

## NCLAT/ NCLT IN RESPECT TO ADMIN LAW

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### **Introduction**

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On 1st June 2016, the Ministry of Corporate Affairs issued an Official Notification by which the Central Government exercised the powers granted to it by section 408 of the Companies Act, 2013 and transferred all matters pending before the Company Law Board (CLB) to the National Company Law Tribunal (NCLT).

The National Company Law Tribunal (NCLT) was established as a specialized organization for the administration of corporate justice on the basis of the suggestions made by the Justice Eradi Committee.<sup>2</sup> The Justice Eradi Committee<sup>3</sup> was a committee that was established by the Central Government in 1999 with the purpose of examining the legislation relating to the insolvency and winding up of companies, with the goal of re-modeling it in line with the most recent advances and innovations in corporate law and governance.

The NCLT and NCLAT were created to consolidate the powers and jurisdiction of various authorities such as the Company Law Board, the Board for Industrial and Financial Reconstruction (BIFR), the Appellate Authority for Industrial and Financial Reconstruction (AAIFR), the Official Liquidator (OL), and the High Court's regarding provisions related to restructuring and winding up.

Once the NCLT and the NCLAT became operational, no ordinary court has the jurisdiction over any case involving a dispute that the NCLT or the NCLAT is allowed to decide under this Act or any other law presently in effect. In addition, no court or other authority has the jurisdiction to issue an injunction prohibiting the Tribunal or the Appellate Tribunal from exercising any power granted to them by or under this Act or any other law in effect at the time

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<sup>1</sup> BALLB (Hons), SOL, NARSEEMONJEE INSTITUTE OF MANAGEMENT AND STUDIES, 2020-25

<sup>2</sup>Shri Justice V. Balakrishna Eradi, Report of High-level Committee on Law Relating to Insolvency and Winding up of Companies, 2000, p.47.

<sup>3</sup> Ibid.

## **NCLAT/ NCLT**

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### **Composition and qualifications**

#### **For NCLT:**

##### **→ President:**

In NCLT, there must exist a President. The qualification of the President is that they must have served as a judge of High Court for at least 5 years.

The age limit should be at least 50 years old, but not more than 67 years.

##### **→ Judiciary members:**

Other than President, NCLT also comprises of judicial members. The qualification of these judicial members are that they must have served as a judge of High Court or District Court for at least 5 years or must be an advocate with 10 years' experience.

The age prescribed must be of at least 50 years but not more than 65 years.

##### **→ Technical Members:**

Other than the President and judicial members, the composition of NCLT also includes some technical members. The technical members are basically the experts of their respective fields.

The ideal candidate for this position must meet the following qualifications:

- Someone that must have served as a member of the Indian Corporate Law Services for at least 15 years.
- Someone that must have practiced CA for at least 15 years.
- Someone that must have practiced CS for at least 15 years.
- Someone that must have practiced CMA for at least 15 years.
- Someone they must have served as a presiding officer of Tribunal or Labor Court or National Tribunal for at least 5 years.
- Must be somebody with integrity and should be above 50 years old but not more than 65 years as of the time of appointment.

For NCLAT:

→ Chairperson:

There must be a chairperson present in NCLAT. The chairman should have served as a judge in Supreme Court or as a Chief Justice of High Court. The age requirement is that he/she should at least be of 50 years but not more than 70 years.

→ Judicial Members

Judicial member for NCLAT must be a retired judge of High Court or must be a judicial member of NCLT for at least 5 years. The age requirement is that he/she must be at least 50 years of age but no more than 67 years.

→ Technical members.

A technical member of NCLAT must be someone with integrity and must have 25 years of special knowledge or experience in specialist areas. He/she must be at least of 50 years but not more than 67 years.

The chairman/ President, the judicial members, and the technical members are appointed for the period of 5 years. They are further eligible for re-appointment of another 5 years. Additionally, the ratio between the judicial and technical members is 3:2. If additional members are the appointed further, this ratio continues.

