

NATIONAL COMPANY LAW TRIBUNAL
AND NATIONAL COMPANY LAW
APPELLATE TRIBUNAL


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GENESIS OF NATIONAL COMPANY LAW TRIBUNAL

- It all started way back in 1999 when Justice Eradi Committee, constituted by the Govt of India in 1999 headed by Justice V. Balakrishna Eradi, a retired Judge of the Supreme Court of India, submitted its report recommending, *inter alia*, setting up of a National Company Law Tribunal (NCLT in short) to be vested with the functions and power with regard to rehabilitation and revival of sick industrial companies, a mandate presently with BIFR, AAIFR under SICA.

ARGUMENTS FAVOURING TRIBUNALISATION

The courts function under archaic and elaborate procedural laws and highly technical Evidence Law. To ensure fair play and avoidance of judicial error, the procedural laws provide for appeals, revisions and reviews, and allow parties to file innumerable applications and raise vexatious objections as a result of which the main matters get pushed to the background. All litigation in courts get inevitably delayed which leads to frustration and dissatisfaction among litigants.



In view of the huge pendency, courts are not able to bestow attention and give priority to cases arising under special legislations. Therefore, there is a need to transfer some selected areas of litigation dealt with by traditional courts to special Tribunals. As Tribunals are free from the shackles of procedural laws and Evidence Law they can provide easy access to speedy justice in 'cost-affordable' and 'user friendly' manner.

MEMBERS OF THE TRIBUNAL

- ▶ Tribunals should have a Judicial Member and a Technical Member. The Judicial Member will act as a bulwark against apprehensions of bias and will ensure compliance with basic principles of natural justice such as fair hearing and reasoned orders. The Judicial Member would also ensure impartiality, fairness and reasonableness in consideration. The presence of Technical Member ensures the availability of expertise and experience related to the field of adjudication for which the special Tribunal is created, thereby improving the quality of adjudication and decision-making.

COMPANIES (AMENDMENT) ACT, 2002

- In line with the Eradi Committee Report and long felt need and widespread criticism from different quarters, we saw the Companies (Amendment) Act, 2002 and repeal of SICA (Sick Industrial Companies Act) proposed to the new regime of tackling corporate rescue and insolvency procedures in India with a view to creating confidence in the minds of all the stakeholders like investors, creditors, labour and shareholders. The amended Act suggested for change by combining the powers of Courts, the BIFR and the CLB in one specialised NCLT.

INSERTION OF CHAPTER 1B & 1C IN Companies Act, 1956

- Accepting the recommendations of Eradi Committee, Government passed Company (Second amendment) Act, 2002 inserting chapters 1B and 1C in Companies Act, 1956 which provided for establishment of National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) to take over the functions which were being performed by Company Law Board (CLB), Board of Industrial and Financial Reconstruction (BIFR), Appellate Authority for Industrial and Financial Reconstruction (AAIFR) and the High Court.

CHALLENGE TO NEW INSERTIONS

➤ The Madras Bar Association, apprehending an encroachment into their exclusive professional domain by other professionals like practising CMAs, CAs & CSs, challenged the validity of the Chapters 1B and 1C in 2002 before the Madras High Court. High Court in its judgment dated 30th March, 2004 held that creation of the tribunal and vesting therein the powers exercised by High Court and Company Law Board was not unconstitutional.

CHALLENGE TO ARTICLE 323B OF INDIAN CONSTITUTION

➤ The petitioner had challenged Article 323B, which, they alleged, diluted the judiciary powers by empowering the executives to sit in judgment over matters requiring judicial experience. It was also argued that the dependence of tribunals on the sponsoring or parent department for infrastructural facilities or personnel may undermine the independence of the tribunal. When the tribunals are formed, they are mostly dependant on their sponsoring department for funding and even space for functioning. The statutes constituting tribunals routinely provide for members of civil services from the sponsoring departments becoming members of the tribunal and continuing their lien with their parent cadre.

PREJUDICED TRIBUNAL MEMBERS

- This is indeed a fact even today when the Tribunals like MSTT, CESTAT etc, with due respect to them have been rolling out judgment after judgment in favour of the Revenue, despite valid grounds raised by the assessees, because their posting and privileges are contingent upon the pleasure of the Government of the day which has appointed them. So there is no denying the facts as argued by the Petitioner, Madras Bar Association.

