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RESEARCH ARTICLE

ROLE OF NCLT IN IMPROVING CORPORATE GOVERNANCE IN INDIA: A DESCRIPTIVE ANALYSIS

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Abstract

On the event of India Today conclave 2023, the Hon'ble Prime Minister of India on 18th March 2023, recognized the contribution of National Company Law Tribunal (NCLT) in strengthening the corporate governance practices in India. It imposes a curiosity in any research oriented mind that how the principles embodying the NCLT becoming one of the contributing factor for good corporate governance for the India Inc. In the merger and arrangement cases the NCLT has efficiency of the 93 %. In the oppression, mismanagement and other cases the efficiency counted at 80 %. Similarly in the insolvency dispute cases the efficiency is counted at 86 % in totality and the total amount involved in the settlement was more than ₹ 10,49,264 crore. Keeping in view the size of the corporate world operating in and through India, there need to be strengthening of the NCLT window in terms of resources and providing other jurisdictions to adjudicate the matters. The independence and machinery of the NCLT should be safeguarded and preserved.

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Introduction

The Eradi committee was formed by the central government in 1999 under the chairmanship of shri Justice V. Balakrishna Eradi, retired judge of the Hon'ble Supreme Court of India. The committee was required to examine and make recommendations with regards to:-

- the desirability of changes in existing law relating to winding up of companies so as to achieve more transparency and avoid delays in the final liquidation of the companies.
- the mechanism through which the management of companies will be conducted after the winding up of order is issued and the authority which will supervise timely completion of proceedings.
- the rules of winding up and adjudication of insolvency of companies.
- the manner in which the assets of the companies are brought to sale and the proceeds are distributed efficiently and
- a self-contained note on winding up of companies having regard to the Sick Industrial Companies (Special Provision) Act, 1985 and the Securities Contracts (Regulations) Act, 1956 with a view to creating confidence in the mind of investors, creditors, labour and other shareholders.

The committee make recommendation for the establishment of the 'National Company Law Tribunal (NCLT)', combining all the powers of CLB, AAIFR, BIFR along with jurisdiction and powers, vested in High Court relating to the winding up process of companies. The NCLT was formed as quasi-judicial body on 01 June 2016 under

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section 408 of The Companies ACT 2013 with the objectives of resolution of disputes relating to the company law, insolvency and bankruptcy issues, competition law, the SEBI act and other rules. The rationality in the establishment of the NCLT can be traced in the following broad parameters.

1. Single window rather than moving from one platform and forum to another;
2. Mandate of speedy processing of the cases;
3. Reducing the burden of the High Courts

In the first phase the Ministry of Corporate Affairs has set up eleven Benches, one Principal Bench at New Delhi and ten other Benches at New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. These Benches are headed by the President Chief Justice (Retd.) Ramalingam Sudhakar and comprises of sixteen Judicial Members and nine Technical Members at different locations. Subsequently, more Benches at Cuttack, Jaipur, Kochi, Amravati, and Indore have been setup and new members have joined"

