

## **ANNEXURE IV**

### **CONFIDENTIALITY UNDERTAKING**

This confidentiality undertaking has been signed by \_\_\_\_\_, a prospective resolution applicant, having its office at \_\_\_\_\_ acting through Mr./Ms. \_\_\_\_\_, the authorized signatory / authorized representative ("**Resolution Applicant**"), which expression shall, unless repugnant to the context, include its successors, legal representatives, permitted assigns and administrators in business) in favour of Mr. Nirav Kirit Pujara, an insolvency professional having registration no. IBBI/IPA-001/IP-P01450/2018-2019/12285, on \_\_\_\_\_ day of \_\_\_\_\_, 2022 (hereinafter referred to as "**Resolution Professional**" or "**RP**"). WHEREAS Andhra Cements Limited, a company registered under Companies, Act, 1956 (hereafter referred as "**Corporate Debtor**") is under corporate insolvency resolution process vide National Company Law Tribunal, Amravati Bench ("**NCLT**") order dated April 26, 2022.

WHEREAS the Resolution Professional is preparing information memorandum as per Section 29 (1) of the Code and Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in respect of the Corporate Debtor ("**Information Memorandum**").

WHEREAS the Resolution Professional is required to share the Information Memorandum and other relevant information (as defined in Section 29 of the Code) with a prospective resolution applicant after receiving an undertaking from the prospective resolution applicant to the effect that the prospective resolution applicant shall maintain confidentiality of the information contained in the Information Memorandum and any other information shared with such prospective resolution applicant and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under Section 29(2) of the Code.

#### **THEREFORE, the Resolution Applicant hereby declares and undertakes as follows:**

1. The Resolution Applicant declares and undertakes that it will not divulge any information including any financial information of the Corporate Debtor, disclosed to it by the Resolution Professional (or any other person on behalf of the Resolution Professional) and any part of the information contained in the Information Memorandum of Corporate Debtor, prepared as per Section 29(1) of the Code and Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and any other relevant information (as defined in Section 29 of the Code), through oral, electronic or written communication or through any mode (including on a data room), and the same shall constitute "**Confidential Information**". Any information or documents generated or derived by the recipients of Confidential Information that contains, reflects or is derived from any Confidential Information shall also be deemed as Confidential Information.
2. The Resolution Applicant further unconditionally and irrevocably undertakes and declares that:
  - i. the Confidential Information shall be kept confidential by the Resolution Applicant and shall be used solely as allowed under the Code;
  - ii. the Resolution Applicant shall not use the Confidential Information to cause any undue gain or undue loss to itself, the Corporate Debtor, the Resolution Professional or any other person;

- iii. the Resolution Applicant shall comply with all provisions of law for the time being in force relating to confidentiality and insider trading in relation to such Confidential Information;
  - iv. the Resolution Applicant shall protect any intellectual property of the Corporate Debtor which it may have access to;
  - v. the Confidential Information may only be disclosed to and shared by the Resolution Applicant with officers, directors, employees, or advisors of the Resolution Applicant, or, upon prior intimation to the Resolution Professional, with identified co-investors ("**Representative**"), in accordance with applicable laws, including in relation to confidentiality and insider trading, and terms of this confidentiality undertaking on a strict need-to-know basis and only to the extent necessary for and in relation to the corporate insolvency resolution process of the Corporate Debtor, provided that the Resolution Applicant binds such Representative, by way of an undertaking/ agreements, to terms at least as restrictive as those stated in this confidentiality undertaking. The Resolution Applicant shall be responsible for any breach of the confidentiality obligations by any Representative to whom the Resolution Applicant shares the Confidential Information in accordance with this confidentiality undertaking;
  - vi. the Resolution Applicant shall ensure that all Confidential Information is kept safe and secured at all times and is protected from any unauthorised access, use, dissemination, copying, theft or leakage;
  - vii. the Resolution Applicant shall immediately destroy and permanently erase all Confidential Information within 30 days upon being notified to do so by the Resolution Professional or the Corporate Debtor or the liquidator;
  - viii. the Resolution Applicant shall take all necessary steps to safeguard the privacy and confidentiality of the information in the Information Memorandum and shall use its best endeavours to secure that no person acting on its behalf divulges or discloses or uses any part of the Confidential Information, including but not limited to the financial position of the Corporate Debtor, all information related to disputes by or against the Corporate Debtor and any other matter pertaining to the Corporate Debtor as may be specified in the Information Memorandum; and
  - ix. the Resolution Applicant shall be responsible for any breach of obligations under this confidentiality undertaking (including any breach of confidentiality obligations by any Representative) and shall indemnify and hold harmless the Resolution Professional and members of Committee of Creditors for any loss, damages and costs incurred by the Resolution Professional due to such breach of obligations by the Resolution Applicant (or any Representative) or any person acting on its behalf.
3. Notwithstanding anything to the contrary contained herein, the following information shall however not be construed as Confidential Information:
- i. information which, at the time of disclosure to the Resolution Applicant was already in the public domain without violation of any provisions of applicable laws;
  - ii. information which, after disclosure to the Resolution Applicant becomes publicly available and accessible without violation of applicable laws or a breach of this confidentiality undertaking;

