

# NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL: AN ANALYSIS

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## **ABSTRACT:**

The Central Government has constituted National Company Law Tribunal (NCLT) under section 408 of the Companies Act, 2013. It is a newly established branch which exclusively deals in corporate matters such as looking into the rights of shareholders of the company, dissolution, liquidation etc. NCLT also has an appellate tribunal and the matter then directly goes to the Supreme Court as the last resort. It deals with all the disputes relating to company except for criminal prosecution as under the Companies Act. It investigates into company accounts, entertains class action suits etc. This tribunal is not bound by rules of evidence and CPC but is guided by section 420 of the Companies Act which states the tribunal shall be bound by the principles of natural justice. NCLT was conceptualized by Eradi Committee.

## **INTRODUCTION**

There is a recognizable pattern around the world towards restructuring of business procedures and rearrangements of laws administering them. We see this pattern because in modern times there is major use of electronic correspondence and data innovation that has speeded up business activities and also made them universal. It is very important that the adjudication system and disposal of matters relating to business activities these days be in line with the speed with which business is being executed around the world. In India, there is a high rate of pendency of cases in courts and one of the reasons behind this is that in certain business matters, specialized knowledge of various fields is required and for that experts are required to adjudicate the case. Therefore, keeping in mind the need for speedier adjudication in the corporate world and specialized

knowledge required, the proposition of specialized tribunals has gained appreciation over a period of time.

The Eradi Committee was set up as a board to analyze the current laws relating to corporate law and other procedures relating to companies matter to restructure it and bring it in line with the most recent advancements and developments in the corporate law and administration and also to recommend changes in the procedures followed at different stages during proceedings of company matters to avoid pointless postponements. NCLT is based on the recommendations of this committee. The setting up of NCLT and NCLAT are merely a part of endeavors to move to a faster dispute resolution system that tunes in with current needs and development. The setting of these tribunals foresees the cutting down of existing burden upon high courts due to pending company matters.

This paper in its first part attempts to explain the need because of which specialized tribunals like NCLT came into existence. Secondly, it states the powers of NCLT and its functioning thereby and lastly the constitutionality of NCLT and cases related to it are discussed.

### **ESTABLISHMENT OF NCLT – A NEED FOR SPECIALIZED TRIBUNAL FELT.**

The National Companies Law Tribunal is a special authority made under the Companies Act, 2013 to deal with corporate disputes emerging under the Act. The tribunal has features and powers just as of a court of law, the only difference is that it shall only take up matters of corporate concerns or matters in contravention with the Companies Act, 2013. The kind of remedies that NCLT can present are correct a wrong or impose any legal sanction or costs to the company or parties involved in the matter and the rights and privileges of these parties may be affected thereby. Also, NCLT is not bound by the strict legal standards of procedure, it may decide cases by following the principle of natural justice.<sup>1</sup>

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<sup>1</sup> (Vartoli, 2016)

## GENESIS

The setting up of specialized tribunal was first observed in the Supreme Court judgment in Sampath Kumar case. In this case, the supreme court has drawn attention towards the fact that since the time India got independence, there has been rapid growth and vast increase in population which increases the burden of courts in the country and therefore specialized tribunals shall play a major role in reducing this burden.

## ESTABLISHMENT

NCLT was recommended by Justice Eradi Committee on law relating to insolvency and winding up of companies. The Companies (Second Amendment) Act, 2002 made a provision for setting up NCLT and Appellate Tribunal in order to substitute the existing boards and courts taking up matters of corporate concerns such as Company Law Board (CLB) and Board for Industrial and Financial Reconstruction and also dealing with some matters under the jurisdiction of High Court relating to company matters.<sup>2</sup> However the constitutionality of NCLT was challenged and so this amendment was not notified until 2013 Companies Act came into being. However, the powers and functions originally proposed were different to the ones in the 2013 Act. Whether NCLT was violative of the constitutional arrangements was again tested and the case got decided in the year 2015. The Apex Court maintained the constitutionality of NCLT yet a portion of the provisions were considered unconstitutional and defective.