Literature Review

Although not many studies being conducted to judge the rationality and performance of the tribunal and the ones that could be traced through literature review were only the conceptual studies. Babbar, S. & Kumari, S. (2022) discussed the overview of the NCLT, important case judgment delivered by Hon'ble Supreme Court on Insolvency and Bankruptcy Code 2016. It stressed the Economic Survey on NCLT that concluded IBC 2016 has bettered the India's debt recovery mechanism and further proposes the strengthening of the NCLT and appellate tribunal. The study by Devi, D.,S. & Kannappan, M. (2018) compares the NCLT with company law board that it is the single window for all the disputes in the corporate governance. It discussed the various provision of CLB and NCLT formation, their respective significance and various powers vested in the NCLT The paper concluded that NCLT reduces the multiplicity of litigations before different forums and courts. The studies also of the kind of illustrating the importance of the NCLT. Gayathri, U. & Arya, R. (2018) focuses on the importance of the national company law tribunal and national company law appellate tribunal to adjudicate the disputes of the corporates in India. The major finding was the inefficiency of the national company law tribunal to adjudicate the matter within the time framed. the study by Hartarska V. (2005) summarized that good governance can be categorized as internal factors like size of the board, managerial capture of the board, stakeholder's representation and external factors such as difference in regulation, competition & Audit. Jaiswal, S., Singh, P. & Singh, V. (2023) analysed the formation, power and functions of NCLT and a detailed anysis of a landmark case Tata Consultancy Services Vs Cyrus Investment Pvt ltd. It concluded that NCLT has helped in reducing the backlog of cases faced by the Indian Judicial System. Kamath, K. (2018) examined the constitution of the NCLT, tracks the constitutionality of the provisions as they stand, and suggests certain modifications to the existing legislation. Majumdar, A. (2020) analysed the corporate governance practices in China and India. The paper suggested that emerging economies such as China and India ought to develop and implement corporate governance norms that are separate from those of advanced economies to combat the unique issues arising out of shareholding patterns at home.

In Indian context one recent study by Karki, C. (2023) which tried to analyze the role and performance of the National Financial Reporting Authority as independent regulator and concluded that the two body viz The Institute of Chartered Accountants of Indian and the National Financial Reporting Authority should work together to evolve improving quality of accounting and auditing standards in practice in India. Raees, A., S. (2022) explored the job of National Company Law Tribunal under various laws, being the laws offer ease of doing businesses and ease of exit the corporate field. It concluded that NCLT taking over the burden of the High Courts. The paper emphasized that it is essential that the transition length of converting CLB to NCLT, especially in phrases of transfer of present subjects need to be cautiously treated through the applicable authorities, because the same will determine its effectiveness in due path. Srivastava, Das, and Pattanayak (2018) advocates that corporate governance practices are instituted in the earlier time for the protection of the investors, but with the passage of time firms realized that it was essential to the survival of the firm. The study by Vinayak, C. (2016) stressed on the need of the NCLT, the composition of the members of the NCLT and statutory provisions of the NCLT as well as the benefit in the broad areas of compromise and arrangements, sick companies, winding up and reduction of share capital of the corporates. Whereas the study by Yadav, H. (2022) displayed that scandals and frauds arises when directors and top management are not forced to follow certain governance code. The emphasis should shift from only investor protection to all stakeholders' protection. It concludes that a better compliance mechanism by regulatory bodies is not sufficient.

Therefore on the backdrop of above arguments there should be attempt to judge the working especially the successful resolution plans and revival proposal advanced under the supervision and leadership of the NCLT.

Hypothesis

The NCLT is an effective tool of corporate governance.

Research Methodology

The primary objective of the study is to analyse the role and performance of the NCLT in improving the corporate governance practices in India. The paper used the cases filed under the Companies Act and the Insolvency and Bankruptcy Code under the various sections of the respective Acts. The paper borrowed the secondary data available from the NCLT website <https://nclt.gov.in/> and other Government of India websites. The time period is 2016 to 2022. The paper used the statistical and descriptive tools.

Analysis

(1) Petitions under The Companies Act

The provisions regarding compromise, arrangements and amalgamations are covered under chapter XV; sections 230 to section 240 of The Companies Act 2013. The section 230 is on the power of the NCLT to sanction the compromise or arrangements that shall be binding upon the company, all the creditors, or class of creditors or members or class of members.

The Table 1 providing a picture of the case filed, pending and disposed of under the respective arrangements. Out of the 14685 cases filed 13701 are disposed of by the NCLT since its establishment. In relative terms the efficiency counts at 93.29 %.

Table 1:- Cases Filed, Pending and Disposed under section 230-232 of The Companies Act, 2013 (Merger and Acquisitions) from 01.06.2016 TO 31.08.2022.

