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RESEARCH ARTICLE

NCLT A SINGLE ROOF FOR ALL CORPORATE DISPUTES.

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Abstract

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Introduction:-

The **National Company Law Tribunal (NCLT)** is a strong quasi-judicial body in India that is constituted with the objective of the settlement of dispute related to the companies at the single place without delays and adjudicates almost all issues relating to companies in India. 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 has gained acceptability over a period of time. The NCLT was established under the Companies Act 2013 and was constituted on 1 June 2016.

The NCLT has eleven benches, two at New Delhi (one being the principal bench) and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai.^[2] Justice M.M. Kumar, a retired judge of the Punjab and Haryana High Court has been appointed as President of the NCLT. 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.

The setting up of NCLT as a specialized institution for corporate justice is based on the recommendations of:-

The Justice Eradi Committee on Law Relating to Insolvency and Winding up of Companies:-

The Committee examined not only the Companies Act, 1956 but also the other relevant laws having a bearing on the subject such as Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), Recovery of Debts due to Banks and Financial Institutions Act, 1993

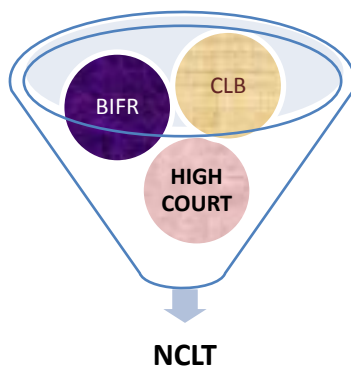
The United Nations and International Monetary Fund Report:-

The Committee in its report noted that there are at present three different agencies namely, the **High Courts**, which have powers to order winding up of companies under the provisions of the Companies Act, 1956; secondly, the **Company Law Board** set up under section 10E of the Companies Act, 1956 to exercise powers conferred on it by the Act or the powers of the Central Government delegated to it and finally, **Board for Industrial and Financial**

Reconstruction (BIFR) which deals with the references relating to rehabilitation and revival of companies. The High Courts are not able to devote exclusive attention to winding up cases which is essential to conclude the winding up of companies quickly. The experiment with BIFR for speedy revival of companies has also not been encouraging. The committee after a detailed analysis of the working of BIFR, with respect to revival of sick companies and the working of High Courts with respect to winding up of companies recommended for the formation of a composite Legal forum to address all aspects of Companies Act 1956 rather than have separate Acts (SICA 1985 etc.) and

multiple forums (BIFR, High Court) for various sections of the Companies Act 1956.

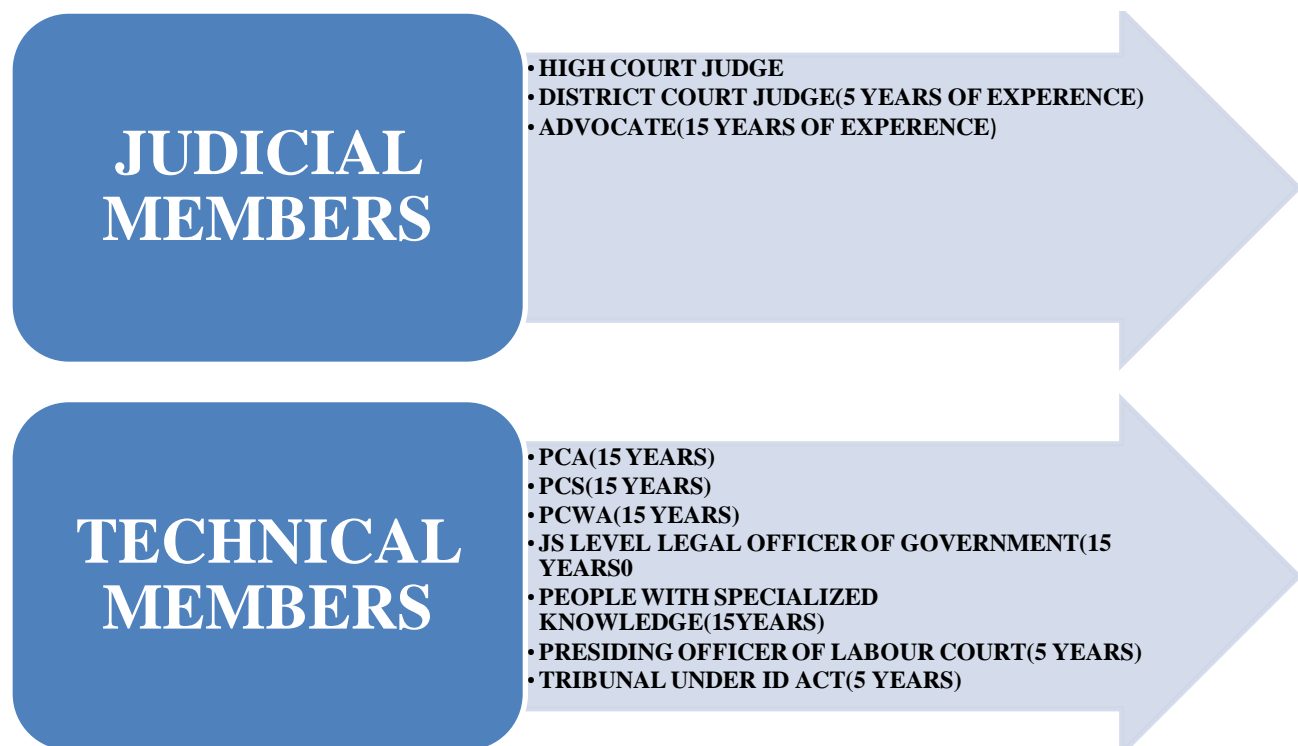
Why need nclt??



