

**BOSE INSTITUTE
KOLKATA**

Request for Proposal

BI/T/12/2014-15 dt. 30.01.2015

To be addressed to:

**The Sr. Prof. & In-charge, Registrar's Office,
Bose Institute, Centenary Building,
P-1/12, CIT Scheme - VII / M
Kolkata - 700054 (INDIA)**

Request for Proposal (RFP) from TRANSACTION ADVISOR

Request for Proposal (RFP) from TRANSACTION ADVISOR is invited by The Senior Professor & In-charge, Registrar's Office, Bose Institute, acting on behalf of both Bose Institute and West Bengal State University for selection of suitable entities who will be responsible for clinical research and commercialization of M-2(having PCT International Application No. PCT/IN2013/000593 and Indian Patent Application No. 1120/KOL/2012A), an invented molecule which is a cancer chemotherapeutic Agent/Formulation. The brief synopsis about the said M-2 can be checked on-line at <http://patentscope.wipo.int/search/en/WO2014049619>.

Bose Institute, an autonomous institution under the Department of Science and Technology, Government of India engaged in scientific research having its registered office at 93/1, Acharya Prafulla Chandra Road, Kolkata – 700009, West Bengal, India and having PAN AAAAB7724K

And

West Bengal State University, an university established under the provisions of Act XXVIII of 2007 having its campus at Berunanpukuria, P.O. – Mallikapur, Barasat, North 24 Parganas – 700126 having PAN AAAJWD148B have jointly developed the aforesaid M-2 molecule, patent of which has already been filed and published in India and has been applied for in Australia, Europe including UK and USA, which is suitable for further research and commercialization in the Pharmaceutical Industry. Bose Institute and West Bengal State University jointly are the absolute and undisputed owners of the said molecule.

Bose Institute and West Bengal State University have jointly agreed to pursue further research and development and commercialization by intending entities

for saving the mankind from the ill-effects of cancer, a life-threatening disease. This project was taken up for furtherance of the avowed objectives of the said institutions. It is now desired that the services of an experienced Transaction Advisor be taken to assist them in the entire process of commercialization and also to obtain optimal financial benefit from the same. This RFP invite proposals from transaction advisors representing a team of suitably qualified and experienced financial, technical and legal advisors to help achieve the said avowed objective by the process of outright sale of the said molecule.

Procedure of submission of proposal

The intending **Transaction Advisors** are required to submit their proposal under Two Bid System, the first bid containing the technical detail of the **Transaction Advisor** in the following documents:

Technical bid

1. Self attested copies of PAN, Trade license and details of addresses of all offices.
2. Individual **Transaction Advisors** need not apply. Applications are being invited from a Company, LLP or a partnership. The details of formation needs to be submitted, i.e. date of formation/incorporation, names of partners/Directors and names of authorized signatories, etc.
3. Self declaration to the effect that payment of all statutory and government liabilities has been made.
4. Details of Registration with the Service Tax Authorities (Number).
5. Photocopy of Audited accounts for last 3 years, duly certified by a Chartered Accountant.

6. The Transaction Advisor must satisfy an average minimum turnover from consulting activities of Rs 100 crores during last three financial years which will be apparent from the above mentioned documents.
7. The nature of job envisages international connection. Self declaration to the effect that the **Transaction Advisor** has independent presence in at least at 3 regions amongst Europe, Australia, Americas, Asia and Africa inter-alia stating the said office addresses. Own or associate offices in Europe, Australia and Americas will be given additional appropriate weightage.
8. Documentary proof of negotiations of at least three projects of induction of strategic investor or of similar nature in last five previous years, out of which at least one should be successful, detailed write ups of such jobs are required to be attached.
9. The **Transaction Advisor** should have worked on at least 3 M&A/ fund raising assignments as financial consultant/ Transaction Advisor in the life sciences and healthcare sector. Detailed references of such jobs are required to be attached.
10. Contact with the Pharmaceutical Industry shall be given preference; A list of names of such Pharmaceutical entities should be attached giving the respective nature of involvements.
11. The **Transaction Advisor** is considered an expert in the activity of such negotiations, hence the **Transaction Advisor** should in brief attach the steps he would take to achieve the objective. Technical Proposal with understanding of the scope, approach and methodology, team profiles,

relevant credentials of the team members, etc, is to be attached in brief format.

