

NATIONAL COMPANY LAW TRIBUNAL (NCLT) - “A SIGNLE WINDOW INSTITUTION FOR COPORATE JUSTICE”

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ABSTRACT

There is a discernible trend around the world towards rationalization of business processes and simplification of legislations governing them. This trend is being driven partly by the use of electronic communication and information technology that has speeded up business transactions as well as making them international. Time is, therefore, ripe to ensure that dispensation of justice and disposal of business matters by the court and authorities should be in tune with the speed with which business is being transacted. Further, certain business matters require specialized domain knowledge for dealing with the matters justifiably. Keeping in view the pendency of legal matters and need for specialized knowledge of the persons discharging the responsibility of adjudicating the matters involving intricate issues relating to the subjects, the process of setting up of specialized tribunals, in this article I shall be dealing with NCLT, has gained acceptability over a period of time.

KEYWORDS: CLB, NCLT, High Court, Supreme Court

INTRODUCTION

The genesis of setting up of specialized tribunals can be traced in the Supreme Court judgement in Sampath Kumar case¹. In this case, while adopting the theory of alternative institutional mechanism the Supreme Court refers to the fact that since independence, the population explosion and the increase in litigation had greatly increased the burden of pendency in the High Courts. The Supreme Court also referred to studies conducted towards relieving the High Courts of their increased load; the recommendations of the Shah Committee for setting up independent Tribunals as also the suggestion of the Administrative Reforms Commission for setting up of Civil Service Tribunals.

On June 01, 2016, the Ministry of Corporate Affairs (MCA) published a notification regarding the constitution of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) with effect from the June 01, 2016. The constitution of the aforesaid Tribunals, is in the exercise of the powers conferred by Sections 408 and 410 respectively of the new Companies Act, 2013.

The Companies (Second Amendment) Act, 2002 provides for the setting up of a National Company Law Tribunal and Appellate Tribunal to replace the existing Company Law Board (CLB) and Board for Industrial and Financial Reconstruction (BIFR). The setting up of the NCLT as a specialized institution for corporate justice is based on the recommendations of the Justice Eradi Committee, a committee set up to examine the existing law relating to winding up proceedings of companies in order to re-model it in line with the latest developments and innovations in

¹ S P Sampath Kumar v. Union of India ,1985 (4) SCC 458.

the corporate law and governance and to suggest reforms in the procedure at various stages followed in the insolvency proceedings of companies to avoid unnecessary delays in tune with the international practice in this field. The setting up of the NCLT and NCLAT are part of the efforts to move to a regime of faster resolution of corporate disputes, thus improving the ease of doing business in India. NCLT and NCLAT will also pave the way for the faster implementation of the bankruptcy code. Their setting up is expected to reduce the burden on courts. As reported by Livemint, an Indian daily, government data revealed that 48,418 civil cases were pending before the Supreme Court of India as of mid-February 2016, 3.116 million civil cases pending before the high court as of December 31, 2015 and 8.234 million civil cases pending before the district and subordinate courts.

In *R. Gandhi, President, Madras Bar Association v. Union of India*² the petitioner challenged the constitutionality for creation of NCLT AND NCLAT on the ground “Provisions regarding formation of NCLT and NCLAT are ultra vires of Article 14 of the constitution” the Supreme Court held that the Parliament’s power to create National Company Law Tribunal and National Company Law Appellate Tribunal is clearly traceable to Entries 43 and 44 of List I. The Court also viewed that Parliament is thus competent to enact law with regard to the incorporation, regulation and winding up of Companies. The power of regulation would include the power to set up adjudicatory machinery for resolving the matters litigated upon, and which concern the working of the companies in all their facets.

It may be pointed out that the Law Commission, as referred to by the Supreme Court in the case of *L Chandra Kumar*,³ had also recommended the creation of specialist Tribunals in place of generalist Courts. Therefore, the creation of National Company Law Tribunal and Appellate Tribunal and vesting in them the powers exercised by the High Court with regard to company matters cannot be said to be unconstitutional. With respect to the challenge of the provisions contained in the new Act dealing with the qualifications technical Members of NCLT/NCLAT, the Apex Court held that only officers who are holding the ranks of Secretaries or Additional Secretaries alone are to be considered for appointment as technical Members of NCLT.⁴

MEGA TRIBUNAL

NCLT can be called as Mega Tribunal. Because NCLT will CONSOLIDATE the corporate jurisdiction of the followings:

- Company Law Board
- Board for Industrial and Financial Reconstruction.
- The Appellate Authority for Industrial and Financial Reconstruction
- Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High Courts.

With the establishment of the NCLT and NCLAT, the Company Law Board under the Companies Act, 1956 and BIFR will stand dissolved.

²(2010)11 SCC 1

³ L Chandra Kumar v. Union of India (1997) 3SCC, 261.

