

## ***Study Materials***

Class - B. Com (Hons) Sem II

Sub – Corporate Law

Sub Code – CC- 4

Topic – Structure of Corporate Law – NCLT and NCLAT (pt-2)

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It has been more than 14 years that we first heard about National Company Law Tribunal [NCLT] & National Company Law Appellate Tribunal [NCLAT]. But now by MCA Notification dated 1<sup>st</sup> June, 2016 in exercise of the powers conferred by section 408 of the Companies Act, 2013 (18 of 2013), the Central Government hereby constitutes the National Company Law Tribunal to exercise and discharge the powers and functions as are, or may be, conferred on it by or under the said Act with effect from the 1<sup>st</sup> day of June, 2016.

### **ADMINISTRATION OF NCLT AND NCLAT**

Section 415 to Section 433 (both inclusive) has also come into force. These sections deal with administration of NCLT and NCLAT.

415. Acting President and Chairperson of Tribunal or Appellate Tribunal.

416. Resignation of Members.

417. Removal of Members.

418. Staff of Tribunal and Appellate Tribunal.

419. Benches of Tribunal.

420. Orders of Tribunal.

421. Appeal from Orders of Tribunal.

422. Expeditious disposal by Tribunal and Appellate Tribunal.

423. Appeal to Supreme Court.

424. Procedure before Tribunal and Appellate Tribunal.

425. Power to punish for contempt.

426. Delegation of powers.

427. President, Members, officers, etc., to be public servants.

428. Protection of action taken in good faith.

429. Power to seek assistance of Chief Metropolitan Magistrate, etc.

430. Civil court not to have jurisdiction.

431. Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.

432. Right to legal representation.

433. Limitation.

### **CONSTITUTION OF NCLT AND NCLAT:**

#### **I. NCLT & NCLAT Consist:**

- There are two classes of members to the National Company Law Tribunal; Judicial Members and Technical Members.
- The Tribunal shall be headed by the President while the Appellate Tribunal by Chairperson.
- NCLAT not exceeding eleven members for hearing appeals against the orders of the Tribunal

#### **II. Qualification: (President/Member of NCLT)**

S. No.	President	Judicial Member	Technical Member
i.	Is/has been Judge of High Court $\geq 5$ years	Is/has been Judge of High Court (any period)	Has Member of Indian Corporate Law Service /Indian Legal Service $\geq 15$ years (out of 15 years at least 3 years to be in the pay scale of Joint Secretary to GOI or equivalent post)
ii.		Is/has been District Judge atleast 5 years	Is/has been Practicing Chartered Accountant at least 15 years
iii.		Has been Advocate of court held a judicial office or as member of a tribunal atleast 10 years	Is/has been Practicing Cost Accountant at least 15 years
iv.			Is/has been Practicing <b>COMPANY SECRETARY</b> at least 15 years
v.			Person with proven ability, integrity and standing having special knowledge and experience $\geq 15$ years [1](in below mentioned specified areas)

vi.			Presiding Officer of Labour Court/ Tribunal/ National Tribunal (under Industrial Disputes Act, 1947) at least 5 years
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### **III. Qualification: (Chairman/Member of NCLAT)**

- National Company Law Appellate Tribunal, constituting of a Chairperson and not exceeding eleven members for hearing appeals against the orders of the Tribunal.

S. No.	Chairman	Judicial Member	Technical Member
i.	Is/has been Judge of Supreme Court	Is/has been Judge of High Court	Person with proven ability, integrity and standing having special knowledge and experience $\geq$ 25 years [2](in below given specified areas)
ii.	Is/has been Chief Justice of High Court	Is a Judicial Member of Tribunal for at least 5 years	

### **IV. Selection of Members**

S. No.	President/ Chairman	Judicial Members of the Appellate Tribunal	Members of the Tribunal and the Technical Members of the Appellate Tribunal
i.	Shall be Appointed after consultation with the Chief Justice of India.	Shall be Appointed after consultation with the Chief Justice of India.	shall be appointed on the recommendation of a Selection Committee consisting of

### **V. Selection Committee Consisting:**

The Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee.

