IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(*Through Hybrid Mode*)

Item No.6
CP (IB)/18/7/AMR/2026

IN THE MATTER OF:

IFCI Venture Capital Funds Limited

…. Financial Creditor

Vs.

Gundlathoti Ready Mix Cement Industry Private Limited

…. Corporate Debtor

Under Section: **7 of IBC, 2016**

Order delivered on 11.09.2026

CORAM:

HON'BLE SHRI KISHORE VEMULAPALLI, MEMBER (JUDICIAL)

HON'BLE SHRI UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)

PRESENT:

For the Financial Creditor : Mr. Sreedhar Valiveti, Adv.
For the Corporate Debtor : Ms. Reddy Pavani, Adv.

ORDER

The instant Application CP (IB)/18/7/AMR/2026 (hereinafter referred to as the **"CP 18/2026"** or **"Application"**) was e-filed on 29.03.2026 and physically filed vide Diary No.579 dated 01.04.2026 by IFCI Venture Capital Funds Limited (hereinafter referred to as the **"Financial Creditor"** or "**Applicant**" or "**IFCIVCFL**") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **'IBC'** or **'Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as the **"IB Rules"**) seeking initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as the **'CIRP'**) against

Gundlathoti Ready Mix Cement Industry Private Limited (hereinafter referred to as the **"Corporate Debtor" or "Respondent"**) against the default amount of Rs.1,47,69,875/- (Rupees One Crore Forty Seven Lakh Sixty Nine Thousand Eight Hundred Seventy Five Only) as on 31.03.2024.

2. The Registry vide communication dated 27.04.2026, raised certain defects/ objections and returned the Application to the Financial Creditor for compliance.

3. Pursuant to the above communication dated 27.04.2026 of the Registry, the Financial Creditor vide letter dated 10.06.2026 to the Registrar stated as under:

I. <u>**Defect No.1:**</u> Memo of parties with their email IDs, Mobile No's.

<u>Compliance:</u> We have already mentioned the email IDs of the respective FC and CD's at each and every cause title mentioned in the Applicant. Further, w.r.t. the Mobile number, we have altered and mentioned the mobile no's of both the parties accordingly. **So the defect is complied.**

II. <u>**Defect No.2:**</u> Copy of Petitioner PAN no.

<u>Compliance</u>: Copy of PAN is now attached at Annexure-XXVI the petition. **Accordingly, defect is complied.**

III. <u>**Defect No.3:**</u> Acknowledgment in Balance sheets should be highlighted and page no. and para no. are to be stated in synopsis.

<u>**Compliance:**</u> The Annexures w.r.t the Acknowledgment in Balance sheets of the CD were already mentioned in the Brief Facts of the case under the heading of Limitation. However, in view of you objection, the page no. and para no. is mentioned at synopsis and brief facts of the case. **Accordingly, the defect is complied.**

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IV. **Defect No.4:** Copies of debentures.

Compliance: The copies of the debentures are attached at Annexure-XXV of the Application. **Accordingly, the defect is complied.**

V. **Defect No.5:** Bank statements upto the date of filing the case.

Compliance: The copies of the statement showing outstanding balance as on 31.03.2026 is attached at Annexure-XXIV of the application. **Accordingly, the defect is complied.**

VI. **Defect No.6:** Page No.16 should be clearer with total amount of outstanding.

Compliance: The total amount of outstanding at Page No. 16 is rectified and mentioned. **Accordingly, the defect is complied.**

VII. **Defect No.7:** Record of Default.

Compliance: The Hon'ble NCLAT vide its judgment dated 13.12.2023 passed in ***Vijay Kumar Singhania Vs. Bank of Baroda and Anr. (CA (AT) (Ins) 1058 of 2023*, which was also upheld by the Supreme Court VIDE its order dated 14.08.2024)**, wherein it held that filing of the Record of Default is not mandatory. The said order portion of the above judgment is as follows:

> *"29. From the above examination of statutory scheme, Rules and Regulations, it is clear that Regulation 20(1A) cannot be read to mean that after the said amendment brought in regulation w.e.f 14.06.2022 an application filed under Section 7 which is not supported by information of default from an information utility is to be rejected and if the Financial Creditor has filed other evidence to prove default which is contemplated by the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the said application has not to be considered. We, thus, are of the considered view that even after amendment of Regulation 20 by insertion of Regulation 20(1A) w.e.f 14.06.2022, Financial Creditor is entitled to file evidence of record of default as contemplated by Regulation 2A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.* ***We, thus, do not find any substance in the submission of the Appellant that since Financial Creditor has not filed the record of default from an information utility, Section 7 deserves to be rejected."***

Therefore, in compliance of the above, we are hereby filing the Balance sheets of the CD acknowledging the debt due to the FC. **Accordingly, the defect is complied.**

VIII. **Defect No.8:** Valid Assignment of IRP, Registration Certificate of IRP.

Compliance: The Copy of the Valid Assignment of IRP and Registration Certificate of IRP is attached as Annexure-XXII of the Application. **Accordingly, the defect is complied.**

Accordingly, the application is being re-filed herewith after curing the defects as required. It is therefore prayed that the same may kindly be taken on record and processed in accordance with law.

4. The Registry vide communication dated 18.06.2026, again raised certain defects/ objections and returned the Application to the Financial Creditor for compliance.

5. Pursuant to the above communication dated 18.06.2026 of the Registry, the Financial Creditor vide letter dated 18.06.2026 to the Registrar stated as under:

I. **The Applicant/Financial Creditor respectfully submits that the Petition was returned with an objection directing the Financial Creditor to file bank statements up to the date of filing of the Petition reflecting debit and credit transactions with the Corporate Debtor.**

COMPLIANCE:

a) In this regard, it is submitted that the Financial Creditor is the Investment Manager of the Venture Capital Fund for Scheduled Castes established by the Government of India. The Government of India has placed a Venture Capital Fund of Rs.200 Crore with IFCI for promoting entrepreneurship among Scheduled Castes and providing concessional finance, with IFCI contributing an additional sum of Rs.50 Crore as Lead Investor and Sponsor of the Fund. The said Fund has been operational since FY 2014-15 and is managed by IFCI Venture Capital Funds Limited, a subsidiary of IFCI Limited.

b) It is further submitted that the Financial Creditor extends financial assistance to numerous entities under the aforesaid scheme and does not maintain separate bank accounts or borrower-wise bank statements for each company financed by it. The bank accounts maintained by the Financial Creditor contain transactions pertaining to several borrowers and other financial dealings. Production of complete bank statements up to the date of filing of the Petition would therefore run into thousands of pages and would not specifically reflect transactions relating exclusively to the Corporate Debtor.

c) It is respectfully submitted that the purpose of production of bank statements is to establish disbursement of funds by the Financial Creditor to the Corporate Debtor. ***In the present case, the Financial Creditor has already filed the copy of the bank statement evidencing disbursement of funds to the Corporate Debtor as Annexure-XX.***

d) Further, the Corporate Debtor has acknowledged the debt due to the Financial Creditor in its audited Financial Statements/Balance Sheets annexed as Annexure-XVII and Annexure-XVIII. The Financial Creditor has also filed the Statement of Outstanding Balance as on 31.03.2026 evidencing the amount due and payable by the Corporate Debtor.

e) Therefore, the disbursement of funds stands established through Annexure-XX, the existence and acknowledgment of debt stand established through Annexure-XVII and Annexure-XVIII (Audited Balance sheets of the CD), and the amount outstanding and in default stands evidenced by the Statement of Outstanding Balance as on 31.03.2026. Accordingly, sufficient material establishing the financial debt and default has already been placed on record.

f) Without prejudice to the above, the Financial Creditor undertakes to place necessary submissions before the Hon'ble Bench, if required, after numbering and listing of the Petition.

g) It is therefore prayed that the above explanation may kindly be taken on record, the defect may be treated as complied with and the Petition may kindly be numbered and processed further.

Accordingly, the application is being re-filed herewith after curing the defects as required. It is therefore prayed that the same may kindly be taken on record and processed in accordance with law.

6. Thereafter, the Financial Creditor e-filed the Application on 19.06.2026 and physically filed vide Diary No.1147 dated 06.07.2026. Thereafter, the Application was first listed on 15.07.2026.

7. The registered office of the Corporate Debtor is situated at Door No. 2-204, Annavaram Village, Guntur, Rompucherla Mandal, Andhra Pradesh-522603. Therefore, the territorial jurisdiction lies with this Adjudicating Authority.

8. Facts of the case as submitted by the Counsel for the Financial Creditor during the course of today's hearing and stated in its pleadings are as under:

(i) The registered office of the Financial Creditor is at IFCI Tower, 61 Nehru Place, New Delhi-110019. The Corporate Debtor is a Company engaged in the business of manufacturing and supplying ready mix concrete.

(ii) As per Part-IV of Form-1 of the Application, the total amount claimed to be in default and the date on which the default occurred is Rs.1,47,69,875/- (as on 31.03.2024) are shown below:

2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	a) The Applicant subscribed to 2,13,000 OCDs of the Corporate Debtor having a face value of Rs. 100 each, aggregating to a total financial assistance of Rs.2,13,00,000, under the Investment Agreement dated 14.03.2018. The said debentures carried coupon interest at the rate of 8% per annum (revised to 6% as per the Modification of Operation of Guidelines for Financial

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		d) Accordingly, the **date of default for the purpose of the present application is 30.06.2021**, being the first default occurring after the expiry of the Section 10A period.

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		g) Accordingly, the **total amount in default as on 31.03.2024 amounts to Rs. 1,47,69,875 (Rupees One Crore Forty Seven Lakh Sixty Nine Thousand Eight Hundred Seventy Five Only)**.

(iii) The Corporate Debtor approached the Financial Creditor seeking financial assistance to establish a ready mix concrete manufacturing plant with a proposed installed capacity of approximately 48,000 cubic meters per annum and the Financial Creditor agreed to extend the financial assistance to the Corporate Debtor through investment in Optionally Convertible Debentures (hereinafter referred to as the **'OCDs'**) vide Investment Agreement dated 14.03.2018 executed between the Financial Creditor, Corporate Debtor and Promoters along with recorded rights and obligations of the parties, framework under which Financial Creditor would provide financial assistance. Pursuant to the above, the Corporate Debtor issued 2,13,000 OCDs (Face Value of Rs.100) with coupon rate of 8% p.a. (revised to 6% as per the Modification of Operation of Guidelines for Financial Assistance to schemes of VCF-SC Entrepreneurs (2021-22 to 2025-26) dated 28.10.2022 vide File No. 14020/07/2020-SCD-IV (E.O. 35959 issued by

Ministry of Social Justice & Empowerment, Department of Social Justice & Empowerment) in favour of the Financial Creditor.

(iv) Further, as per the Investment agreement, the OCDs issued to the Financial Creditor were to be redeemed through a structured buyback and redemption mechanism, whereby the promotors of the Corporate Debtor were obligated to buy back the OCDs in accordance with a defined repayment schedule i.e. periodic redemption through quarterly instalments beginning from 31.03.2019 and continuing till 31.03.2024 along with applicable coupon interest. Pursuant to the above, the Financial creditor also executed the Assignment Agreement dated 14.03.2018 and Deed of Guarantee dated 14.03.2018 executed by the Personal Guarantor in favour of the Financial Creditor. On the same date i.e. 14.03.2018, the Financial Creditor also executed the Declaration and Undertaking, Pledge Agreement, and Deed of Undertaking for non-disposal of shares & meeting shortfall by promotors.