12. A specific separate declaration envisaging that the **Transaction Advisor** has not ever been convicted of financial or other offences of moral turpitude and has no pending litigation of serious financial or other offences of moral turpitude.
13. An Undertaking that **Transaction Advisor** meets the guidelines issued by Department of Disinvestment, Government of India.
14. **Bid security** or earnest money – The bidders are not allowed to alter or withdraw from the bid during the bid validity period, hence an amount of **Rs. 1,00,000/-** should be deposited with the technical bid documents. The bid security may be accepted in form of account payee demand draft, Bankers cheque or Bank guarantee from any commercial bank drawn in favour of "Bose Institute".
15. **Transaction Advisors** not considered for Financial bid will be refunded the Bid security without any interest, immediately after the decision on the technical bids has been taken by the committee.
16. **Transaction Advisor** will be selected for the Financial bid on the basis of assigned marks against fulfillment of above-mentioned criteria. The decision of the Bose Institute and West Bengal State University will be final in this regard. Clause no. 9 of the Letter of Proposal envisages the same and it is implied that by affixing the signature in the said Proposal, the **Transaction Advisor** unequivocally accepts the same.
17. The **Transaction Advisor** will have to answer all the queries made to it upon the Technical Bids.

18. Canvassing of any sort and at any stage is a disqualification.
19. The prescribed Forms and Formats will have to be strictly adhered to while submitting the Technical and the Financial Bids.
20. All the intending **Transaction Advisors** will submit only ONE proposal.

Financial bid

The financial bid shall be put forward by the **Transaction Advisors** by filling up the blank portions in the following format.

The **Transaction Advisors** who proposes the lowest fee as per calculations given below shall be selected.

Item	Fee structure of the Transaction Advisors
On sale of the product from Rs.50 crores to 100 crores	Rupees------(A) plus applicable taxes and deduction of tax at source
On sale of product above 100 crores to 200 crores	Rupees (A) +----- % of the incremental amount over 100 crores = Rupees ------(B) plus applicable taxes and deduction of tax at source
On sale of product above 200 crores to 500 crore	Rupees (B) +----- % of the incremental amount over 200 crores = Rupees ------(C) plus applicable taxes and deduction of tax at source
On sale of product above 500 crore	Rupees (C) + Rs_____ for every crore or part thereof above Rs. 500 crores plus applicable taxes and deduction of tax at source

The final selection of the Transaction Advisor will be done on an overall evaluation of the Technical and Financial bids on the basis of points carried over from the Technical Bid and the points earned in the Financial Bid.

General guidelines

- 1> The Transaction Advisor in course of his services will have access and knowledge about the entire patented molecule and the tender process hence should ensure that absolute confidentiality is maintained by him in respect of the patented molecule and/or the tender process and he will not disclose the same, save and except in manner and form as permitted.
- 2> The Transaction Advisor by the dint of his experience is expected that he will understand all the detailed ramifications and implications of the entire process of the commercialization of the patented molecule and his expected assigned role thereto for which purpose, if required, he might make suitable enquiries and submit queries to that effect at the **Pre-bid conference** only, to be held on **24th February 2015 at 3.00 p.m.** in the **Seminar Hall, Annexe Block**, Centenary Campus, Bose Institute, P 1/12, C.I.T. Scheme – VIIM, Kolkata - 700054.
- 3> The two bids should be separately placed in 2 sealed envelopes (with specific mentioning of “Technical Bid” and “Financial Bid”) and should be placed in one single envelop to be appropriately marked thereupon and deposited to the **Tender Box kept at the Purchase Cell, 1st floor, Annexe Block**, Centenary Campus, Bose Institute, P 1/12, C. I. T. Scheme – VIIM, Kolkata – 700054, West Bengal, India by **09/03/2015 upto 4.00 p.m.**
- 4> Late bids will not be accepted.

