be ascertained by the Auction Participant and would be borne by the successful bidder.

## 8. ASSETS TO BE AUCTIONED AND RESERVE PRICES

Asset	Block	Notes
Land at Chhata – Unit 1	Block 1	Note – 1

### General Note on Payment:

The successful bidder shall make the full payment of the final bid amount within ninety days from successfully winning the bid. Provided that payments made after thirty days shall attract an interest rate of 12% per annum. Provided further that the asset sale as auctioned shall be cancelled if the payment is not received within ninety days.

**The reserve price for respective block of assets will be provided on October 12, 2020 on [www.usheragro.com](http://www.usheragro.com)**

**Kindly note that the bidders cannot place a bid for the block of assets at a value below the reserve price.**

### Note – 1

The land at Chhata Unit 1 is a freehold Land and is admeasuring 3.990 hectares (approximately 9.86 acres). It may be noted that Building, Plant and Machinery located at Chhata Unit 1 has been sold in an auction dated September 19, 2020 (“**said Sold Block**”). It may be noted that, in case the successful bidder of the said Sold Block delays to make payment or fails to make payment as per agreed terms and conditions, then the successful bidder for Block 1 shall have to allow time to the Liquidator to conduct fresh auction of the said Sold Block. Further, the successful bidder of Block 1 shall not get the possession of land until the premises has been vacated by the successful bidder of the said Sold Block.

In case the auction for the said Sold Block is cancelled and the Liquidator is not able to conduct fresh auction for the said Sold Block in a timely manner, the successful bidder for Block 1 shall have no rights to claim any penalty or damages from the Liquidator.

In pursuance to the terms and conditions in the Process Memorandum dated September 12, 2020, the successful bidder of the said Sold Block shall vacate the premises by February 18, 2021. The Liquidator shall not be responsible for delays in vacation of premises and in no way the Liquidator can be held responsible for any matters for any reason whatsoever. Further, the liquidator shall not be responsible for / or any damages to the boundary walls, wire fencing, security cabin and lighting, etc. Furthermore, at no point in time for any reason whatsoever, the successful bidder of Block 1 shall create any hassles or make any demands from the successful bidder of said Block and / or the Liquidator.

*Cognizance should be taken of the fact that the liquidator does not give any assurance or warranty of the physical condition of assets and their suitability for any sort of operation that the bidder envisages.*

## 9. EARNEST MONEY

All Auction Participants shall, along with or prior to the submission of their Bids, deposit 10% (Ten percentage) or higher as of the reserve price as per “Reserve Price Document” for the relevant block of Assets, as earnest money (“**Earnest Money**”).

Earnest Money shall be provided **ONLY** in the form of cash, to be deposited by the Auction Participant by way of direct bank transfer (RTGS / NEFT) to the bank account specified below. No interest will be paid to the Auction Participant in relation to the amount deposited as Earnest Money. In this regard, the following must be noted –

- i. Earnest Money is to be paid by the Bidder along with Bid Form.
- ii. The details for bank transfer of the Earnest Money are as follows:

<b>Account Number</b>	054405009952
<b>Beneficiary Name</b>	Usher Agro Limited (In Liquidation)
<b>Bank Name</b>	ICICI Bank Limited
<b>Branch</b>	MIDC, Andheri East, Mumbai
<b>IFSC Code</b>	ICIC0000544

- iii. The details of any remittances in this regard shall be entered in the Bid form submitted by the Bidder. The entire EMD amount shall be remitted by the Bidder (s) from one bank account only and to be owned by the Bidder.
- iv. Bidders shall preserve the remittance challan and shall produce the same in front of the Liquidator as and when demanded.
- v. All payment made by the Bidder under the e-auction shall be intimated to the Liquidator at [krishnachamadia@gmail.com](mailto:krishnachamadia@gmail.com).

The Bidder may request the Liquidator to permit the Bidder to submit the Earnest Money through its Associate Company. Such payment of the Earnest Money by an Associate Company of the Bidder shall be accompanied by a letter in the format as set out in Format A (*Earnest Money by an Associate Company*). Such Associate Company must also be an Eligible Bidder as per the requirements specified in this Process Memorandum. Provided that, the Liquidator reserves the right to accept such a request at its sole discretion and upon such terms and conditions as it deems fit, including requiring such party to submit any authorization documents or other necessary details/documents.