(v) Accordingly, instalments became due on 31.03.2019, 30.06.2019, 30.09.2019, 31.12.2019, 31.03.2020, 30.06.2020, 30.09.2020, 31.12.2020, 31.03.2021, 30.06.2021, 30.09.2021, 31.12.2021, 31.03.2022, 30.06.2022, 30.09.2022, 31.12.2022, 31.03.2023, 30.06.2023, 30.09.2023, 31.12.2023 and finally on 31.03.2024. The Corporate Debtor failed to make payment of instalment, which fell due on 30.09.2020 and remained in default in remaining instalments.

(vi) Despite repeated reminders, the Corporate Debtor has not made any payment towards redemption of OCDs. The repayment schedule contemplated periodic obligations and each failure to honour the instalment due on the specified date constituted a default under the agreement. As per Article XI, clause (a) of the Agreement, two consecutive defaults at any stage of payment of coupon and/ or redemption/ buyback of OCDs as per the repayment schedule constitute an event of default. The clause 2.3 of Article II of the Agreement provides the repayment schedule for redemption of OCDs.

(vii) Certain instalments fell due on period covered under the Section 10A of the Code i.e. from 25.03.2020 to 25.03.2021, but the present Application is seeking default, which occurred subsequent to the Section 10A period and accordingly the date of default is 30.06.2021 i.e. the instalment falling after Section 10A period. The Hon'ble NCLAT in the matter of ***SREI Equipment Finance Ltd. v. R.S. Kamthe Infrastructure Developers Pvt. Ltd.,*** *Company Appeal (AT) (Ins.) No. 116 of 2024*, decided on 28.01.2026, has categorically held that where the financial creditor bases its claim on defaults, which occurred subsequent to the Section 10A period, the application under Section 7 of the Code cannot be rejected on the ground that earlier defaults occurred during the Section 10A period, provided the application is confined to such subsequent defaults. The relevant extract of the order dated 28.01.2026 is as follows:

"*11. The above judgments clearly support the submissions of the appellant that when the Section 7 application is based on default committed subsequent to Section 10A period and the amount claimed subsequent to Section 10A period is well beyond threshold, application cannot be rejected on the ground that it is barred by Section 10A application. We only clarify that Section 7 application filed by the appellant has to confine to the default committed subsequent to Section 10A period.*"

(viii) The Corporate Debtor failed to redeem the OCDs falling due after the Section 10A period i.e. from 31.03.2021 to 31.03.2024, comprising 13 quarterly instalments of 10,143 OCDs each, aggregating to a principal amount of Rs. 1,47,69,875/- i.e. principal amount of Rs. 1,31,85,900/- along with coupon interest Rs.15,83,975/-. The Financial Creditor issued recall notice dated 02.07.2024 and a demand notice dated 13.09.2024 to the Corporate Debtor at the registered address of the Corporate Debtor and Corporate Debtor failed to clear the outstanding dues.

(ix) As per records of the Financial Creditor, the outstanding liability of the Corporate Debtor as on 31.03.2026 is Rs.3,02,80,733.50 comprising Rs.2,13,00,000/- towards the principal and Rs.89,80,733.50 towards accrued interest and the Corporate Debtor continues to remain liable for the aforesaid amount together with future interest and charges in accordance with the terms of the agreement.

(x) The financial assistance extended by the Financial Creditor through subscription of the OCDs constitute a financial debt within the meaning of section 5(8) of the Code and the amount in default is far in excess of the minimum threshold prescribed under Section 4 of the Code.

9. During the hearing dated 15.07.2026, it was observed that the Financial Creditor served the notice on the Corporate Debtor on 29.03.2026 to the registered e-mail id as appearing in the master data of the Corporate Debtor, but the same was not be enclosed with Application.

10. During the next hearing dated 28.07.2026, in the absence of such proof of service, this Adjudicating Authority deemed it appropriate to issue notice to the Corporate Debtor and the Registry was directed to issue notice to the Corporate Debtor through Speed Post by informing the next date of hearing and the Corporate Debtor was granted one week time to file its Counter, and posted the matter to 17.08.2026, on which date, the Counsel for the Corporate Debtor sought a copy of this Application and one week time thereafter to file the Vakalat and reply.

11. During the next hearing dated 04.09.2026, it was observed that page nos.36 and 90 of the Application are missing from the DMS portal and page no.90 is also missing from the hard copy. The Financial Creditor sought a week's time to rectify the above, and the Corporate Debtor also sought time to file the Counter. Time as prayed for was granted and the matter was posted to today for further consideration.

12. Pursuant to the order dated 04.09.2026, the Corporate Debtor vide Diary No. 1732 dated 10.09.2026 filed the Counter, wherein it contended that there is no financial debt, which is in default to the present Financial

Creditor, IFCIVCFL and therefore, the present Application is not maintainable at the threshold and is liable to be dismissed in limine.

(i) As per the Investment Agreement dated 14.03.2018, the Applicant floated a Venture Capital Fund in name of Venture Capital Fund for Schedule Castes (hereinafter referred to as the "**VCF-SC**") under the scheme of the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment to promote entrepreneurship in the Scheduled Castes. The VCF-SC has been set up as a trust fund under registered trust deed and is also registered with the Securities and Exchange Board of India (hereinafter referred to as the "**SEBI**").

(ii) The IFCIVCFL, as the settlor, entrusted IL&FS Trust Company Limited (hereinafter referred to as the "**IL&FS**") to act as the trustee. IL&FS as the trustee has appointed IFCIVCFL as the Investment Manager under the Investment Management Agreement in respect of VCF-SC for managing the investments and providing administrative services. The aforesaid Investment Agreement dated 14.03.2018 was entered by IFCIVCFL in its capacity as the Investment Manager and not as the Debenture Holder or Debenture Trustee. The OCDs were issued in the name of VCF-SC by the Corporate Debtor, for which IL&FS acted as the Debenture Trustee.

(iii) Upon the creation and registration of the VCF-SC and the consequent transfer of the fund corpus, the role of IFCIVCFL as the settlor stood exhausted, thereby rendering IFCIVCFL functus officio qua the trust property.

(iv) Under the Indian Trusts Act, 1882, the legal ownership and title to the trust assets vest exclusively in the Trustee, i.e., IL&FS. The OCDs in question stand issued by the Corporate Debtor strictly in the name of VCF-SC and are administered under the regulatory and contractual oversight of the Debenture Trustee, i.e., IL&FS.

(v) An Investment Manager holds neither proprietary interest nor legal title in the trust assets and can under no canon of law be equated with or substituted for either the OCD holder, VCF-SC or the OCD Trustee IL&FS. Consequently, the Applicant has no independent legal right to assert ownership over the debentures or maintain the present proceedings against the Corporate Debtor.

(vi) The present Application is liable to be dismissed in limine under Section 7(5)(b) of the Code for lack of locus standi. Under Section 5(7) a "Financial Creditor" must be the person to whom the financial debt is legally owed or to whom such debt has been legally assigned.

Section 5(7) of the IBC, 2016:

" 'financial creditor' means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;"

Section 3(23) of the IBC, 2016:

" 'person' includes—

(a) an individual;(b) a Hindu Undivided Family;(c) a company;(d) a trust; (e) a partnership; (f) a limited liability partnership; and (g) any other entity established under a statute, and includes a person resident outside India;"

(vii) The Applicant is merely an "Investment Manager" under Regulation 2(1)(q) of the SEBI (Alternate Investment Fund) Regulations, appointed by the Trustee under an Investment Management Agreement to manage and provide administrative services. A contractual service manager possesses no legal title, beneficial ownership or actionable claim in the trust assets and cannot sue in its own name. The debt is not legally owed to the Applicant under Section 5(7) of the Code and the defect goes to the root of jurisdiction rendering the Application an incurable nullity.

Regulation 2(1)(q) of the SEBI (Alternative Investment Funds) Regulations, 2012:

" 'manager' means any person or entity who is appointed by the AIF to manage its investments by whatever name called and may also be same as the sponsor of the Fund;"

(viii) The Applicant in Part I of Form I of the Application is an independent company having its own corporate persona and the OCDs on record were not issued in the name of the Applicant herein, but under the name of VCF-SC.

(ix) The Applicant is only appointed as an investment manager by the trustee, the right to sue or file any Application will be on the Debenture Trustee, but not the Investment Manager, who was merely appointed to manage, invest and provide administrative services to the Debenture Trustee.

(x) Under Section 7(1) of the IBC, an application for initiating CIRP against a Corporate Debtor can be filed strictly by a financial creditor either by itself or jointly with other financial creditors or by "any other person on behalf of the financial creditor as may be notified by the Central Government". This statutory filter restricts representational filings exclusively to classes of persons specifically recognised and notified by the Central Government. In the present case, the Applicant is not the Financial Creditor in its own right.

(xi) The Applicant also fails to qualify as an "any other person as notified by the Central Government" under Section 7(1) of the Code. The Ministry of Corporate Affairs, vide Notification S.O. 1091(E) dated 27.02.2019, has notified only four specific categories entitled to file on behalf of a financial creditor: (i) a guardian (ii) an executor or administrator of an estate (iii) a trustee (including a debenture trustee) and (iv) a person duly authorized by the Board of Directors of a company. An "Investment Manager" will not fall under any of the above categories of persons.

(xii) Consequently, the Applicant has no statutory competence to initiate CIRP on behalf of the trustee, rendering the Application an incurable nullity for absolute want of authority under Section 7(1) of IBC.

(xiii) The Applicant's reliance on the balance sheets of the Corporate Debtor for seeking extension of limitation under Section 18 of the Limitation Act, 1963 is fundamentally misconceived and legally unsustainable. An acknowledgement under Section 18 does not confer title, create a fresh cause of action or cure an inherent defect of locus standi, it merely extends the period of limitation for an entity. Mere accounting entries in the books of account of the Corporate Debtor are maintained strictly for statutory reporting under the Companies Act, 2013 and cannot alter the legal nature of the underlying transaction or vest substantive rights of a "Financial Creditor" in an unnotified third-party entity.

(xiv) The mandatory statutory conditions precedent prescribed under Section 5(7), Section 5(8) and Section 7(1) of the Code override mere bookkeeping entries. In the total absence of any debt legally owed to or disbursed by the Applicant, the question of extending limitation does not arise rendering the Application liable to be rejected in limine.

(xv) Under Section 5(8) of the IBC, the foundational prerequisite to constitute a "financial debt" is an actual disbursement of funds against the consideration for the time value of money. A perusal of the bank statements and transactional documents placed on record by the Applicant demonstrates that the subscription funds were disbursed exclusively from the bank account of VCF-SC and not a single rupee was disbursed from the bank account of the IFCIVCFL, thereby disentitling the Applicant from claiming the status of a "Financial Creditor" under Section 5(7) read with Section 5(8) of the Code.

(xvi) Under the statutory scheme of Section 7 of the IBC, the existence of a legally enforceable debt due to the Applicant is a condition precedent to establish any default. In the total absence of any debt owed to the Applicant, the question of default does not arise, rendering the present Application fundamentally non maintainable and liable to be dismissed in limine under Section 7(5)(b) of the IBC.

(xvii) The perusal of the Investment Agreement dated 14.03.2018 reveals that it confines the role of the Applicant strictly to that of an administrative Investment Manager to manage, invest and provide administrative services to the Fund and confers no right or authority whatsoever to institute insolvency proceedings under Section 7 of the Code. While the Agreement records that the OCDs were subscribed under the trust fund VCF-SC, the contractual liberty given to the Applicant under any clause or Article of the Investment Agreement is merely to issue a notice of recall or demand in its Investment Manager capacity. Such contractual provisions do not vest proprietary title to the debt, privity of contract as the debenture holder or the legal right to initiate judicial proceedings, which substantive rights remain exclusively with the Trustee IL&FS. Therefore, the Investment Agreement does not confer any statutory competence or locus standi upon the Applicant to institute the present Application under the Code

(xviii) The Applicant cannot unilaterally characterize the OCDs as a crystallized "financial debt" under Section 5(8) of the Code. The OCDs were issued as hybrid, equity-linked venture investments under an Alternative Investment Fund structure, carrying intrinsic conversion options rather than an unconditional commercial borrowing, the crystallization, whereof depends upon the strict fulfilment of contractual conversion milestones, valuation mechanisms and redemption covenants. Being a mere third party Investment Manager holding neither the debenture certificates nor privity of contract as the debenture holder or trustee, the Applicant has no legal authority to assert that these hybrid equity instruments constitute a financial debt.

