

F.No. 3/9/2020-DIPAM-II-B/ Vol. III
Government of India
Ministry of Finance
Department of Investment & Public Asset Management

Dated:04/09/2020

Preliminary Information Memorandum (PIM) issued on 7th March, 2020 for inviting expression of interest for strategic disinvestment of 1,14,91,83,592 equity shares (52.98%) held by Government of India in Bharat Petroleum Corporation Limited (“Company”) [Except BPCL’s 61.65%, stake in Numaligarh Refinery Ltd.] - Replies to the pre-bid queries.

The Preliminary Information Memorandum (PIM) for inviting expression of interest for strategic disinvestment of 1,14,91,83,592 equity shares (52.98%) held by Government of India in Bharat Petroleum Corporation Limited (“Company”) [Except BPCL’s 61.65%, stake in Numaligarh Refinery Ltd.] was issued on 7th March, 2020, which was further modified on 31.3.2020, 26.5.2020 and 29.7.2020.

2. In view of the requests received from the Interested Parties (IPs) and the prevailing situation arising out of COVID-19, the last date for submission of written queries on PIM was extended to 23 June, 2020.

3. The queries received up to the due date have been considered and the replies to the queries are given as under:

Sr No.	Query from Potential IP	Response to the query
1	Refer Point no. 5.2.1- Financial Criteria, on Page no. 38 of PIM. In point (a)- Net Worth, it is written “This Net Worth criterion may be satisfied either by the IP or by the entity into which the accounts of the IP are consolidated” Please clarify that whether Net Worth of IP to be taken is on a consolidated basis or standalone basis.	The Net Worth of an IP will be considered on a consolidated basis. With regards to definition of Net Worth, kindly read the Clause 5.2.1 of the PIM as amended vide the corrigenda to the PIM issued on 04/09/2020.
2	In Annexure IV – Request for Qualification on page No 65 and	The latest audited balance sheet used by the IP for meeting the Net Worth criteria for

	<p>66,</p> <p>a. Point No. 21, “all contingent liabilities that, if materialized, would reasonably be expected to have a material adverse effect on the business, operations (or results of operations), assets, liabilities and/or financial condition of the Company, or other similar business combination or sale”.</p> <p>b. Point No. 22, “pending litigations that, if decided against the IP, shall disqualify the IP in terms of prescribed eligibility criteria and extant Government instructions on disinvestment.”</p> <p>We request you to clarify the date/period w.r.t. which status of contingent liabilities and pending litigations (as given in these points) is required.</p>	<p>qualification shall be considered.</p>
<p>3</p>	<p>In respect to requirement in Annexure II on Page no.59, there is a requirement of Board Resolution</p> <p>“The certified extract of the resolution of our board of directors dated [*] approving our participation in the Strategic Disinvestment and giving the necessary authority to the Representative in connection therewith is enclosed.”</p> <p>We request you to clarify if a general authorization Board Resolution to participate in the process for sale of assets will be sufficient.</p> <p>AND</p> <p>As per the Preliminary Information Memorandum (PIM), EoI should be authorized by the company’s</p>	<p>An IP need not pass and submit a Board resolution specifically for the purpose of submitting the EOI, provided that any official of the IP has, in terms of a general resolution/authorization from the Board or under the constitutional documents of the IP, the necessary authority for taking actions such as submitting the EOI of the IP, in which case such an officer can submit the EOI for and on behalf of the IP. However, a specific Board resolution for participating in the strategic disinvestment will be required at the time of bidding.</p>

	<p>Board of Directors (BoD). As per potential IP's Articles of Association submission of EoI should not be authorized by BoD since it does not contain any financial liabilities and decision can be made by CEO. Please clarify, if this would be sufficient.</p>	
4	<p>Do we understand it correctly from PIM that the Qualified Interested Party (QIP) who has submitted an EoI independently and subsequently wishes to form a consortium for the final bid, shall be permitted to form such a consortium acting as Lead Member, within 45 days from the date it is qualified as a QIP.</p>	<p>Please refer to Clause 5.2.2 point 10 (a) & (c). If a qualified IP has submitted its EOI independently of any other and subsequently wishes to form a consortium for the bid, then the same is permitted, provided the Consortium is formed within 45 days of it being qualified as a QIP (subject to submission of required documents, had the consortium been formed at the outset). However, this will only be permitted so long as such QIP is the Lead Member of the consortium. Additionally, each of the consortium members should be qualified as required in the PIM.</p> <p>Where two sole bidders have qualified based on the EoI's submitted by each of them independently, the formation of a Consortium by these sole bidders will not be permitted. Similarly, in case two Consortia have been qualified based on the EoIs submitted by them independently, then their consolidation into a single Consortium shall not be permitted.</p>
5	<p>Please update whether the BPCL Trust shares will be cancelled therefore leading to a sale of Government shareholding which accounts for 58.43%, rather than 52.98%, share of the company? If this decision is not taken before the EOI Due Date, please confirm when this decision will be taken.</p>	<p>In the PIM Pg. 1 clause 1.1, it is mentioned that</p> <p><i>"BPCL Trust for Investment in Shares holds 20,23,72,422 equity shares of BPCL i.e. 9.33% (treasury shares) for the benefit of BPCL. It is possible that these shares may be retained, cancelled or disposed prior to the Proposed Transaction; and correspondingly the total number of outstanding shares / capital structure of BPCL may change".</i></p> <p>Notwithstanding any such retention, cancellation, or disposal, the number of shares</p>