- 5> The **Technical bids** shall be **opened** on **10/03/2015 at 2.00 p.m. in the Seminar Hall, Annexe Block**, Centenary Campus, Bose Institute, P 1/12, C. I. T. Road, Scheme – VIIM, Kolkata – 700054 and after the first round of selection on basis of technical bids, the **Financial bids** shall be **opened** on **17/03/2015**.
- 6> The bidding Transaction Advisors may be present on both the days either in self or by authorized representation.
- 7> Successful Transaction Advisor will be formally communicated by Bose Institute within 15 days from 17/03/2015 (i.e. date of opening of Financial bids)
- 8> Successful candidate will deposit an additional sum of **Rs 5 lacs** (Rupees Five lacs only) as **performance security** in form of account payee demand draft drawn in favour of Bose Institute, Bankers cheque or Bank guarantee from any commercial bank, within three working days from the date of such communication. The Bid Security of successful bidder will also be treated as additional performance security, thus totaling Rs. 6 lacs (Rupees Six lacs only).
- 9> Both the Technical and Financial Bids will have to be in English language, properly paginated and will have to be signed in every page by authorized person of the Transaction Advisor.
- 10> The **Transaction Advisor** will not act in a collusive manner with any of the prospective purchasing entities and or any other entity.
- 11> The **Transaction Advisor** will act in a due diligent, true and fair manner in all its dealings with the institutions making this RFP and with all prospective purchasing entities.
- 12> The **Transaction Advisor** will not accept and/or solicit any remuneration in connection with the subject matter of this RFP from any

prospective purchasing entities and or any other entity and/or engage in any activity whatsoever which may be in conflict of interest of the institutions making this RFP.

- 13> The **Transaction Advisor** will have to provide objective and impartial advices and shall keep the interest of the institutions making this RFP as paramount consideration while discharging their assigned as per this RFP.
- 14> The **Transaction Advisor** shall not provide any advisory services by whatever name called to any prospective purchasing entities and or any other entity in connection with the subject matter of this RFP.
- 15> All fees payable to the Transaction Advisors will be in INR inclusive of Service Tax and will be subject to other Tax deduction laws in force, only upon receipt of the consideration value from the selected entity.
- 16> The **Transaction Advisor** will act strictly with approval of Bose Institute at all steps of implementation.

Forfeiture of Bid Security and Performance security

The Bid security will be forfeited if the Transaction Advisor withdraws from the Bid, or varies the Bid documents during the tenure of the Bid period for all the intending Transaction Advisors.

The performance security will be forfeited when either of the following conditions occurs

- (a) The Transaction Advisor is unable to arrange for a minimum of three eligible bidders on the appointed date of open bidding.
- (b) The Transaction Advisor arranges for the three eligible bidders but none of them bid above the base price as decided by the Transaction Advisor himself.

- (c) The bidders arranged by the Transaction Advisor does not pay up the bid amount as directed on the specified date

The duties of the Transaction Advisor alongwith the specified time schedule shall be

Serial No	Activity	Time frame
1	Enter into an irrevocable contract with Bose Institute	One week from communication of selection
2	Undertake a complete study of the work to be done, and declare a base price over and above Rs 50 crore as stated in the minimum slab of the Financial bid, and declare a bidding date (which should be within eight weeks from date of selection)	Two weeks from communication of selection
3	Preparation of Expression of Interest (Eoi) document: The Transaction Advisor shall prepare EOI and other marketing documents with limited information as relevant with a view to provide prospective buyers/bidders with relevant information and unique selling points so as to enable them to decide whether to provide initial indications of interest. The Eoi document will state the complete transaction process envisaged,	Three weeks from communication of selection

	indicative timelines, formats for submission of expression of interest, qualifying criteria, confidentiality undertakings, terms and conditions, inviting proposals from interested parties covering concept note and proposed approach on how the party envisages to commercialize the product, proposed payment structure for the Institute, etc. The qualification criteria for the prospective buyers shall be decided in close consultation with the Institute which may include financial, technical and business parameters of the prospective buyers.	
4	Vetting of the prepared EOI by the appointed authority of the Bose Institute	Three weeks from communication of selection
5	Identification of prospective buyers: The Transaction advisor shall identify and develop a list of potential buyers with apparent interest and resources to enter into the Transaction. The identified list is to be vetted by the appointed authority of the Bose Institute, The vetted EOI is to be shared with the vetted list of prospective buyers/bidders	Six weeks from communication of selection
6	Evaluation of Eols: The Transaction advisor shall evaluate Eols thus received from interested parties on the basis of Qualifying Criteria and Qualified Bidders will be shortlisted in discussion with the	Six weeks from communication of selection

	Institute. The shortlisted Buyers/bidders are to be from the list already vetted by the Bose Institute	
7	<p>Preparation of Bid Pack: The Transaction advisor shall prepare a Bid Packet which is to be issued to shortlisted potential buyers after having received a non-disclosure undertaking/agreement from such buyers. The Bid Packet shall comprise</p> <ol style="list-style-type: none"> a. Detailed technical write up on the Molecule, b. Finalised payment structure – I.e. the date of release of payment by the successful buyer, no milestone payments or contingent payments shall be entertained c. Request for Proposal (RFP) containing all necessary terms for financial bidding and formats for the same, d. Draft legal agreement, etc 	Six weeks from communication of selection
8	Pre bid discussion and query handling: If required, shortlisted buyers shall be invited to a pre-bid discussion to handle queries from such buyers. The Transaction Advisor shall facilitate and coordinate such pre-bid discussions	Seven weeks from communication of selection