## MEMBERS IN NCLT TRIBUNAL

In June 2016, eleven benches of NCLT under sub-section (1) of section 419 of Companies Act, 2013 were constituted. Out of these 11, two will be in New Delhi, and one at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai.<sup>3</sup>

The constitution of the NCLT will have individuals with practical and legal expertise. However, the qualification rule for picking a technical member comes up short. The practical criteria can be browsed in different fields of experience including administrative services.

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<sup>2</sup> (De, 2016)

<sup>3</sup> (Manekar, 2016)

## POWERS OF NCLT

There are several provisions in the Companies Act, 2013 that not just take the powers from existing judiciary and vest it in NCLT but it also endorses extra powers. Powers that involve removal of directors or investigating into the affairs of the company or checking records of the company; order reopening of financial accounts, etc are all given to NCLT. This tribunal also has the powers to compensate the investors that suffer loss due to company's fraudulent and illegal activities. This power also includes, if required, holding an authority personally liable for his/her illegal acts. Important and urgent orders can be passed by NCLT relating to instances of misconduct, harassment and class action suits. Approval of NCLT is mandatory if a company wishes to shift from being a public company to a private company and also in cases of need of issuing fresh redeemable shares due to not being able to pay dividend. As per section 434 of this Act<sup>4</sup>, all the pending procedures that previously the CLB started under the Companies Act, 1956 are to be transferred to the tribunal. The provisions accommodating transfer of cases from BIFR and the High courts have not yet been notified. NCLT tribunal functions just as a civil court would. It includes sending summons, ordering production of evidence and documents, etc. The only difference is the Civil Procedure is not binding upon this tribunal, it acts in the favor of natural justice.

- 1) Class Action – Company law, ever since its inception has aimed at protecting the interests of all the shareholders in a company, specially the ones who are not the promoters. There have been several instances when companies have tricked and cheated their investors who invested in their companies and as a result the savings and investments have dried up. An efficient set of recourses are available under the Companies Act, 2013 for people who are victims to such fraud are compensated by the offenders and the offenders will be liable for a civil action. Class action is a procedure that allows one or more affected persons to file a case on behalf of a 'class'. Section 245<sup>5</sup> accommodates relief for investors who have been subjected to illegal and fraudulent activities of the company management or other people linked to the company.

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<sup>4</sup> (mca.gov)

<sup>5</sup> (mca.gov)

- 2) Deregistration of Companies – NCLT has the powers to take several steps if any procedural errors are made at the time of incorporation and the powers can extend upto deregistering the company. Even though a company has the feature of limited liability, if NCLT finds necessary, the members may also face consequences of unlimited liability. Sec 7(7)<sup>6</sup> of this Act provides the method of deregistering a company and it must not be confused with winding up of a company. Deregistration happens when a company has been registered in a wrongful or illegal manner.
- 3) Reopening of Accounts & Revision of Financial Statements – There have been instances when the records that a company keeps in its books have been falsified. Section 130 and Section 131 read with Section 447, 448 in the Companies Act, 2013 is an answer to such activities. These section states the situations in which a company's financial statements can be revisited by NCLT. While Section 130 gives powers to the tribunal to order reopening of financial statements to the company, Section 131 is for the companies to revise its financial statements but reopening is not allowed.<sup>7</sup>

### **SHIFT FROM CLB, BIFT AND HIGH COURTS TO NCLT**

All the powers that were with the Company Law Board have now been transferred to NCLT and CLB is dissolved. NCLT also exercises its jurisdiction over some matters that BIFR and high courts used to deal with but the matters that have not been notified yet stay with BIFR and high court.

While matters identifying with the investigation of an organization's records, freezing of assets, representative suits, transformation of a public company to a private company will now be looked after by the NCLT, and appeal following this would go to NCLAT and not the high courts, those identifying with compromise, amalgamation and capital reduction will keep on being under the domain of the High Courts.