Sections	No. of Cases Numbered	No. of Cases Pending	No. of Cases Disposed off	% of Disposal (4/2*100)
1	2	3	4	5
Sec 230-232	14685	984	13701	93.29 %

Source: NCLT website <https://nclt.gov.in/section-230-232>

The provisions regarding prevention of oppression and mismanagement are covered under chapter XVII sections 241 to section 246 of The Companies Act 2013. The cases filed before the NCLT under the following sections of the Companies Act 2013 are depicted in the Table 2.

1. Section 241 and section 242 of the Companies Act 2013 and Section 397/398 of the Companies Act 1956: The application to NCLT/CLB for relief in case of oppression of any member/s or mismanagement or affair prejudicial to the interest of the creditors or company. The section 242 provides for the power of the NCLT.
2. Section 59: Rectification of Register of Members.
3. Section 271: The circumstances in which company may be wound by the NCLT.
4. Section 252: provision for the Appeal to the NCLT against the order of the Registrar of the Company.
5. Section 75: provides for the damages in case the company fails to pay the deposit or any interest thereon.

The cases filed since the inception of the NCLT were 35,012 out of which 28,036 were disposed of. In relative terms the efficiency of NCLT in respect of the oppression and mismanagement etc cases is approximately 80 %.

Table 2:- Cases Filed, Pending and Disposed under other section of The Companies Act, 2013 from 01.06.2016 TO 31.08.2022.

Sections	No. of Cases Numbered	No. of Cases Pending	No. of Cases Disposed off	% of Disposal (4/2*100)
1	2	3	4	5
Sec 241/242, 59,271, 252,75 of The Companies Act 2013 and sections	35,012	6,976	28,036	80.07 %

397/398 of The Companies Act 1956				
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Source: NCLT website <https://nclt.gov.in/other-section>

(2) Petition under the Insolvency and Bankruptcy Code 2016

The Insolvency and Bankruptcy Code 2016 (IBC) was enacted to provide the comprehensive statute for resolving the insolvency and bankruptcy of companies, individuals, and partnerships. The IBC was enacted to overhaul India's outdated insolvency and bankruptcy laws and to provide a more efficient and effective system for resolving insolvency in a time bound manner ensuring cost effective resolution. The strive of the entrepreneurship is not only the easing of doing business but also the ease of exit in case the venture not profitable any more or inoperative.

The statistics of the cases filed under section 7, 9 and section 10 of the IBC is depicted in the Table 3.

1. Section 7: Initiation of Corporate Insolvency resolutions process by the Financial Creditors of the Company.
2. Section 9: Application for initiation of corporate insolvency resolution process by the operational creditor.
3. Section 10: Initiation of Corporate Insolvency resolution process by the corporate applicant.

The financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to; The operational creditors means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred; The corporate applicant means corporate debtor or a member or partner of corporate debtor who is authorized to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or an individual who is in charge of managing the operations and resources of the corporate debtor; or a person who has the control and supervision over the financial affairs of the corporate debtor.

Table 3:- Cases Filed, Pending and Disposed under section 7, 9 and 10 of the Insolvency and Bankruptcy Code 2016 from 01.11.2017 to 31.08.2022.

Section	No. of Cases Numbered	No. of Cases Pending (Pre Admission)	No. of Cases Pending (After Admission)	No. of Cases Disposed off	No. of Cases Adjudicated (4)+(5)	% of Adjudication (6/2*100)
1	2	3	4	5	6	7
Sec. 7	9,429	2,304	1540	5,990	7,530	79.86%
Sec. 9	21,262	4,703	1,639	16,162	17,801	83.72%
Sec. 10	512	168	190	291	481	93.94%
Total	31,203	7,175	3,369	22,443	25,812	85.84%

