

F.No.58/2008/BIFR/SD & C Cell
Board for Industrial and Financial Reconstruction
Special Director & Co-ordination Cell

New Delhi, 24th August, 2009

Subject:- PROCEDURE AND GUIDELINES TO BE FOLLOWED BY ASSET SALE COMMITTEE (ASC) APPOINTED BY BIFR FOR SALE OF ASSETS OF SICK COMPANIES.

In supersession of BIFR OM No. 58/2008/BIFR/SD & C Cell dated 25-05-2009, following Procedure and Guidelines have been approved by the Board for Industrial and Financial Reconstruction (BIFR) for sale of Assets of sick companies.

(a) An Asset Sale Committee (ASC) shall be formed by the Operating Agency (OA) / Monitoring Agency (MA) in terms of the orders issued by the BIFR. Broadly, the composition of Asset Sale Committee would be as follows:-

1. DGM or above level officers from Operating Agency (OA)/ Monitoring Agency (MA) as representative of OA /MA;
2. Company's Representative of the rank of Managing Director or Dy. MD.
3. Representative of Secured Creditors – If there are more than one Secured Creditors, one representative from each secured creditor needs to be nominated.
4. If it involves sale of land, Revenue Officer of the level of Sub Divisional Magistrate of the District in which the land in question is located.
5. Representative of administrative Ministry or Department in respect of Central Govt. PSUs / representative of the concerned State Govt. Department in respect of State Govt. PSUs.
6. Special Director, if any, nominated by BIFR.

(b) All the assets should be got valued (if not already done) by an independent Government approved valuer and having regard to the likely market prices thereof, reserve price should be fixed in respect of each of the assets, if possible. Asset valuation should be completed within a month of the order.

(c) The assets to be sold may be suitably divided into saleable lots or packages, with a view to fetching maximum price. Where land sale is involved, a representative of the concerned State Govt. (s) should also be co-opted as member(s) of the ASC.

(d) The sale of assets should be effected by way of public sale through sealed tenders, after adequate notice is given to the public through advertisements in three leading newspapers / trade journals – one of the news papers being in English and the other in the regional language of the locality where the assets are located. 45-days' time will be allowed to the bidders to inspect the assets and submit their offers. The cost of the advertisements shall be charged to the company and recovered from it.

(d) (i) Sale of such assets of Sick Companies can be considered through “e auction” also, provided that the entire process is considered in a free and fair manner through competitive bidding.

(e) The advertisements should clearly state that the proposed sale of assets of the company is being effected under the directions of the Board for Industrial & Financial Reconstruction (hereinafter referred to as the ‘Board’).

(f) The prospective buyers / bidders will be allowed to inspect the assets on stipulated date or dates in the presence of the company’s representatives. Offers /bids shall be made in sealed envelopes to be opened by the Assets Sale Committee (ASC) on previously specified and notified place, date and time in the presence of the bidders’ representatives.

(g) The bidder should deposit by means of a Bank Draft earnest money deposit (EMD) equivalent to 2% - 5% of the notified reserve price in respect of each asset / package along with the bid. Bids not accompanied by the EMD shall be rejected. EMD shall be forfeited if the party whose offer / bid is finally accepted defaults in making the balance payment in terms of the conditions of sale and completing other sales formalities within the due date. If, however, the sale is completed within the specified time limit, the EMD shall be adjusted towards the final sale price. The EMD will not, however, carry any interest.

(i) In respect of Central Govt. PSUs / State Govt. PSUs, procedure as laid down under Rule 198 of General Financial Rules, 2005, Govt. of India, Ministry of Finance (Deptt. of Expenditure) relating to “Disposal through Advertised Tender” will be followed. The important aspects to be kept in view while disposing the goods through advertised tender are as under:-

1. The basic principle for sale of such goods through advertised tender is ensuring transparency, competition, fairness and elimination of discretion. Wide publicity should be ensured of the sale plan and the goods to be sold. All the required terms and conditions of sale are to be incorporated in the bidding document comprehensively in plain and simple language. Applicability of taxes, as relevant, should be clearly stated in the document.

2. The bidding document should also indicate the location and present condition of the goods to be sold so that the bidders can inspect the goods before bidding.

3. The bidders should be asked to furnish bid security along with their bids. The amount of bid security should ordinarily be ten percent of the assessed or reserved price of the goods. The exact bid security amount should be indicated in the bidding document.