13. During the course of hearing today, it is submitted by the Financial Creditor that page no.36 belongs to non-judicial stamp paper in respect of verifying affidavit and there is no matter in the page no.90 and the same was due to wrong pagination, therefore these can be excluded from the Application.

14. During the course of today's hearing, the Corporate Debtor, relying upon his Counter Affidavit, opposes the admission of the present Application, and contend that the Financial Creditor lacks the requisite locus standi to maintain the proceedings under Section 7 of the IBC. It is submitted that, under the Investment Agreement dated 14.03.2018, the OCDs were issued by the Corporate Debtor in the name of the VCF-SC, while IL&FS acted as the Debenture Trustee and IFCIVCFL entered into the Investment Agreement solely in its capacity as Investment Manager and not as Debenture Holder or Debenture Trustee. The Corporate Debtor, referring to the bank statement at page 22 of the Counter Affidavit, contend that the disbursements were made from the account of the VCF-SC to the Corporate Debtor and not from IFCIVCFL. Hence, in

terms of Section 5(7) of the Code, the IFCIVCFL does not qualify as a "Financial Creditor" in respect of the alleged debt and, consequently, has no locus standi to institute the present Application under Section 7 of the Code. Per contra, it is submitted by the Financial Creditor that as per 'Article XII: Rights in the event of Default' of the Investment Agreement dated 14.03.2018, at page 83 of the Application, during the currency of the assistance under VCF-SC, if any event of default or potential event of the default as mentioned aforesaid has occurred, IFCIVCFL has the right to take appropriate action against the Corporate Debtor with respect to the said financial assistance and hence, the IFCIVCF has the locus standi to file the present Application for initiation of the CIRP against the Corporate Debtor.

15. We have heard the Counsels for the Financial Creditor and Corporate Debtor also perused the records carefully.

16. Before going to analysis, we need to go through the details of the agreement as follows:

(i) The Investment Agreement was executed on 14.03.2018 between Corporate Debtor, Promotors (Srinivasa Rao Gundlatoti alias Srinivas Rao Gundlathoti and Ashok Gullathoti) and Financial Creditor. The relevant extract of the Agreement is reproduced below:

INVESTMENT AGREEMENT

THIS AGREEMENT made at New Delhi, this 14th day of March, Two Thousand and Eighteen between:

M/s GUNDLATHOTI READY MIX CEMENT INDUSTRY PRIVATE LIMITED, a Company incorporated under Companies Act, 2013 with Corporate Identification Number U74999AP2017PTC107073 and having its Registered Office at 2-204 Annavaram Village Rompucherla Mandal Guntur AP 522603 IN (hereinafter referred to as "the Company/ GRMC ", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns) of the **FIRST PART**;

AND

1. Srinivasa Rao Gundatoti *alias* Srinivas Rao Gundlathoti, son of Shri Ankaiah Gundatoti, residing 2-204 Annavaram Village, Guntur AP 522603; and
2. Ashok Gullathoti, son of Srinivasa Rao Gundatoti, residing 2-204 Annavaram Village, Guntur AP 522603.

(hereinafter collectively referred to as "the Promoters", which expression shall, unless repugnant to the subject or context thereof, include their respective successors, assigns, heirs and executors) of the **SECOND PART**;

AND

IFCI Venture Capital Funds Limited, a public limited company incorporated under the Companies Act, 1956 (1 of 1956) with Corporate Identification Number U65993DL1988GOI030284 and having its Registered Office at IFCI Tower, 61, Nehru Place, New Delhi - 110 019 (hereinafter referred to as 'IFCI Venture', which expression shall, unless it be repugnant to the subject or context thereof, include, its successors and assigns) of the **THIRD PART**;

(ii) The Financial Creditor herein floated a Venture Capital Fund in the name of VCF-SC, which was set up as a Trust Fund under which the IL&FS and Financial Creditor herein had been appointed as the

Trustee and Investment Manager respectively. The relevant extracts of the Agreement is reproduced below:

WHEREAS IFCI Venture, a public company incorporated under the Companies Act, 1956 (1 of 1956) and having its Registered Office at IFCI Tower, 61, Nehru Place, New Delhi-110019 (hereinafter referred to as IFCI, which expression shall, unless it is repugnant to the subject or context thereof, include its successors and assigns) has floated a Venture Capital fund by the name of "Venture Capital Fund for Scheduled Castes" (hereinafter referred to as "VCFSC") to promote entrepreneurship among the Scheduled Castes and to provide concessional finance to them.

WHEREAS VCFSC has been set up as a Trust Fund under the registered Trust Deed. IFCI as settlor, has entrusted the Fund to IL&FS Trust Company Ltd., a company incorporated under the Companies Act, 1956 having its registered office at IL&FS Trust Company Limited, Plot No. C 22, G- Block, Bandra Kurla Complex, Bandra (East), Mumbai- 40005 as Trustee. Venture Capital Fund for scheduled castes has been registered with Securities Exchange Board of India (SEBI).

WHEREAS IFCI Venture has been appointed as Investment Manager of VCFSC by the Trustee to manage, invest and provide administrative services to VCFSC in accordance with the provisions of Investment Management Agreement entered by it with the Trustee. IFCI Venture has the necessary powers to grant to the company the financial assistance hereunder and to enter into this Agreement.

(iii) As per Schedule II enclosed with the Agreement , the project cost is Rs.318 lakh to be financed by promoters contribution of 104 lakh and assistance under VCF-SC in equity of Rs.1 lakh and in OCDS of Rs.213 lakh. The relevant extract of the Agreement is reproduced below:

SCHEDULE - II
FINANCIAL PLAN

Project Cost

The company has estimated cost of its project as under:

Project Cost:

Particulars	Project Cost(in lakh)
Land Development	8.80
Technical Civil Work (Building)	30.00
Plant and Machinery	214.16
Electrification cost	2.00
Pre- Operative Expenditure	2.04
Margin Money for Working Capital Portion (i.e. 25% of Total Working Capital fund)	50.00
Interest During Construction Period	11.00
Total Cost of Project	**318.00**

Means of Financing

The company proposes to finance the project as under:

Means of Finance Particulars	Amount(In Rs. Lakh)	% Holding
Promoters Contribution (in Equity)	104.00	32.70%
Assistance under VCF-SC (in Equity)	1.00	67.30%
Assistance under VCF-SC (in OCDs)	213.00	
TOTAL	318.00	100.00%

(iv) Under the Agreement, the Financial Creditor has agreed to finance Rs.2.14 crore (OCD – Rs.2.13 crore and Equity of Rs.0.01 crore) out of total project cost of Rs.3.18 crore. The relevant extracts of the Agreement is reproduced below:

WHEREAS the company is desirous to set up a factory for the production of Ready Mix Concrete (RMC) with an installed capacity of 48,000 Cubic. Mt. p.a. (hereinafter referred to as "Project"), which is more particularly described in Schedule I hereto.

WHEREAS The total cost of the project proposed by GRMC is **Rs.3,18,00,000/- (Rupees Three Crore Eighteen Lakh Only)** towards setting up a factory for the production of Ready Mix Concrete (RMC) with an installed capacity of 48,000 Cubic. Mt. p.a.

WHEREAS the Company/ Promoters will make arrangements to raise funds through equity shares to the tune of at least **Rs.1,04,00,000/- (Rupees One Crore Four Lakh only)** i.e. 32.70% of the total project cost as per the sanctioned business plan of GRMC to the satisfaction of IFCI Venture.

AND WHEREAS IFCI Venture has agreed to finance a part i.e. **Rs.2,14,00,000/-** (Rupees Two Crore Fourteen Lakh Only) towards the total project cost Rs.3,18,00,000/- (Rupees Three Crore Eighteen Lakh Only) by way of subscription to i) **Optionally Convertible Debentures (OCDs):** 2,13,000 OCDs of Rs. 100/- each, at par, aggregating to Rs. 2,13,00,000; and ii) **Equity Shares:** 1,000 equity shares of Rs. 100 each, at par, aggregating to Rs. 1,00,000 for a period of 6 years and having moratorium of 9 Months from the date of first disbursement on the terms and conditions mentioned herein below:

(v) As per the terms of the Agreement, the Financial Creditor under VCF-SC will subscribe to 2,13,000 OCDs aggregating to Rs.2.13 crore in the Corporate Debtor. The OCDs shall carry coupon rate of 8% per annum payable on quarterly basis to VCF-SC starting from the date of disbursement. In case of delay in payment of coupon rate and/ or redemption of OCDs, there shall be default coupon rate @ 12% per annum chargeable for delayed period of payment. The Corporate Debtor/ Promoters shall redeem/ buy back up to 1,72,431 OCDs as per the redemption Schedule. The OCDs bought back by the Promoters shall automatically stand converted into interest free unsecured loan or equity share capital at the option of the

Promoters and remain in the Corporate Debtor Company till the Financial Creditor under VCF-SC holds any OCD/ Equity in the Corporate Debtor. The outstanding OCDs as on 31.03.2023 shall be converted into equity shares at the sole discretion of the Financial Creditor. The above conversion of OCDs may take place after giving an opportunity to the Corporate Debtor/ Promoters to redeem/ buy back as per the redemption buyback schedule. The relevant extracts of the Agreement are reproduced below:

ARTICLE - II

TERMS OF ISSUE OF DEBENTURES & EQUITY SHARES

A. SUBSCRIPTION TO DEBENTURES

Amount of Debentures to be Issued

2.1 IFCI Venture under VCF-SC will subscribe to 2,13,000 (Two Lakh Thirteen Thousand Only) nos. of OCDs of Rs.100/- each aggregating to Rs.2,13,00,000/- (Rupees Two crore Thirteen lakh Only) in GRMC. The OCDs shall carry coupon rate of 8% per annum to be payable on quarterly basis to VCF-SC, starting from the date of disbursement of the assistance under the fund. **In case of any delay in the payment of the coupon on OCDs and/or redemption of OCDs, there shall be a default coupon rate @ 12% per annum chargeable for the delayed period of payment**

2.2 The OCDs shall be convertible into equity shares of the company or redeemed/bought back by Company/Promoters as per terms contained hereinafter.