ARTICLE 323B OF INDIAN CONSTITUTION

➤ Article 323B provides for (1) the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.


➤ (2) The matters referred to in clause (1) are the following, namely:-

➤ (a) levy, assessment, collection and enforcement of any tax;

➤ (b) foreign exchange, import and export across customs frontiers;

➤ (c) industrial and labour disputes;

➤ (d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;

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- (e) ceiling on urban property;
 - (f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A (delimitation of constituencies or the allotment of seats to such constituencies).
 - (g) production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;

EMPOWERMENT FOR CONSTITUTING TRIBUNALS

- Article 323B does not talk about general Corporate Laws related to Companies. That was the reason why the Supreme Court held in its 2010 judgment that the legislative competence of Parliament to provide for creation of courts and tribunals can be traced to Entries 77, 78, 79 and Entries 43, 44 read with Entry 95 of List I, Item 11A r/w Entry 46 of List III of the Seventh Schedule of the Constitution.

LEGALITY OF NCLT

- Articles 323A and 323B of the Constitution are enabling provisions which enable the setting up of tribunals contemplated therein; and that the said Articles, however, cannot be interpreted to mean that they prohibited the legislature from establishing tribunals not covered by those Articles, as long as there is legislative competence under the appropriate Entry in the Seventh Schedule. And hence it held that Article 323B had nothing to do with the constitution of NCLT and that its formation was valid and constitutional.

HIGH COURT'S STAND ON CH 1B & 1C

➤ The Madras High Court held that several provisions of chapters 1B and 1C i.e. Sections 10-FD(3)(f)(g)(h), inter-alia, were defective and thus violative of basic constitutional scheme of separation of power and independence of judiciary; and that unless the provisions were amended by removing the defects, it would be unconstitutional to constitute NCLT and NCLAT.

CHALLENGE OF MADRAS HIGH COURT ORDER

- In 2006, the Union of India went in Appeal against the Madras High Court Order of 2004, before the Supreme Court of India and the judgment of Supreme Court came on 11th May, 2010. In the said 2010 Judgment, while the constitution bench of the Supreme Court held the NCLT and the NCLAT as envisaged by the Part 1B and Part 1C of the Companies Act, 1956 (the **1956 Act**) to be a fit and proper body, it agreed with the views of the Madras High Court (wherewith the issue came to the Supreme Court in appeal) that certain provisions of Part 1B and Part 1C of the 1956 Act relating to the appointment and the eligibility for membership of the NCLT and the NCLAT were "defective" and required rectification (by way of amendment).

ELIGIBILITY OF CMAs TO BE TECHNICAL MEMBER

- The provisions of Part 1B & Part 1C of the Companies Act, 1956, as replicated in Chapter XXVII of the Companies Act, 2013, related to NCLT/NCLAT laid down the terms for constitution of the Tribunal, qualifications of the judicial and technical members, etc. Accordingly, CMAs/CAs/CSs in practice for more than 15 years were eligible to become technical members of the Tribunal. It also laid down that even Jt. Secretary rank bureaucrats and Class A Officers were eligible to become technical members, which was objected to by both the Madras High Court as well as the Supreme Court. The Courts directed that only Secretary or Addl. Secretary level officials could be treated as eligible for appointment as technical members.

MISTAKEN NOTION ON TECHNICAL MEMBERSHIP

- There is a mistaken notion that the Courts had objected to professionals like CMAs/CAs/CSs being considered for the post of technical members, which is not correct. In fact, the Supreme Court had categorically stated in their 2010 judgment that only Clauses (c), (d), (e), (g), (h), and later part of clause (f) in sub-section (3) of section 10FD and officers of civil services of the rank of the Secretary or Additional Secretary in Indian Company Law Service and Indian Legal Service can be considered for purposes of appointment as Technical Members of the Tribunal. Clauses (c),(d),(e) relate to CAs, CMAs & CSs.

RECTIFICATION OF PART 1B & 1C

- Pursuant to the 2010 judgment, the rectification to Part 1B and Part 1C of the 1956 Act to operationalize the NCLT and the NCLAT were not carried out. May be because already the 2013 Companies Act was seriously deliberated upon and the Government felt that the changes could be incorporated in the new Act.