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<sup>6</sup> (mca.gov)

<sup>7</sup> (Manekar, 2016)

## ESTABLISHMENT OF APPELATE TRIBUNAL

An Appellate Tribunal has also been established for people aggrieved by the NCLT's decision to seek redressal from. Section 421 of the Companies Act, provides for this mechanism and Section 423 provides for an appeal mechanism to the Supreme Court if unhappy with the NCLAT decision which has to be filed within 45 and 60 days respectively from the date of the order passed. NCLAT is enabled to hear claims on both question of fact and law. Additionally, the 1956 Act permitted the orders of the CLB to be disputed before the High Court and after that the Supreme Court. Conversely, appeals from NCLT are sent before the Appellate Tribunal and after that to the Supreme Court. This wipes out the difficulty of clashing High Court judgements and accomplishes consistency in the position of law on a specific subject, along these lines, guaranteeing more prominent equity.

The structure of the Appellate tribunal will comprise of a Chairperson and two individuals. The Chairman of NCLAT ought to be a man who is appropriate to be a Supreme Court Judge or Chief Justice of High Court. The individual from the tribunal ought to be someone who has practice of at the very least 25 years in the field of science, innovation, medication, financial aspects, managing an account or any such field whose experience may be profitable in Appellate Tribunal.<sup>8</sup>

Interestingly, just like NCLT, NCLAT too works on the principles of natural justice and is not bound by any set procedures of law. The functions and powers however will be the same as of a civil court's such as the summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of materials and receiving evidence on affidavits. The tribunal and appellate tribunal will have all powers which are vested in the civil court. In any case, it must be noticed, that the jurisdiction of civil court isn't banned in all issues and in cases, where the tribunal believes that the civil court can investigate the issue in a more complicated or important issue, at that point suggestions can be taken from the civil court.<sup>9</sup>

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<sup>8</sup> (Bala)

<sup>9</sup> (S.S Rana & Advocates )

## CHALLENGES

### *Madras Bar Association v UOI<sup>10</sup> – Constitutional or not ?*

Madras Bar Association, apprehending encroachment into their exclusive professional domain, challenged the validity of NCLT before Madras High Court. High Court in its judgment in 2004 held that creation of the tribunal and vesting therein the powers exercised by High Court and Company Law Board was not unconstitutional.

The NTT Act ( National Tax Tribunal) was passed in 2005 and the first petition was filed in 2006 by Madras Bar Association challenging the setting up of NTT.

In this case the constitutional validity of NTT Act, 2005 was challenged, additionally there was a challenge to Article 323B of Constitution of India. It was contended that tribunals did not follow the normal rules of evidence contained in Evidence Act. The petitioner had challenged that empowering executive to sit in judgment over matters that require judicial experience was diluting the power and independence of judiciary. It was also argued that the dependency of tribunals on the sponsoring or parent department for infrastructural facilities or personnel may undermine the independence of tribunal.

The court held that Articles 323A<sup>11</sup> and 323B<sup>12</sup> of the Constitution are empowering arrangements which empower the setting up of tribunals and that the said Articles, in any case, can't be decoded to imply that they denied the lawmaking body from building up tribunals not secured by those Articles, insofar as there is authoritative ability. What's more, henceforth it held that Article 323B had nothing to do with Constitution of NCLT and that its development was substantial.

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 11<sup>th</sup> May 2010. In the said judgment, while the constitution bench of the Supreme Court held the NCLT and NCLAT of Companies Act, 1956 to be fit and proper body, it agreed with the views of Madras High Court that certain provisions of part 1B and part 1C of the 1956 Act relating to appointment and the

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<sup>10</sup> (Indiakanoon)

<sup>11</sup> (mca.gov)

<sup>12</sup> (mca.gov)

eligibility for membership of the NCLT and NCLAT were “defective” and required rectification.<sup>13</sup>

In 2014, the Companies Act, 2013 was passed by the Parliament and partially notified into effect; although, the provisions in the 2013 Act relating to the NCLT and NCLAT were not notified. Although the rectifications had been concluded in the 2013 Act, 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 other provisions too of this Act suffered from the same defects as those observed in 2010 judgment and therefore should be struck down as unconstitutional.