2.3 The Company/ Promoters shall redeem/ buy back up to **1,72,431 (One Lakh Seventy Two Thousand Four Hundred Thirty One Only) nos. of OCDs of Rs.100/- each aggregating to Rs. 1,72,43,100/- (Rupees One Crore Seventy Two Lakh Forty Three Thousand One Hundred Only)** held by IFCI Venture under VCF-SC after 31st March 2019 and on/or before 31st March 2023 in the manner specified below. The OCD's bought back by the promoters shall automatically stand converted into interest free unsecured loan or equity share capital at the option of the promoters and remain in the company till IFCI Venture under VCF-SC holds any OCD's / equity in GRMC. The redemption/ buyback shall take place as per the below given schedule:

Sl. No.	Repayment Date	No. of OCD's to be redeemed	Outstanding No. of OCDs of Face Value Rs. 100 /- Each
1.	30 June 2018	0	
2.	30 September 2018	0	
3.	31 December 2018	0	
4.	31 March 2019	10,143	202,857
5.	30 June 2019	10,143	192,714
6.	30 September 2019	10,143	182,571
7.	31 December 2019	10,143	172,428
8.	31 March 2020	10,143	162,285
9.	30 June 2020	10,143	152,142
10.	30 September 2020	10,143	141,999
11.	31 December 2020	10,143	131,856
12.	31 March 2021	10,143	121,713
13.	30 June 2021	10,143	111,570
14.	30 September 2021	10,143	101,427
15.	31 December 2021	10,143	91,284
16.	31 March 2022	10,143	81,141
17.	30 June 2022	10,143	70,998
18.	30 September 2022	10,143	60,855
19.	31 December 2022	10,143	50,712
20.	31 March 2023	10,143	40,569
No. of OCDs to be bought back		1,72,431	
21.	30 June 2023	10,143	30,426
22.	30 September 2023	10,143	20,283
23.	31 December 2023	10,143	10,140
24.	31 March 2024	10,140	-
No. of OCDs to be bought back		40,569	
Total OCDs to be bought back		2,13,000	

Important Note: The above redemption schedule has been prepared based on the assumption that the Company shall avail the first disbursement on 28th February 2018. Hence, all the dates mentioned in this agreement shall get changed as per the gap between the actual date of first disbursement and assumption date.

2.4 The outstanding OCDs as on 31st March 2023 shall be converted into equity shares at the sole discretion of IFCI Venture, after reviewing the performance of GRMC as per audited annual accounts of the Financial Year 2021-22 compared with the projections submitted by GRMC. The OCDs shall be converted into fully paid-up equity shares of GRMC at par i.e. after the conversion of the OCDs, each OCD will be converted into 1 (One) equity share of face value of Rs.100/- each of GRMC. The conversion shall be exercised by VCF-SC after the audited annual accounts are approved by the shareholders in the Annual General Meeting of the company for the Financial Year 2021-22 and on/before October 31, 2022.

2.5 The conversion of OCDs into equity shares of GRMC as per the above clause may take place after giving an opportunity to the Company/ Promoters to redeem/ buyback the outstanding OCDs as per the redemption/ buyback schedule given at clause (2.3) above along with coupon rate of 8% p.a. after 31st March 2023 and on/ or before 31st March 2024. The company shall give its written consent to IFCI Venture within a period of 30 days after 31st March 2023.

2.6 Such conversion of OCDs into equity shares shall be at the sole discretion of IFCI Venture and in the manner as decided by IFCI Venture. Also, such equity shares held by VCF-SC shall carry an IRR of 15% p.a. from the date of conversion.

2.7 In case IFCI Venture decides not to convert the OCDs into equity shares of GRMC or till such time the outstanding OCDs are not converted into equity shares of GRMC, the Company / Promoters shall continue to redeem / buyback the outstanding OCDs as per the redemption / buyback schedule given at clause (2.3) above along with coupon rate of 8% p.a.

B. Subscription to Equity Shares

a. Subject to satisfaction of terms & conditions of this agreement, IFCI Venture under VCF-SC will subscribe to 1,000 (One thousand only) equity shares of Rs.100/- (Rupees Hundred Only) each in GRMC, aggregating to Rs.1,00,000 (Rupees One Lakh only) towards the total project cost.

b. The equity shares subscribed by VCF-SC in the Company would rank pari-pasu to the other equity shares constituting the paid up capital of the Company, including issue of bonus shares, distribution of dividends and voting rights etc.

c. The entire equity shares shall be bought back by the Company/ Promoters after 31st March 2023 and on/or before 31st March 2024 at an IRR of 15% p.a. compounded annually.

(vi) The events of default *inter alia,* include two consecutive defaults at any stage of payment of coupon and/ or redemption/ buy back of OCDs. The relevant extract of the Agreement is reproduced below:

ARTICLE XI

EVENTS OF DEFAULT

a. Two consecutive defaults at any stage of payment of coupon and / or redemption / buyback of OCDs / Equity as per the schedule given above;

b. Invalidity or unenforceability of any security;

c. Non-compliance of regulatory and statutory compliances and corporate governance;

d. Implementation of the project not achieved by the date as specified in the business plan submitted by the Company or such date as extended by IFCI Venture;

e. Failure by the promoters to contribute their share as per the approved means of finance;

f. Any Government action detrimental to the project;

g. Abandonment of the project;

h. Any event which threatens the continuation of the project;

i. Guarantor/Promoter(s) sells their existing shareholding in the Company/ or any other company/ group company without prior written permission from IFCI Venture;

j. Any representation, warranty or statement made or deemed to be made is or proved to be incorrect or misleading in any manner;

k. Any event which, in the opinion of IFCI Venture, is likely to constitute Material Adverse Change to the Company;

l. All or substantially all of the undertaking, assets or properties of the Company or any of its subsidiaries, associates, affiliates or holding company are seized, expropriated or compulsorily acquired by the authority of Government;

m. Any step is taken or proceedings started for dissolution or winding-up or for the appointment of a receiver, judicial manager, trustee or similar officer;

n. Any change in material ownership/control of the Company/or group company/connected company without prior permission of IFCI Venture;

o. Failure to provide Net Worth Certificate of Guarantors;

p. Any change in Key Management Personnel(s), which in the opinion of IFCI Venture, is likely to constitute Material Adverse Change to the Company/Project;

q. Failure to provide TDS certificates;

r. Failure to provide fresh valuation of mortgaged properties;

s. Failure to perform or comply with any other obligations or terms and conditions.

(vii) In the event of default, the Financial Creditor has various rights including the right to take any appropriate legal actions. The relevant extract of the Agreement is reproduced below:

ARTICLE XII

RIGHTS IN THE EVENT OF DEFAULT

During the currency of the assistance under VCF-SC if any event of default or potential event of default as mentioned aforesaid has occurred, IFCI Venture shall have the right to:

a. Cancel undisbursed financial assistance;

b. Call off the investment and/or recall the said financial assistance/ invoke guarantee(s)/ and/ or take any other appropriate legal actions;

c. Charge default coupon @ 12% compounded annually from the date of disbursement on the entire outstanding amount for OCDs;

d. Convert the entire outstanding OCDs including premium amount @12% p.a. into equity shares at par. Such equity shares shall be bought back by the Company/ Promoters on/ or before 31st March 2024 at an IRR of 15% p.a. compounded annually.

e. Enforcement of the security of properties mortgaged/assets hypothecated/ pledged/ invoke guarantees to IFCI Venture;

f. Appoint special auditor in the Company for verification of financials or any other purposes. All expenses related to such appointment shall be borne by the Company;

g. Stipulate additional conditions in its absolute discretion.

(viii) In the event of default by the Corporate Debtor, Clause 9.3 of Article IX of the Investment Agreement expressly provides that the IFCIVCFL shall be at liberty to recall the entire financial assistance, whereupon the Corporate Debtor and the Promoters shall be liable to repay the entire financial assistance together with interest at the rate of 12% per annum. Further, Article XIII of the Investment Agreement provides that, upon breach of the terms and conditions thereof, IFCI Venture shall have the right to recall the financial assistance, and the Corporate Debtor and the Promoters shall be liable to repay the financial assistance together with the stipulated default coupon of 12% per annum on the OCDs. The relevant extracts of the Agreement are as follows:

9.3 Recall of the financial assistance

In the event of default in redemption of debentures and buyback of equity as per terms herein or any other default in adhering to any of the terms and conditions of this Agreement IFCI Venture shall be at a liberty to recall the entire assistance and in such an event the company/promoters shall be under obligation to repay the entire financial assistance together with the interest @12% p.a.

ARTICLE XIII
BREACH OF TERMS & CONDITIONS

In the event of breach of any of the terms and conditions contained hereinabove, IFCI Venture shall reserve the right to call off the venture and recall the financial assistance and the promoters / GRMC would be liable to pay the financial assistance amount along with default coupon of 12% p.a. on the OCDs and 15% p.a. on the equity shares from the date of first disbursement.

(ix) The coupon rate of 8% p.a. was revised to 6% as per the Modification of Operation of Guidelines for Financial Assistance to schemes of VCF-SC Entrepreneurs (2021-22 to 2025-26) dated 28.10.2022 vide File No. 14020/07/2020-SCD-IV (E.O. 35959 issued by Ministry of Social Justice & Empowerment, Department of Social Justice & Empowerment) in favour of the Financial Creditor

17. The first issue for consideration before us is "**Whether the present Application is filed within the period of limitation**"

(i) The Financial Creditor has filed the Application based on the date of default as 30.06.2021 as mentioned in Part IV of the Form 1 of the Application, which is the first actionable default after expiry of the Section 10A period.

(ii) Accordingly, the date of default has been stated by the Financial Creditor as 30.06.2021, according to which, the limitation would expire on 29.06.2024.

(iii) It is noted that the Balance Sheet as at 31.03.2023 of the Corporate Debtor (page 167 of the Application) reflects the outstanding borrowing against the OCDs at the option of the Financial Creditor. The relevant extracts of the above balance sheet are reproduced below:

LONG-TERM BORROWNIGS		Note No: 3
Particulars	As at 31.03.2023	As at 31.03.2022
A.Secured		
A.Secured	-	-
Term loans	-	-
i) From banks		-
ii) From companies	20,980	
(Optionally convertible 172040 debetures of Rs.100/- each		
convertible at the option of IFCI Ventures at an interest		
rate of 8%, redeemable after 31-03-2023 and before 31-03-2024)	-	-
Note: a)Company has used the borrowings from banks and financial	-	-
b)The company has not been declared as a wilful defaulter by any bank or	-	-

(iv) The Hon'ble Supreme Court vide judgment dated 22.10.2024 in the matter of ***Vidyasagar Prasad vs. UCO Bank & Anr., Civil Appeal No. 1031 of 2022***, observed entry made in the balance sheet amounts to an acknowledgement of the liability. The relevant extract of the aforesaid judgment is reproduced below:

> **10.1** Following the principles as expounded in the case of *Bishal Jaiswal* (Supra), the Adjudicating Authority as well as the NCLAT have examined the case in detail and have come to the conclusion that the entry made in the balance sheet coupled with the note of the auditor of the appellant clearly amounts to acknowledgement of the liability. We see no reason whatsoever to take a different view of the matter. Their findings are fortified when we examine the matter from another perspective.

(v) Hon'ble NCLAT, Principal Bench, New Delhi in its recent order dated 03.02.2026 in ***Raghav Butola vs. Jammu and Kashmir Bank (Company Appeal (AT) (Insolvency) No. 240 of 2026)***, has also affirmed that acknowledgement of the liability in the Balance sheet extends the limitation period under Section 18 of the Limitation Act, 1963. The relevant extract of the aforesaid judgment is reproduced below:

> 6. Admittedly, the guarantee was invoked on 12.02.2020, hence, three years' period shall commence from the said date. The Adjudicating Authority has returned a finding that in Balance Sheet of the year 2021-22 and 2023-24, there is acknowledgment, which is acknowledgment within the meaning of Section 18 of the Limitation Act, therefore, limitation period stood extended and Application filed on 14.04.2025 is well within time. The Hon'ble Supreme Court in the matter of "Asset Reconstruction Co. (India) Ltd. Vs. Bishal Jaiswal, (2021) 6 SCC 366", held that acknowledgment in the balance sheet is acknowledgement within the meaning of Section 18 of the Limitation Act. We, thus, are of the view that the Adjudicating Authority has rightly come to the conclusion that application filed on 14.04.2025 is not barred by time and by virtue of Section 18 the limitation shall extend and the application is well within time.|

(vi) In view of the above acknowledgement of liability in the Balance Sheet of the Corporate Debtor within the limitation period, fresh limitation period of three years will start extending the limitation period up to 31.03.2026.