CHALLENGE OF COMPANIES ACT, 2013

- In 2014, the Companies Act, 2013 (the 2013 Act) was passed by the Parliament and partially notified into effect; although, the provisions in the 2013 Act relating to the NCLT and the NCLAT were not notified. Although the rectifications to Part 1B and Part 1C of the 1956 Act directed by the Supreme Court in the 2010 Judgment had been included in Chapter XXVII of the 2013 Act, the Madras Bar Association filed its writ petition before the Supreme Court in 2013. The Madras Bar Association prayed for a writ of declaration contending that some provisions of Chapter XXVII of the 2013 Act too suffered from the same defects as those observed in the 2010 Judgment, and therefore should be struck down as unconstitutional.

FINALITY TO CONSTITUTION OF NCLT

On May 14, 2015, the Constitution Bench of the Supreme Court led by Chief Justice HL Dattu partly allowed the writ petition filed by the Madras Bar Association wherein it struck down the validity of Technical Member appointment & Selection Committee constitution but it upheld the validity of the NCLT / NCLAT under the Companies Act, 2013. The provisions relating to NCLT & NCLAT were also challenged under the Companies Act, 1956 (in Union of India Vs R. Gandhi, President, Madras Bar Association), wherein the Supreme Court's Constitution Bench upheld the validity of NCLT / NCLAT and certain provisions relating to constitution of board of company law administration were held as 'unconstitutional'.

NTT -VS- NCLT

- SC completely dismissed Madras Bar Association's reliance on 2014 ruling of SC, wherein the constitution of National Tax Tribunal (NTT) was held as 'unconstitutional'.
- In the present case, the Supreme Court's Constitution Bench rejected Sr. Advocate Arvind Datar's (representing the writ petitioner, Madras Bar Association) contention that UoI Vs R. Gandhi judgment did not deal with constitution of NCLAT. The SC held that the Constitution Bench categorically dealt with the constitutional validity of NCLT & NCLAT under the caption "Whether the constitution of NCLT and NCLAT under Parts 1B & 1C of Companies Act are valid".
- SC remarked that such 'adventurism' on the petitioner's part is totally unfounded and stated that the earlier ruling in UoI Vs R. Gandhi is of Constitution Bench and is binding on the co-ordinate Bench as well.

Apex court differentiated the NTT ruling from NCLT/NCLAT and held that the NTT was a matter where power of judicial review exercised by the High Court was vested in NTT which was sought to be unconstitutional. SC observed that NCLT is the 'first forum' in the hierarchy of quasi-judicial fora set-up under the Companies Act 2013 and stated that NCLT, would not only deal with question of law but would be called upon to thrash out the factual disputes/aspect as well.

With respect to the issue of constitutionality of provisions for appointment of technical members to NCLT/NCLAT, the constitutional bench of SC relied on its earlier ruling in Union of India Vs R. Gandhi and observed that only officers holding ranks of Secretaries or Additional Secretaries can be considered for appointment as Technical members.

CONSTITUTION OF SELECTION COMMITTEE

- The SC held the constitution of Selection Committee (for selecting the Members of NCLT and NCLAT) as invalid and stated that instead of 5 members Selection Committee, it should be 4 members (2 from administrative branch + 2 from judiciary) Selection Committee. The 4-member Selection Committee shall include - Chief Justice, Senior Judge, Secretary in the Finance Ministry and Law Secretary, with the caveat that the Chief Justice will have a casting vote.

PAVING THE PATH TO NCLT

- The recent SC ruling on the constitutional validity of NCLT & NCLAT is one of the biggest leaps for the corporate sector and the professional fraternity. The step will have a positive impact on the corporate restructuring (i.e. mergers and acquisitions, capital restructuring, revival of sick companies and dispute related matters) as the NCLT will not just only replace the Company Law Board (CLB), but will also bring under its umbrella cases filed with the High Courts, Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR).
- It seems that matters pertaining to winding up have been taken out of jurisdiction of NCLT and NCLAT by recent amendment to the Companies Act, 2013 in 2015. However, Section 270 (which are yet to be made effective) onwards still refer to "Tribunal".