**Appointment of members of NCLT and NCLAT:**

The Central Government of India is responsible for appointing the members of the National Company Law Tribunal (NCLT) based on the recommendations provided by a selection committee. This committee comprises three individuals, including the Chief Justice of India, the Secretary of the Ministry of Corporate Affairs, and a senior government official chosen by the Central Government.

### **Jurisdiction of NCLT**

The NCLT operates according to the regulations of the Companies Act of 2013. The Companies Act grants the NCLT the jurisdiction to make decisions regarding legal proceedings. There are numbers of functions that NCLT performs. They additionally are empowered with certain powers as well. The most major one being the power to investigate. Chapter XIV (24) of the Companies Act of 2013 grants the Tribunal the authority to conduct investigations. If an application is made against a company by 100 members, the Tribunal can authorize an investigation into the company's operations, including ownership. Additionally, the court can freeze company assets and impose restrictions on securities under certain circumstances, which is a departure from the previous practice.

Other than this, the jurisdiction of NCLT includes:

#### → Class Action

Section 245 of the Indian Companies Act allows for Class Action, which is a legal action taken against fraudulent companies that harm their shareholders and depositors. The Companies Act of 2013 includes measures to punish offenders and compensate victims for losses resulting from fraudulent practices. A class action lawsuit permits a single or multiple plaintiffs to seek redress on behalf of a large, geographically dispersed group of harmed individuals. As a result of this provision, investors' assets and rights have been significantly protected. Except for financial institutions, both private and public businesses are fair game for class action lawsuits.

#### → Refusal to Transfer Shares

#### → Oppression and Management

#### → Reopening of Accounts and Revision of Financial Statements

#### → Conversion of Public Company to Private Company

#### → Deregistration of Companies

## **Jurisdiction of NCLAT**

The National Company Law Appellate Tribunal is a higher forum of law than the NCLT, consisting of a chairperson and no more than eleven members. Appeals from the Tribunal Court must be filed with the NCLT within 45 days of the NCLT's ruling, and the Court of Appeals will hear the case. The Appellate Court examines the evidence gathered by the Tribunal and may either confirm or change the decision given by the lower court, and this process takes up to six months. If someone is unhappy with the Tribunal's decision, the next step is to file an appeal with the Appellate Court, which reviews and decides cases based on the previously collected evidence, and if still not satisfied, the Supreme Court is the final option. An appeal to SC can be filed within 60 days.

## **Quasi-Judicial bodies**

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In the course of implementation of various welfare statutes and other new areas of law the administrative authority would be required to be granted some elements of judicial powers so as to bring in flexibility and ensure disposal of matter.

Quasi refers to similar not exact. It refers to performance of functions similar to judicial in nature.

According to Lord Atkin, in the case of *R. v. Electricity Commrs.*<sup>4</sup> it was stated that,

*“When anybody of persons has legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, such body of persons is a quasi-judicial body and decision given by them is a quasi-judicial decision. In a nutshell, what was held in the aforesaid decision was, where a statutory authority is empowered to take a decision which affects the rights of persons and such an authority is under the relevant law required to make an enquiry and hear the parties, such authority is quasi-judicial and decision rendered by it is a quasi-judicial act.”*

Hence, the essential features of quasi-judicial functions are-

- To begin with, when addressing matters that impact citizens' legal rights or interests, the administrative authority must act with a judicial approach as prescribed by law.

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<sup>4</sup> [(1924) 1 KB 171]

- Secondly, in carrying out its adjudicating role, the administrative authority is not obligated to adhere to formal procedural rules, but must adhere to the principles of natural justice.
- Thirdly, quasi-judicial actions are conducted based on the state's policy while ensuring fairness.
- Fourthly, quasi-judicial actions are always subject to judicial review and are obligated to comply with the writ remedies.