10	Bidding, in the appointed place by the Bose institute and on the appointed date as decided with the Transaction Advisor in stage 2	Eight weeks from communication of selection
11	Assessment of Transaction Value and Evaluation of Bids: The Transaction advisor shall evaluate the bids so received on the basis of predefined criteria as defined in the RFP and submit an evaluation report to the Institute. If required, clarifications may be sought from the shortlisted bidders before opening of Price Bids and consider (if required) a second round of bidding. The Transaction advisor shall assist the Institute in arriving at a suitable Transaction Value based on offers received, value of similar/ comparable transactions as may be available in public domain, proposed payment structure by each bidder, etc. The final Transaction Value shall be decided / agreed by the Institute based on the inputs/ suggestions provided by the Consultant	Nine weeks from communication of selection
12	Closure of the bid process and entering into a contract with the buyer Upon finalization of the successful bidder/buyer, the Transaction advisor shall will assist the Institute in signing/ executing of legal transaction agreements as necessary	Ten weeks from communication of selection

13	Payment by buyer The transaction advisor shall be responsible for the payment from the buyer as per scheduled date	Eleven weeks from communication of selection
14	Payment to the Transaction advisor – The transaction advisor shall be refunded his Securities (pre bid & Performance) and the fee as per his financial bid	Eleven weeks from communication of selection

All disputes are subject to arbitration within Kolkata jurisdiction.

Within five working days of the signing of the contract, the transaction advisor shall submit an Inception Report giving a detailed work plan and assignments for each individual in the team.

The Transaction Advisor shall submit Interim Reports at the interval of two weeks describing progress of work, updated work schedule, and any key constraints encountered by the Transaction Advisor in the performance of the activities.

Proposed Implementation Schedule

Sl. #	Task	Date
1.	Base Price Declaration	
2.	Preparation of EOI	
3.	Vetting, Finalization and Flotation of EOI	
4.	Identification of Prospective buyers & Receipt of EOI from them	

Sl. #	Task	Date
5.	Evaluation of EOI	
6.	Preparation of bid pack	
7.	Release of Bid Pack and arranging for query handling	
8.	Bidding	
9.	Evaluation of Bids and submission of report to BI	
10.	Closure of bid process and Award signing of the contract	
11	Payment by buyer	
12	Payment to Transaction Advisor	
	Financial close	Appointment plus 4 months

Note: Implementation of the above schedule in lesser time period will be highly appreciated and if any expenditure is incurred by Transaction advisor (which is needed and incurred in consultation and prior permission with BI authorities) will be reimbursed by BI.

The duty of the Transaction Advisor will be:

- (b) Submission of Proposed Implementation Schedule.
- (c) The Transaction Advisor will be required to produce a comprehensive feasibility study for the preparation of **Expression of Interest (EOI)**

document: The Transaction Advisor shall prepare EOI and other marketing documents with limited information as relevant with a view to provide prospective buyers/bidders with relevant information and unique selling points so as to enable them to decide whether to provide initial indications of interest. The Eoi document will state the complete transaction process envisaged, indicative timelines, formats for submission of expression of interest, qualifying criteria, confidentiality undertakings, terms and conditions, inviting proposals from interested parties covering concept note and proposed approach on how the party envisages to commercialize the product, proposed payment structure for the Institute, etc. The qualification criteria for the prospective buyers shall be decided in close consultation with the Institutes which may include financial, technical and business parameters of the prospective buyers. After obtaining approval from the institutes, the Transaction Advisor will advertise the same.

- (d) **Quotation of Base Price:** The Transaction Advisor will have to have to quote the Base Price for the product after ascertaining the same from prospective buyers.
- (e) **Identification of prospective buyers:** The Transaction Advisor shall identify and develop a list of potential buyers with apparent interest and resources to enter into the Transaction and share the Eoi document with such prospective buyers.