(vii) Since the present Application has been e-filed on 29.03.2026, we are of the considered view that it is well within the period of limitation.

18. The Corporate Debtor has contended that the subscription funds were disbursed from the bank account of VCF-SC and therefore, the

Applicant IFCIVCFL, is not a "Financial Creditor" under Section 5(7) read with Section 5(8) of the Code and the requisite locus standi to maintain the proceedings under Section 7 of the IBC. It is further submitted that, under the Investment Agreement dated 14.03.2018, the VCF-SC was constituted as a trust, with IL&FS acting as the Trustee and IFCIVCFL acting only as the Investment Manager. Therefore, the Applicant has no locus to file the present Application. Therefore, the next issue for consideration before us "***Whether the IFCIVCFL has a right to file the present Application***".

(i) As per clause 1.1 of the Agreement, the Corporate Debtor has approached the Financial Creditor herein to finance the project of the Corporate Debtor and Financial Creditor under the VCF-SC has agreed to finance the assistance.

(ii) As per clause 2.1 of the Agreement, the Financial Creditor under VCF-SC subscribed the aforesaid OCDs as per the terms and conditions of the Agreement.

(iii) Pursuant to the aforesaid Investment Agreement, the following Agreements were executed by the Corporate Debtor and Promoters:

    a. The Corporate Debtor and Promoters of the Corporate Debtor executed Assignment Agreement dated 14.03.2018 assigning the rights under the Lease Deed dated 05.03.2018 in favour of the Financial Creditor herein. The relevant extracts of the Assignment Agreement is reproduced below:

ASSIGNMENT AGREEMENT

(Assignment of rights under Lease Deed dated 5th March 2018)

This deed of assignment is executed on 14th March, 2018 at New Delhi between-

M/s GUNDLATHOTI READY MIX CEMENT INDUSTRY PRIVATE LIMITED, a Company incorporated under Companies Act, 2013 with Corporate Identification Number U74999AP2017PTC107073 and having its Registered Office at 2-204 Annavaram Village Rompucherla Mandal Guntur AP 522603 IN (hereinafter referred to as "First Party or Lessee")

AND

IFCI Venture Capital Funds Limited, a public limited company incorporated under the Companies Act, 1956 (1 of 1956) and having its Registered Office at IFCI Tower, 61, Nehru Place, New Delhi-110 019 (hereinafter referred to as "Second Party/IFCI Venture)

AND

Srinivasa Rao Gundatoti *alias* **Srinivas Rao Gundlathoti**, son of Shri Ankaiah Gundatoti, residing 2-204 Annavaram Village, Guntur AP 522603 (hereinafter referred to as ""Third Party/Lessor")

1. The First Party/Lessee has executed a Lease Deed dated 05.03.2018 with Srinivasa Rao Gundatoti *alias* Srinivas Rao Gundlathoti, son of Shri Ankaiah Gundatoti, residing 2-204 Annavaram Village, Guntur AP 522603 (hereinafter referred to as "lessor") for taking the Property bearing Sy No.663/2A to an extent of Ac. 0.32 cents and in Sy No. 664/1 an extent of Ac. 0.63 Cents out of Ac. 3.75 Cents making total of Ac. 0.95 Cents at Annavaram Village, Rompicherla Mandal, Guntur District, Andhra Pradesh (Leased Land) for a lease term of 10 years.

2. The First Party has approached IFCI Venture for financial assistance under VCF-SC for setting up a factory for the production of Ready Mix Concrete (RMC) with an installed capacity of 48,000 Cubic. Mt. p.a.at Sy No.663/2A to an extent of Ac. 0.32 cents and in Sy No. 664/1 an extent of Ac. 0.63 Cents out of Ac. 3.75 Cents making total of Ac. 0.95 Cents at Annavaram Village, Rompicherla Mandal, Guntur District, Andhra Pradesh.

3. One of the conditions of the said financial assistance from IFCI venture is that the structure/building, equipment, plant & machinery etc, acquired/ to be acquired on the said leased land shall be hypothecated to IFCI Venture.

4. The First Party has agreed to transfer/assign the lease hold rights in the favour of IFCI Venture in the event of default in observing the terms and condition of the said financial assistance. In such an event, IFCI venture shall have absolute right to enter into the leased land and enforce the security charged to IFCI Venture.

5. The lessor hereby agrees to the above transfer/assignment of lease hold rights and shall not raise any objection in the event of enforcement of securities by IFCI Venture.

6. The Lessee hereby agrees that it shall have no objection on mortgage by lessor of the abovementioned property in favour of IFCI Venture Capital Funds Limited in connection with obtaining any loan/ financial assistance.

7. The lessee also agrees that in case of default of any of the terms of sanction by the lessee, IFCI Venture shall have the right to enforce the security and lessee shall not raise any objection. Also, in case of enforcement of the abovementioned property mortgaged under Declaration & Undertaking dated 14th March, 2018, the lease deed dated 5th March, 2018 between the lessor and lessee shall stand cancelled.

Note: Event of Default as defined in the Investment Agreement dated 14th March, 2018.

For GUNDLATHOTI READY MIX CEMENT INDUSTRIES PVT LTD,

Director

Srinivasa Rao Gundatoti *alias* Srinivas Rao Gundlathoti

(On behalf of Gundlathoti Ready Mix Cement Industry Private Limited)

(First Party)(Lessee)

IFCI Venture Capital Funds Ltd. (Second Party)

I agree & confirm the above,

G. S Rao

Srinivasa Rao Gundatoti *alias* Srinivas Rao Gundlathoti (Lessor)

Witness No. 1 Solemnly Affirmed /Sworn Before Me Witness No. 2

NOTARY PUBLIC, NEW DELHI (INDIA)

b. The Promoters of the Corporate Debtor also executed the Deed of Guarantee dated 14.03.2018 in favour of the Financial Creditor herein. The relevant extracts of the Deed of Guarantee is reproduced below:

DEED OF GUARANTEE
(Personal)

THIS DEED OF GUARANTEE executed at New Delhi this 14th March, 2018 by:

1. Srinivasa Rao Gundatoti alias Srinivas Rao Gundlathoti, son of Shri Ankaiah Gundatoti, residing 2-204 Annavaram Village, Guntur AP 522603; and
2. Ashok Gullathoti, son of Srinivasa Rao Gundatoti, residing 2-204 Annavaram Village, Guntur AP 522603

(hereinafter collectively referred to as the "Guarantors" which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, executors and administrators);

IN FAVOUR OF

IFCI Venture Capital Funds Limited a Company incorporated within the meaning of the Companies Act, 1956 and having its registered office at IFCI Tower, 61 Nehru Place, New Delhi 110 019, (hereinafter referred to as "IFCI Venture or Lender" which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns).

WHEREAS

1 M/s GUNDLATHOTI READY MIX CEMENT INDUSTRY PRIVATE LIMITED, a Company incorporated under Companies Act, 2013 with Corporate Identification Number U74999AP2017PTC107073 and having its Registered Office at 2-204 Annavaram Village Rompaicherla Mandal Guntur AP 522603 IN (hereinafter referred to as "the Company/ GRMC") and the Guarantors have requested IFCI VENTURE for the subscription of **Rs.2,14,00,000/-** (Rupees Two Crore Fourteen Lakh Only) in GRMC by way of subscription to: to i) **Optionally Convertible Debentures (OCDs):** 2,13,000 OCDs of Rs. 100/- each, at par, aggregating to Rs. 2,13,00,000; and ii) **Equity Shares:** 1,000 equity shares of Rs. 100 each, at par, aggregating to Rs. 1,00,000.

2. IFCI VENTURE has agreed to the request of the Company and the Guarantors have agreed to give their personal guarantee on the terms and conditions contained in the **"Investment Agreement" dated 14th March, 2018** executed between the Company and IFCI VENTURE (hereinafter referred to as "Investment Agreement").

3. At the request of the Guarantors, IFCI Venture has agreed to make to the Company, disbursement(s)/ interim disbursement(s) out of the said financial assistance.

NOW THIS DEED WITNESSETH AS FOLLOWS:

In consideration of the premises, the Guarantors hereby unconditionally, absolutely and irrevocably guarantee to and agree with IFCI Venture as follows:-

xxxxx

3. In the event of any default on the part of the Company in payment/repayment of any of the moneys referred to above or in the event of any default on the part of the company to comply with or perform any of the terms, conditions and covenants contained in the said Agreement, the Guarantors shall, upon demand, forthwith pay to IFCI Venture, without demur, all the amounts payable by the company under the said agreement.

c. The Corporate Debtor executed the Deed of Hypothecation dated 14.03.2018 in favour of the Financial Creditor herein. The relevant extracts is reproduced below:

DEED OF HYPOTHECATION

THIS DEED OF HYPOTHECATION executed at New Delhi on 14th March, 2018 by M/s GUNDLATHOTI READY MIX CEMENT INDUSTRY PRIVATE LIMITED, a Company incorporated under Companies Act, 2013 with Corporate Identification Number U74999AP2017PTC107073 and having its Registered Office at 2-204 Annavaram Village Rompucherla Mandal Guntur AP 522603 IN (hereinafter referred to as "the Hypothecator/ Company/GRMC " which expression shall, unless it be repugnant to the subject or context thereof include its successors and assigns) AND

IFCI Venture Capital Funds Limited, a public limited company incorporated under the Companies Act, 1956 (1 of 1956) and having its Registered Office at IFCI Tower, 61, Nehru Place, New Delhi-110 019 (hereinafter referred to as "IFCI Venture", which expression shall, unless it is repugnant to the subject or context thereof, include its successors and assigns).

WHEREAS the main objects of IFCI Venture include carrying on business of, inter alia, assisting the innovation and development including application and commercialization of technology and or granting financial assistance by way of equity participation, debentures or advances for the purpose.

WHEREAS IFCI Venture, a public limited company incorporated under The Companies Act, 1956 (1 of 1956) and having its Registered Office at IFCI Tower, 61, Nehru Place, New Delhi-110019 (hereinafter referred to as IFCI Venture, which expression shall, unless it is repugnant to the subject or context thereof, include its successors and assigns) has floated a Venture Capital fund by the name of "Venture Capital Fund for Scheduled Castes" (hereinafter referred to as "VCF-SC") to promote entrepreneurship among the Scheduled Castes and to provide concessional finance to them.

WHEREAS VCF-SC has been set up as a Trust Fund under the registered Trust Deed. IFCI Ltd as settler, has entrusted the Fund to IL& FS Trust Company Ltd., a company incorporated under the Companies Act, 1956 having its registered office at IL& FS Trust Company Limited, Plot No. C 22, G- Block, Bandra Kurla Complex, Bandra (East), Mumbai- 40005 as Trustee. Venture Capital Fund for scheduled castes has been registered with Securities Exchange Board of India (SEBI).

WHEREAS IFCI Venture has been appointed as Investment Manager of VCF-SC by the Trustee to manage, invest and provide administrative services to VCF-SC in accordance with the provisions of Investment Management Agreement entered by it with the Trustee. IFCI Venture has the necessary powers to grant to the company the financial assistance hereunder and to enter into this Agreement.

WHEREAS the company is desirous to set up a factory for the production of Ready Mix Concrete (RMC) with an installed capacity of 48,000 Cubic. Mt. p.a. (hereinafter referred to as "Project").

AND WHEREAS IFCI Venture has agreed to finance a part i.e. **Rs.2,14,00,000/-** (Rupees Two Crore Fourteen Lakh Only) towards the total project cost Rs.3,18,00,000/- (Rupees Three Crore Eighteen Lakh Only) by way of subscription to i) **Optionally Convertible Debentures (OCDs):** 2,13,000 OCDs of Rs. 100/- each, at par, aggregating to Rs. 2,13,00,000; and ii) **Equity Shares:** 1,000 Equity shares of Rs. 100 each, at par, aggregating to Rs. 1,00,000 (Rupees One Lakh Only), on the terms and conditions mentioned in the Investment Agreement dated 14th March, 2018.

