

## **PROCUREMENT NEWS**

Applications for the empanelment of Detective Agencies are invited in the prescribed format to unearth the uncharged assets of borrowers and guarantors in case of NPA borrowers where the bank has to resort to legal action to recover its dues. Further, details of such assets of borrowers & guarantors are also required to be collected at the time of processing the borrowers' request for compromise for which services of the detective agencies have to be engaged.

### **1. Scope of Work:**

- Tracing all assets (including unencumbered and encumbered) of borrowers and guarantors which are not known to the Bank.
- Ascertaining/tracing the details of any other business interest/related parties of the borrowers & guarantors including connected persons in whose name assets may have been created out of funds diverted from borrower account and held including Benami properties/assets.
- Finding out the details of multiple Bank accounts being maintained by the borrowers & guarantors in different banks (both inland and overseas).
- Locating the addresses of missing/absconding borrowers, guarantors, and their legal heirs/related parties.
- Identifying assets alienated by borrower and guarantors through preferential/avoidance/fraudulent transactions. This may be either way of sale to third parties or transfer of property to relatives/friends/other connected persons by way of assignment, transfer, gift, sale etc.
- Obtaining certified copies of Sale Deeds/other necessary documents in respect of properties traced required for filing of Attachment Before Judgement (ABJ).
- Tracing of foreign assets of the borrower/guarantor and realization of the same by enforcing our rights at such foreign soil after considering the local laws as applicable.
- Advising appropriate valuation of traced properties.

### **The Illustrative list of Assets to be traced:**

- a) **Hard assets:** Land, buildings, Real Estate, Vehicle, vessels, aircraft, & significant inventory owned by the subject
- b) **Financial Assets:** Investments in shares, bonds, other instruments and dividends, receivables, other liquid assets, lease, rent receivables for properties
- c) **Corporate Assets:** Shareholdings in Joint Ventures/Subsidiary/ Associates, partnership interests, significant contracts, and relevant information in terms of profile, operations, and assets
- d) **Crypto Assets:** Investments in Cryptocurrencies, Non-Fungible Tokens (NFTs), tokens for services or investments in Cryptocurrency exchanges

### **2. Eligible Agencies:**

- Agency should be engaged in Detective work, through legal means conforming to regulations, related to asset tracing at both domestic and offshore locations for the last 2 years.

- Agency should have working/association with any Public or Private Sector Bank/FIs/LIC/GIC, etc. and Government agencies like CBI, ED, SFIO, etc. for a period of 2 years (minimum). Agencies having presence in multi states may be given preference subject to fulfilling other mandatory eligibility criteria/qualifications.
- Generally Corporate or LLPs will be empanelled. However, Individuals and Sole Proprietary concerns who fulfil the other eligibility criteria and having successful track record may also be considered for empanelment.
- Agency should have a valid TAN and PAN number and should have submitted last 2 years IT returns.
- Agencies should not have been blacklisted by any bank or financial institution or State/Central Government or any other regulatory authority. Agencies/Applicants will have to provide an undertaking on their official letter head.
- No criminal proceedings should be pending against the Agencies before Courts/CBI/any Law Enforcement Agencies. The criminal/antecedent verification will be done through police verification post application. No penalty should have been imposed by any Court of Law/Army Courts/any Law Enforcement Agencies/Tribunals or Statutory Authorities. Agencies/Applicants have to provide an undertaking on their official letter head. Further, the empanelment/engagement of Detective Agencies will be done based on their track record and performance.
- Agency should have a proven record of dealing with corporate assets/financial assets/hard assets/foreign assets/crypto assets
- Agency should have proven expertise in gathering open-source intelligence and technical intelligence.