S.No.	Position	Selection Committee Consisting
i.	Chairperson	§ Chief Justice of India or his nominee
ii.	Member	§ A senior Judge of the Supreme Court or a Chief Justice of High Court
iii.	Member	§ Secretary in the Ministry of Corporate Affairs
iv.	Member	§ Secretary in the Ministry of Law and Justice
v.	Member	§ Secretary in the Department of Financial Services in the Ministry of Finance

### **VI. Terms:**

**Tenure-** President/ Judicial Member/ Technical Member Shall hold office for 5 year from the date of enter into office.

**Re-appointment-** President/ Judicial Member/ Technical Member Eligible for another term of 5 year.

### **Eligibility NCLT-**

- In case of President shall hold office until he attains age of 67 years.
- In case of Member age at least 50 year shall hold office until he attains age of 65 years

### **Eligibility NCLAT**

- In case of President shall hold office until he attains age of 70 years.
- In case of Member age at least 50 year shall hold office until he attains age of 67 years

### **Advantages of NCLT & NCLAT:**

- It shall avoid multiplicity of litigation before various Forums (High Courts, CLB, BIFR, AAIFT). Thus there will be a consolidation of Corporate Jurisdiction.
- There shall be at least 11 benches of the NCLT, thereby providing justice almost at one's doorstep.
- This tribunal shall comprise of technical experts who will provide more concrete and precise decision.
- There will be mixture of judicial and equitable jurisdiction while deciding matters.
- There shall be reduction in period of winding up from 20-25 years to 2 years.
- Reduction in pendency of cases, expeditious disposal of cases.

### **SCOPE of Services for PRACTICING COMPANY SECRETARIES under NCLT:**

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. Therefore, Practicing Company Secretaries would for the first time be eligible to appear for matters which were hitherto dealt with by the High Court viz. mergers, amalgamations under Section 391-394 and winding up proceedings under the Companies Act, 1956. Areas opened up for company secretaries in practice under NCLT are briefly stated hereunder:

**PCS as Member of NCLT:** A Practicing Company Secretary can be appointed as a Technical Member of NCLT, provided he has 15 years working experience as secretary in whole-time practice.

**Appearance before National Company Law Appellate:** Tribunal As stated earlier a Practicing Company Secretary has been authorized to appear before National Company Law Appellate Tribunal.

**Insolvency Process:** Currently, the law does not support effective participation of professionals and experts in the Insolvency process. There is no shortage of quality professionals in India. Disciplines of chartered accountancy, company secretaryship, cost and works accountancy, law etc can act as feeder streams, providing high quality professionals for this new activity. In fact, private professionals can play a meaningful role in all aspects of process.

Insolvency practice can also open up a new field of activity for service professionals while improving the quality of intervention at all levels during rehabilitation/winding up/liquidation proceedings. Law should encourage and recognize the concept of Insolvency Practitioners (Administrators, Liquidators, Turnaround Specialists, Valuers etc). Greater responsibility and authority should be given to Insolvency Practitioners under the supervision of the Tribunal to maximize resource use and application of skills.”

**A. Winding up:** The National Company Law Tribunal has also been empowered to pass an order for winding up of a company. Therefore Practicing Company Secretaries may represent the winding up case before the Tribunal.

**B. Compromise and Arrangement:** With the establishment of NCLT, a whole new area of practice will open up for Company Secretary in Practice with respect to advising and assisting corporate sector on merger, amalgamation, demerger, reverse merger, compromise and other arrangements right from the conceptual to implementation level. Company Secretaries in practice will be able to render services in preparing schemes, appearing before NCLT/NCLAT for approval of schemes and post merger formalities

**C. Sick Companies**

- Since all powers of BIFR have been entrusted to NCLT, detecting the Sick companies and providing resolution of the queries and for making reference to the Tribunal for revival and rehabilitation of the Company
- The provisions also mandated preparation of scheme and seeking approval from the Tribunal as may be required. Thus the practicing professionals could play a pivot role in the same area.

**CONCLUSION:**

In view of vast opportunities emerging with the establishment of National Company Law Tribunal, the Practicing Company Secretaries should standardize their competencies with the global benchmarks to provide value added services in assisting the Tribunal in dispensation of justice and speedier disposal of matters like merger, amalgamation, restructuring, revival and rehabilitation of sick companies and winding up of companies.

[1] 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

[2] 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.

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