IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.301
C.P.(IB)/128(AHM)2026

Proceedings under Section 9 IBC

IN THE MATTER OF:

M/s.Kothamangalam Aggregtes Prestressed Concrete Industries ....**Applicant**
V/s
ACC Limited ....**Respondent**

Order delivered on: 31/08/2026

Coram:
Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

SJ/AD/AP

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)

COMPANY PETITION (IB) 128 (AHM) 2026

(Application under Section 9 Read with rule 6 of the Insolvency and Bankruptcy Rules, 2016)

<u>In the matter of:</u>

M/s Kothamangalam Aggregates
Prestressed Concrete Industries
Ayroorapadam, Kothamangalam P.O.,
Ernakulam - 686 692, Kerala
Represented by its Managing Partner

.....Petitioner/
Operational Creditor

Versus

ACC Limited
Adani Corporate House, Shantigram,
S.G. Highway, Khodiyar, Gandhi Nagar,
Gandhinagar, Gujarat, India, 382421

.....Respondent/
Corporate Debtor

Order pronounced on 31.08.2026

Coram:
MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Sd/-

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Present:

For the Petitioner : Mr. Aswin Gopakumar, Adv, Mr. Anwin Gopakumar, Adv, Mr. Aditya Venugopalan, Adv, Mr. Mahesh Chandran, Adv, Mr. Saranya Babu, Adv, Mr. Abhishek S, Adv Mr. Rohit P, Adv and Ms. Gopika B S, Adv

For the Respondent : Mr. Rashesh Sajanwala, Sr. Adv and Mr. Shamik Bhatt, Adv.

JUDGEMENT

1. This application is filed by the Operational Creditor viz, M/s Kothamangalam Aggregates Prestressed Concrete Industries, a partnership firm, through its managing partner and authorized person Mr. Arun David, under Section 9 of Insolvency and Bankruptcy Code, 2016 ("I&B Code, 2016) seeking initiation of Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor viz. ACC Limited for having default of an amount of Rs.1,90,80,600/. The date of default is not mentioned.
2. It is submitted that the Operational Creditor, M/s Kothamangalam Aggregates Prestressed Concrete Industries, had entered into a Letter of Intent and an Agreement dated 21.06.2019 with the Corporate Debtor, ACC Limited, for hiring of six transit mixers. It is submitted that under the said Agreement, Applicant was required to supply transit mixers on hire to the respondent round the clock for at least twenty-eight days in a calendar month in the plant at Kochi for period of three years

Sd/- -SD-from 21.08.2019 till 20.08.2022. The Applicant submits that, under Clause 4 of Schedule B to the Agreement, the Corporate Debtor was liable to pay fixed monthly charges of Rs.1,47,000/- for each Transit Mixer, along with the agreed charges towards diesel consumption and transfer of Transit Mixers between locations.

3. The Applicant submits that, despite having supplied and deployed the Transit Mixers pursuant to the Agreement dated 21.06.2019, the Corporate Debtor delayed and failed to make the contractual payments and sought to avoid its obligations by repeatedly invoking the Force Majeure clause on account of COVID-19 vide email dated 27.03.2020 and consequent government regulations. It is contended that, notwithstanding such invocation, the Corporate Debtor continued to seek deployment of Transit Mixers, vide email dated 02.06.2020 including by requesting additional Transit Mixers. The Applicant submits that the Corporate Debtor's invocation of Force Majeure was contrary to the prevailing Government orders, as construction activities had been permitted to resume from 22.04.2020 and further submits that the same was brought to the attention of respondent with email dated 04.06.2020. The Applicant further submits that the Corporate Debtor again

invoked Force Majeure vide email dated 25.07.2020 despite such relaxation. The Applicant submits that five drivers and helpers were available at the ACC premises for operation of the Kochi Plant, which was accepted by respondent and the understanding regarding deployment of the Transit Mixers, drivers and helpers was subsequently confirmed through email dated 06.08.2020.

4. The Applicant further submits that the Corporate Debtor furnished miscalculated statements which were addressed through credit notes and subsequent communications. It is contended that the Corporate Debtor thereafter requested removal of two Transit Mixers vide email dated 11.05.2021 citing liquidity concerns. The Applicant submits that it accordingly raised invoices in accordance with the contractual terms, under which payment was required within one month of raising the invoice, but the Corporate Debtor failed to clear the outstanding dues and only subsequently replied to the demand notice dated 29.09.2022 on 15.11.2022.

5. Applicant has relied upon following documents:

   a) Demand Notice dated 29.09.2022 along with proof of delivery.
   b) Letter of Intent dated 21.06.2019.
   c) Agreement for Hiring of Transit Mixer bearing Document No. ACCC/TM/Bang/26 dated 21.06.2019.