### **3. Fees/Sharing of Recovery Proceeds:**

The fee will be paid as per either of the following two models (only one, combination of the two not allowed) i.e. (i) Fixed Fee based model & (ii) Recovery proceeds sharing model:

#### **Fixed Fee Based Model:**

The following fee will be paid to the Detective Agencies on case-to-case basis:

- i) A minimum fee of INR 5000/- per person (Proprietor, Partner, Director, Guarantor etc.)
- ii. For locating each unencumbered (not known to us) properties which leads to the attachment of the same, INR 20,000/- will be paid for each property located. All the properties in one title deed to be considered as one property. Fee for obtaining certified copy of Title Deed will be reimbursed on production of receipt issued by appropriate government/revenue authority.
- iii. On receipt of whereabouts of the missing borrowers/guarantors, a flat fee of INR 10,000/- per person to be paid.
- iv. On receipt of other information i.e. information on other businesses of the borrower, accounts with other banks, credit facilities from other banks etc. a flat maximum fee of INR 10,000/- per person (maximum INR 25000/-) to be paid.

- The above rates are exclusive of applicable taxes.
- Reasonable out of pocket expenses are also admissible. However, actual out of pocket expenses should not be more than 50% of the prescribed fee.

### Recovery proceeds sharing model:

As an alternative of fee-based model a recovery sharing model with DA is as under:

In accounts where the outstanding is INR 10 cr. or above, Bank may allow engagement of services of empanelled detective agencies and approve the payment to the Detective Agency on the following lines (both individual/portfolio basis):

i). **Advance/ Upfront Fee:** Detective Agencies may be extended advance/ upfront fee for meeting out of pocket expenses. The advance payment shall be considered as under:

(Table-01)

Amount Outstanding in the A/c (Minimum Above INR Rs. 10 Crores)	Maximum Out of Pocket Expenses (OPE) to be paid as advance/upfront fee for meeting out of pocket expenses
Above INR 100 Crores	Up to INR 50000/- (Fifty Thousand) negotiable
INR 50 Cr. To INR 100 Cr.	INR 25000/- (Twenty-Five Thousand)
INR 10 Cr. To INR 50 Cr.	INR 10000/- (Ten Thousand)

ii) **Successful identification fee:** Successful identification (Detection) fee will be linked to the Realisable Value of the unencumbered assets identified. In case Detective Agency finds out any unencumbered assets of borrower/guarantor and provides credible evidence (s) through documents/papers (including submitting certified copies of sale deeds) and on acceptance of the property/asset by the Bank; based on the valuation of the property/ies (to be done by the bank), a percentage as enumerated below may be paid to Detective Agency:

(Table-02)

S.No.	Realisable Value of total unencumbered assets traced by the DA	Fee Structure (of the realisable value of assets*)
1.	Less than INR 1 Cr	Nil
2.	More than INR 1 Cr.	0.20 % of the value of assets
* Realisable value as per valuation through approved valuer of the bank		

III) A part payment (table-2) net of amount paid as per the table -1, will be made on the basis of successful identification of a property/asset by the Detective Agency and on the Bank's acceptance of such asset/property identified by the Detective Agency as valuable & enforceable.

iv) There shall be upper cap of INR 25 lacs for payment of fee under table 1. The upfront amount i.e., out of pocket expenses already paid as advance/upfront fee for meeting out of pocket expenses, shall be adjusted at the time of payment of fee as per table 2.

v) Once actual recovery is affected on account of disposal of the property i.e., the recovery proceeds may be shared with DA up to 10% (basing on negotiation in each case) of the recovered amount. The share in recovery shall be net of the payment already made (as per table-1 & table-2) or negotiated amount, whichever is lower, already paid in a particular case.

vii) Under the Success (Detection) fee model in case the DA is not able to trace any asset, no commission would be paid and only the Out-of-Pocket Expenses (OPE as per table 1, paid in advance/upfront fee for meeting out of pocket expenses) will be met.

#### **Cases of Foreign Assets:**

In case of foreign assets (unencumbered assets traced by the DA), where the DA undertakes to enforce the rights of the bank at such foreign jurisdictions at its own expenses, a higher percentage up to 50% (to be negotiated upfront) of actual recovery may be shared on realisation (inclusive of all legal/enforcement expenses) based on quotation made by multiple enforcement agencies/legal firms.

#### **4. Review and Monitoring**

The performance of empanelled Detective Agencies will be reviewed once in a year.

#### **5. Depanelment of DA**

In case, the performance of the DA is not found satisfactory, or any adverse court observation is found against a Detective Agency or its director/promoter/partner or key persons, the bank would reserve the right to depanel the Detective Agency as per the laid down procedure.