		<p>held, and to be sold by the GoI in the Proposed Transaction, will not change and remain the same at 1,14,91,83,592.</p> <p>Decision on treatment of treasury shares shall be communicated to the QIPs with the RFP or subsequently.</p>
6	<p>Has SEBI confirmed whether a mandatory tender offer will be triggered by the Transaction in relation to Indraprastha Gas Limited and Petronet LNG Limited? Will SEBI provide a comfort letter that no mandatory tender offer is triggered in respect of these subsidiaries?</p>	<p>The IPs may consult their legal counsel with respect to the matter.</p>
7	<p>There is reference in the Preliminary Information Memorandum (PIM) to the RFP containing restrictions relating to employee protection, asset stripping, business continuity, lock in of shares or shareholding in the consortium investment vehicle in the SPA. Could you please provide further detail in respect of these restrictions prior to the EOI Due Date?</p>	<p>This information shall be provided to the QIPs in the RFP/ SPA.</p>
8	<p>The PIM specifies that a consortium is required to incorporate an entity (investment vehicle) if it is selected as the strategic investor with shareholdings equivalent to participation in the consortium. Please confirm whether it is possible to place a bid as an unincorporated consortium and if not, the rationale for the incorporation requirement?</p>	<p>With regards to this query, kindly read the revised Clause 5.2.2(6) of PIM and the new Clause 5.2.3 of the PIM, amended/ inserted vide the corrigendum dated 04/09/2020.</p>
9	<p>If BPCL's sales overseas mean that merger filings are also required in jurisdictions outside of India will those merger filings be accepted as conditions precedent to the completion of the Transaction?</p>	<p>BPCL's exports outside India are insignificant in comparison to its total revenue. The relevant details will be provided in the data room.</p> <p>Condition Precedent in relation to merger filings in jurisdictions outside India shall not be acceptable.</p>
10	<p>What is the contemplated amount of</p>	<p>The required information shall be made</p>

	the Earnest Money Deposit which will be required prior to submission of the financial bid?	available in the RFP.
11	In addition to the virtual data room, what due diligence is envisaged relating to i) site/asset visits and ii) management presentations and interviews?	Site/asset visits and management presentation(s) will be permitted. Protocol/modalities for the same shall be provided in Virtual Data Room/RFP.
12	Will the divestment of BPCL's interest in NRL be completed before the completion of the Proposed Transaction? If so, what will the proceeds of this divestment be used for?	The divestment of BPCL's interest in NRL shall be completed before the closing of the BPCL divestment process. The decision with regard the utilization of proceeds from the NRL sale shall be communicated to QIPs prior to submission of financial bid.
13	Do we understand it correct from PIM that the sole bidder should not provide the profit & loss account information, proving the profits (profit after tax) in at least 3 (three) out of last 5 (five) financial years?	Please refer to Clause 5.2 (d) of the PIM which is reproduced hereunder <i>"An IP, which is required to prepare a profit & loss account, must have reported profits (profit after tax) in at least 3 (three) out of the last 5 (five) financial years. In the event that the IP is a sole bidder, and has come into existence as a result of a merger/ demerger/ amalgamation of 2 or more entities, the sum of the profit after tax of such entities should be positive in 3 (three) out of the last 5 (five) financial years.</i> <i>In the event that the IP is a consortium or a special purpose vehicle, the lead member must have profits (after tax) in at least 3 (three) out of the last 5 (five) financial years."</i>
14	Do we need as a single bidder to apostille the documents submitted within the EoI?	Yes, this is required for the POA; for both sole and consortium bids.
15	What are requirements of minority buyout for this deal?	IPs may seek advice of their legal counsel in this regard. Clause 4.2 of the PIM provides snapshot of open offer guidelines. The IP may further refer to Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
16	What level of details will be	It is proposed that all such information as is