CHAPTER XXVII OF COMPANIES ACT, 2013

DEFINITIONS

- 407. In this Chapter, unless the context otherwise requires,—
- (a) "Chairperson" means the Chairperson of the Appellate Tribunal;
- (b) "Judicial Member" means a member of the Tribunal or the Appellate Tribunal appointed as such and includes the President or the Chairperson, as the case may be;
- (c) "Member" means a member, whether Judicial or Technical of the Tribunal or the Appellate Tribunal and includes the President or the Chairperson, as the case may be;
- (d) "President" means the President of the Tribunal;
- (e) "Technical Member" means a member of the Tribunal or the Appellate Tribunal appointed as such.

CONSTITUTING THE NCLT

- 408. The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

QUALIFICATION OF MEMBERS

- 409. (1) The President shall be a person who is or has been a Judge of a High Court for five years.
- (2) A person shall not be qualified for appointment as a Judicial Member unless he -
 - (a) is, or has been, a judge of a High Court; or
 - (b) is, or has been, a District Judge for at least five years; or
 - (c) has, for at least ten years been an advocate of a court.
- Explanation.—For the purposes of clause (c), in computing the period during which a person has been an advocate of a court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he becomes an advocate.

(3) A person shall not be qualified for appointment as a Technical Member unless he

➤ (a) has, for at least fifteen years been a member of the Indian Corporate Law Service or Indian Legal Service out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service; or

➤ (b) is, or has been, in practice as a chartered accountant for at least fifteen years; or

➤ (c) is, or has been, in practice as a cost accountant for at least fifteen years; or

➤ (d) is, or has been, in practice as a company secretary for at least fifteen years; or

➤ (e) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies; or

➤ (f) is, or has been, for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947.

CONSTITUTING NCLAT


➤ 410. The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against the orders of the Tribunal.

QUALIFICATION OF NCLAT MEMBERS

- 411. (1) The chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.
- (2) A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for five years.
- (3) A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience, of not less than twenty-five years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

APPOINTMENT OF MEMBERS OF NCLT/NCLAT

- 412. (1) The President of the Tribunal and the chairperson and Judicial Members of the Appellate Tribunal, shall be appointed after consultation with the Chief Justice of India.
- (2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of—
 - (a) Chief Justice of India or his nominee—Chairperson;
 - (b) a senior Judge of the Supreme Court or a Chief Justice of High Court—Member;
 - (c) Secretary in the Ministry of Corporate Affairs—Member;
 - (d) Secretary in the Ministry of Law and Justice—Member; and
 - (e) Secretary in the Department of Financial Services in the Ministry of Finance—Member.

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- 412(3) The Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee.
 - (4) The Selection Committee shall determine its procedure for recommending persons under sub-section (2).
 - (5) No appointment of the Members of the Tribunal or the Appellate Tribunal shall be invalid merely by reason of a vacancy or any defect in the constitution of the Selection Committee.

HOLDING OF OFFICE

- 413. (1) The President and every other Member of the Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years.
- (2) A Member of the Tribunal shall hold office as such until he attains,—
- (a) in the case of the President, the age of sixty-seven years;
- (b) in the case of any other Member, the age of sixty-five years:
- Provided that a person who has not completed fifty years of age shall not be eligible for appointment as Member:
- Provided further that the Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.

413(3) The chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years.

➤ (4) A Member of the Appellate Tribunal shall hold office as such until he attains,—

➤ (a) in the case of the Chairperson, the age of seventy years;

➤ (b) in the case of any other Member, the age of sixty-seven years:

➤ Provided that a person who has not completed fifty years of age shall not be eligible for appointment as Member:

➤ Provided further that the Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.

REMUNERATION OF MEMBERS

- 414. The salary, allowances and other terms and conditions of service of the Members of the Tribunal and the Appellate Tribunal shall be such as may be prescribed:
- Provided that neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to their disadvantage after their appointment.

VACANCY IN OFFICE

- 415. (1) In the event of the occurrence of any vacancy in the office of the President or the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the President or the Chairperson, as the case may be, until the date on which a new President or Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.
- (2) When the President or the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the President or the Chairperson, as the case may be, until the date on which the President or the Chairperson resumes his duties.