#### **6. Time Limit for Submission of Report**

A time frame of maximum 60 days from the date of allotment will be allowed to the agency to submit the report. In cases, where level of progress has been made but investigation not completed within the specified 60 days period, the time limit may be extended by the Branch Head by another 30 days on specific request by the Detective Agency and the Branch Head is satisfied with the details/ reasons furnished by the agency.

#### **7. Confidentiality**

The DA understands that it would be acquiring sensitive Confidential Information concerning the Bank and its Customers affairs in the course of delivering the Services. It fully understands the confidential nature of the engagement and shall hold in strict confidence all information obtained from the Bank.

The DA will not disclose such information to others or use such information except in connection with the performance of the Services under this Agreement. Information relating to the Bank, to the DA's relationship with the Bank and to the Services, including Confidential Information, may be shared by DA with its employees or advisers only as mentioned herein below. The DA shall remain responsible for preserving confidentiality if any Confidential Information which is shared with its employees or accessed by any other party.

Save as otherwise expressly provided in this Agreement, DA shall not during the term of this Agreement or thereafter disclose to any person or use for any purpose any

Confidential Information obtained by it from SBI in connection with the borrower or this Agreement, but the DA may:

- a) disclose Confidential Information to such of its staff and advisers (which shall include lawyers, accountants and auditors) who have a need to know such Confidential Information for the proper performance of their duties as stipulated in this agreement.
- b) use Confidential Information in the proper exercise of its rights and the performance of its obligations under this Agreement.

The DA undertakes to take proper care and all reasonable measures to protect the confidentiality of the Confidential Information.

DA shall be subject to the obligations of confidence in this clause, irrespective of whether communicated orally or in writing by the Bank or its staff or obtained through observations made by staff of the DA.

Without prejudice to any other rights or remedies of the Bank the DA acknowledges and agrees that damages may not be an adequate remedy for any breach by it of the provisions of this Clause 8 and that SBI shall be entitled to the remedies of injunction, specific performance and other equitable relief, for any threatened or actual breach of the provisions of this Clause 8.

## **8. Term and Termination**

8.1. This Agreement shall take effect from the date of this Agreement (the "Effective Date") and shall be valid up to office closing hours on\_\_\_\_\_. The Bank may at its sole discretion extend and keep the agreement alive and in force for such period(s) which the Bank considers necessary in respect of all or any of the accounts entrusted to the DA. In case of such extension, the terms and conditions as stipulated in this Agreement shall be applicable to the accounts for such extended time.

8.2. The Bank reserves the right to terminate this agreement with immediate effect, if

- a) DA commits material breach of (i) terms and conditions of this agreement or (ii) Representations and warranties in this agreement.
- b) DA commits breach of any law, statutory guidelines including guidelines issued by RBI or any other authority or actions/inactions on the part of DA or his employees, agents, authorized representative which amount to offence(s) under any provisions of law or expose the Bank to financial or reputational loss.
- c) Enter into or is found by the Bank to be in a situation of conflict of interest which in the reasonable opinion of the Bank warrants immediate termination of the Agreement.
- d) If the performance by the DA of its duties is substantially prevented by reason of "Force Majeure" for continuous period of thirty (30) days. Therefore, the Bank may, on written notice, terminate this Agreement or any part affected by such clause.
- e) Bank can terminate the agreement by giving notice to the DA if his performance is considered by the Bank inadequate / unsatisfactory.

8.3. On termination of this Agreement, the DA shall cease to perform any work / job / function under this arrangement.

8.4. Notwithstanding the termination of this Agreement, the liability of the DA, incurred by the DA prior to the date of termination of this Agreement, mentioned in clauses 8

and 15 of this Agreement shall survive even post termination of this Agreement. The liability of the DA shall also survive in cases where the liability is incurred by the Bank after the termination of this Agreement, but the liability arises out of act/ omission of the DA during the term when this Agreement was in force.

## **9. Ownership:**

9.1. The Bank shall retain ownership of the copyright and all other intellectual property rights in the Confidential Information whether oral or tangible and in the product of the Services, including ownership of the DA's report and working papers. The Bank shall acquire ownership of any product of the Services in its tangible form on payment of the DA's Charges for such product. For any purpose and not limited to delivering services to other clients, the DA shall not be entitled to use or share any Confidential Information, or the information contained in the product of the Services, which shall remain the Bank's property.