The basic objective of setting up NCLT/NCLAT as is envisaged by way of the act is to substitute the existing company law board as well as the BIFR on the one hand and The Courts of Law on the other hand thus effectively putting into the hands of one particular institution the powers and functions which are held and carried out by three different institutions. The Central Government shall by notification in the gazette through the use of Section 10FB of the Companies Second Amendment Bill facilitate the setting up of The National Company Law Tribunal so as to exercise all the powers and functions that have been conferred upon it by way of the companies act or other laws that are relevant to its functioning and in force at that point in time.. It is thus evident that the powers and functions of the National Company Law Tribunal would be derived from and discharged under the Companies Act.

Constitutions of tribunals:-

As per the provisions of Section 408 of the Companies Act 2013, the Central Government shall, by notification in the official gazette constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.



Nature of powers enjoyed by nclt:-

NCLT will exercise and discharges such powers and functions that were conferred on it through the Companies Act, 2013 or any other law for the time being in force.

The President shall be a person who is or has been a Judge of a High Court for five years.

A person shall not be qualified for appointment as a Judicial Member unless he—

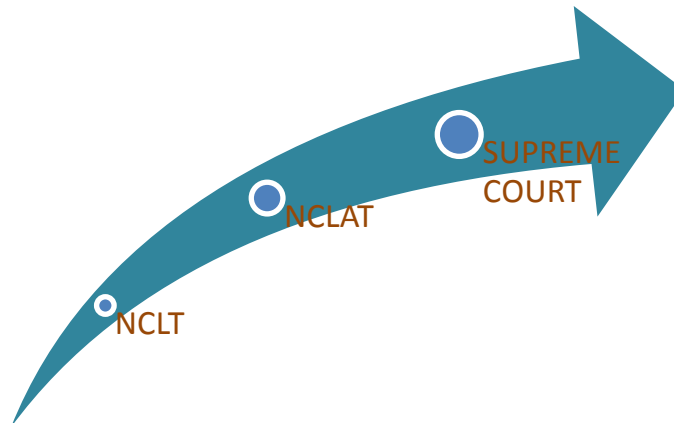
- is, or has been, a judge of a High Court; or
- is, or has been, a District Judge for at least five years; or
- has, for at least ten years been an advocate of a court.

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
- ❖ initiated before the Company Law Board under the previous act (the Companies Act 1956);
- ❖ pending before any district court or High Court under the previous act, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies;
- ❖ pending before the Board for Industrial and Financial Reconstruction, including those pending under the Sick Industrial Companies (Special Provisions) Act 1985;
- ❖ pending before the Appellate Authority for Industrial and Financial Reconstruction; and
- ❖ pertaining to claims of oppression and mismanagement of a company, winding up of companies and all other powers prescribed under the Companies Act.

Any person aggrieved from the decisions passed by the NCLT than such party may file an appeal before the National Company Law Appellate Tribunal. The decision passed by the NCLAT is further appealable to Supreme Court.



Benefits of nclt/nclat:-

The establishment of NCLT and NCLAT as specialized Quasi Judicial Bodies with professional approach will have the following beneficial effects:

1. Reduce pendency of winding up cases and shorten the period of winding-up process;
2. Avoid multiplicity and levels of litigation before High Courts and quasi-judicial Authorities like Company Law Board (CLB), Board for Industrial and Financial Reconstruction (BIFR) and Appellate Authority for Industrial and Financial Reconstruction (AAIFR) as all such matters will then be heard and decided by NCLT;
3. The appellate procedure will be streamlined with an appeal against order of the NCLT lying before NCLAT and with further appeal against the order of NCLAT lying with the Supreme Court only on points of law, thereby reducing the delay in appeals; and
4. The burden on High Courts will be reduced and BIFR and AAIFR will be dissolved.

