

Constitution of National Company Law Tribunal and National Company Law Appellate Tribunal

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At last, the Ministry of Corporate Affairs (MCA) on 1st of June, 2016 notified the constitution of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). Simultaneously, MCA has notified the relevant section of the Companies Act, 2013 (the Act) on the dissolution of Company Law Board (CLB) constituted under the Companies Act, 1956 (1956 Act) with the constitution of the NCLT. The Act has introduced, *inter alia*, the following three new definitions, defining (a) Chairperson; (b) Member; and (c) President.



- a) “Chairperson” means the Chairperson of the Appellate Tribunal;
- b) “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; and
- c) “President” means the President of the Tribunal.

Hon’ble Justice S. J. Mukhopadhaya, Judge (Retd), Supreme Court of India has joined as the Chairperson of the NCLAT and Hon’ble Justice M. M. Kumar, Judge (Retd) has joined as the President of the NCLT.

Existing structure

Several provisions of the Companies Act require the sanctions, approval of different authorities besides the MCA. The 1956 Act has broadly divided such sanctions and approval from three different authorities. The provisions relating to amalgamation, merger, winding up, reduction of capital etc. need the final clearance of the High Courts having jurisdiction to the registered office of the companies. The second one is the constituted CLB mainly for providing relief for oppression and mismanagement besides compounding of offences, transfer of shares, deposits etc. The third authority is the Board for Industrial and Financial Reconstruction (BIFR) and its Appellate Authority to deal with sick companies. It was the Companies (Second Amendment) Act, 2002 that paved the way to set up NCLT and its Appellate

Authority to consolidate all such matters dealt by three different authorities, to not only provide great relief to the corporate entities but also reduce the burden of the High Courts. Besides, the Act has certain new provisions such as class action suits to be dealt and decided by NCLT.

Constitution of NCLT Benches and their jurisdiction

Initially, NCLT is constituted with eleven benches. The Principal Bench of NCLT is located at New Delhi together with another Bench of NCLT. Besides, in nine other places, the Benches have been notified. The location of the Benches and their jurisdictions are as under:

Sl No	Title of the Bench	Location	Territorial Jurisdiction of the Bench
1.	(a) National Company Law Tribunal, Principal Bench (b) National Company Law Tribunal, New Delhi Bench	New Delhi	(1) State of Haryana. (2) State of Rajasthan. (3) Union territory of Delhi.
2.	National Company Law Tribunal, Ahmedabad Bench	Ahmedabad	(1) State of Gujarat. (2) State of Madhya Pradesh. (3) Union territory of Dadra and Nagar Haveli. (4) Union territory of Daman and Diu.
3.	National Company Law Tribunal, Allahabad Bench	Allahabad	(1) State of Uttar Pradesh. (2) State of Uttarakhand.
4.	National Company Law Tribunal, Bengaluru Bench	Bengaluru	(1) State of Karnataka.
5.	National Company Law Tribunal, Chandigarh Bench	Chandigarh	(1) State of Himachal Pradesh. (2) State of Jammu and Kashmir. (3) State of Punjab. (4) Union territory of Chandigarh

6.	National Company Law Tribunal, Chennai Bench	Chennai	(1) State of Kerala. (2) State of Tamil Nadu. (3) Union territory of Lakshadweep. (4) Union territory of Puducherry.
7.	National Company Law Tribunal, Guwahati Bench	Guwahati	(1) State of Arunachal Pradesh. (2) State of Assam. (3) State of Manipur. (4) State of Mizoram. (5) State of Meghalaya. (6) State of Nagaland. (7) State of Sikkim. (8) State of Tripura.
8.	National Company Law Tribunal, Hyderabad Bench	Hyderabad	(1) State of Andhra Pradesh. (2) State of Telangana.
9.	National Company Law Tribunal, Kolkata Bench	Kolkata	(1) State of Bihar. (2) State of Jharkhand. (3) State of Odisha. (4) State of West Bengal. (5) Union territory of Andaman and Nicobar Islands.
10.	National Company Law Tribunal, Mumbai Bench	Mumbai	(1) State of Chhattisgarh. (2) State of Goa. (3) State of Maharashtra.

