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## AN-OVERVIEW OF THE NATIONAL COMPANY LAW TRIBUNAL

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### ABSTRACT

National Company Law Tribunal (NCLT) is a Quasi-Judicial body which deals with disputes emerging out of the company. It is the most significant purview of the company as the necessary part lies towards keeps up the tranquillity of the company by settling the disputes. Since the revolution in Industries and after autonomy the development of the Indian economy just as its methodology towards organization has picked up significance and India is on the phase of being a created nation. National Company Law Tribunal was set up by the Central Government under Companies Act 2013 with a perspective on setting down the organization disputes inside a constrained edge time and which is likewise evaluated to be of more affordable while contrasted with others. The judgment encircled by the National Company Law Tribunal (NCLT) can be appealed by the National Company Law Appellate Tribunal (NCLAT). NCLAT is an appellate body which can hear the appeal against the decisions of the NCLT. And appeal against the decision of the NCLAT hears by the Supreme Court (SC). The NCLT has replaced the Company Law Board (CLB). NCLT was formed under Companies Act 2013 with an object to the speedy solution of the corporate disputes and this Research Paper discusses the development and significance of National Company Law Tribunal and National Company Law Appellate Tribunal to settle down the dispute arising related to the Company.

### RESEARCH OBJECTIVE

The below research paper explains in detail about the National Company Law Tribunal and National Company Law Appellate Tribunal, their background, constitution, powers and their importance in the corporate sector.

## **RESEARCH QUESTIONS**

The following are the research questions that can be framed:

1. What is the background and object to establish the National Company Law Tribunal and National Company Law Appellate Tribunal?
2. What is the constitution of NCLT and NCLAT?
3. What are the powers of the NCLT and NCLAT?
4. What is the importance of NCLT and NCLAT?

## **RESEARCH METHODOLOGY**

The research done in this research paper is entirely Doctrinal. The author has used the secondary data, like the articles, act, interviews, Act, discussions and debate. Only the necessary information is being taken from the sources.

## **INTRODUCTION**

NCLT was constituted on first June 2016 by the central government under section 408 of the Companies Act 2013. NCLT had begun its working in the month of June in Delhi and was extended in metro urban communities till July. The first suit was initiated in Mumbai and thus NCLT was started.

In 1988, the law commission displayed the 124<sup>th</sup> report that explains that there is a need to establish an autonomous tribunal for speedy resolution of cases and reduce the burden of cases on the courts. Now the need for establishing of the tribunal is considered very important and in light of which National Green Tribunal was constituted for managing the instances of the condition and Central administrative tribunal was constituted to manage the administrative matters. Further through Companies Amendment Act 2015 assembly constituted a particular tribunal for managing and solving of corporate cases. The NCLT has pulled the attention of the general public as the people describe their personal views on this and many other author's research describes that NCLT is very important and beneficial for people seeking justice. The procedure for solving a dispute is easier and speedy compared to the other tribunals. NCLT

resolves a dispute within a framed time especially matters related to the corporate affairs. NCLT was constituted to resolve the corporate cases quickly and maintain peace and harmony in the company and to establish a free flow of management in the company. NCLT is very important and beneficial for the partners, shareholders, the general public as they get speedy remedy in case of any dispute.

NCLT is a quasi-judicial authority which established with an object to solve corporate matters which are civil under the companies Act. The Constitutional validity of NCLT preserved by the Supreme Court and some provisions rendered as a violation of constitutional principles. NCLT works the same as other courts of the country, as it works on an unbiased basis and follows the principle of Natural Justice.

NCLT is also an adjudicating authority for the process of insolvency resolutions for companies and limited liability partnership under the Insolvency and Bankruptcy code 2016.

### **Background of NCLT**

#### **ERADI Committee**

The ERADI committee was formed in 1999 by the central government for the creation of National Company Law Tribunal. It was a high-level committee established by the central government. ERADI committee recognized that there was a need of a body for quick disposal of issue relating to companies than the ERADI committee recommended for the formation of the NCLT.

#### **J.J.IRANI COMMITTEE**

J.J.IRANI committee repeated and declare the need of NCLT, as it is required experts to deal with the issues refer to it. There should be a prescribed qualification for the appointment of the member and members should be properly trained to work in NCLT. The NCLT and NCLAT

were first expected to set up in Companies (Amendment) Act, 2002, but due to several problems, it could not happen.

### **Companies (Second Amendment) Act, 2002**

Based on the above recommendations, “the Companies (Second Amendment) Act, 2002” provided for the formation of a new National Company Law Tribunal and National Company Law Appellate Tribunal. They were proposed to having jurisdiction of company law board, BIFR, AAIFR, and the company courts of the high court.

On 1 June 2006, came a pleasant surprise that the National Company Law Tribunal and National Company Law Appellate Tribunal were constituted by the government finally. NCLT and NCLAT are the quasi-judicial bodies of India. NCLT and NCLAT deal in the issues relating to the companies of India. NCLT and NCLAT were constituted on 1 June 2016 under the Companies Act 2013. Section 408 and 410 of the Companies Act 2013 explains about the constitution of the aforesaid tribunals.

According to section 408 of the companies Act 2013, the central government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as National Company Law Tribunal consisting of a president and the 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 maybe, conferred on it by or under this Act or any other law for time being in force.

On 1 June 2016, the Ministry of Corporate Affair (MCA) notifies about the constitution of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) for exercising the power imposed on them under section 408 and 410 of the Companies act 2013. Almost for 14 years, this notification was in the abeyance than on the recommendation of ERADI committee it was introduced in the Companies (second amendment) Act 2002. In recent times the Indian government emphasis to make the easier process of NCLT and take various steps to raise the importance of NCLT and NCLAT.