### **FINALITY TO CONSTITUTION OF NCLT**

In 2015, the Supreme Court incompletely permitted the writ appeal to documented by the Madras Bar Association wherein it struck down the legitimacy of a few arrangements yet it maintained the legitimacy of NCLT and NCLAT under the Companies Act, 2013. On account of Union of India versus R. Gandhi as well, the Supreme court maintained the constitutionality of NCLT and NCLAT and held a few arrangements as illegal of the Companies Act.

### **NTT vs NCLT**

Supreme Court completely dismissed Madras Bar Association’s reliance on 2014 ruling, wherein the constitution of NTT was held as unconstitutional.

In the present case, the apex court rejected the contention that UOI vs R. Gandhi did not deal with constitution aspect of NCLT. The Supreme Court held that Constitution bench explicitly managed the established legitimacy of NCLT and NCLAT when it stated "Whether the constitution of NCLT and NCLAT of Companies Act are legitimate". Supreme Court remarked that earlier ruling in UOI vs R. Gandhi<sup>14</sup> is of Constituion bench and is binding on the co-ordinate bench as well. Supreme Court differentiated the NTT ruling from NCLT and NCLAT and held that NTT was a matter where power of judicial review exercised by the High Court was vested in NTT which was

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<sup>13</sup> (Network, 2015)

<sup>14</sup> (ITA, 2010)



sought to be unconstitutional.

Concerning the issue of lawfulness of arrangements for arrangement of specialized individuals to NCLT or NCLAT, the constitution seat of Supreme court depended on its before decision in UOI versus R.Gandhi and watched that exclusive officers holding positions of Secretaries or Additional Secretaries can be considered for arrangement as specialized individuals.

As an analysis to the ruling of the Supreme Court, it have impacted the corporate restructuring by which NCLT's jurisdiction over the matters other than Company law board (CLB) is extended to cases filed before the high court, BIFR and AAIFR as well. By this ruling, the formed NCLT/NCLAT body will result in reducing the burden of the supreme court, high court, and CLBs for matters related to the corporate law. There will be a proper hearing within a minimum time which will result in more efficient and quick results. Also, it will help practicing chartered accountants, company secretaries and accountants to represent their client before the newly formed body of NCLT/NCLAT which earlier they were not allowed because only advocates are allowed to represent matter before the High Court and the Supreme Court when NCLT/NCLAT never existed.

## CONCLUSION

There are still certain aspects that are unsolved. The destiny of cases pending before BIFR, particularly the ones which are at conclusive stages, is covered in equivocalness. It creates the impression that fresh applications would be required to be recorded before NCLT. In the meantime, the way and the day and age inside which the issues are to be transferred from CLB have not been determined. There is additionally no lucidity about the working of tribunal, as the principles have yet not been advised. Integration of jurisdiction represents overwhelming weight upon the tribunals and the real transfer of records to the tribunal will endure execution challenges. Having respect to the wide powers, the quality of justice must not be traded off. Satisfactory training to the individuals from tribunal and appropriate foundation are of great importance. Pending notifications must be notified as soon as possible to avoid complexities in the structure already complicated and overburdened. A solid managerial mechanism must be set up particularly for issues managing transfer of cases. The establishment of NCLT as a single forum is a key

milestone in the journey towards institutional reforms for quicker resolution of company law matters. While capacity and infrastructure building in the NCLT will evolve over a period of time, the new structure should facilitate a faster and simpler dispute resolution mechanism for corporate disputes.

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