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d) E-mail communications exchanged between ACC Limited and Kothamangalam Aggregates between 27.03.2020, 02.06.2020, 04.06.2020, 25.07.2020 26.07.2020, 06.08.2020, 08.09.2020, 09.09.2020, 11.05.2021, 01.10.2021 and 23.01.2022.

e) Reply Notice dated 15.11.2022 issued by ACC Limited to the Demand Notice dated 29.09.2022.

f) Form C filed before NeSL Information Utility bearing Unique Debt Identifier No. AAFFK4799M_S22-23/19.

g) MCA Master Data of the Corporate Debtor.

6. The Respondent/Corporate Debtor (CD) has filed written submission contending maintainability of the petition wherein it is alleged that the present petition is not maintainable for non-compliance with the mandatory requirements of Sections 8 and 9 of the IBC, 2016. It is submitted that the Petitioner relies upon Tax Invoice No. S22-23/19 dated 28.09.2022 for an alleged operational debt of Rs.1,90,80,600/- and issued the demand notice under Section 8 of the IBC on 29.09.2022. It is contended that under Clause 5(a) of the Agreement dated 21.06.2019, the Petitioner was required to submit invoices for the services rendered on a weekly/monthly basis and the Respondent was required to make payment within 30 days from submission of a valid tax invoice. It is contended that if the said invoice was valid and legitimate, the payment could have become due only upon

expiry of the stipulated period of 30 days, i.e. on or after 28.10.2022, and consequently there was no debt due or default as on 29.09.2022 when the demand notice was issued. The Respondent therefore submits that the demand notice was premature and invalid and, consequently, the mandatory requirement of a valid notice under Section 8, which is a condition precedent for initiation of proceedings under Section 9 of the IBC, was not fulfilled.

7. The Respondent further contending that under the Agreement dated 21.06.2019, invoices were required to be raised monthly/weekly after completion of the requisite service period and submission of log sheets, and that the alleged default, if any, would consequently arise separately in respect of each invoice upon expiry of 30 days therefrom. It is submitted that the invoice relied upon by the Petitioner in present petition refers to hire charges for a period of 24 months, was not raised within the time stipulated under the Agreement and, by the time invoice was raised on 28.09.2022, the alleged claim of the Petitioner had become time barred going by the Petitioner's own description of hire period mentioned in the invoice. It is further contended by the Respondent that the Petitioner's case is that the Corporate Debtor was required to make payment towards the hire charges

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of the Transit Mixers within 30 days of hiring, any alleged default for the period from 01.09.2020 to 24.03.2021 would be barred by Section 10-A of the IBC. It is further contended that the alleged defaults in respect of the periods of hire up to 31.07.2022 would be barred by limitation, as the corresponding defaults would have occurred at different points of time on or before 30.08.2022, whereas the petition was filed only on 17.09.2025, i.e., beyond three years from the date of such alleged defaults. It is lastly contended that the alleged operational debt pertaining to the period from 01.08.2022 to 20.08.2022, stated to be Rs.6,93,840/-, even if taken into consideration and the petition is treated as being confined to the said period, would fall below the minimum threshold prescribed under Section 4 of the IBC and, therefore, could not sustain the present petition..

8. The Respondent further contends that, in its reply dated 15.11.2022 to the demand notice dated 29.09.2022, it had unequivocally disputed the demand raised by the Petitioner. It is submitted that the Petitioner has not placed on record any communication wherein the Respondent has admitted the alleged debt. The Respondent further contends that, under the terms of the Agreement dated 21.06.2019, hire charges for the Transit Mixers were payable only in respect of the Transit Mixers

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actually engaged/employed by the Respondent. It is stated that the Petitioner had earlier raised invoices for the period up to 31.05.2021 in accordance with the said contractual arrangement, claiming hire charges only for the number of Transit Mixers actually engaged/employed by the Respondent, and not in respect of all 6 Transit Mixers. It is submitted that the Respondent had duly made payment against all such invoices and further contended that Petitioner did not engage/employ any Transit Mixers after 31.05.2021.

9. The Respondent further contends that the Petitioner had raised monthly invoices up to 31.05.2021, against which payments were duly made by the Respondent, and thereafter, instead of raising regular monthly invoices, the Petitioner raised a consolidated invoice dated 28.09.2022 for the period from 01.09.2020 to 20.08.2022, which Respondent contends that it is an afterthought. It is submitted that, if the claim were genuine, the Petitioner ought to have raised complete invoices for the period up to 31.05.2021 and thereafter regular monthly invoices for the period from 31.05.2021 to 20.08.2022. The Respondent further contends that the Petitioner issued the demand notice under Section 8 of the IBC on 29.09.2022, i.e., on the very next day after issuance of the aforesaid invoice, despite there being no

-Sd/- -SD-default on the part of the Respondent. It is further submitted that the present petition was filed only on 17.09.2025, nearly three years after issuance of the demand notice dated 29.09.2022. The Respondent also points out that the defects in the petition were communicated on 03.10.2025, but were removed only on 01.04.2026, after the petition had earlier been dismissed for non-removal of defects. It is further contended that the petition does not disclose any specific date of default. Respondent, being a listed public company, submits that as per information available in the public domain, it had recorded a standalone net profit after tax of Rs.2,424.56 crores for FY 2024-25.