Source: NCLT website <https://nclt.gov.in/section-7-9-and-10>

As shown in the Table 3 the financial creditors of the companies filed 9429 petition for initiation of corporate insolvency resolution process against the said company on the event of the default by the respective companies. Out of which 7,530 cases were disposed of by the NCLT. In relative terms the efficiency of the NCLT is counted at approximately 80 %. Similarly the operational creditors filed 21,262 petitions for initiation of corporate insolvency resolution process against the said company on the event of the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment. Out of which 17,801 cases were disposed of by the NCLT. In relative terms the efficiency of the NCLT is counted at approximately 84 %. The corporate applicant filed 512 petitions for the initiation of corporate insolvency resolution process against the defaulting company before the NCLT. Out of which 481 were adjudicated by the NCLT. In relative terms the efficiency of the NCLT is counted at approximately 94 %. In totality, one can note that total 31,203 case were filed under section 7, 9 and 10 of the Insolvency and Bankruptcy Code 2016 before the NCLT out which 25,812 were adjudicated and relative efficiency counts around 86% approximately.

The Table 4 below exhibits the cases and amount settled through the intervention of the NCLT.

Table 4:- Total Amount involved in the Cases Disposed of under section 7, 9 and 10 of the Insolvency and Bankruptcy Code 2016.

Stage of Disposal	Total No. of Cases	Amount Involved (₹) Crore
Settled Before Admission	23,608	7,21,282
Settled After Admission/Sec 12A	1052	24,601
Resolution Plan Approved	565	3,03,381
Total	25,225	10,49,264

(Note: Amount realized under Sec. 43, 45, 49 & 66; during Liquidation; Section 94 and 95 of IBC, 2016 not included)

Source: NCLT website <https://nclt.gov.in/amount-involved-section-7-9-and-10>

The total number of cases settled at the initial stage i.e. even before the admission of the case were 23,608 and the amount involved therein was ₹ 7,21,282 Crore. The cases settled after admission or under section 12 A of the IBC code (withdrawal of the application admitted under section 7,9 or 10) were 1052 and amount involved therein was ₹ 24,601 crores. The successful resolution approved by the NCLT were 565 and the amount involved therein was ₹ 3,03,381 crore. In totality we can exhibit total number of cases dispose of were 25,225 and total amount settled was ₹ 10,49,264 crore.

Conclusion & Recommendations:-

Generally the term good corporate governance refers to the ethical business practices and the system under which transparency, accountability and fairness are ensured. The India is the fastest developing nation in the world and has the youngest population to deploy the resources and strive for a double digit growth in the national income. The one of the complaint by the global investors that they do not find a convenient exit system in the case when venture does not work out to be profitable or deploys the resources of the loss making unit to the profit making ventures. Although the Indian government after adopting liberalizing policy in 1990s, ensured the working environments for the global investors but still a number of platforms, forums and laws were acting as hindrance for smooth ease of doing business and ease of exit. The establishment of the National Company Law Tribunal and transferring the authority to adjudicate the company cases under the various laws enacted for the corporate is the turning point in terms of adjudication of the company matter along with the proposing the resolution plans for the gain of all the interested parties including investors, creditors, regulatory authorities and society at large. If we look at performance of the NCLT in the last seven years of its inception, the results are visible and impressive. In fact we can conclude that this was the commendable job of the Indian government to establish the NCLT. In the merger and arrangement cases the NCLT has efficiency of the 93%. In the oppression, mismanagement and other cases the efficiency counted at 80 %. Similarly in the insolvency dispute cases the efficiency is counted at 86 % in totality and the total amount involved in the settlement was more than ₹ 10,49,264 crore. Although the NCLT has presented impressive report card of its performance but keeping in view the size of the corporate world operating in and through India, there need to be strengthening of the NCLT window in terms of resources and providing other jurisdictions to adjudicate the matters. We can imagine the size of the corporate ten years ahead, therefore the Government should accordingly legislate to provide the rapid justice within the time framed. The NCLT has shared the burden of the High Courts, therefore the independence and machinery of the NCLT should be safeguarded and preserved.

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