WHEREAS

1) IFCI Venture has sanctioned a financial assistance of **Rs.2,14,00,000/-** (Rupees Two Crore Fourteen Lakh Only) to M/s GUNDLATHOTI READY MIX CEMENT INDUSTRY PRIVATE LIMITED, a Company incorporated under Companies Act, 2013 with Corporate Identification Number U74999AP2017PTC107073 and having its Registered Office at 2-204 Annavaram Village Rompucherla Mandal Guntur AP 522603 IN (hereinafter referred to as "the Company or Hypothecator or GRMC") under the Venture Capital Fund for Schedule Caste (VF-SC) on the terms and conditions contained in the Investment Agreement entered into between the Company and IFCI Venture (hereinafter referred to as "the Investment Agreement").

2) One of the conditions of the said Investment Agreement is that the Financial Assistance together with premium, Penal premium/charges, costs, expenses and other monies whatsoever stipulated in the Investment Agreement shall be secured, inter alia, by a **FIRST CHARGE** by way of hypothecation of entire moveable assets which company has purchased/to be purchased from the sanctioned financial assistance of IFCI Venture and contribution of promoters under VCF-SC (more particularly described in the Schedule) including moveable plant, machinery, machinery spares, tools and accessories, modules, furnitures, fixtures, fittings and all other moveables etc. both present and future.

3) IFCI VENTURE has called upon hypothecator to execute these presents which Company has agreed to do in the manner hereinafter expressed.

d. The Promoter of the Corporate Debtor executed the Declaration and Undertaking for Mortgage by deposit of Title Deeds dated 14.03.2018 in favour of the Financial Creditor herein. The relevant extracts is reproduced below:

DECLARATION AND UNDERTAKING

In the matter of Mortgage by deposit of title deeds

By

Srinivasa Rao Gundatoti *alias* Srinivas Rao Gundlathoti, son of Shri Ankaiah Gundatoti, residing 2-204 Annavaram Village, Guntur AP 522603 (**herein referred to as " Mortgagor"**);

to

IFCI Venture Capital Funds Ltd. ("IFCI Venture")

I, *Srinivasa Rao Gundatoti alias* Srinivas Rao Gundlathoti, son of Shri Ankaiah Gundatoti, residing 2-204 Annavaram Village, Guntur AP 522603 (**herein referred to as " Mortgagor"**), do hereby solemnly declare and say as follows:

I am competent to make this Declaration and Undertaking regarding creation of mortgage by deposit of title deeds in favour of IFCI Venture Capital Funds Ltd., (**herein referred to as "IFCI Venture"**) for creation of a valid mortgage as security for securing the financial assistance under Venture Capital Fund For Scheduled Caste (**hereinafter referred as VCF-SC"**) of **Rs.2,14,00,000/-** (Rupees Two Crore Fourteen Lakh Only) in GUNDLATHOTI READY MIX CEMENT INDUSTRY PRIVATE LIMITED by way of subscription to: **i) Optionally Convertible Debentures (OCDs)**: 2,13,000 OCDs of Rs. 100/- each, at par, aggregating to Rs. 2,13,00,000, and ii) **Equity Shares**: 1,000 equity shares of Rs. 100 each, at par, aggregating to Rs. 1,00,000 hereinafter referred to as '**Subscription**' in M/s GUNDLATHOTI READY MIX CEMENT INDUSTRY PRIVATE LIMITED, a Company incorporated under Companies Act, 2013 with Corporate Identification Number U74999AP2017PTC107073 and having its Registered Office at 2-204 Annavaram Village Rompicherla Mandal Guntur AP 522603 IN (**hereinafter referred to as 'the Company'**) setting up a factory for the production of Ready Mix Concrete (RMC) with an installed capacity of 48,000 Cubic. Mt. p.a. (**hereinafter referred to as "Project"**).

1. I say that the I am seized and possessed of or otherwise well and sufficiently entitled to the lands and other immovable properties more particularly described in the Schedules hereunder written together with all buildings and structures thereon attached to the earth or permanently fastened to anything attached to the earth (**hereinafter referred to as "the said immovable properties"**).

2. I further say that the said immovable properties comprises of all that pieces and parcels of lands comprised in and forming part of Non-agricultural property being all piece or parcel of Property bearing Sy No.663/2A to an extent of Ac. 0.32 cents and in Sy No. 664/1 an extent of Ac. 0.63 Cents out of Ac. 3.75 Cents making total of Ac. 0.95 Cents at Annavaram Village, Rompicherla Mandal, Guntur District, Andhra Pradesh and other buildings, structures, erections, etc, constructed and/or to be constructed thereon, both present and future, and being lying and situated at Guntur.

3. I say that the immovable properties of the Mortgagor are outside the purview of the Urban Land (ceiling and regulation) Act, 1976.

4. I say that the Mortgagor has not created any charge(s) or encumbrance(s) on the said immovable properties.

5. I say that the said immovable properties, both present and future, are now proposed to be mortgaged and charged to **IFCI Venture Capital Funds Limited** (hereinafter called "**IFCI Venture**") for financial assistance of Project **Rs.2,14,00,000/-** (Rupees Two Crore Fourteen Lakh Only) advanced to M/s GUNDLATHOTI READY MIX CEMENT INDUSTRY PRIVATE LIMITED, a Company incorporated under Companies Act, 2013 with Corporate Identification Number U74999AP2017PTC107073 and having its Registered Office at 2-204 Annavaram Village Rompicherla Mandal Guntur AP 522603 IN (hereinafter referred to as "the Company/ GRMC") by IFCI Venture under Venture Capital Funds For Scheduled Castes (**hereinafter referred to as "VCF-SC"**) together with interest, additional interest, further interest, liquidated damages, compound interest, Front-end fees, premium on prepayment or on **redemption**, costs, charges, expenses and other monies payable under Investment Agreement dated 14th March, 2018 amended from time to time together with interest, default interest, premium on prepayment or on redemption, costs, charges, expenses and other monies payable by the Company to the IFCI Venture under the respective Investment Agreement on **EXCLUSIVE FIRST CHARGE BASIS**

e. The Agreement for Pledge of Shares dated 14.03.2018 was executed by the Promoters of the Corporate Debtor. The relevant extracts is reproduced below:

AGREEMENT FOR PLEDGE OF SHARES

This Agreement made at New Delhi this 14th March, 2018 by:-

1. Srinivasa Rao Gundatoti *alias* Srinivas Rao Gundlathoti, son of Shri Ankaiah Gundatoti, residing 2-204 Annavaram Village, Guntur AP 522603; and
2. Ashok Gullathoti, son of Srinivasa Rao Gundatoti, residing 2-204 Annavaram Village, Guntur AP 522603

(hereinafter referred to as the 'Pledgers', which expression shall, unless repugnant to the subject or context thereof, include their respective successors, assigns, heirs and executors)

IN FAVOUR OF

IFCI Venture Capital Funds Ltd., a Company within the meaning of the Companies Act, 1956 and having its registered office at IFCI Tower, 61, Nehru Place, New Delhi-110 019 (hereinafter referred to as 'IFCI Venture').

WHEREAS

IFCI Venture has, at the request of the pledgers, sanctioned financial assistance under "Venture Capital Fund for Scheduled Castes" (VCF-SC) of **Rs. 2,14,00,000/-** (Rupees Two Crore Fourteen Lakh Only) in GUNDLATHOTI READY MIX CEMENT INDUSTRY PRIVATE LIMITED by way of subscription to: I) **Optionally Convertible Debentures (OCDs)**: 2,13,000 OCDs of Rs. 100/- each, at par, aggregating to Rs. 2,13,00,000; and II) **Equity Shares**: 1,000 equity shares of Rs. 100 each, at par, aggregating to Rs. 1,00,000 (Rupees One Lakh Only) (hereinafter referred to as 'Subscription') in M/s GUNDLATHOTI READY MIX CEMENT INDUSTRY PRIVATE LIMITED, a Company incorporated under Companies Act, 2013 with Corporate Identification Number U74999AP2017PTC107073 and having its Registered Office at 2-204 Annavaram Village Rompucherla Mandal Guntur AP 522603 IN (hereinafter referred to as 'the Company/ GRMC') on the terms and conditions contained in the Investment Agreement dated 14th March, 2018 executed by and between IFCI Venture and the Company (hereinafter referred to as "Investment Agreement").

ii) One of the conditions in the said Investment Agreement executed by the company, promoters of the company and IFCI Venture is that the said subscription shall be secured, inter alia by pledge of shares held by the pledgers in the Company.

iii) In pursuance of the said Investment Agreement, the pledgers have agreed to pledge the equity shares more particularly described in the schedule hereunder to IFCI Venture and have agreed to execute this Agreement.

iv) The pledgers have the necessary power to enter into this Agreement.

(iv) Pursuant to the Investment Agreement and Deed of Hypothecation executed by the Corporate Debtor, the charge has been created in favour of the Financial Creditor herein on 14.03.2018 with the

Registrar of Companies, which is reflected in the Master Data of the Corporate Debtor, the relevant extract of which is reproduced below:

Ministry Of Corporate Affairs (44)

Date : 03-01-2025 5:14:14 pm

Company Information

CIN	U74999AP2017PTC107073
Company Name	GUNDLATHOTI READY MIX CEMENT INDUSTRY PRIVATE LIMITED
ROC Name	ROC Vijayawada
Registration Number	107073
Date of Incorporation	20/11/2017
Email Id	gundlathoti.readymix909@gmail.com
Registered Address	2-204 ANNAVARAM VILLAGE, Guntur, KOMPUCHERLA MANDAL, Andhra Pradesh, India, 522403
Address at which the books of account are to be maintained	-
Listed in Stock Exchange(s) (Y/N)	No
Category of Company	Company limited by shares
Subcategory of the Company	Non-government company
Class of Company	Private
ACTIVE compliance	ACTIVE Compliant
Authorised Capital (Rs)	1,10,00,000
Paid up Capital (Rs)	92,27,000
Date of last AGM	30/09/2024
Date of Balance Sheet	31/03/2024
Company Status	Active

Jurisdiction	
ROC (name and office)	ROC Vijayawada
RD (name and Region)	RD, South East Region

Index of Charges

Sr. No	SRN	Charge Id	Charge Holder Name	Date of Creation	Date of Modification	Date of Satisfaction	Amount	Address	Whether charge registered by other entity	Asset Holder Name
1	[illegible]	[illegible]	IFCI VENTURE CAPITAL FUNDS LIMITED	14/03/2019	-	-	2,33,00,000	IFCI TOWER,61 NEHRU PLACE,NEW DELHI, , India, 110019	No	-

NOTARY PUBLIC GOVT. OF INDIA

(v) Based on the above facts and circumstances, the VCF-SC has disbursed the amount to the Corporate Debtor for subscription of OCDs.

(vi) As per clause (a) of Article XI of the Agreement, two consecutive defaults at any stage of payment of coupon and/ or redemption/ buy back of OCDs would amount to event of default.

(vii) As per clause (b) of Article XII of the Agreement, the Corporate Debtor has agreed that the Financial Creditor herein has right to take appropriate legal actions.

(viii) It is an admitted fact by the Corporate Debtor that the disbursement under the Agreement has been availed by it.

(ix) After executing the Assignment Agreement, Deed of Guarantee, Deed of Hypothecation, Declaration & Undertaking and Pledge Agreement and also availing the loan based on the Agreement dated 14.03.2018, wherein they have agreed that the Financial Creditor herein shall have right to take appropriate legal actions in the event of default, the Corporate Debtor would be estopped from taking another stand that the Financial Creditor herein cannot file the Section 7 Application, and the same would not be a valid ground based on the rule of estoppel.