## **Tribunalisation in India**

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Tribunals refer to an adjudicating body appointed to adjudicate on claims of a particular kind. However, they are different from courts. The Indian Courts have recognized both courts and tribunals as separate entities. In articles 136<sup>5</sup> and 227,<sup>6</sup> courts and tribunals are referred separately. The tribunals deal with certain special matters whereas all other matters generally go before the ordinary courts.

The origin of establishing specialized tribunals can be traced back to the Supreme Court's decision in *S.V. Sampath Kumar v. Union of India*.<sup>7</sup> In this case, the court acknowledged that the increase in population and litigation since independence had led to a significant backlog of cases in the High Courts. Therefore, the court proposed the use of alternative institutions to expedite case resolution and reduce the burden on the High Courts. It was determined that the Parliament and state legislatures had the legislative authority to establish these tribunals, as provided under Article 245 of the constitution and various entries in List I of the Seventh Schedule.

Additionally, the explanation of the word “Judicial” in the case of *Harinagar Sugar Mills Ltd. Shyam Sundar*,<sup>8</sup> is of importance here. The word "judicial" can mean either the performance of judicial duties or the performance of administrative duties that do not take place in a court but nonetheless require the use

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<sup>5</sup> Art. 136 of The Constitution of India, 1950.

<sup>6</sup> Art. 227 of The Constitution of India, 1950.

<sup>7</sup> 1987 SCR (3) 233.

<sup>8</sup> AIR 1961, SCC 1669.

of a "judicial mind," that is, the ability to weigh the merits of competing interests and reach a decision about what is fair and just.

The concept of Tribunals was brought through 42nd amendment to the constitution which included Article 323A and 323B<sup>9</sup> providing for constitution of tribunals dealing with administrative service issues and other matters.

### **Essentiality of tribunals**

#### **→ Need of the Society**

With the society changing from a police state to welfare state which aimed to not only providing justice but making sure that it is seen that the justice has been done, it became important to come up with solutions to achieve that. Hence, creating specialized bodies dealing with particular subject matter within a particular set time frame was suggested. The aim of which was to provide speedy trial and reduce the burden of High Courts while reducing the pendency of cases on them.

#### **→ Effective as High Courts**

An Important point of consideration is the tribunals are not substitute of High Courts. The Hon'ble High Courts have been granted supreme power to adjudicate a matter by the constitution and this power cannot be taken away. Tribunals act as an alternative or simultaneous adjudicating body. They are just as effective as High Courts, is the notion that needs to be highlighted to the public at large. The decisions pronounced by the tribunals are just as binding as those of High Courts, though appealable.

#### **→ Need for legal knowledge**

For the functioning of the tribunal to be constitutionally correct, there is a need that a person comprising legal knowledge is present at the panel. No case that has been adjudicated can be ultravires to our constitution and should not violate any person's fundamental rights. To deal with legal jargons, presence of a person equipped with legal knowledge is important.

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<sup>9</sup> Art. 323A and 323B of the Indian Constitution, 1950.

→ Need for Expert Members

Along with a judicial person, the special features of tribunals are that they have expert/technical members on board with them. In corporate justice, there are lots of requirements, limitations, powers, etc. which are required which only an expert belonging to that field can know. Hence, there requirement is of utmost importance.

→ Manner of appointment of members

These tribunals are of quasi-judicial nature and possess a question on the independence of judiciary. Hence, such independence is assured in the manner of appointment of members as well as in the composition of the panel. The ratio so prescribed in 3:2, meaning 3 judicial members and 2 of the experts. Additionally, even though it is the government who makes the appointment of the members, they cannot do so without the consultation of the CJI.

**Difference between Tribunals and Courts**

The term tribunal broadly refers committee appointed to adjudicate on claims of a particular kind.

