

**"ANNEXURE -H"**

**CONFIDENTIALITY UNDERTAKING**

**(To be executed on stamp paper and duly notarized)**

To,

**CA. Nirav Anupam Tarkas**

**Resolution Professional for Steelco Gujarat Limited**

**Subject: Undertaking Under Section 29 of the Insolvency and Bankruptcy Code, 2016 (IBC) and Regulation 36(4) of the Insolvency And Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 (CIRP Regulations) to maintain Confidentiality**

This confidentiality undertaking has been signed by \_\_\_\_\_, a Potential Resolution Applicant (as per Section 5(25) of Insolvency & Bankruptcy Code, 2016 ("**Code**")), having its office at \_\_\_\_\_ Acting through Mr. / Ms. \_\_\_\_\_, the authorized signatory / authorized representative ("**Resolution Applicant**", which expression shall, unless repugnant to the context, include its successors, legal representatives, permitted assigns and administrators in business) on \_\_\_\_\_ day of \_\_\_\_\_, 2020 in favor of CA. Nirav Anupam Tarkas, Resolution Professional for Steelco Gujarat Limited having registration no. **IBBI / IPA-002 / IP-N00776 / 2018-19 / 12375**.

**WHEREAS Steelco Gujarat Limited**, a company registered under Companies, Act, 1956 (here after referred as "Corporate Debtor") is under corporate insolvency resolution process vide NCLT, Ahmedabad order dated **December 31, 2020** and later on **CA. Nirav Anupam Tarkas** was appointed as the Resolution Professional for the Corporate Debtor by the **NCLT, Ahmedabad Bench vide order dated December, 31 2020** in accordance with Section 22 of the Insolvency & Bankruptcy Code, 2016 ("Code") ("Resolution Professional").

**WHEREAS** the Resolution Professional has prepared information memorandum as per Section 29 (1) of the Code and Regulation 36 of the Insolvency and Bankruptcy Board of

India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in respect to the Corporate Debtor ("**Information Memorandum**").

**WHEREAS** the Resolution Professional is required to share the information memorandum and any other information with a potential resolution applicant after receiving an undertaking from the Resolution Applicant to the effect that the Resolution Applicant shall maintain confidentiality of the information contained in the Information Memorandum and shall not use such information to cause any undue gain or undue loss to themselves or any other person and comply with the requirements under Section 29(2) of the Code.

**THEREFORE, the Resolution Applicant here by declares and undertakes as follows:**

1. The Resolution Applicant declares and undertakes that it will not divulge to anyone in any manner (whether through oral or written communication or through any other mode of communication), any information concerning the Corporate Debtor, including but not limited to the existence, business, operations, financial position, disputes by or against the corporate debtor, or the day to day activities of the Corporate Debtor, disclosed to it through oral or written communication or through any other mode, whether by the Resolution Professional (or any other person on behalf of the Resolution Professional), and / or any part of the information contained in the Information Memorandum, and all such information shall be hereinafter referred to as "**Confidential Information**". Any information or documents generated or derived by the recipients of Confidential Information that contains, reflects or derived from any Confidential Information shall also become Confidential Information.
2. The Resolution Applicant further unconditionally and irrevocably undertakes and declares that
  - a) the Confidential Information shall be kept confidential by the Resolution Applicant and shall be used solely for the purpose as allowed under the Code;
  - b) the Resolution Applicant shall not use the Confidential Information to cause any undue gain or undue loss to itself or any other person;
  - c) the Resolution Applicant shall comply with all provisions of law for the time being in force relating to confidentiality and insider trading;
  - d) the Resolution Applicant shall protect any intellectual property of the corporate debtor which it may have access to;

- e) the Confidential Information may only be disclosed to and shared with its employees or third parties by the Resolution Applicant, in accordance with applicable laws, including in relation to confidentiality and insider trading, and terms of this confidentiality undertaking on a strict need-to-know basis and only to the extent necessary for and in relation to the corporate insolvency resolution process of the corporate debtor, provided that the Resolution Applicant binds such employees and third parties, by way of an undertaking

/ agreements, to terms atleast as restrictive as those stated in this confidentiality undertaking;