#### **Forfeiture of Earnest Money from the Auction Participant**

The Earnest Money furnished can be forfeited at any time, upon the occurrence of any of the following events:

- a) if any of the conditions under this Process Memorandum are breached by the Auction Participant or in case the Auction Participant is found to have made any misrepresentation; or
- b) if the Auction Participant is found to be ineligible to submit the bid under Section 29A of the IBC (as amended from time to time) or is found to have made a false or misleading declaration of eligibility under Section 29A of the IBC (as amended from time to time); or
- c) if the Auction Participant is identified as the Successful bidder and does not accept the Letter of Intent issued by the Liquidator.

#### **Adjustment of Earnest Money of the Successful Bidder**

The Earnest Money shall not be set-off against or used as part of the consideration that the Successful Bidder proposes to offer in relation to the Company, unless expressly indicated as such by the Auction Participant.

However, if the auction fails then the Earnest Money paid by the bidders shall be returned (without interest) within 7 (seven) days of the date of the announcement of the successful bidder.

### **10. TRANSACTION DOCUMENT**

The Successful Bidder may be required to execute a letter of intent (LOI) provided by the Liquidator, the terms of which shall be binding on the Successful Bidder. The declaration of successful bidder shared on registered email id of the bidder shall be deemed to be LOI provided by the bidder.

The successful bidder shall deposit the balance sale consideration as per **Timetable in Point 15** below. Post receipt of the balance sale consideration including taxes, if any, the process for executing a sale certificate and/or conveyance document and/or transfer documents for the relevant asset/assets shall be initiated between the Successful Bidder and the Company.

## **11. DECLARATION OF SUCCESSFUL BIDDER**

The declaration of the successful bidder(s) for any asset block(s) shall be done by the Liquidator at the end of the determined auction phase. Determination of the successful bidder(s) shall be done on the basis of highest bid received for the asset block (s) by the Liquidator via the auction portal process. In case of any dispute / discrepancy, the liquidator shall assess the auction applications and declare the successful bidder (s) offering maximum value for the auctioned assets. This right of selecting and declaring the successful bidder (s) shall solely rest with the Liquidator at all times.

It shall be the endeavour of the Liquidator to sell all blocks and maximise overall recovery. While evaluating bids, the Liquidator may provide preference to bids for more than one block. The Liquidator may provide preference to bid (or combination of bids) that provides higher overall recovery even if, for one particular block, some other bid provides for a higher offer than a consolidated bid for that one block.

## **12. FRAUDULENT AND CORRUPT PRACTICES**

The Auction Participant shall observe the highest standard of ethics during the auction Process and subsequently during the closure of the auction process and declaration of successful bidder. Notwithstanding anything to the contrary, contained in this Process Memorandum, or in the Letter of Intent, the Liquidator shall reject an auction bid, revoke the Letter of Intent, as the case may be, without being liable in any manner whatsoever to the Auction Participant, if the Liquidator, at his discretion, determines that the Auction Participant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the auction Process or has, undertaken any action in respect of such process which results in the breach of any Applicable Law including the Prevention of Corruption Act, 1988. In such an event, the Guarantee Beneficiary may invoke the Earnest Money, without prejudice to any other right or remedy that may be available to the Liquidator under this Process Memorandum or Applicable Law.

For the purposes of this Clause the following terms shall have the meaning hereinafter respectively assigned to them:

**“coercive practice”** shall mean impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the auction Process;

**“corrupt practice”** shall mean (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the auction Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Liquidator or the Company, who is or has been associated or dealt in any manner, directly or indirectly with the auction Process or arising there from, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Liquidator or the Company, shall be deemed to constitute influencing the actions of a person connected with the auction Process); or (ii) engaging in any manner whatsoever, during the auction Process or thereafter, any person in respect of any matter relating to the

Company, who at any time has been or is a legal, financial or technical adviser of the Liquidator or the Company, in relation to any matter concerning the auction process;

**“fraudulent practice”** shall mean a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the auction Process;

**“restrictive practice”** shall mean forming a cartel or arriving at any understanding or arrangement among the Auction Participants with the objective of restricting or manipulating a full and fair competition in the auction Process; and

**“undesirable practice”** shall mean (i) establishing contact with any person connected with or employed or engaged by the liquidator with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the auction Process; or (ii) having a Conflict of Interest.