9.2. The DA shall not disclose in any external communication the fact that the DA has rendered services to the Bank by identifying the name of the Bank and shall not reproduce the Bank's logo or other registered trademarks in the DA's external communication or in any form or medium without the Bank's prior written consent. The Bank disclaims all responsibility or liability for any costs, damages, losses, liabilities, expenses incurred by anyone as a result of 23 circulation, publication, reproduction or use of any reports contrary to the provisions of this paragraph."

## **10. Powers and Duties**

10.1. The DA also undertakes to comply with any other statutory guidelines / acts/ rules / Fair Practices Code / Code of Conduct which may be issued to from time to time by the Government/ Reserve Bank/ Indian Banks Association or any other authority.

10.2. The DA hereby specifically agrees to discharge its obligations in respect of its employees, authorized agents, representations in accordance with applicable Laws including Labour Laws and it shall be the sole obligation and liability of DA to discharge such obligation and in no event the Bank shall be responsible or liable for such liabilities towards the employees, authorized representatives, agents of the DA. Further, the DA, its partners, employees, authorized representatives, shall not be entitled to claim employment in the Bank or make any similar or analogous claims against the Bank.

## **11. Force Majeure**

11.1 "Force Majeure Event" means any event due to any cause beyond the reasonable control of the Bank, including without limitations, war, sabotage, fire, explosion, blockade, strikes, acts of god, civil commotion, natural catastrophe and also including unavailability of any communication systems, breach, or virus in the processes or payment or delivery mechanism, computer hacking, any technical faults and malfunctioning in the computer terminal or the systems getting affected by any malicious, destructive or corrupting code or program, mechanical or technical errors/failures or power shut down, faults or failures in telecommunication etc.

11.2 The Bank shall not be held responsible for any loss or damage which may be incurred by the DA as a result of such "Force Majeure Event".

11.3 Each party will give notice to the other as soon as possible upon becoming aware of an event that may lead to the invocation of this clause.

11.4 If the Force Majeure Event continues for a period more than 30 days, the Bank shall be entitled to terminate this Agreement at any time thereafter. Neither party shall have any penal liability to the other in respect of the termination of this Agreement as a result of a Force Majeure Event. However, DA shall be entitled to receive remuneration for any Services actually rendered up to the date of the termination of this Agreement.

## **12. Waiver**

No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights in relation to a breach of this Agreement operate as a waiver of any subsequent breach and no right, power or remedy given to or reserved to either party under this Agreement is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

## **13. Assignment & Sub-Contracting**

13.1 The DA understands and confirms that the Services rendered by the DA in accordance with terms of this Agreement are not assignable without prior express written approval of the Bank. The DA is also prohibited from sub-contracting any of its rights or obligations to any person without prior express written approval of the Bank and such sub-contracting shall be subject to the terms mentioned herein and such other terms as may be specified by the Bank at the time of approving the sub-contracting by the DA.

13.2 However, the Bank shall have the right to transfer, assign or sell all its rights, benefits or obligations to any person and these terms and conditions mentioned under this Agreement shall continue to be in force (if expressly agreed to by the successor or assigns) and effect for the benefit of the successors and assigns of the Bank.

13.3 The DA agrees to obtain prior approval/consent of the Bank of the use of subcontractors by the DA for any part of the Services.

13.4 Before engaging Sub-Contractor, the DA shall carry out due diligence process on sub-contracting/ sub-contractor to the satisfaction of the Bank and Bank should have access to such records.

13.5 In the event of sub-contracting the DA shall ensure that suitable documents including confidentiality agreement are obtained from the sub-contractor and the DA shall ensure that the secrecy and faith of Bank's data / processes is maintained.

13.6 Notwithstanding approval of the Bank for sub-contracting, the DA shall remain liable to the Bank for all acts/omissions of sub- contractors.

13.7 In respect of that part of the Services where chain outsourcing and subcontractors are permitted by the Bank; the sub-contractor should have same level of obligations as that of the DA and the DA agrees to obtain suitable documents in this regard from the sub- contractor.