	provided in data room, any limitation due to shareholding in competitive Indian companies?	<p>customary in a transaction of like nature, considering restriction on account of applicable regulations and competitive nature of information, will be provided.</p> <p>However, access to data room shall be Provided to QIPs post signing of the Confidential Undertaking (CU) as per Annexure VII of the PIM.</p>
17	<p>Clause 2.11 of PIM</p> <p>We did not find “IHB Pvt Ltd (25%)” at Annexure XII, however this subsidiary is mentioned at Clause 2.11 of PIM.</p>	IHB was incorporated in Financial Year 2019-20 whereas, Annexure XII of PIM provides list of subsidiaries, JVs and associates of BPCL as per Annual report for financial year 2018-19.
18	Please provide a detailed corporate structure (incl. shares of partners in joint shareholdings)?	<p>Annexure XII of PIM provides list of subsidiaries, JVs and associates of BPCL as per Annual report for financial year 2018-19.</p> <p>The details of Partners shall be made available to QIPs in the virtual data room.</p>
19	In terms of Indian antimonopoly regulations, what are requirements for the successful bidder?	<p>IPs may seek their legal counsel’s opinion with regards to antimonopoly regulation applicable to them.</p> <p>The successful bidder may need to file with the Competition Commission of India for its approval to the acquisition. Filings are made in Form I or Form II.</p>
20	<p>Clause 2.11 of PIM</p> <p>Why “Petroleum India International” (18.8%) mentioned at Annexure XII is not mentioned at Clause 2.11 of PIM</p>	<p>Annexure XII is based on the Annual Report of FY 2018-19.</p> <p>This association of persons is in the process of winding up as all the members have executed termination agreement and consequently, capital has been refunded and balance surplus available with this AOP was distributed among members. Formal closure after closing of tax returns etc. for year 2019-20 is expected shortly.</p>
21	<p>Clause 4.2 of PIM</p> <p>Regarding Clause 4.2 of PIM, please provide an additional information on the BoD authorities’ limitations after the open offer submission?</p>	<p>IPs may seek advice from their legal counsel on this issue.</p> <p>As an example, the Takeover Regulations (in Regulation 26), broadly require that the board of directors of a target company (i.e. BPCL in this case) must ensure that the</p>

		company conducts its business in the ordinary course consistent with past practice, and there may be certain actions for which express approval of the shareholders shall be required. There may be other regulations too dealing with this matter.
22	<p>We understand there is USD1.65bn in bonds and that the change of control of BPCL could trigger an acceleration event. Can the Government confirm that the bondholders cannot block or preempt the sale and that the bonds could be redeemed if needed based on the strength of the company's balance sheet?</p> <p>Please advise whether lenders consents will be required for the change of control over BPCL and the quantity of lenders that will require consents.</p>	<p>The bondholders/ lenders consent if required shall be taken at an appropriate stage. Information in this regard shall be made available to QIPs in the data room.</p>
23	Will domestic gas distribution businesses be part of the deal?	All businesses of BPCL (except BPCL's shareholding and management control in NRL) are part of the deal.
24	Credit ratings of BPCL.	Credit ratings of BPCL are available in public domain.
25	<p>In Annexure IV – Request for Qualification, on Page 65, In point No. 20, the requirement is of “Statutory Auditor’s Certificate certifying Net worth as on date of latest audited annual reports”</p> <p>We request you to clarify if the certificate of Net Worth from a practicing Chartered Accountant instead of a Statutory Auditor would be sufficient.</p>	Statutory Auditor certificate for Net Worth certification shall be required.
26	<p>What financial commitments does the company have which are material eg. above USD 0.5 bln?</p> <p>For example, has the company already made material financial commitments to Ratnagiri refining or other future large investments in</p>	<p>Information about financial commitments of BPCL are available in the Annual Report.</p> <p>Further details shall be available to QIPs in the data room.</p>