*The Bidder shall not involve himself or any of his representatives in price manipulation of any kind directly or indirectly by communicating with other Bidders.*

*The Bidder shall not divulge either his bid or any other details provided to him by the Liquidator or during the due diligence process in respect of the asset to any other party. Prior to conduct of due diligence/ site visits, the Liquidator may require the Bidder to execute confidentiality agreement with the Company/ Liquidator.*

### **13. COSTS, EXPENSES AND TAX IMPLICATIONS**

The Auction Participant shall be responsible for all the costs incurred by it on account of its participation in the auction Process, including any costs associated with participation in the discussion Meeting (if any), Site Visit, etc. The Liquidator shall not be responsible in any way for such costs, regardless of the conduct or outcome of the auction Process.

For purpose of abundant clarity, it is hereby clarified that the Auction Participant is expected to make its own arrangements including accommodation for the discussion Meeting (if organised) or Site Visit and all costs and expenses incurred in that relation shall be borne by the Auction Participant.

All expenses incurred towards movement / shifting of plant & machinery (ies) or any asset of the Company post the e-auction process should be borne by the successful auction applicant. The Liquidator shall not be held responsible / liable to pay any expenses towards such movement of plant & machinery (ies) or any asset of the Company.

The Auction Participant shall not be entitled to receive re-imburement of any expenses which may have been incurred carrying out of due diligence, search of title to the assets and matters incidental thereto or for any purpose in connection with the auction process plan.

All taxes applicable (including stamp duty implications and registration charges) on sale of assets would be borne by the successful bidder

- i. The sale attracts stamp duty, registration charges etc. as per relevant laws
- ii. The successful bidder shall bear all the necessary expenses like applicable stamp duties / additional stamp duty / transfer charges, fees, etc. for transfer of property (ies) in his / her name
- iii. The payment of all statutory / non – statutory dues, taxes, rates, assessments, charges, fees, etc. owned by UAL to anybody in respect of the Property(ies) shall be sole responsibility of successful bidders
- iv. Purchaser has to bear the cess or other applicable tax i.e. GST, TDS, TCS etc.

*It is expressly stated that the Liquidator does not take or assume any responsibility for any dues, statutory or otherwise, of the Company, including such dues, if any, which may affect transfer of the*

liquidation assets in the name of the Successful Bidder and such dues, if any, will have to be borne/ paid by the Successful Bidder.

The Auction Participant shall be responsible for fully satisfying the requirements of the IBC and related Regulations as well as all Applicable Laws that relevant for the sale process. The Successful Bidder shall be responsible for obtaining requisite regulatory or statutory or third-party approvals, no-objections, permission or consents, if any, that are or may be required under Applicable Law for purchasing the relevant assets.

#### 14. GOVERNING LAW AND JURISDICTION

This Process Memorandum, the auction Process and the other documents pursuant to the Process Memorandum shall be governed by the laws of India and any dispute arising out of or in relation to the Process Memorandum or the auction Process shall be subject to the exclusive jurisdiction of the Adjudicating Authority, courts and tribunals at Mumbai, India.

#### 15. TIMETABLE

The following timetable shall apply to the process memorandum. The timetable may be amended by the Liquidator through issuance of an addendum to the process memorandum.

#	Event	Timeline (days)
1	Public Announcement of Auction	12 October 2020 (T)
2	This Process Memorandum made available on the website <a href="http://www.usheragro.com">www.usheragro.com</a> as per Terms and Conditions	12 October 2020 (T)
3	Submission of Bid Forms, Declaration forms	12 October 2020 to 17 October 2020 (T + 5)
4	KYC declaration, Due Diligence and Request for Title Documents  <i>(Access to be given only to Eligible Bidders post submission of the bid forms and declaration forms)</i>	12 October 2020 to 17 October 2020 (T + 5)
5	Site Visits and Discussion Meeting  <i>(Access to be given only to Eligible Bidders post submission of the bid forms and declaration forms)</i>	12 October 2020 to 17 October 2020 (T + 5)
6	Earnest Money submission	12 October 2020 to 17 October 2020 until 6.30 p.m (T + 5)
7	Date of e-auction	19 October 2020 (T + 7)
8	Announcement of successful bidder	19 October 2020 (T + 7)
9	Return of Earnest Money Deposit to unsuccessful bidders	26 October 2020 (T+14)
10	Payment of balance consideration by successful bidder	17 January 2021 (T+97)

#### General Note on Payment:

The successful bidder shall make the full payment of the final bid amount within ninety days from successfully winning the bid i.e. by 17 January 2021. Provided that payments made after thirty days shall attract an interest rate of 12% per annum. Provided further that the asset sale as auctioned shall be cancelled if the payment is not received within ninety days.