Courts are adjudicating bodies which have been established by the state for administration of justice. The term 'administration of justice' implies 'exercise of juridical power of the state to maintain and uphold rights When a legal right of an individual is violated or the aggrieved party can approach the courts for redressal of their grievance It is the responsibility of the courts to restore. The courts are recognized as instrumentalities of the States. The powers of the judiciary are derived from the Constitution or from any other Act of Legislature constituting those authorities. Some of the essential characteristic features of courts are they are permanent bodies whose numbers are fixed and can try any suit or other causes within their jurisdiction.

On the other hand, tribunals are administrative bodies and are a consequence of the multifarious activities of the state.

Administrative bodies have the ability to consider policy matters when making administrative decisions, which is a common occurrence. Despite this, it is possible that these bodies must still act impartially and reasonably in their decision-making process, and may need to adhere to principles of fairness and justice.



## **Constitutionality of NCLAT and NCLT**

The Indian Constitution has recognized both courts and tribunals as separate entities. In Articles 136 and 227 it refers to courts and tribunals separately. The Constitution refers to the Courts of Civil Judicature as Courts and Tribunals refer to the 'bodies of men who are appointed to decide controversies arising under certain special laws'

The main argument against the constitutionality of the NCLT and NCLAT was that they were established under the Companies Act, which was not included in the Union List, State List or Concurrent List of the Indian Constitution, and therefore, the Central Government did not have the power to create these tribunals.

However, the Supreme Court of India in a landmark judgement in *Union of India v. R. Gandhi*<sup>10</sup> held that the NCLT and NCLAT were validly constituted under Article 246 read with Entry 45 of the Concurrent List of the Constitution of India, which deals with the subject of companies, and that the establishment of these tribunals was necessary for the efficient and effective resolution of corporate disputes. The court also held that the powers of the NCLT and NCLAT, as well as the qualifications and appointment of their members, were in accordance with the Constitution of India.

Further in the case of *Madras Bar Association v. Union of India and Anr*<sup>11</sup>, major contentions made by the Madras Bar Association:

→ Appointment Process:

MBA argued that the appointment process of members to the NCLT lacked transparency and was controlled by the executive, which compromised the independence of the judiciary.

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<sup>10</sup>MANU/SC/0378/2010

<sup>11</sup>2015 SCC OnLine SC 388 (India)

→ Independence of NCLT:

MBA argued that the NCLT was not sufficiently independent from the executive branch of the government, and as a result, its decisions might be biased.

→ Lack of Judicial Review:

MBA argued that the NCLT's decisions were not subject to proper judicial review, and the tribunal's rulings could be challenged only on limited grounds.

Supreme Court's response:

- Appointment Process: The Supreme Court held that the appointment process for NCLT members was consistent with the Constitution and that the executive's involvement in the process was necessary to maintain accountability and balance.
- Independence of NCLT: The Supreme Court emphasized the importance of the NCLT's independence and held that the executive's control over the appointment process did not compromise the tribunal's independence.
- Judicial Review: The Supreme Court held that NCLT's decisions were subject to judicial review, and parties could challenge them on the grounds of legal errors, bias, and lack of jurisdiction.

In summary, the Supreme Court upheld the constitutional validity of the NCLT and addressed the concerns raised by the MBA regarding the appointment process, independence of the NCLT, and judicial review. The Court held that the balance between judicial independence and executive accountability had been maintained, and the institutional framework for corporate law had been strengthened.

## CURRENT SITUATION

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The primary aim with which these tribunals were set up was to save time of the courts and provide with a speedy trial, along with reducing the burden of the courts. Though the attempt is laudable, whether this aim has been achieved or just on paper is still to be determined.

If we look at the data of the years provided in the table below (Annexure A), in the initial years, as against the average time of 330 days, in the year 2017-18 and again in 2018-19, the cases have been resolved before the stipulated time period. But as the number of cases increased over the years, the number of days in resolving them has also increased.