Interestingly, companies having their registered office in Delhi and Haryana are being regulated by the Registrar of Companies, Delhi and Haryana, but the matters relating to High Court proceedings of companies registered in Haryana are before the High Court at Chandigarh. Now, the jurisdiction as

given above for companies having registered office in Haryana will be dealt with by NCLT, Delhi instead of NCLT at Chandigarh.

Notified provisions to be dealt at NCLT

MCA initially notified 29 provisions which are mainly of the existing provisions of CLB and certain administrative matters such as transfer of pending proceedings, appeal against CLB order and dissolution of CLB. Matters which are being dealt with at High Courts and BIFR are yet to be notified by MCA. The said provisions notified by MCA are as under:

1.	Sub section (7) of section 7 [except clause (c) and (d)]	Power to pass orders etc. where company has been incorporated by furnishing any false or incorrect information or representation etc.
2.	Second proviso to sub-section (1) of section 14	Provisions relating to conversion of public and private company
3.	Sub-section (2) of section 14	
4.	Sub-section (3) of section 55	To issue further redeemable preference shares when a company is unable to redeem the existing unredeemed preference shares or to pay dividend thereon
5.	Proviso to Clause (b) of sub-section (1) of section 61	To approve consolidation or division of share capital resulting in change in voting percentage of shareholders
6.	Sub-sections (4) to (6) of section 62	Order of government for conversion of loans/ debentures into shares in public interest and where terms of conversion of debentures in shares of the company ordered by the Government are not acceptable to the company , the company may appeal to the Tribunal for making such order as it may deem fit
7.	Sub-sections (9) to (11) of section 71	Where the assets of the company are insufficient to discharge of debentures ,

		the debenture trustee may apply to NCLT
8.	Section 75	Damages for fraud with respect to failure to repay deposits and interest thereon
9.	Section 97	Power of Tribunal to call general meeting
10.	Section 98	Power of Tribunal to call meetings of members etc.
11.	Section 99	Punishment for default in complying with provisions of sections 96 to 98
12.	Sub-section (4) of section 119	Inspection of minutes book of general meeting
13.	Section 130	Re-opening of accounts on the courts or tribunals order
14.	Section 131	Voluntary revision of financial statements or board report
15.	Second proviso to sub-section (4) and sub-section (5) of section 140	Removal, resignation of auditor and giving of special notice
16.	Sub-section (4) of section 169	Removal of directors
17.	Section 213	Investigation into company's affairs in other cases
18.	Sub-section (2) of Section 216	Investigation of ownership of company
19.	Section 218	Protection of employees during investigation
20.	Section 221	Freezing of assets of company on inquiry and investigation
21.	Section 222	Imposition of restrictions upon securities
22.	Sub-sections (5) of section 224	Actions to be taken in pursuance of inspector's report

23.	Sections 241, 242 [except clause (b) of sub-section (1), clause (c) & (g) of sub-section (2)], 243, 244, and 245	Application to Tribunal for relief in cases of oppression, etc.& powers of Tribunal
24.	Reference of word 'Tribunal' in sub-section (2) of section 399	Inspection, production and evidence of documents kept by Registrar
25.	Sections 415 to 433 (both inclusive)	Acting President and Chairperson of Tribunal or Appellate Tribunal
26.	Sub-section (1)(a) and (b) of section 434	Transfer of certain pending proceedings
27.	Sub-section (2) of section 434	Transfer of certain pending proceedings
28.	Section 441	Compounding of certain offences
29.	Section 466	Dissolution of Company Law Board and consequential provisions

Conclusion

Another major hurdle is the non-notification of rules for NCLT and NCLAT. One does not know, with the dissolution of CLB and without having proper set up of NCLT, how to move forward for any new issues and immediate relief for any oppression and mismanagement. It is also unclear whether, for any new issues such as mergers and amalgamation, winding up or matters relating to sick companies, to take decisions as per the existing structure or to wait and watch for further notifications.

Certainly, professionals other than advocates who are authorised to appear NCLT and NCLAT would welcome the move. The matters which are dealt with by CLB at four major cities would now be spread over to ten cities; that would not only provide great relief to corporates but also open up opportunities to practising company secretaries.

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