*\*While the timeline for submission of bid forms and declaration forms extends from **12 October 2020 to 17 October 2020**, please note that access to documentation, additional information and site visits will be granted only once the Bidder submits the Bid Form and Declaration Form and the Liquidator is satisfied about his eligibility to participate in the bidding process.*

**Note - The timeline for payment of final sale consideration may be extended at the sole discretion of Liquidator, to the extent permissible under the applicable laws and regulations. In case the final sale consideration is not paid within the stipulated timeline prescribed by the Liquidator, the Liquidator shall forfeit Earnest Money Deposit and all other sums received by the successful bidder towards the bid.**



## Terms and Conditions

In addition to the Process Memorandum, following terms and conditions apply:

1. E-Auction is being held on “***As is where is basis***”, “***As is what is basis***”, “***Whatever there is basis***” and “***No recourse basis***” and will be conducted ‘On Line’. The auction will be conducted through a designated web portal. Process Memorandum containing E-Auction bid form, Declaration by bidders, General terms and conditions of online auction sales are available on website [www.usheragro.com](http://www.usheragro.com). Interested bidders who have paid the EMD shall be registered on the designated auction portal through which they can submit their bid online.
2. The Bidders should make their own Independent inquiries regarding the encumbrances, title of assets put on auction and claims/rights/dues/ affecting the assets, and should conduct their own prior to submitting their bid. The e-Auction advertisement does not constitute and will not be deemed to constitute any commitment or any representation of the Liquidator. The property is being sold with all the existing and future encumbrances/ claims/ dues/demands whether known or unknown to the Liquidator. Liquidator shall not be responsible in any of way for any third-party claims/rights/dues.
3. The intending bidders should submit the evidence for Earnest Money deposit like UTR number along with self- attested copies of (i) Proof of identification (KYC) viz. Voter ID card/Driving License/Passport etc., (ii) Current Address-Proof for communication, (iii) PAN card of Bidder, (iv) Valid e-mail ID, (v) contact number (Mobile/Landline) of the bidder etc. to the office of Liquidator by **17 October 2020 by 6.30 PM**. Scanned copies of the original of these documents can also be submitted to e-mail ID of Liquidator.
4. It should be the responsibility of the interested bidders to inspect and satisfy themselves about the property before submission of the bid.
5. Liquidator has right to demand documents from bidder for the process and in case the documents are not provided, the liquidator may disqualify the bid.
6. The e-Auction/ bidding of above properties would be conducted exactly on the schedule Date & Time as mentioned against each property by way of inter-se bidding amongst the bidders. The bidder may improve their offer in multiple of amount mentioned under the column “Bid Increment Amount” against each property. In case bid is placed in the last 5 minutes of the closing time of the e-auction, the closing time will automatically get extended for 5 minutes.
7. The Earnest Money of the successful bidder shall be retained towards part sale consideration and the Earnest Money of unsuccessful bidders shall be refunded within fourteen days. The Earnest Money shall not bear any interest. Default in deposit of balance amount payable towards successful bid by the successful bidder would entail forfeiture of the whole money, already deposited and asset shall be put to re-auction and the defaulting bidder shall have no claim/right in respect of asset /amount.
8. The purchaser shall bear the applicable stamp duties/ additional stamp duty/ transfer charges, fee, Taxes, GST, etc. and also all the statutory/ non-statutory dues, taxes, rates assessment charges fees etc. owing to anybody.
9. The Liquidator is not bound to accept the highest offer and has the absolute right to accept or reject any or all offer(s) or adjourn/ postpone / cancel the e-Auction or withdraw any property or portion thereof from the auction proceedings at any stage without assigning any reason there for.

10. The sale certificate will be issued and/or transaction/ sale documents executed in the name of the Successful Bidder(s) only and will not be issued in any other name(s).
11. The sale shall be subject to conditions prescribed under the Insolvency & Bankruptcy Code, 2016 and provisions and regulations thereunder.
12. The interested bidders may give offers either for one or more than one asset blocks. In case a bidder bids for more than one asset, he will be required to submit separate Earnest Money amount for each asset blocks.
13. The decision of Liquidator on declaration of successful bidder shall be final and binding on all the Bidders.