A rising trend hence is observed in the average time it takes to resolve a case, with the current figure standing at almost 679 days (as against the statutory stipulated time limit of 330 days).

The Ministry says that cases are taking longer to be resolved because of legal disputes, and as time goes by, there are more requests for interim decisions in these cases, which also affects the amount of money that can be recovered from the assets involved.<sup>12</sup>

Another point to be considered is the fact that, there is a shortage of 25 members in the NCLT because there are only 39 officials (01 President and 37 Members) compared to the sanctioned strength of 63 (01 President and 62 Members).<sup>13</sup>

To sum it up, just like two faces of a coin, these tribunals still are facing some of the challenges which needs to be addressed.

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<sup>12</sup> Rahul Garg, '25 Member Vacancies in NCLTs ' (Live Law, 12 December 2022), <https://www.livelaw.in/news-updates/ibc-nclt-pendency-of-cases-lok-sabha-ministry-of-corporate-affairs-216476-#:~:text=25 Member Vacancies In NCLTs,Almost Tripled In 5 Yrs>

<sup>13</sup> Government of India, Ministry of corporate affairs, Lok Sabha unstarred question n. 784, Answered on December 2022.

**(d): As per information provided by the Insolvency and Bankruptcy Board of India, as on September 30, 2022, the year wise data of cases resolved and average time taken for resolution under the Insolvency and Bankruptcy Code (Code) since its inception is as under:**

| <b>Year</b>                                | <b>No. of cases resolved</b> | <b>Average time taken (days)</b> |
|--|------------------------------|----------------------------------|
| <b>2017-18</b>                             | <b>19</b>                    | <b>230</b>                       |
| <b>2018-19</b>                             | <b>78</b>                    | <b>326</b>                       |
| <b>2019-20</b>                             | <b>136</b>                   | <b>422</b>                       |
| <b>2020-21</b>                             | <b>120</b>                   | <b>468</b>                       |
| <b>2021-22</b>                             | <b>143</b>                   | <b>560</b>                       |
| <b>2022-23<br/>(up to September, 2022)</b> | <b>57</b>                    | <b>679</b>                       |
| <b>Total</b>                               | <b>553</b>                   | <b>473</b>                       |

ANNEXURE A<sup>14</sup>

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<sup>14</sup>Source: Government of India, Ministry of corporate affairs, unstarred question n. 784. Answered on December 2022.

## Conclusion

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The Eradi Committee recommended setting up specialized tribunals to handle all company matters in 2000. It took 16 years for these tribunals to be established, but the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) were created in May 2015 after being declared constitutional by the Supreme Court in the *Madras Bar Association v Union of India*<sup>15</sup> case.

The legislature has the authority to transfer any court's jurisdiction to a tribunal, so long as it is clear that the tribunals exercise judicial power and the individuals appointed to the positions of President/Chairperson/Members are of a caliber that is at least approximative to that of the mainstream judicial system.

The NCLT has significantly impacted company law by replacing the conventional Company Law Board and having different functions and powers. The tribunal has helped ease the burden on courts and other institutions and ensures speedy delivery of justice.

The tribunal now has the authority to hear class action litigation, which introduces a novel form of investor majority rules system in India.

However, that being said, NCLAT and NCLT still have lots of challenges which needs to be addressed and tackled, pendency of cases, shortage of manpower, being few of them. All in all, this system has been adopted in a number of western countries. The value to investors would increase as this aids Indian companies in implementing better corporate administration practices action suits, which will promote better corporate governance practices and benefit investors. This can further increase our stand in the ease of business reports published by world banks, which t is a research initiative that evaluates the impact of regulations on businesses and entrepreneurship in various countries globally. The project collects data and analyzes the relevant laws, policies, and procedures that affect business activities in each country, and uses this information to generate a ranking system that reflects the ease of doing business in each location. Hence, the advantages of having these tribunals overpower its disadvantages.

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<sup>15</sup> Ibid. supra no. 15.