- f) the Resolution Applicant shall ensure that all Confidential Information is always kept safe and secured and is protected from any theft or leakage;
- g) the Resolution Applicant shall immediately destroy and permanently erase all Confidential Information upon the approval of a resolution plan by the National Company Law Tribunal("NCLT")under Section 31(1) of the Code or upon an order for liquidation of the corporate debtor being passed by the NCLT under Section 33 of the Code, unless otherwise waived by the (i) Corporate Debtor in writing in the event of approval of resolution plan by the NCLT; or(ii)liquidator in writing in the event of an order for liquidation of the Corporate Debtor being passed by the NCLT under Section 33 of the Code;
- h) the Resolution Applicant shall take all necessary steps to safeguard the privacy and confidentiality of the Confidential Information and shall use its best endeavors to secure that no person acting on its behalf divulges or discloses or uses any part of the Confidential Information, including but not limited to the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified in the Information Memorandum; and
- i) the Resolution Applicant shall be responsible for any breach of obligations under this confidentiality undertaking and shall indemnify the Resolution Professional for any loss, damages and costs incurred by the Resolution Professional due to such breach of obligations by the Resolution Applicant or any person acting on its behalf.

3. Notwithstanding any thing to the contrary contained herein, the following information shall however not be construed as Confidential Information

- a) information which, at the time of disclosure to the Resolution

Applicant was already in the public domain without violation of any provisions of applicable laws;

- b) information which, after disclosure to the Resolution Applicant becomes publicly available and accessible without violation of applicable laws or a breach of this confidentiality undertaking;
  - c) information which was in the possession of the Resolution Applicant prior to its disclosure, as evidenced by the records of the Resolution Applicant;
  - d) information that is received by the Resolution Applicant from a third party which is not in breach of its confidentiality obligations hereunder; and
  - e) information that is required to be disclosed by the Resolution Applicant (and to the extent required to be disclosed) pursuant to the requirements of applicable laws, or order of a judicial, regulatory or administrative authority, provided however the Resolution Applicant should use its best endeavors to provide prior intimation of such requirement to disclose to the Resolution Professional and cooperate in all manner required with the Resolution Professional if the Resolution Professional wishes to obtain an injunction or similar order against such requirement of disclosure.
4. No representation or warranty has been provided by the Resolution Professional in relation to the authenticity or adequacy of the information provided to the Resolution Applicant, including Confidential Information, and the Resolution Applicant would not have any claim against the Resolution Professional or any person acting on its behalf or the Corporate Debtor in relation to any information provided in the Information Memorandum.
  5. Nothing contained herein shall be construed as granting or implying any transfer of rights (including license rights) to the Resolution Applicant pertaining to the Confidential Information, or any patents or other intellectual property protecting or relating to the confidential information.
  6. Resolution Applicant agrees that it shall take reasonable measures to protect the secrecy of, and avoid disclosure and unauthorized use, destruction of the Confidential Information. Without limiting the foregoing, the Resolution Applicant shall take at least those measures to protect the Confidential Information that it takes to protect its own most highly confidential information.
  7. Nothing in this confidentiality undertaking shall have the effect of limiting or restricting any liability arising as a result of fraud or willful default.
  8. Resolution Applicant shall immediately notify the Resolution Professional of any known or suspected breaches of this

undertaking and shall give the Resolution Professional full co-operation in any search or scrutiny or investigation or legal actions that the Resolution Professional may decide to undertake.

9. Damages may not be an adequate remedy for a breach of this confidentiality undertaking and the Resolution Professional shall be entitled to the remedies of injunction, specific performance and other equitable relief for a threatened or actual breach of this confidentiality undertaking. The rights and remedies here in provided shall be cumulative and not exclusive of any rights or remedies provided by law, and the Resolution Professional shall be entitled to seek all or any one or more of such remedies against the Resolution Applicant.
10. The Resolution Applicant hereby represents and warrants that it has the requisite power and authority to execute, deliver and perform its obligations under this Agreement.
11. The terms of this confidentiality undertaking may be modified or waived only by a separate instrument in writing signed by the Resolution Applicant with the prior written consent of the Resolution Professional that expressly modifies or waives any such term.
12. If any provision of this undertaking is determined to be invalid, void or unenforceable for any reason, then the remaining provisions hereof shall remain unaffected and in full force and effect.
13. 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 Ahmedabad shall have exclusive jurisdiction over matters arising out of or relating to this confidentiality undertaking.

Signed on behalf of

\_\_\_\_\_

By Mr. \_\_\_\_\_

(Name and Designation)

Authorized Signatory

