

**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 08.06.2020

**THROUGH VIDEO CONFERENCING**

**CAUSE LIST**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittalala  
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 62 /BB/2020	For orders	Sec 9 of I&B code 2016	Harish P	Mahesh M	M/s Chemizol Additives Pvt Ltd	

ADVOCATE FOR PETITIONER/s:

Ms. Mahesh .M

ADVOCATE FOR RESPONDENT/s:

ORDER

CP. (IB) no. 62 of 2020 is disposed of vide separate order. with direction.

  
Member (T)

  
MEMBER (J).



2. Brief facts of the case, as mentioned in the Application/Petition, which are relevant to the issue in question, are as follows:

(1) M/s. Chemizol Additives Private limited (hereinafter referred to as 'Respondent/Corporate Debtor') was incorporated on 13.09.2007, under the Companies Act, 1956 with CIN: U01131KA1997PLC022393 having its registered office at Plot No.19 E & F, Bidadi Industrial Area, 2<sup>nd</sup> Phase, Sector 1 Talakuppa Village, Bidadi, Ramanagar - 562109. The Nominal/Authorised Share Capital of the Company is Rs.5,00,000/- divided into 50,000/- equity shares of Rs. 10/- each. The main objects of the Company are inter alia engaged in the business of lubricant additives Research, development and Manufacturing etc.

(2) The Operational Creditor/Petitioner was an employee of the Corporate Debtor, and the details of his employment are as follows:

Sl. No.	Name	Date of joining	Designation	Employee Code	Salary details per month	Last Salary drawn
1.	Harish	01.09.2015	Project Lead, Tribology	CAPL0079	Rs. 51,132	October 2018

During the year 2018, the Corporate Debtor due to financial crunch expressed his inability to run the Centre and to carry out the works from the said premises, therefore requested the Operational Creditor to work from home vide separate letter written to each of the employee dated 27.08.2018. The Operational Creditor obliging to the request of the Corporate Debtor started working from home from 01.09.2018. Though the Corporate Debtor agreed to pay the salary to the Operational Creditor, he was paid only till October 2018. However, after October 2018, the Corporate Debtor abruptly stopped paying the salary to the Operational Creditor, without

giving any reasons and did not come forward to pay the agreed salary till date.

- (3) Further, Operational Creditor has not been paid his rightful employment due from November 2018. Even though the Operational Creditor continued to serve the Corporate Debtor in good faith hoping that the crisis would be resolved and they would receive their rightful dues. Later, the Operational Creditor realised that there was no sign of improvement of situation of the Corporate Debtor, thus putting the recovery of his salary in jeopardy, with no other option, the Operational Creditor resigned from the job, vide Resignation letter dated 23<sup>rd</sup> June 2019 and thereby he was relieved by the Corporate debtor, vide letter dated 10.07.2019.
- (4) The Corporate Debtor acknowledged the dues that they owed to Operational Creditor at the time of his resignation and promised to pay the same at the earliest. However, the Corporate Debtor deliberately avoiding the obligation to pay the due amount of Rs. 4,40,100 /- (Rupees Four Lakhs Forty Thousand One Hundred only) towards the arrears of salary from November 2018 to July 2019 and bonus payable (Rs. 4,26,100/- + 14,000/-). Further the Operational Creditor in addition to salary is also eligible for the payment of bonus every year. Despite of several reminders for the payments towards the salary, the Corporate Debtor neglected all the demands and failed to make payments to the Operational Creditor. Therefore, the Operational Creditor issued a Demand notice dated 17.10.2019, under provisions of Code by demanding it to pay unpaid salaries from the Corporate Debtor. Having failed to pay and even not responded to the notice, the instant Petition is filed seeking the relief as stated supra.