(x) After default by the Corporate Debtor, the Financial Creditor issued the recall notice dated 02.07.2024, the relevant extract of which is reproduced below:

IFCI VENTURE

BY REGD.AD/E-MAIL

Ref: IFCI Venture/Legal/GRMCIPL/2024-25/ July 02, 2024

M/s Gundlathoti Ready Mix Cement Industry Private Limited (Borrower) — 20105542
2-204, Annavaram Village,
Rompucheria Mandal, Guntur,
Andhra Pradesh- 522603

Mr. Gundathoti Srinivasa Rao (Director/Guarantor) — 20105543
D.No.: 663-2A, 66A-1A,
Narasaraopet to Rompicheria Road,
Annavaram Village Panchayat,
Rompicheria Mandal, Guntur Dist.

Mr. Gullathoti Ashok (Director/Guarantor) — 20105544
2-204, Annavaram Village,
Rompucheria Mandal, Guntur,
Andhra Pradesh- 522603

Dear Sir(s),

RECALL NOTICE

Re: Financial Assistance of Rs. 2.14 Crore (Rupees Two Crore Fourteen Lakh Only) sanctioned by IFCI Venture Capital Funds Ltd., (IFCI Venture) – Defaults Committed by you in payment of outstanding dues

1. IFCI Venture Capital Funds Ltd. (hereinafter referred to as "IFCI Venture") had sanctioned a Financial Assistance of **Rs. 2,14,00,000/-** (Rupees Two Crore Fourteen Lakh Only) to **M/s. Gundalathoti Ready Mix Cement Industry Private Limited** (hereinafter referred to as "the Company or GRMCIPL") a Company within the meaning of the Companies Act, 1956 (1 of 1956) and having its Registered Office at 2-204, Annavaram Village, Rompucheria Mandal Guntur, Andhra Pradesh - 522603 (hereinafter referred to as "Company") by way of subscription to i) Optionally Convertible Debentures (hereinafter referred to as the 'Debentures' or 'OCDs') comprising 2,13,000 OCDs of Rs. 100/- each, at par, aggregating to Rs. 2,13,00,000/- and ii) 10,000 Equity Shares of Rs. 10 each at par aggregating to Rs.

NOTARY PUBLIC GOVT. OF INDIA

1,00,000 (Rupees One Lakh Only) on the terms and conditions contained in the Investment Agreement dated 14 March, 2018 executed by and between the Company, **Mr. Gundathoti Srinivasa Rao**, and **Mr. Gullathoti Ashok** (hereinafter referred to as "Promoters") and IFCI Venture under VCF-SC. The total financial assistance of **Rs. 2,14,00,000/- (Rupees Two Crore Fourteen Lakh Only)** was disbursed to the company in tranches.

2. The Company, for securing the said financial assistance, had given the following securities: First charge on assets created in the project with assistance from IFCI Venture under VCF-SC and contribution from promoters:

   a) First charge by way of hypothecation on all the present and future movable assets of the Company such as plant & machineries, furniture & fixtures, fittings, showpieces, etc.;
   b) First charge by way of equitable mortgage by deposit of original title deeds has been created on Property bearing Survey. No. 663/2A to an extent of Ac. 0.32 cents and in Survey. No. 664/1 an extent of Ac. 0.63 cents out of Ac. 3.75 cents making a total of Ac. 0.95 cents at Annavaram Village, Rompicherla Mandal, Guntur District, Andra Pradesh.
   c) Other securities
      - Pledge of 51% unencumbered equity shares held by Promoters in the company.
      - Personal Guarantee of promotors
      - Post dated Cheques for coupon payment and redemption of OCDs as per the redemption schedule

   (More particularly described in Annexure-A)

3. Further you have failed to make payment of coupon for consecutive two quarters since 30.09.2020. As per clause 11 (a) of the Investment agreement, whereby it has been agreed that there will be event of default if Company is failed to make a payment of coupon for the two consecutive defaults. The said clause is mentioned hereunder for reference:

   Article XI

Events of Default

(a). Two consecutive defaults at any stage of payment of coupon and/o redemption/buyback of OCDs/Equity as per the schedule given above;

4. Further, IFCI Venture, advised the company, promoters for remitting the outstanding amount and had also sent various communications to the Company vide letters, emails, phone calls, etc. for remitting the dues under VCF-SC However, the promoters have not made any payment to clear the dues so far even after continuous persuasion and ample opportunities given by IFCI Venture and the default is in continued default since 30.09.2020.

5. As per Clause 9.3 of the said Investment Agreement, in the event of default in redemption of debentures and buyback of equity as per terms contained therein or any other default in adhering to any of the terms and conditions of the Investment agreement, IFCI Venture shall be at liberty to recall the entire assistance and in such an event the company/promoters shall be under obligation to repay the entire disbursed financial assistance together with the coupon interest @10% p.a. It is to inform that even after giving various reminders & ample opportunities; you have failed to honor your commitment towards the payment of outstanding dues on OCDs held by IFCI Venture under VCF-SC.

6. In view of continued default in payment of outstanding dues for consecutive two quarters, IFCI Venture hereby recall the financial assistance disbursed to **M/s. Gundalathoti Ready Mix Cement Industry Private Limited** and call upon the Company and its Promoters /Guarantors to make payment of entire financial assistance along with coupon / interest as envisaged in the Investment Agreement forthwith.

7. We hereby call upon the Company and Promoters /Guarantors to pay an amount of Rs.2,71,79,781/- (Rupees Two Crore Seventy-One Lakh Seventy-Nine Thousand Seven Hundred Eighty-One Only) calculated as on March 31, 2024 including default coupon along with other coupon interest/ expenses till such time the outstanding amount is paid off in full. (More particularly described in Annexure-B).

8. The notice is further given that consequent upon the venture having called off and financial assistance having recalled by us, the said outstanding amount including principal and coupon interest of the assistance, as mentioned in para-7 above have become payable forthwith and you are liable to pay default coupon rate @ 10% p.a. in terms of the said Investment Agreement till the entire outstanding dues together with interest and other dues are paid off in full.

9. We, therefore, hereby call upon the Company and the Promoters/guarantors, to pay forthwith the said sum of Rs.2,71,79,781/- (Rupees Two Crore Seventy One Lakh Seventy Nine Thousand Seven Hundred Eighty One Only) **calculated as on March 31, 2024** as aforesaid together with coupon calculated as stated above from the date of this notice and other money that may become due and payable by you to us up to the date of repayment thereof, **within 15 days from the date of this notice.** In default of your not making payment to us as aforesaid within 15 days as stipulated above, it will be presumed that you/ the company are unable to pay their debts, rendering them liable for a recovery suit, insolvency proceedings & other legal actions as may be deemed fit under the laws. We shall further, be constrained to enforce the security of properties mortgaged/ hypothecated, pledge of shares and/or take legal proceedings against company/promoters & guarantors, and in such an event company/promoters & guarantors shall also be held liable for all costs, charges and other expenses which may be incurred by us in this behalf, in addition to the said outstanding amount.

Yours Faithfully,

(Authorized Signatory)
IFCI Venture Capital Funds Ltd.

(xi) Subsequent to the recall notice, the Financial Creditor issued the default notice dated 13.09.2024, the relevant extract of which is reproduced below:

IFCI VENTURE

By E-mail/Courier

Ref: IFCI Venture/Legal/GRMCIPL/2024-25/201058D September 13, 2024

M/s Gundlathoti Ready Mix Cement Industry Private Limited (Borrower)
2-204, Annavaram Village,
Rompucheria Mandal, Guntur,
Andhra Pradesh- 522603

Mr. Gundathoti Srinivasa Rao (Director/Guarantor)
D.No.: 663-2A, 66A-1A,
Narasaraopet to Rompicheria Road,
Annavaram Village Panchayat,
Rompicheria Mandal, Guntur Dist.

Mr. Gullathoti Ashok (Director/Guarantor)
2-204, Annavaram Village,
Rompucheria Mandal, Guntur,
Andhra Pradesh- 522603

Dear Sir(s),

"DEFAULT NOTICE"

SUB: Financial assistance of 2.14 Crore to M/s Gundlathoti Ready Mix Cement Industry Private Limited - Default in Repayment of financial assistance under Venture Capital Fund for Scheduled Castes

1. We refer to our several communications, wherein, we had reminded you about your defaults and advised you to clear your outstanding dues at the earliest, but you have utterly failed to repay the outstanding dues of IFCI Venture under VCFSC.

2. Defaults are continuing since long and in-spite of repeated assurances and commitment by you/ your representatives, the financial assistance has not been regularized till date. The default position stand as follows:

Overdue position in the accounts (as on 31st March,2024)

Overdue Principal	2,13,00,000 /-
Overdue Interest (Gross)	57,79,780.5 /-
Total (approx.)	**2,70,79,781/-**

(Default statement enclosed)

3. In view of the above, we again advise you to pay the defaulted amount of **Rs. 2,70,79,781/- (Rupees Two Crore Seventy Lakh Seventy Nine Thousand Seven Hundred Eighty One Only)** calculated as on 31st March, 2024 as aforesaid together with coupon interest calculated as on the date of this notice (including penal coupon interest on 'other events of default') and equity of Rs. 1,00,000/- along with the IRR on equity to be buyback by promoters as a put option exercise by IFCI Venture as per terms of agreement and other moneys that may become due and payable by you to us upto the date of repayment thereof, within 15 days the date of this notice.

4. Further, you are advised to show cause as to why a legal action includes but not limited to filing Insolvency Application to National Company Law Tribunal (NCLT) under IBC, 2016 and other appropriate legal actions under the laws.

5. Kindly note that the above notice is issued without prejudice to the rights and remedies to IFCI Venture available against the Company/Guarantors/Mortgagors.

Yours sincerely,

(Authorised Signatory)
IFCI Venture Capital Funds Ltd
Under VCFSC

(xii) The Corporate Debtor has failed to make the payment of the debt and any contention raised by the Corporate Debtor regarding the existence of debt and default have not been placed on record by the Corporate Debtor.

(xiii) The Corporate Debtor has also acknowledged the debt due to the Financial Creditor herein in its Audited Financial Statements for the Financial Years 2021-22 and 2022-23.

(xiv) In the present case, the record establishes that the Corporate Debtor failed to adhere to the agreed redemption schedule and committed continuing defaults in repayment of the OCDs. Consequently, the Financial Creditor exercised its contractual right of recall by issuing the Recall Notice dated 02.07.2024, followed by the Demand Notice dated 13.09.2024, calling upon the Corporate Debtor to discharge the outstanding financial liability. The record further shows that, despite such recall and demand, the Corporate Debtor failed to discharge the outstanding dues..

(xv) Thus, a conjoint reading of Clauses 2.1 and 2.3, Clause 9.3 of Article IX, Article XI, Article XII and Article XIII of the Investment Agreement makes it evident that IFCIVCFL was vested with substantive contractual rights in respect of the financial assistance, including the right to recall the entire financial assistance upon default, demand repayment with the stipulated interest/default coupon, enforce the securities and take appropriate legal action. These provisions assume significance, while considering the objection raised by the Corporate Debtor as to the locus standi of IFCIVCFL to maintain the present Application under Section 7 of the Code. The Financial Creditor herein, therefore, cannot be regarded as a mere Investment Manager having only administrative or ministerial functions. The contractual documents expressly confer upon IFCIVCFL substantive and enforceable rights arising from the financial transaction, including the right to recall the entire financial assistance and to take appropriate legal action upon default. The exercise of such contractual rights by issuance of the Recall Notice and Demand Notice further demonstrates the nature and extent of the authority vested in the Financial Creditor herein ,under the contractual framework.