- (f) **Evaluation of Eols:** The Transaction Advisor shall evaluate Eols thus received from interested parties on the basis of Qualifying Criteria and Qualified Bidders will be shortlisted and submitted to Bose Institute.
- (g) **Preparation of Bid Packet:** The Transaction Advisor shall prepare a Bid Packet which is to be issued to shortlisted potential buyers after having received a non-disclosure undertaking/agreement from such buyers. The Bid Packet shall comprise
 - a. Detailed technical write up on the Molecule,
 - b. Finalised payment structure based on the analysis of proposals received in the Eol stage and discussions with Institute/potential investors,Request for Proposal (RFP) containing all necessary terms for financial bidding and formats for the same, Draft agreement, etc.
- (h) **Release of Bid Packet:** The Transaction Advisor shall release the Bid Pack to shortlisted buyers from the Eol stage.
- (i) **Pre bid discussion and query handling:** If required, shortlisted buyers shall be invited to a pre-bid discussion to handle queries from such buyers. The Transaction Advisor shall facilitate and coordinate such pre-bid discussions.
- (j) **Bidding:** Upon conclusion of pre bid discussions, the shortlisted buyers will be invited to submit their bid on the basis of finalized legal documents and other terms & conditions and on the appointed date, bid process to be completed.
- (k) **Assessment of Transaction Value and Evaluation of Bids:** The Transaction Advisor shall evaluate the bids so received on the basis of predefined criteria as defined in the RFP and submit an evaluation report

to the Institute. If required, clarifications may be sought from the shortlisted bidders before opening of Price Bids and consider (if required) a second round of bidding. The Transaction Advisor shall assist the Institute in arriving at a suitable Transaction Value based on offers received, value of similar/ comparable transactions as may be available in public domain, proposed payment structure by each bidder, etc. The final Transaction Value shall be decided / agreed by the Institutes based on the inputs/ suggestions provided by the Transaction Advisor.

- (l) **Assist in signing/ executing of legal transaction agreements:** Upon finalization of the successful bidder/buyer, the Transaction Advisor will assist the Institutes in signing/ executing of legal transaction agreements as necessary. In the whole process, one of the prime objectives of the Transaction Advisor will be to obtain the highest bid for the molecule over and above the base price.

The Bose institute reserves the right to reject any bids on basis of non submission of documents or not being of the required criteria or for non submission of the required bid amount and may alter the time schedule if founds required

Letter of Proposal

On letterhead of the Transaction Advisor

To,

The Sr. Prof. & In-charge, Registrar's Office,

Bose Institute

Kolkata

Sub: Appointment of Transaction Advisor

Dear Sir,

With reference to your RFP Document dated _____, We, having examined the same and understood their contents, hereby submit our Proposal for selection as Transaction Advisor to advise on the process and selection of a suitable buyer for the Molecule. The proposal is unconditional and unqualified.

1. We acknowledge that the Institute will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Transaction Advisor and we certify that all information provided in the Proposal and in the Appendix is true and correct and documents accompanying such Proposal are true copies of their respective originals.
2. We acknowledge the right of the Institute to reject our application without assigning any reason or otherwise waive our right to challenge the same on any account whatsoever.
3. We declare that:
 - a. We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, in respect of any tender or request for proposal issued by or any agreement entered into with the Institute or any public sector enterprise or any government, Central or State; and
 - b. We hereby certify that we have taken steps to ensure that in conformity with the provision of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
4. We understand that the Institute may cancel the Selection Process at any time and that the Institute is neither bound to accept any Proposal nor to select the Transaction Advisor, without incurring any liability to the bidders in accordance with the terms of RFP document.
5. We certify that we have not been convicted by a Court of Law or indicted or adverse order passed by a regulatory authority which would cast a doubt on our ability to

- undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
6. We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us.
 7. We further certify that no investigation by a regulatory authority is pending either against us or against our CEO or any Directors which might infringe upon our rights to participate in this RFP.
 8. We certify that we meet the eligibility criteria included in the RFP including the guidelines for qualification of bidders issued by the Government of India vide Department of Disinvestment OM No.6/4/2001-DD-II dated 13th July 2001 which is available as Appendix ____ of the RFP
 9. We hereby irrevocably waive any right or remedy which we may have at any stage under law or howsoever otherwise arising to challenge or question any decision taken by the Institutes in connection with the selection of Transaction Advisor or in connection with the Selection Process itself in respect of the above mentioned job.
 10. We agree and understand that the proposal is subject to the provision of the RFP document. In no case, shall we have any claim or right of whatsoever nature, if the appointment of Transaction Adviser is not awarded to me/us or rejected.
 11. We agree to keep this offer valid for not less than 120 (one hundred twenty) days from the Bid Due Date specified in the RFP.
 12. A Board Resolution in favour of the authorized signatory to sign and submit this Proposal and documents is attached herewith.
 13. We have studied RFP and all other documents carefully. We understand that we shall have no claim, right or title arising out of any documents or information provided to us by the Institute or in respect of any matter arising out of or concerning or relating to Selection Process including the award of the job of Transaction Advisor.
 14. The Financial Proposal is being submitted in separate cover. This Technical Proposal read with the Financial Proposal shall constitute the Application which shall be binding on us.
 15. We agree and undertake to abide by all the terms and conditions of the RFP Document.
 16. In witness thereof, we submit this Proposal under and in accordance with the terms of the RFP Document.