Avenues for the companies secretary under nclt:-

The establishment of NCLT shall offer wide area of work as the company Secretaries have been authorized to appear before the NCLT/NCLAT. The areas are specified as under:-

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.

Sick Companies:-

- (a) Timely detection of sick company.
- (b) Making a reference of sick industrial company to NCLT

Winding up:-

The National Company Law Tribunal has also been empowered to pass an order for winding up of a company. Therefore the Practicing Company Secretaries may represent the winding up case before the Tribunal. Unlike the earlier position allowing only government officers to act as Official Liquidators, now professionals like Practicing Company Secretaries have been permitted to act as Liquidator in case of winding up by the Tribunal.

Reduction of Capital:-

As per amended section 100 of the Companies Act, subject to confirmation by the Tribunal, a company limited by shares or a company limited by guarantee and having a share capital may if so authorized by its articles by special resolution reduce its share capital. The Practicing Company Secretaries will be able to represent cases of reduction of capital before the Tribunal.

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.

Wayahead:-

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 has been established as an alternative to the Company Law Board, the Board for Industrial and Financial Reconstruction and The Company Court and seeks to exercise its powers and functions through its benches. The National Company Law Tribunal is not another name for the 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 however if implemented would have certain 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.

Location and postal address of nclt and its benches and nclat:-

S.NO	TITLE OF BENCH	LOCATION AND POSTAL ADDRESS
1.	NATIONAL COMPANY LAW APPELLATE TRIBUNAL.	NEW DELHI 'B'WING,3 RD FLOOR,PARYAVARAN BHAWAN,C.G.O COMPLEX,LODHI ROAD,NEWDELHI-110003
2.	(A)NATIONAL COMPANY LAW TRIBUNAL ,PRINCIPAL BENCH. (B)NATIONAL COMPANY LAW TRIBUNAL,(NEW DELHI) BENCH	NEW DELHI BLOCK NO 3,GF,5 TH ,6 TH ,7 TH ,8 TH FLOORS,C.G.O,COMPLEX,LODHI ROAD,NEW DELHI-110003
3.	NATIONAL COMPANY LAW TRIBUNAL,(AHMEDABAD),BENCH	AHMEDABAD ANAND HOUSE,GROUND,1STAND 2 ND FLOORS,SG HIGHWAY,THALTEJ,AHMEDABAD- 380054
4.	NATIONAL COMPANY LAW TRIBUNAL,(ALLAHABAD),BENCH	ALLAHABAD 9 TH FLOOR,SANGAM PLACE, CIVIL LINES, ALLAHABAD-211001
5.	NATIONAL COMPANY LAW TRIBUNAL,(BANGALURU),BENCH	BANGALURU CORPORATE BHAWAN,12 TH FLOOR,RAHEJA TOWERS,M.G.ROAD,BANGALURU-560001
6.	NATIONAL COMPANY LAW TRIBUNAL,(CHANDIGARH),BENCH	CHANDIGARH GROUND FLOOR,CORPORATE BHAWAN, SECTOR-27-B,MADHYA MARG,CHANDIGARH- 160019
7.	NATIONAL COMPANY LAW TRIBUNAL,(CHENNAI),BENCH	CHENNAI CORPORATE BHAWAN(UTI BUILDING)3 RD FLOOR NO,29 RAJAJI SALAI,CHENNAI-600001
8.	NATIONAL COMPANY LAW TRIBUNAL,(GUWAHATI),BENCH	GUWAHATI 4 TH FLOOR,PRITHVI PLANET BEHIND HANUMAN MANDIR G.S.ROAD GAWAHATI-781007

9.	NATIONAL COMPANY LAW TRIBUNAL,(HYDERABAD),BENCH	HYDERABAD CORPORATE BHAWAN,BANDLAGUDA TATTIANNARAM VILLAGE, HAYATNAGAR MANDAL, RANGAREDDY DISTRICT,HYDERABAD-500068
10.	NATIONAL COMPANY LAW TRIBUNAL,(KOLKATA),BENCH	KOLKATA 5,ESPLANADE ROW(WEST),TOWN HALL GROUND AND FIRST FLOOR,KOLKATA-700001
11.	NATIONAL COMPANY LAW TRIBUNAL,(MUMBAI),BENCH	MUMBAI 6 TH FLOOR,FOUNTAIN TELECOM BUILDING NO ,1 NEAR CENTRAL TELEGRAPH,M.G.ROAD MUMBAI-400001

References:-

1. Justice Eradi Committee on Law Relating to Insolvency and Winding up of Companies.
2. Companies Act 2013 .
3. Bare Act for definitions and provisions.