⁴ <http://www.livelaw.in/supreme-court-upholds-constitutionality-of-the-national-company-law-tribunal-and-the-national-company-law-appellate-tribunal/>

POWERS OF NCLT

The NCLT has been empowered to exercise the following powers:

- Most of the powers of the Company Law Board under the Companies Act, 1956.
- All the powers of BIFR for revival and rehabilitation of sick industrial companies;
- Power of High Court in the matters of mergers, demergers, amalgamations, winding up, etc.
- Power to order repayment of deposits accepted by Non-Banking Financial Companies as provided in section 45QA of the Reserve Bank of India Act, 1934;
- Power to wind up companies;
- Power to Review its own orders.
- Under the old regime, there was no express provision ousting the jurisdiction of the Civil Courts, and various judicial pronouncements have time and again reiterated the requirement of an express provision for ousting Civil Court jurisdiction. Putting an end to the debate, Section 430 the Act expressly ousts the jurisdiction of Civil Courts. While provisions relating to the investigation of a company's accounts, freezing of assets, class action suits, conversion of a public company to a private company will now be governed by the NCLT, and appeal there from would be before NCLAT instead of High Court.

The NCLT shall have powers and jurisdiction of the Board for Industrial and Financial Reconstruction (BIFR), the Appellate Authority for Industrial and Financial Reconstruction (AAIFR), Company Law Board, High Courts relating to compromises, arrangements, mergers, amalgamations and reconstruction of companies, winding up etc. Thus, multiplicity of litigation before various courts or quasi-judicial bodies or forums have been sought to be avoided.

TRANSITION FROM CLB TO NCLT

The Act has set out in detail the procedure to deal with cases which are pending in various forums in Section 434. The Government has notified 1st June 2016 for transfer of matters from CLB to NCLT. On that date, all the pending proceedings before CLB will be transferred to NCLT and Tribunal will dispose of such matters in accordance with the provisions of law. Tribunal has discretion to take up the pending CLB proceeding from any stage. At its discretion, it can take up the matter at stage where it was left by CLB or start the proceedings afresh or from any stage it deems fit.

The powers of the NCLT shall be exercised by the Benches constituted by its President. Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within 60 (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:

As per a notice published on the website of the Department of Personnel and Training on March 30, 2016, former judge (Retd.) of the Supreme Court of India, Hon'ble Mr. Justice S.J. Mukhopadhyaya, was appointed as the chairperson of the NCLAT, and the Appointments Committee of the Cabinet approved appointment of Justice (Retd.) M.M. Kumar, Chairman of the Company Law Board as President, National Company Law Tribunal (NCLT). As per section 466 of the Companies Act 2013, existing members and staff would be members and staff of the NCLT.

Vide its notification dated June 01, 2016, the Central Government also constituted 11 (eleven) Benches of the NCLT in exercise of its powers under sub-section (1) of section 419 of the new Companies Act, 2013. Of the said 11 benches, two shall be situated in New Delhi, and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai.

FEATURES OF NCLT

- Specialized court for the Corporate entities.
- This will be only Tribunal for the Corporate Members.
- It shall avoid multiplicity of litigation before various Forums
- There shall be various branches of the NCLT all over India, thereby providing justice almost at one's doorstep.
- There will be a mixture of judicial and Technical members while deciding matters
- There shall a reduction in period of winding- up.
- Reduction in pendency of cases.
- Expeditious disposal of cases.
- NCLT & NCLAT have deals with exclusive jurisdiction.

The establishment of NCLT/NCLAT shall offer various opportunities to Practicing Company Secretaries as they have been authorized to appear before the Tribunal/Appellate Tribunal (Section 432). Therefore, Practicing Company Secretaries would for the first time be eligible to appear for matters which were hitherto dealt with by the High Court.

Areas opened up for company secretaries in practice under NCLT are stated hereunder:

- Compromise and Arrangement
- Merger & Amalgamation u/s 391-394.
- Revival & Rehabilitation of Sick Companies
- winding up proceedings under the Companies Act, 1956
- Reduction of Capital
- Private liquidator and many others.
- Right to appear as Legal Representative

The Constitution of NCLT and NCLAT are part of the efforts for faster resolution of Corporate disputes, thus improving the ease of doing business in India. Essentially the setting up of NCLT & NCLAT would give a facelift to the corporate law and practice in India. It shall offer various opportunities to various professionals like CS/CA/CMA as they are authorized to appear before Tribunal/Appellate Tribunal.

The formation of the National Company Law Tribunal with its proposed wide reach all over India by virtue of its location, powers, functions and jurisdiction should be a mechanism of great importance to a large number of people,

primarily because of the fact that the National Company Law Tribunal is not another name for the conventional Company Law Board, nor does its powers, functions, jurisdictions or area of work similar to that of the Company Law Board. The National Company Law Tribunal has been established as an alternative to the Company Law Board, the Board for Industrial and Financial Reconstruction and seeks to exercise its powers and functions through its benches. Although it cannot be said for sure how efficacious the substitution from the previous formal method of dispute resolution will be in comparison to the working of the National Company Law Tribunal since it is still in its infancy and it is far too early to say if in fact it would be an effective alternative to the courts and other institutions.

CONCLUSIONS

The National Company Law Tribunal however would have certain definite benefits such as removing the burden of legal work from the shoulder of the Company Courts as well as the other institutions which are required for the smooth working and speedy conveyance of justice. The National Company Law Tribunal would exercise its original jurisdiction to resolve disputes before it. In order for the National Company Law Tribunal and the idea behind implementing it to be successful the independence of the tribunal must be ensured and preserved.

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