- iii. information which was, lawfully and without any breach of this confidentiality undertaking, in the possession of the Resolution Applicant prior to its disclosure, as evidenced by the records of the Resolution Applicant;
  - iv. information that is received by the Resolution Applicant from a third party which is not in breach of its confidentiality obligations in relation to such information; and
  - v. information that is required to be disclosed by the Resolution Applicant (and to the extent required to be disclosed) pursuant to the requirements of applicable laws, or order of a judicial, regulatory or administrative authority or the guidelines of the regulatory/administrative authority or the stock exchange, provided however the Resolution Applicant should use its best endeavours to provide prior intimation of such disclosure to the Resolution Professional. Without prejudice to the aforementioned, in the event such disclosure cannot be avoided, the disclosure shall be limited strictly to the extent required for compliance with the aforementioned law, rules, guideline or order.
4. No representation or warranty has been provided by the Resolution Professional in relation to the authenticity or adequacy of the information provided to the Resolution Applicant, including the Confidential Information, and the Resolution Applicant would not have any claim against the Resolution Professional or any person acting on its behalf or the Corporate Debtor or Committee of Creditors or any member thereof in relation to any information provided in the Information Memorandum.
  5. Nothing in this confidentiality undertaking shall have the effect of limiting or restricting any liability of the Resolution Applicant or Representative arising as a result of fraud or wilful default.
  6. Damages may not be an adequate remedy for a breach of this confidentiality undertaking by the Resolution Applicant or Representative and the Resolution Professional shall be entitled to the remedies of injunction, specific performance and other equitable relief for a threatened or actual breach of this confidentiality undertaking.
  7. The Resolution Applicant hereby represents and warrants that it has the requisite power and authority to execute, deliver and perform its obligations under this confidentiality undertaking.
  8. The terms of this confidentiality undertaking may be modified or waived only by a separate instrument in writing signed by the Resolution Applicant with the prior written consent of the Resolution Professional that expressly modifies or waives any such term.
  9. This confidentiality undertaking and any dispute, claim or obligation arising out of or in connection with it shall be governed by and construed in accordance with Indian laws and the NCLT Hyderabad, Amravati bench shall have exclusive jurisdiction over matters arising out of or relating to this confidentiality undertaking.
  10. The confidentiality undertaking shall be in conjunction to any other undertakings provided by the Resolution Applicant to the Resolution Professional.

Encl: Board resolution authorizing the execution of the undertaking.

Signed on behalf of

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(Name of Resolution Applicant)

By \_\_\_\_\_

\_\_\_\_\_  
(Name and Designation)  
Authorised Signatory

**Notes:**

1. To be executed on a stamp paper of adequate amount, in the state where this document is executed. To also be notarized.
2. Foreign companies submitting EOI are required to ensure that the documents submitted as part of the expression of interest are appropriately apostilled, and stamp duty is paid in India before submission to the Resolution Professional.
3. In case of submission of EOI by a consortium, the undertaking set out above is to be provided by each of the members of the consortium.
4. The execution of this affidavit must be authorized by a duly passed resolution of the board of directors of the prospective resolution applicant.
5. Each page of the undertaking is required to be signed by the prospective resolution applicant at the bottom of the page and on the execution page, the deponent must affix his/her full signature and additionally affix the rubber stamp seal (if any) of the prospective resolution applicant