RESIGNING FROM OFFICE

- 416. The President, the Chairperson or any Member may, by notice in writing under his hand addressed to the Central Government, resign from his office:
- Provided that the President, the Chairperson, or the Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

REMOVAL FROM OFFICE

- 417. (1) The Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who—
- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President, the Chairperson, or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member; or Salary, allowances and other terms and conditions of service of Members.

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

- Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (b) to (e) without giving him a reasonable opportunity of being heard.
- 417(2) Without prejudice to the provisions of sub-section (1), the President, the Chairperson or the Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government in which such President, the Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard.

417(3) The Central Government may, with the concurrence of the Chief Justice of India, suspend from office, the President, the Chairperson or Member in respect of whom reference has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government shall, after consultation with the Supreme Court, make rules to regulate the procedure for the inquiry on the ground of proved misbehaviour or incapacity referred to in sub-section (2).

OFFICERS/STAFF OF NCLT/NCLAT

- 418. (1) The Central Government shall, in consultation with the Tribunal and the Appellate Tribunal, provide the Tribunal and the Appellate Tribunal, as the case may be, with such officers and other employees as may be necessary for the exercise of the powers and discharge of the functions of the Tribunal and the Appellate Tribunal.
- (2) The officers and other employees of the Tribunal and the Appellate Tribunal shall discharge their functions under the general superintendence and control of the President, or as the case may be, the Chairperson, or any other Member to whom powers for exercising such superintendence and control are delegated by him.
- (3) The salaries and allowances and other conditions of service of the officers and other employees of the Tribunal and the Appellate Tribunal shall be such as may be prescribed.

BENCHES OF NCLT/NCLAT

419. (1) There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.

(2) The Principal Bench of the Tribunal shall be at New Delhi which shall be presided over by the President of the Tribunal.

(3) The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member:

Provided that it shall be competent for the Members of the Tribunal authorised in this behalf to function as a Bench consisting of single

Judicial Member and exercise the powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order, specify

- Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit.
- (4) The President shall, for the disposal of any case relating to rehabilitation, restructuring, reviving or winding up, of companies, constitute one or more Special Benches consisting of three or more Members, majority necessarily being of Judicial Members.

419(5) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

ORDERS OF THE TRIBUNAL

- 420. (1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.
- (2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:
 - Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.
- (3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

APPEAL AGAINST NCLT ORDER

- 421. (1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.
- (2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.
- (3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

- 421(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

PERIOD OF DISPOSAL

➤ 422. (1) Every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal within three months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

➤ (2) Where any application or petition or appeal is not disposed of within the period specified in sub-section (1), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period not exceeding ninety days as he may consider necessary.

APPEAL BEFORE SUPREME COURT

- 423. Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:
- Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

TRIBUNAL NOT GOVERNED BY CODE OF CIVIL PROCEDURE

➤ 424. (1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

➤ (2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

➤ (b) requiring the discovery and production of documents;

➤ (c) receiving evidence on affidavits;

➤ (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

➤ (e) issuing commissions for the examination of witnesses or documents;

➤ (f) dismissing a representation for default or deciding it *ex parte*;

➤ (g) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

➤ (h) any other matter which may be prescribed.

424(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

➤ (a) in the case of an order against a company, the registered office of the company is situate; or

➤ (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

➤ (4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

JURISDICTION, POWERS & AUTHORITY

- 425. The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that—
 - (a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and
 - (b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.

DIRECTION TO OFFICERS/STAFF

426. The Tribunal or the Appellate Tribunal may, by general or special order, direct, subject to such conditions, if any, as may be specified in the order, any of its officers or employees or any other person authorised by it to inquire into any matter connected with any proceeding or, as the case may be, appeal before it and to report to it in such manner as may be specified in the order.

DEEMED PUBLIC SERVANTS

- 427. The President, Members, officers and other employees of the Tribunal and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

LEGAL IMMUNITY TO TRIBUNAL/MEMBERS

428. No suit, prosecution or other legal proceeding shall lie against the Tribunal, the President, Member, officer or other employee, or against the Appellate Tribunal, the Chairperson, Member, officer or other employees thereof or liquidator or any other person authorised by the Tribunal or the Appellate Tribunal for the discharge of any function under this Act in respect of any loss or damage caused or likely to be caused by any act which is in good faith done or intended to be done in pursuance of this Act.