Name, Designation, Sign and Seal

**Format for Declaration that the Transaction Advisor has no pending litigation
On letterhead of the Transaction Advisor**

Date

To,

Dear Sir/Madam,

I would like to inform that, to the best of our knowledge that _____(name of the Transaction Advisor) have no pending litigation and we have not been blacklisted by any central/state government ministry/department/PSU/Government company, autonomus institutions under Government of India.

We hereby declare that all the information and statements made in this response are true and accept that any misrepresentation contained therein may lead to our disqualification.

We understand you are not bound to accept this or any other response that you may receive.

Yours sincerely,

Name, Designation, Sign and Seal

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Dated 13th July, 2001

OFFICE MEMORANDUM

Subject: Guidelines for qualification of Advisors for disinvestment process

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for selection of Advisors, so that the parties selected through competitive bidding inspire public confidence. Earlier, a set of criteria like sector experience, knowledge, commitment etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification / disqualification of the parties to act as Advisors to the Government for the disinvestment transactions:-

- (a) Any conviction by a Court of Law or indictment / adverse order by a regulatory authority for a grave offence against the Advising concern or its sister concern would constitute a disqualification. Grave offence would be defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of offence would be taken on a case to case basis after considering the facts of the case and relevant legal principles by the Government. Similarly, the decision in regard to the relationship between the sister concerns would be taken, based on relevant facts and after examining whether the two concerns are substantially controlled by the same person/persons.
- (b) In case such a disqualification takes place, after the entity has already been appointed as Advisor, the party would be under an obligation to withdraw voluntarily from the disinvestment process, failing which the Government would have the liberty to terminate the appointment / contract.
- (c) Disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply

to all the Advisors already appointed by the Government for various disinvestment transactions, which have not yet been completed.

- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expressions of Interest (EOI) from the interested parties to act as Advisor. Further, the interested parties shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against the CEO or any of its Directors/Managers/Employees, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, similar undertaking will be obtained along with EOI. They would also have to give an undertaking that if they are disqualified as per the prescribed criteria, at any time before the transaction is completed, they would be required to inform the Government of the same and voluntarily withdraw from the assignment.
- (h) The interested parties would also be required to give an undertaking that there exists no conflict of interest as on the date of their appointment as Advisors in handling of the transaction and that, in future, if such a conflict of interest arises, the Advisor would immediately intimate the Government of the same. For disinvestment proposes, 'conflict of interest' is defined to include engaging in any activity or business by the Advisor in association with any third Party, during the engagement, which would or may be reasonably expected to, directly or indirectly, materially adversely affect the interest of Government of India or the Company (being disinvested) in relation to the transaction, and in respect of which the Advisor has or may obtain any proprietary or confidential information during the engagement, that, if known to any other client of the Advisor, could be used in any manner by such client to the material disadvantage of Government of India or the Company (being disinvested) in the transaction. The conflict of interest would be deemed to have arisen if any Advisor firm/concern, has any professional or commercial relationship with any bidding firm / concern for the same disinvestment transaction during the pendency of such transaction. In this context, both Advisor firm and bidding firm would mean the distinct and

separate legal entities and would not include their sister concern, group concern or affiliates etc. The professional or commercial relationship is defined to include acting on behalf of the bidder or undertaking any assignment for the bidder of any nature, whether or not directly related to disinvestment transaction.

- (i) On receiving information on conflict of interest, the Government would give the option to the Advisor to either eliminate the conflict of interest within a stipulated time or withdraw from the transaction and the Advisor would be required to act accordingly, failing which Government would have the liberty to terminate the appointment/contract.

(A.K. Tewari)

Under Secretary to the Government of India.