**FORMAT A**

**EARNEST MONEY AMOUNT PAYMENT BY AN ASSOCIATE COMPANY**

To,

Mr. Krishna Chamadia  
Liquidator – Usher Agro Limited  
212 Laxmi Plaza, Laxmi Industrial Estate, New Link Road,  
Andheri West, Mumbai- 400053, Maharashtra, India  
("Liquidator")

[Copy to:]

[Insert name of the Bidder with address]

Dear Sir,

**Sub:** Payment of Earnest Money on behalf of [Insert name of the Bidder] in relation to the auction of assets of Usher Agro Limited.

With reference to the bid submitted by [Insert name of the Bidder with address] for assets of Usher Agro Limited in accordance with and subject to the provisions of the process memorandum dated [•] ("**Process Memorandum**"), issued by the Liquidator, it is hereby declared and confirmed that [Insert name and address of the Associate Company and address of the head office] is [an/the] [Insert description of relationship with Bidder] ("**Associate Company**") of [Insert name of the Bidder], and that the payment of the Earnest Money amount vide [Insert mode of payment] ("**Payment**") is on behalf of [Insert name of the Bidder]. The Associate Company acknowledges that such amounts paid as Earnest Money shall be subject to the terms of the Process Memorandum and hereby waives any right to claim any refund or adjustment of the amounts of such Payment except in accordance with the terms of the Process Memorandum.

The Associate Company hereby represents and warrants that payment of amounts on behalf of [Insert name of the Bidder] is in compliance with Applicable Law.

Capitalised terms used but not defined in this letter shall have the meanings ascribed to such terms in the Process Memorandum.

Thank you.

Yours sincerely,

.....

[Signature and name of the Authorised Officer of the Associate Company]

Rubber stamp/seal of the Associate Company

**ACKNOWLEDGMENT**

We hereby acknowledge and confirm the statements set out above by the Associate Company. Yours sincerely,

.....

[Signature and name of the Authorised Officer of the Bidder]

Rubber stamp/seal of the Bidder

**Annexure I**  
**BID Application Form**

(Please fill up separate Bid application forms for each property)

Date:

Dear Sir,

I am desirous in participating in the E-Auction announced by you on the website of Usher Agro Limited / in the newspaper publication dated ..... in .....

**Details of Bidder**

Name of the Bidder	
Constitution of Bidder	
Contact No.	
Email ID	
PAN No.	
Address	

**Details of Division / Asset:**

Sr. No. in sale notice for which Earnest Money deposited (Asset Block Number)	
Description of Block	

I/We/M/s. also enclose copies of the required KYC documents. We request you to kindly verify the same and arrange with the auction portals for issue of an ID and password for us to enable us to take part in the E-Auction.

Place:

Date:

Signature

(Seal in case of company / firm)

## Annexure II Declaration by Bidders

To,  
The Liquidator,  
Usher Agro Limited (In Liquidation)