#### **14. Severability**

Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.

#### **15. Indemnity**

The DA agrees to indemnify and hold harmless the Bank from time to time and at all times hereafter, from and against (i) all loss, damage, harm, injury, expenses including advocate fees suffered or incurred by the Bank and (ii) all notices, claims, demands, action, suits or proceedings given, made or initiated against us on account of or arising out of (a) the performance, by the DA of all or any of its obligations hereunder, or (b) any default committed by the DA in the performance of all or any of its obligations hereunder, as also against all costs, charges and expenses suffered or incurred by the Bank on account of the aforesaid including but not limiting to breach of warranty and representation and also actions/inactions of the DA which results in diminishing the realizable value of the assets or non-compliance with the RBI guidelines or which exposes the Bank to claim from the Borrower/ guarantor or any other party including damages, costs, expenses, charges, fees, fines incurred or suffered by the Bank in defending criminal proceedings against the officials of the Bank where such actions arise solely on accounts of acts / inaction on the part of DA, its employees , agents or authorized representatives.

#### **16.Variations:**

Any terms of the DA or any third-party purporting to vary this Agreement shall be of no effect unless agreed in writing by the Bank.

#### **17. Relationship between the parties**

Nothing in the Contract constitutes any relationship of employer, employee, principal and agent of partnership between the Bank and DA. No Party has any authority to bind the other Party in any manner whatsoever except as agreed under the terms of the contract.

#### **18. Dispute Resolution**

If any dispute arising out of this Agreement remains unresolved for twenty [20] Business Days from the date on which the notice setting out the nature of the dispute is served by one party on the other, either party may request a meeting with the other party within further ten (10) Business Days to resolve the dispute. In the event that the dispute is not resolved within 30 days under this procedure the parties shall be free to decide its own course of action.

#### **19. Applicable Laws and Jurisdiction**

19.1 This Agreement and any matters relating to this Agreement shall be governed by and construed in accordance with the Indian laws.

19.2 The parties submit and agree to the non-exclusive jurisdiction of the Courts at the place where this agreement is executed.

#### **20. Notices**



20.1 Any notice required under this Agreement shall be given in writing and in the English language and sent to the address of the party as mentioned in this Agreement. For the Bank, the address for service of notices shall be the address of the Branch which has executed this Agreement.

20.2 In case of change of address for the service of the notice, the parties shall duly notify in writing to the other party about such change.

20.3 Any notice under this clause shall be sent in writing by registered post or equivalent, facsimile, courier. No notice shall be deemed to have been served if the same has been sent by emails; and

i) if posted, shall be deemed to have been received five (5) Business Days after the date of posting.

ii) in the case of facsimile upon confirmation of complete receipt being given by the intended recipient party; or

iii) if couriered, on delivery.

## **21. Document to be submitted:**

- I. Application form duly filled (available as Annexure I)
- II. PAN Card/GST number as applicable
- III. Memorandum & Articles of Association for company and registered partnership deed along with the registrar of firm certificate in case of partnership firms.
- IV. Audited Balance Sheets for the last 03 years.
- V. Other Documents supporting for expertise/experience.
- VI. Registrations Certificates with professional bodies/Organisations.
- VII. Letter of empanelment from other banks/financial institution along with assignment letter for undertaking Detective work.
- VIII. Letter of assignments from other clients

The aforesaid list is illustrative and not exhaustive. The bank may call for such other documents as may be considered necessary for verifying the eligibility or competence of the Detective Agency.

## **22. Procedure for empanelment:**

The applicants shall submit their applications duly filled in prescribed format (Annexure I) along with relevant disclosures/documents etc as mentioned above to the DGM & CCO, SBI, LHO Bhopal. Once a decision to empanelment is taken, a letter of empanelment shall be sent to the applicant. The empanelment of the Detective Agency is discretion of the bank, eligibility criteria and other terms and conditions as applicable.

For further information, please contact:

AGM(NPAM)/ Manager (NPAM) , LHO Bhopal:

Contact No: 9285554025/ 8458881222

Email: agmnpa.lhobho@sbi.co.in