4. The bid of the highest acceptable responsive bidder should normally be accepted. However, if the price offered by that bidder is not acceptable, negotiation may be held only with that bidder. In case such negotiation does not provide the desired result, the reasonable or acceptable price may be counter-offered to the next highest responsive bidder(s).

5. In case the total quantity to be disposed of cannot be taken by the highest acceptable bidder, the remaining quantity may be offered to the next higher bidder(s) at the price offered by the highest acceptable bidder.

6. Full payment, i.e. the residual amount after adjusting the bid security should be obtained from the successful bidder before releasing the goods.

7. In case the selected bidder does not show interest in lifting the goods, the bid security should be forfeited and other actions initiated including re-sale of the goods in question at the risk and cost of the defaulter, after obtaining legal advice by OA.

8. Late bids i.e. bids received after the specified date and time of receipt should not be considered.

(h) Where a bid has been finally accepted the purchaser shall be required to pay the balance of the purchase consideration in two instalments of 50% and balance amount of the total selling price minus the EMD amount, payable, respectively, before the end of 45-days and 90-days respectively from the date on which intimation regarding the final acceptance of the bid is dispatched to him by Registered Post (A.D.) /Speed Post at his notified address.

(i) The successful purchaser shall within 15-days of the receipt of intimation regarding the acceptance of his bid, furnish a bank guarantee, valid for one year, as may be considered satisfactory by the OA / MA, to secure full and timely payment of consideration for the assets purchased.

(j) The EMD received from unsuccessful bidders will be refunded to them, without any interest, promptly.

(k) The possession of the assets purchased and the title thereof shall be transferred to the purchaser only on receipt of full payment of the purchase consideration along with interest @ 15% per annum in case of delayed payments, if any, which may be accepted with the prior approval of the Board.

(l) The extension of time to be granted by the Board in terms of para (k) above will not exceed 90-days each from the due date(s) of the respective instalment(s) and shall be subject to prior extension, if necessary, of the period of validity of the bank guarantee for the unpaid amount, besides payments of interest @ 15% per annum for extended period.

(m) The sale of tenancy rights shall be subject to the applicable Rent Control laws, if any.

(n) The ASC will open the bids / offers on the appointed date, time and place in the presence of its members, bidders, BIFR, Special Director (if any), and the representative of the company (if any available). It would examine the offer(s) and select the highest / best acceptable offer(s) in each category, specifying the reasons therefore, and draw up formal proceedings in this regard. If the decision is by the consensus of all the members present and only the highest bid(s) above the respective reserve price(s) fixed is / are proposed to be accepted, the ASC would be free to finalise the same and keep the funds (which are received in deposit in the name of the company for being eventually dealt with in accordance with the directions of the Board.

(o) The expenses which may be deducted by the OA / MA/ ASC from the gross sale proceeds of the assets of the company would include the expenditure incurred by the OA / MA / Secured Creditors on the valuation of assets (where necessary), security and insurance charges for the relevant assets from the date of the orders issued by the BIFR in this behalf as well as the expenses incurred on the issue of advertisements for change of management or sale of assets either through e-auction or through sealed tenders which have not been earlier reimbursed by the company.

(p) In cases -

(i) where there is lack of unanimity amongst the members of the ASC with regard to acceptance of any bid / offer

or

(ii) where the ASC proposes to accept any offer / bid other than the highest one;

or

(iii) accept a bid which is below the reserve price, it would obtain prior approval of the Board in this regard, after specifying the reasons thereof and furnishing all relevant background / information.

(q) All advertisements for sale of assets will be issued on the basis of the sale being on "As is where is" basis and reserving the right to accept or reject any offer without assigning any reasons thereof.

(r) The Asset sale Committee shall obtain the prior permission / approval of the Board, for any relaxation of the above guidelines.

These Guidelines will come into force with effect from date of issue. These guidelines are forwarded to all concerned for information and necessary action. A copy of the ASC Guidelines has been placed on BIFR Website (www.bifr.nic.in) also.

sd/-
(P.N. Thakur)
Secretary

PPS to Hon'ble Chairperson

PPS to Hon'ble Member (KCV)

PPS to Hon'ble Member (PR)

PPS to Hon'ble Member (NS)

All Officers in BIFR

Section Officer(Bench-I)

Bench Officer (Bench-II)

Bench Officer (Bench-III)

Section Officer(Mon-I)

Section Officer(Mon-II)

Section Officer(Mon-III)