(xvi) In view of the foregoing discussion, we are of the considered view that the objection raised by the Corporate Debtor as to the locus standi of the Financial Creditor is devoid of merit. The contractual documents placed on record expressly confer upon IFCIVCFL the right to recall the financial assistance and to take appropriate legal action upon default. Accordingly, the Financial Creditor has the requisite authority to maintain the present Application under Section 7 of the Code.

19. The next issue for consideration before us is **"Whether the Debt in the present Application comes under the definition of Financial Debt under section 5(8) of the Code."**

(i) As per Section 5(8) of the Code, 'financial debt' means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument. The relevant extract of the provision is reproduced below:

> (8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—
>
> xxxxx
>
> (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(ii) In the present Application, the Financial Creditor financed Rs.2,13,00,000/- by way of subscription of 2,13,000 OCDs of Rs.100/- each and the Corporate Debtor/ Promotors agreed to redeem/ buyback the OCDs on quarterly basis along with coupon rate of 8% p.a. Out of 2,13,000 OCDs, the Corporate Debtor/ Promotors were to redeem/ buyback 1,72,431 OCDs on/ or before 31.03.2023 and the said OCDs brought back by the Promotors automatically converted into interest free unsecured loan or equity shares at the option of the promotors. The outstanding OCDs as on 31.03.2023 shall also be redeemed/ bought back by the Promotors, shall automatically get converted into interest free unsecured loan or equity shares at the option of the Promotors along with coupon rate of 8% p.a. on/ before 31.03.2024.

(iii) If the Promotors fails to redeem/ buyback the OCDs before 31.03.2024, outstanding OCDs as on 31.03.2023 shall be converted into the equity shares at the sole discretion of the Financial Creditor. In case of breach of any terms and condition of the investment agreement, the Financial Creditor has right to recall the financial assistance and the Corporate Debtor/ Promotors would be liable to pay the financial assistance along with default coupon of 12% p.a. on the OCDs.

(iv) For this, we referred to the judgement dated 10.01.2024 in the mater of **“Santosh Kumar Vs. ASK Trusteeship Services Private Limited and Anr., Company Appeal (AT) (Ins.) No. 1575 of 2023”** which relied on its old judgement dated 23.04.2019 **“MAIF**

Investments India Pte. Limited vs. Ind Bharath Energy (Utkal) Limited, Company Appeal (AT) (Ins.) No.597 of 2018" held that the OCDs are financial debt based on the clauses of the agreement.

(v) In the present case, the Article XIII gives the Financial Creditor right to recall the financial assistance along with coupon rate in case of breach of agreement. This implies that the present OCDs qualifies the definition of financial debt under section 5(8) of the Code.

20. The next issue for consideration before us **"Whether the Application based on default date after the Section 10A period is maintainable, if the threshold limit after the Section 10A period crosses the threshold limit."**

(i) The first few redemptions of the OCDs was due on Section 10A period. However, the Financial Creditor filed this Application based on the default, which falls after the Section 10A period for the amount defaulted after Section 10A period. The Financial Creditor rightly relies on the Hon'ble NCLAT Judgment dated 28.01.2026 in the matter of **SREI Equipment Finance Ltd. Vs. R.S. Kamthe Infrastructure Developers Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 116 of 2024**. The Hon'ble Appellate Tribunal held that when section 7 application is based on default committed subsequent to Section 10A and the amount claimed subsequent to Section 10A period is well beyond threshold, application cannot be rejected on the ground that it is barred by Section 10A application. The relevant extract of the judgement is reproduced below:

"11. The above judgments clearly support the submissions of the appellant that when the Section 7 application is based on default committed subsequent to Section 10A period and the amount claimed subsequent to Section 10A period is well beyond threshold, application cannot be rejected on the ground that it is barred by Section 10A application. We only clarify that Section 7 application filed by the appellant has to confine to the default committed subsequent to Section 10A period."

(ii) In the present case, since the Financial Creditor filed the Application for the default amount after the Section 10A period based on the default date after the Section 10A period, the Application is maintainable as default after the Section 10A period crosses the threshold limit.

21. The next issue for consideration before us is **"Whether there is a financial debt and default in repayment thereof, when it became due and payable, which meets the minimum threshold limit of Rs. One crore as required under Section 4 of the IBC?"**

(i) The Financial Creditor as per Part-IV of Form-1 of the Application has stated that the total amount in default as on 31.03.2024 amounts to Rs.1,47,69,875/-, and the outstanding liability of the Corporate Debtor as on 31.03.2026 stands at approximately Rs.3,02,80,733.50 comprising Rs.2,13,00,000 towards overdue principal and Rs.89,80,733.50 towards accrued interest.

(ii) Despite repeated reminders and issuance of recall notice dated 02.07.2024 and demand notice dated 13.09.2024, the Corporate Debtor failed to discharge the financial debt.

(iii) Further, the Corporate Debtor has also acknowledged the subsisting liability in its audited financial statements for the year ending 31.03.2023, which constitutes a valid acknowledgement.

(iv) The Corporate Debtor committed default in repayment of the above financial debt which is due and payable and the default continues to subsist, which is more than the threshold requirement of Rs. One Crore as required under Section 4 of the Code.

22. However, before admission of the Application, this Adjudicating Authority has to satisfy itself that the Application is complete and that no disciplinary proceedings are pending against the proposed Interim Resolution Professional (hereinafter referred to as the "**IRP"**). We have gone through the contents of the Application filed by the Financial Creditor and found the same to be complete. The Financial Creditor has proposed the name of Mr. Mannava Divakara Sarma, having Registration No. IBBI/IPA-001/IP-P01192/2018-2019/11917, as the IRP in the present matter. The written consent of the proposed IRP in Form-2 dated 29.03.2026 is placed at page 259 of the Application, wherein the proposed IRP has affirmed that he is eligible to be appointed as the Resolution Professional in respect of the Corporate Debtor and certified that no disciplinary proceedings are pending against him before the Board or the Indian Institute of Insolvency Professionals of ICAI. The copy of the Authorisation for Assignment in Form B is annexed at page 260(c) of the Application, which shows that his Authorisation was valid

up to 31.12.2026. The relevant extract of the IBBI website is reproduced below:

Name of the IP	Mr. Mannava Divakara Sarma
Registration no	IBBI/IPA-001/IP-P01192/2018-2019/11917
Date of Registration	24-Jul-18
Member of IPA	Indian Institute of Insolvency Professionals of ICAI
Member of IPA Since	01-Jun-18
Member of IPE	
Email Id	mdsarma2003[at]yahoo[dot]com
Address	5-4-11,2/3 ,Brodiepet ,Guntur ,Andhra Pradesh ,522002
Have Valid AFA	Yes
AFA Certificate No.	AA1/11917/02/311226/108720
AFA Valid Upto	31-Dec-26
Total CPE Earned	161
Total Assignments	[illegible]

23. As a sequel to the discussion above, the present Section 7 Application bearing CP (IB)/18/7/AMR/2026 filed by the Financial Creditor under section 7 of the IBC for initiating CIRP against the Corporate Debtor Gundlathoti Ready Mix Cement Industry Private Limited is hereby admitted and accordingly, the moratorium is declared in terms of Section 14 of the Code:

(i) Moratorium under section 14(1) for prohibiting all of the following, namely:

   a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

c. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.

(ii) It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

(iii) The supply of essential goods or services to the Corporate Debtor, as may be specified, shall not be terminated or suspended or interrupted during the moratorium period, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances, as may be specified.

(iv) The provisions of sub-section of section 14(1) shall not apply to such transactions, agreements or other arrangement, as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; and also, to a surety in a contract of guarantee to a corporate debtor.

(v) It is clarified that the provisions of Section 14(1) of the Code shall also apply, where the surety seeks to initiate or continue any action or proceedings against the Corporate Debtor pursuant to the Contract of Guarantee.

(vi) The order of` moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33 as the case may be.

24. We also appoint Mr. Mannava Divakara Sarma, bearing Registration No. IBBI/IPA-001/IP-P01192/2018-2019/11917 Email: mdsarma2003@yahoo.com having Address at 5-4-11, 2/3, Brodiepet, Guntur-522002, Andhra Pradesh, as IRP in the instant matter, with the following directions:

(i) The term of appointment of the aforesaid IRP shall be in accordance with the provisions of Section 16(5) of the Code;

(ii) The aforesaid IRP shall also submit an affidavit to this Adjudicating Authority within 7 days of this Order that he is eligible to be appointed as IRP under Regulation 3 of IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016;

(iii) The IRP shall make all requisite disclosures as per First Schedule under Regulation 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 in the first meeting of the CoC;

(iv) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the IRP and the officers and the managers of the Corporate Debtor shall report to the IRP, who shall be enjoined to exercise all the powers, as are vested with the IRP and strictly perform all the duties, as are enjoined on the IRP under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets, over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18(1)(f) of the Code. The IRP is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

(v) The IRP shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

(vi) The IRP shall cause a public announcement immediately (but not later than three days from the date of his appointment), in terms of

Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the CIRP read with Section13(1)(b) read with Section 15 of the Code calling for the submission of claims against Corporate Debtor;

(vii) The IRP/RP shall prepare the Audited Financial Statements as on date of the CIRP and shall submit before the CoC for consideration.

(viii) The IRP/RP shall also ensure that all the assets appearing in the Financial Statements on the CIRP date have been considered in the valuation report. The IRP/ RP shall send individual communication through post or electronic means along with a copy of public announcement to all the creditors as per last available books of accounts/ financial statements on the CIRP date of Corporate Debtor as prescribed under Regulation 6A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(ix) The Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the IRP in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

(x) The suspended Board of Directors is directed to give complete access to the books of accounts of the Corporate Debtor maintained under Section 128 of the Companies Act, 2013. In case, the books are maintained in the electronic mode, the suspended Board of Directors are to share with the IRP/RP all the information regarding maintaining the backup and regarding service provider kept under Rule 3(5) and Rule 3(6) of the Companies (Accounts) Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the service provider and its location, and also address of the location of the books of accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the Corporate Debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. A reference is made to the provisions of Section 128(5) of the Companies Act, 2013, whereby every company should maintain its books of accounts for not less than eight financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

(xi) In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the Corporate Debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.

(xii) In case of any non-cooperation by the suspended Board of Directors or the statutory auditors, the IRP/RP may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the Corporate Debtor. The suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the Corporate Debtor, particularly for government portals, for various compliances. The IRP is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

(xiii) The IRP/RP is directed to approach the government departments, banks, corporate bodies and other entities with request for information/documents available with those authorities/ institutions/ others pertaining to the Corporate Debtor, which would be relevant in the CIRP. The government departments, banks, corporate bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIRP as per law.

(xiv) The IRP shall, after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority within two days of verification of claims received under Regulation 12(1) of the CIRP Regulations, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee.

(xv) The IRP shall also serve a copy of this order to all relevant statutory departments such as Income Tax, GST (Centre and State), Provident Fund, ESI etc.; Regulators; and trade unions/ employee associations to inform them about the commencement of CIRP.

(xvi) The IRP is directed to file a progress report every month to this Adjudicating Authority.

25. The Financial Creditor is directed to deposit Rs.5,00,000/- (Rupees Five Lakhs Only) with the IRP to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Financial Creditor.

26. A copy of this Order shall immediately be communicated to the Financial Creditor, the Corporate Debtor, IBBI, and the IRP named above by the Court Officer/ Registry of this Adjudicating Authority.

Accordingly, CP (IB)/18/7/AMR/2026 stands admitted.

Sd/-
(UMESH KUMAR SHUKLA)
MEMBER (TECHNICAL)

Sd/-
(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)

Krishna/ RSN