10. Heard the counsels for the petitioner as well as the respondent and perused the documents available on record.

11. One of the defences of respondent is that the application is barred by limitation. According to the respondent as per terms of the agreement dated 21.06.2019, the petitioner was required to submit the invoice for the certain service provided once in a week/month to the respondent and the respondent was required to make payment against the valid tax invoice within 30 days from the date of the submission. He further stated that the assuming tax invoice No. S22-23/2019 dated 28.09.2022 was

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valid and legitimate, the respondent was required to make payment against it on or before 28.10.2022 and thereafter it will be in default. However, the petitioner issued demand notice on 29.09.2022, which is thus illegal and invalid. The respondent further stated that on that date there was no debt due and thus no default. As per the agreement, the default would arise separately upon expiry of each invoice. The present invoice refers to higher charges for the period of 24 months which were not raised within time prescribed under the agreement. And the invoice raised on 28.09.2022 is time barred. The respondent has given calculation of dates when invoice to be raised and when it will be under default. In the agreement it was also made clear that charges for TMs were payable only if the same were engaged by the respondent. The respondent has made payment against all the invoice which were used by it. The respondent further submitted that the petitioner had already raised monthly invoices for the period to 13.05.2021 and it was paid by respondent. Thereafter, the petitioner raised consolidated invoices for the period from 01.09.2020 to 20.08.2022, which is an afterthought.

12. As against this the petitioner submitted that as per the agreement read with schedule of the CD has to pay hire charges

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of Rs. 1,47,000/- Per Transit Mixer Per month within 30 days from the date of the submission of tax invoice. The Operational creditor deployed six new TMs with staff on 15.08.2019 and continued till the CD invoke force majeure, reducing number of deployed mixers. On 08.09.2020, the CD furnished month wise statement of June, July & August 2020 and the OC confirming the same. The Operational Creditor also acknowledged liability in reply notice on 15.11.2022.

13. The OC further stated that the consolidated tax invoice sets out month wise break up of higher charges from September 2020 to August 2022. The OC further stated that even if the consolidated invoice is considered hire charges for the months of June 2022, July 2022 and Part of August 2022, aggregates to Rs. 20,82,300/- and fell due on September 2022 which are within limitation.

14. As consolidated invoice was raised, the entire amount fall together. The Tribunal can Savour a composite claim and grant relief to the extent referable to default within the limitation. He further submitted that after the reply notice the time begins to run up fresh from 08.09.2020 in respect of all amount than outstanding and expires not earlier than 08.09.2023. The applicant further stated that even if it is found that any claim is

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beyond three years period, the delay is liable to be condoned u/s 5 of the Limitation Act.

Pg 37 (clause5(a)) of agreement provides as under:

"Based on the charges for hiring as aforementioned the Owner/Contractor shall raise tax invoice on ACC. Owner/Contractor shall submit Invoice for the Services provided once in a week/twice in a month to ACC. The payment shall be effected by concerned at ACC by Account Payee Cheque or Electronic Bank Transfer, as the case may be, within 30 days from the date of submission of the Tax Invoice."

15. Clause 8,1(a) also provides that the owner or the contractor may terminate the agreement by serving notice, in case of non-receipt of payment for the continuous period of three months from the company.

16. From this clause it is clear that the invoice are to be raised weekly or twice in a month and not one invoice for years together. It supports the contention of respondents that he has already paid the monthly invoices raised by the OC upto May 2021. The consolidated invoice dated 20.09.2022 is for period from September 2020 till August 2022.

17. Thus invoices from September 2020 to July 2022 is certainly time barred and only the invoice for 01.08.2022 to 20.08.2022 will be in limitation as it will become due after one month. The said invoice is only for an amount of Rs. 5,88,000/- therefore

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even if the amount is break-up, the invoice which comes under limitation is much below the threshold limit.

18. Section 3 of the Limitation Act provides bar of limitation to every suit, appeal or application. There is no question of extension or condonation of delay in the limitation period for filing the fresh petition. Section 5 prescribes extension to any appeal or application which is not applicable to the present case.

19. The alleged acknowledgement, even if, by mail dated 08.09.2020 is considered itself only for further period of three years expiring on 07.09.2023. There is no further acknowledgement of debt given by the respondent. The respondent clearly denied any acknowledgement of date was given by them. Moreover, there is dispute regarding cancellation of agreement for Transit Mixer is there.

20. The OC also relied upon the acknowledgement of liability in the reply notice of respondent dated 15.11.2022.

21. In this notice, from start to end, the CD has denied liability to pay the amount of Rs. 1,90,80,600/- demanded by Operational Creditor. When the liability is clearly denied, it cannot be taken as acknowledgement of debt. Form-D is not filed.

22. In view of the above, we pass the following:

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ORDER

CP (IB) 128 of 2026 is rejected as not maintainable and disposed of.

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DR. V.G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)