Sir,

1. I/We, do hereby state that, I/We have read the entire terms and conditions governing the auction of Assets of Usher Agro Limited (In Liquidation), as specified in the Process Memorandum dated 12 October 2020 and have understood them fully. I/We, hereby unconditionally agree to confirm with and to be bound by the said terms and conditions and agree to take part in the e-auction process.
2. I/We declare that the Earnest Money and the deposit towards purchase – price have been made by me/us as against my/our bid and that the particulars of remittance and all other information given by me/us in the online form is true and correct.
3. I/We further understand and agree that if any of the statement / information revealed by me/us is found to be incorrect and / or untrue, the bid submitted by me/us is liable to be cancelled and in such case, the Earnest Money and / or any monies paid by me/us is liable to be forfeited by the Seller and that the Seller will be at liberty to annul the offer made to me/us at any point of time.
4. I/We also agree that after my/our offer given in my/our bid for purchase of property (ies) is accepted by the Seller and if, I/We, fail to accept or act upon the terms and conditions of the sale or am/are not able to complete the transaction within the time limit specified for any reason whatsoever and/or fail to fulfil any/all the terms and conditions of the auction and offer letter, the Earnest Money and other monies paid by me/us along with the online form and thereafter, are liable to be forfeited. The timeline for payment of final sale consideration may be extended by sole discretion of liquidator, to the extent permissible under the applicable laws and regulations. In case final sale consideration is not paid within stipulated timeline, the liquidator shall forfeit Earnest Money and all other sums received from the successful bidder.
5. I/We understand that the Earnest Money of all Bidders shall be retained by the Liquidator and returned only after the conclusion of the auction process as per the timelines mentioned. I/We, state that I/We, have fully understood the terms and conditions therein and agree to be bound by the same.
6. I/We confirm that our participation in the e-auction process, submission of bid or acquisition of the Assets pursuant to the provisions of the Process Memorandum will not conflict with, or result in a breach of, or constitute a default under (i) our constitutional documents; or (ii) any applicable laws; or (iii) any authorisation or approval of any government agency or body; or (iv) any judgement, order, injunction, decree, or ruling of any court or governmental authority, domestic or foreign binding on me/us; or (v) any agreement to which I am / we are a party or by which I am / We are bound.
7. The decision taken by the Liquidator with respect to the selection of the Successful Bidder and communicated to us shall be binding on me/us.
8. I/We also undertake to abide by the additional conditions if announced during the e-auction including any announcement (s) on correction of and/or additions or deletions to the time of auction portal and Assets being offered for sale.
9. I/We confirm that the Seller and/or his professional advisors, affiliates, directors, employees, agents, representatives or managers of the process, shall not be liable and responsible in any manner

whatsoever for my/our failure to access and bid on the e-auction portal due to any unforeseen circumstances etc. before or during the auction event.

10. I/We hereby confirm that I/we are eligible to purchase the assets of the Company under Section 29A of the Insolvency and Bankruptcy Code, 2016 (as amended from time to time).

(Signature)

Name:

.....

Address:

.....

.....

Email Id:

.....

Mobile:

.....

**Annexure III**  
**Technical Terms & Conditions of e-auction sale**

1. Intending bidders shall have a valid e-mail ID, valid PAN Card and KYC document to register with the E-Auction Service Provider.
2. Intending bidders have to register with the e-auction service provider.
3. Only upon verification of the Online Form and confirmation of remittance of Earnest Money will the Eligible Bidders be declared and thereafter, permitted to access the Platform for bidding for a particular Property.
4. The Bidder shall be solely responsible for all consequences arising out of the bid submitted by him (including any wrongful bidding) and no complaint/ representation will be entertained in this regard by the Agency/ the Seller. Hence, Bidders are cautioned to be careful to check the bid amount and alter/rectify their bid if required before confirming the bid submitted.
5. Bidders should not disclose their User ID as well as password and other material information relating to the bidding to anyone to safeguard its secrecy.
6. Bidders are advised to change the password immediately on receipt thereof.
7. The declaration as per the format set out in **Annexure II** must be executed in accordance with applicable law and it must be issued in accordance with the constitutional documents of the Bidder, if applicable, after obtaining all corporate approvals as may be required. The extract of constitutional documents and certified copies of the corporate approvals must be enclosed with the declaration. In case of Bidder being an individual, the declaration must be personally signed by the Bidder. In case the Bidder is not an individual, the declaration must be signed by a person who is in full time employment of the Bidder and duly authorized to sign the same.
8. All the aforementioned documents are required to be uploaded on the portal and the original physical copies thereof shall be provided by the Successful Bidder to the Seller in accordance with the Process Memorandum.
9. All bids placed are legally valid bids and are to be considered as bids from the Bidder himself. Once the bid is placed, the Bidder cannot reduce or withdraw the bid for whatever reason. If done so, the Earnest Money amount shall be forfeited.
10. The Bidder shall have to bid for the entire block(s) of assets and cannot bid for individual assets within a block of assets
11. The highest bid on the auction shall supersede all the previous bids of the respective Bidders. The Bidder with the highest offer/ bid does not get any right to demand for acceptance of his bid.
12. After the conclusion of the e-auction for each Asset, the Successful Bidder shall be informed through a message generated automatically by the portal, of the outcome of the e-auction. A separate Intimation shall also be sent to the Successful Bidder. Date of sending the e-mail will be considered as the date of receipt of the Intimation i.e. Date of Intimation.
13. Bidders may encounter certain unforeseen problems such as time lag, heavy traffic, and system/ power failure at the Bidder's end. To avoid losing out on bidding because of above-mentioned reasons, it is advised not to wait for the last moment.