CONTROL OVER PROPERTY, BOOKS OF ACCOUNTS

- ▶ 429. (1) The Tribunal may, in any proceeding relating to a sick company or winding up of any other company, in order to take into custody under its control all property, books of account or other documents requested, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such sick or other company, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,—
 - ▶ (a) take possession of such property, books of account or other documents; and
 - ▶ (b) cause the same to be entrusted to the Tribunal or other persons authorised by it.

429(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

NO JURISDICTION FOR CIVIL COURTS

430. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

VACANCY NO BAR ON VALIDITY

➔ 431. No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be.

APPEARANCE BEFORE NCLT/NCLAT

432. A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

LIMITATIONS ACT APPLICABLE

➔ 433. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be.

TRANSFER OF PENDING CASES TO NCLT


434. (1) On such date as may be notified by the Central Government this behalf,—

(a) all matters, proceedings or cases pending before the Board Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of the Act;

(b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days;

➤ (c) all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer.



(d) any appeal preferred to the Appellate Authority for Industrial and Financial Reconstruction or any reference made or inquiry pending to or before the Board of Industrial and Financial Reconstruction or any proceeding of whatever nature pending before the Appellate Authority for Industrial and Financial Reconstruction or the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 immediately before the commencement of this Act shall stand abated.

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the Tribunal under this Act within one hundred and eighty days from the commencement of this Act in accordance with the provisions of this Act:

- Provided further that no fees shall be payable for making such reference under this Act by a company whose appeal or reference or inquiry stands abated under this clause.
- (2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.

SPEEDING UP OF JUSTICE

➤ The NCLT / NCLAT formation is welcome step as it will reduce the burden of the Supreme Court, High Courts and CLBs on the corporate law related matters, which will ultimately help in unlocking the value of distressed assets. NCLT / NCLAT being the 'specialized benches' for corporate law related matters, it is expected that the matters will be listed and heard in an expeditious and time bound manner.

ROLE OF CMAs

➤ The formation of NCLT / NCLAT will open wide gates for the practicing Cost Accountants, practicing Company Secretaries, and practicing Chartered Accountants, as they would now be able to represent their client companies in matters requiring Tribunal approval i.e. mergers and amalgamations, capital restructuring, revival of sick companies and shareholders-management dispute matters. Until the formation of the NCLT/NCLAT, the practicing professionals (CMA, CS & CA) could appear only before the CLB and for the matters being heard by the HC and Supreme Court, only Advocates were eligible for arguments and representation. Now all practising professionals (Advocates, practising CMA, practising CS & practising CA) will be treated at par for representation before NCLT / NCLAT.

PREPARATION BY CMAs

- For entering / establishing oneself in the field of NCLT / NCLAT, it would be desirable of a practicing professional to take some efforts for enhancing their skill sets, some of which are listed below:
- (1) Thorough study of the provisions of Companies Act, 2013;
- (2) Thorough study of the Secretarial Standards,
- (3) In-depth analysis and study of the provisions of Companies Act, 2013 as well as 1956 relating to mergers and amalgamations, capital restructuring, revival of sick companies and shareholders-management dispute matters;

(4) Thorough knowledge of the case-laws on the topics relating to mergers and amalgamations, capital restructuring, revival of sick companies and shareholders-management dispute matters;

➤ (5) Developing art of advocacy and soft skill;

➤ (6) Having basic knowledge relating to Tax Laws, Accounting treatments in matters relating to mergers and amalgamations, capital restructuring, revival of sick companies and shareholders-management dispute matters;

CONCLUSION

Now hopefully, the remaining part of the Companies Act, 2013 will be notified and may come into force soon as SC's judgment validates the constitutionality of the NCLT / NCLAT. Now, the Govt. needs to take immediate steps for the formation of benches (as much as 16 all over the country), formation of selection committee, electing Technical Members and Judicial Members etc. In due course, the Govt. / MCA will notify a cut-off date with respect to filing of petitions with NCLT (instead of CLB & HC). As discussed above, another area of 'lucrative practice' has opened up for Practising Professionals like CMA, CS and CA for which they will be required to take some extra-efforts and 'invest' some time for the same.



Thank you