	affiliates, subsidiaries or joint ventures?	
27	How will the March 2020 increase of BPCL's shareholder equity in BORL impact the company and the divestment process, given that this presumably means that BORL will now be classified as a State-controlled entity?	BORL presently is a subsidiary of BPCL and hence a state-controlled entity. However, once the Government of India divests its shareholding in BPCL, the status of BORL will change accordingly.
28	Governance model (What is the level of Control over entities? How decision-making process is organized? What governance level exists? What matters decided at each level of authority? What are principles of subsidiaries' management?)	The governance model is based on the Companies Act, 2013 of India as well as the MOA and AOA. Further, for so long as BPCL remains a Central Public Sector Enterprise, it also requires to follow the guidelines of the Department of Public Enterprises, Government of India.
29	What is the CSR program cost (description, condition)?	Requirement of CSR expenditure is governed by Section 135 of Companies Act 2013. As per S. 135 BPCL's CSR spend in a financial year must be at least 2% of the average net profits during the immediately preceding three financial years. Information on CSR program cost of BPCL is available in the Annual Reports.
30	Since NRL is not part of the proposed transaction, we would prefer to get financials excluding NRL	Unaudited financial statements excluding NRL will be made available to QIPs in the data room. NRL balance sheet is available on their website URL: https://www.nrl.co.in/Annual-report .
31	Could you please specify what is included into "e) intangible assets under development" row in the table 9: Consolidated Balance Sheet of BPCL of PIM	Preliminary details are provided in the annual report. Refer Note 6 to the standalone and consolidated Annual Report of FY 2019. Additional information shall be provided to QIPs in the data room.
32	Does foreign exchange loss/gain include into Book value of PPA?	Accounting Policy as per Annual report is given below: <i>The Corporation has elected to continue the policy adopted under Previous GAAP for accounting the foreign exchange differences arising on settlement or translation of long-term foreign currency monetary items outstanding as of 31st</i>

		<i>March 2016 i.e. foreign exchange differences arising on settlement or translation of long-term foreign currency monetary items relating to acquisition of depreciable assets are adjusted to the carrying cost of the assets and depreciated over the balance life of the asset and in other cases, if any, accumulated in "Foreign Currency Monetary Item Translation Difference Account" and amortised over the balance period of the liability.</i>
33	Does BPCL have any alternative corporate governance mechanism except one share/one vote (eg. Voting right ceiling/ownership ceiling, super majority)?	No, all equity shareholders of BPCL have one vote per equity share as per the Companies Act 2013.
34	Do BPCL main shareholders have any shareholding agreements and if so information on them can be disclosed?	There are no shareholders agreements.
35	Do any BPCL Board of Directors (BoD) members have exclusive rights (eg. Veto power, special rights, etc)? What is the BoD formation procedure eg. Cumulative/majority voting etc.)? What is the BoD members' term of office? Can the BoD members be reelected ahead of schedule? Do BoD members have any classes (eg. Classified/staggered BoD)?	Powers of the Board of Directors are governed under the provisions of the Companies Act, 2013 and the MOA / AOA which are available in the public domain.
36	Does the BoD have authority to postpone/limit shareholder voting rights?	No, not permitted under the Indian Companies Act, 2013. IPs may however, seek advice from their legal counsel on the issue.
37	Please provide "Takeover Regulations" and details of escrow arrangement.	IPs may seek legal advice in respect of the same. Broadly, the transaction will be subject to the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. A very brief outline has been provided in S. 4.2 of the PIM. The details of the escrow arrangements

		required for the transaction will be provided in the SPA.
38	What are current BPCL unavoidable capital commitments?	Kindly refer to the Annual Reports and investor presentations.
39	What are the executed capital projects for the last 3 years?	Kindly refer to the Annual Reports and investor presentations.
40	Evaluation of potential risk for the major asset/unit (refining) shutdown.	IPs needs to form their own view based on their diligence.
41	The Net Worth criteria has high requirement for eligibility of USD 10 Bn. Request for reduction of Net Worth criteria.	Request for reduction of Net Worth criteria cannot be accepted. The Net Worth criteria as mentioned in Clause 5.2.1 of the PIM remains unchanged.
42	Mechanics of information exchange. In case there are several parties on the side of DIPAM, how will the process of information exchange be organized? The document is not very clear on which party on the side of DIPAM needs to be contacted/notified/requested a permission from, liability, etc.	The TA will be the principal point of contact for IPs and QIPs.
43	Applicable legislation and arbitration. We propose to provide for a neutral law and arbitration forum – Singapore law and the Singapore International Arbitration Center.	Not acceptable. As per Clause 19 of the CU, the venue of arbitration is New Delhi, India.
44	What are BPCL's rights and obligations in MoUs signed with PSU's, vendors, franchisees, Railways, etc? Will these be assigned to new entity?	BPCL as an entity will continue to exist. Accordingly, assignments of existing MOUs/agreements may not be required. This information shall be provided to QIPs in the data room.
45	Is it possible to submit Expression of Interest (EoI) from main Group entity or Parent entity and later replace the participant with other company from same Group	Kindly refer to the new Clause 5.2.3 of the PIM as inserted vide the corrigendum to the PIM issued on 04/09/2020.
46	Form of the Confidentiality Undertaking. – As it is not proposed to sign a Confidentiality Agreement, a declaration should be provided that BPCL is authorized to share the data uploaded in the data room.	Suitable declaration will be provided in the data room.

4. Some other queries were received from the IPs and the information relating to those queries will be given in the data room, to the extent possible.