3. Heard Mr. Mahesh.M learned Counsel for the Applicant/Petitioner through **Video Conference**. We have carefully perused the pleadings of the party and extant provisions of the Code and the Rules made thereunder.
4. Mr. Mahesh. M, the Learned Counsel for the Petitioner, while reiterating various averments made in the company petition, as briefly stated supra, has further submitted that the Petitioner being an small employee living on the salary, has no other remedy except to approach this Adjudicating Authority hoping instant justice. The engagement of the Petitioner as an employee, and the salary due from the Respondent is not at all in dispute. The Petitioner tried his level best to recover the salary due before invoking the provisions of the Code seeking to initiate CIRP against the Respondent. Further, the Respondent has committed a similar defaults in respect of the several employees, who have filed cases against it. The Adjudicating Authority may take serious view of the matter as the Respondent even failed to respond even to the notice issued by it. Therefore, he urged the Adjudicating Authority to initiate CIRP in respect of the Respondent as prayed for.
5. It is not in dispute that the Petitioner is an employee having worked with the Corporate Debtor/Respondent, and the salary dues to be payable for him. The instant application is filed with an intention to recover the salary dues and other consequential dues like bonus etc. However, the object of the Code is not to recover the alleged dues, it is meant for initiation of CIRP on justified reasons. There is an Employment Agreement dated 01.09.2015 executed between the Petitioner and the Respondent, wherein Clause 6 provides 'governing law' which reads as under:

*"6.1 This Agreement will be governed by the laws of India.*

*6.2 The employee agrees that any dispute or controversy arising out of relating to, or concerning any interpretation, construction, performance or breach of this agreement, shall*

*be resolved by arbitration according to the Indian Arbitration and Conciliation Act 1996 as amended. There shall be Sole Arbitrator appointed by the Company. The place of arbitral proceedings shall be Bangalore, India. English shall be the language of the arbitral proceedings. The arbitral award shall be final and binding upon both the parties”.*

6. For an aggrieved party, knocking at the doors of Judiciary would be last resort. Such party should exhaust alternative remedy available by virtue of Agreement(s) they themselves have voluntarily executed and the terms and conditions in those Agreement(s) would bind them. In the instant case, as stated supra, approaching this Adjudicating Authority is not only the remedy available for the Petitioner as per the terms of agreement. In terms of Clause 6 of the Agreement, as stated supra, both the parties agreed to settle the issue by resorting to *Indian Arbitration and Conciliation Act 1996*. Therefore, the Petitioner can also avail alternative remedy available in the Agreement, which is binding on both the parties. Since the Petitioner has relied upon the very terms and conditions of the Agreement in support of its claim, it cannot selectively choose to insist payment in terms of the agreement, without making/ invoking provisions of alternative remedy.
7. It is a settled position of law that the provisions of the Code cannot be invoked to settle the dispute(s) or to recover the alleged outstanding amount. Admittedly the Petitioner has not invoked other remedies available except the provisions of the code by issuing demand notice. The mere acceptance of the debt in question by the Respondent would not automatically entitle the Petitioner to invoke the provisions of the Code, unless the debt and default is undisputed and proved it to the satisfaction of the Adjudicating Authority. As per the copy of Annual Returns for the Financial year 2017-18, filed by the Petitioner in respect of the Respondent Company, its turnover and net worth are Rs. 103,322,162 and Rs. 1,325,365,853/- respectively. Therefore, the Respondent Company prima facie appears to be solvent Company so as to resolve the issue of outstanding



amount in question. The NCLT is conferred power, even to refer the matter pending before it, to Mediation and Conciliation. U/s 442 of the Companies Act, 2013. The Adjudicating Authority, being NCLT, U/s 60(1) of the Code, can suo motto refer the matter to either Mediation and Conciliation or to Arbitration to settle the dispute. Since, there is already Arbitration clause is available in the Agreement in question, the Petitioner can be permitted to invoke Arbitration clause in respect of the issue in question.

8. For the aforesaid reasons and circumstances of the case, and the law on the issue, we are of considered view that instead of initiating exparte CIRP proceedings, the instant Company Petition can be disposed of with the directions as mentioned below, duly following the principle of ease of doing business.
9. In the result **CP (IB) No. 62/BB/ 2020** is disposed of with the following directions:
  - (1) The Respondent is directed to settle the issue amicable, failing which, the Petitioner is at liberty to invoke the arbitration clause as available under Clause-6 of the Employment Agreement dated 01.09.2015, and the Respondent is directed to participate in such Arbitration, as per law, in order to resolve the issue rather than to aggravate the issue.
  - (2) The Petitioner is also granted liberty to invoke appropriate remedy, as per law, in case, the Petitioner is aggrieved by the proceedings passed during Arbitration to be invoked in pursuance to this order.
  - (3) No order as to costs.

  
**ASHUTOSH CHANDRA**  
**MEMBER, TECHNICAL**

  
**RAJESWARA RAO VITTANALA**  
**MEMBER, JUDICIAL**