Hence the existing Company Law Board (CLB) and Board of Industrial and Financial Reconstruction (BIFR) were replaced by the National Company Law Tribunal and National Company Law Appellate Tribunal. The object of setting up of NCLT and NCLAT was to bring faster resolution in the disputes related to the corporate sector and to improve the business in that.

### **The constitutional validity of NCLT:**

The Supreme Court in the case of Madras Bar association v the Union of India upheld the constitutional validity of NCLT. The Madras Bar Association challenged the constitutional validity of NCLT and NCLAT and filed a writ petition in the Supreme Court. It was argued by the petitioners that the provisions of the Act related to NCLT and NCLAT were adverse to Article 14 of the Indian Constitution.

Then the petitioner's allegations were rejected by the court. The court said that the legislature has the power to make a law which transfers any kind of jurisdiction exercised by any court related to any issue to any Tribunal. It was also said by the court that when jurisdictional power sends to the tribunal they should be treated as Judicial Tribunal. Further, the court said that all the member's that are working in tribunal should be equal in status, rank and capacity. Now the constitutional validity of National Company Law Tribunal and National Company Law Appellate Tribunal upheld by the Constitutional Bench of the Supreme Court on order dated 11 May 2010.

The court has identified that part 1B and part 1C have some constitutional defects and the need some suitable amendments to make them more efficient and operational.

### **Constitution of NCLT and NCLAT**

NCLT and NCLAT were established under the Companies Act 2013 which came into force on September 12, 2013.

### **Qualification of official members of NCLT and NCLAT:**

#### **NCLT:**

- The President of the NCLT shall be a person who is or has been a Judge of a High Court for 5 years.
- An individual can be appointed as a judicial member if he—
  - (a) Is, or has been, a judge of a High Court (HC); or
  - (b) Is, or has been, a District Judge for five years; or
  - (c) Has, for at least 10 years as an advocate of a court.

### **NCLAT:**

National Company Law Appellate Tribunal comprised to hear appeals against the decisions of the NCLT.

- The chairperson will be an individual who is or has been a judge of the Supreme Court or the Chief Justice of a High Court.
- A Judicial member will be an individual who is or has been a Judge of a High Court or is a judicial member from the 5 years of a Tribunal.
- A Technical member will be an individual of demonstrated capacity, trustworthiness and standing to have unique information and experience, of at least 25 years, in law, industry finance, industrial reconstruction and industrial finance and industrial administration and management, matters of accountancy labour, investment, or such different controls identified with the board, direct of issues, recovery, restoration and ending up of companies.

The President of the NCLT and the judicial members and chairperson of the NCLAT will be appointed after meeting and consultation with the Chief Justice of India.

### **Powers of NCLT and NCLAT**

NCLT can look for the help of Chief Metropolitan Magistrate. It can also do De-enlistment of Companies. NCLT can also decide and declare the member's liability unlimited. NCLT can also

perform De-enlistment of organizations in specific conditions when there is the enrolment of organizations is gotten illicitly or improperly. National Company Law Tribunal also has the power to hear the complaint of the refusal of organizations to move protections and amendment of the register of individuals. NCLT plays a very important role in protection of interest of the stakeholders and especially for the non-promoter's shareholders and depositors. NCLT has the Capacity to give remedy to the financial specialists in a huge arrangement of unlawful activities submitted by the organization the executives or different experts and counsellors who are related to the organization.

NCLT Forces to guide the organization to revive its records or permit the organization to modify its fiscal summary yet don't allow reviving of records. The organization can itself likewise move toward the Tribunal through its chief for amendment of its budget report. NCLT has the power to examine or for starting examination procedures. An examination can be led even abroad.

Arrangements are given to help examination organizations and courts of different nations as for examination procedures. It can examine the responsibility of the organization. It can freeze the resources of the organization. NCLT has the Capacity to force a limitation on any protections of the organization. NCLT has the power to change the open constrained organization into the private restricted organization. It can modify the financial year of an organization enlisted in India. The NCLT has the power under the Companies Act to settle procedure. Relating to cases of persecution and fumble of an organization, ending up of organizations and every single other matter recommended under the Companies Act.

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### **Importance of NCLT**

The NCLT is a semi-legitimate pro joined by the decency of the Companies Act, 2013 to oversee corporate inquiry of basic nature authorised by the act. NCLT has powers and procedure like an official court. NCLT works on the lines of any common Court of law in India and is obliged to reasonably choose realities of the case and pick matters in concordance with the guidelines of basic value and the advancement of such decisions, make judgments from the decisions so came to it as solicitations. The solicitations so melded can help in restoring a situation, redressing a wrong by corporate or constraining disciplines/ costs and may change or better the rights,

commitments, duties or advantages of the get-togethers concerned. The Tribunal require not to follow with the severe standards as to procedural law and valuation for any affirmation. NCLAT is an Appellate Tribunal and a re-assessing master which deals with the interests rising out of the decisions of the NCLT. It is formed for keeping up the check and change segment and to review the bungles made by the Court expecting any. It is a transitional insightful conversation like a High Court where the interests follow solicitation or decision of the NCLT. The decisions of NCLAT are further liable to challenge in the Supreme Court of India. The NCLAT overviews the decisions and solicitations of NCLT and has been mastered to keep up.

### **Conclusion**

The establishment of NCLT and NCLAT has been assuming a significant job in dissolving corporate sector disputes. It has been signified as recipient according to law to give some extraordinary consideration and insurance to the corporate side as the nation's monetary development relies on the development of the business. To have more advantageous corporate administration NCLT was built up.

There has been denoted an adjustment in the organization's segment because of the development and proficient capacity of NCLT and NCLAT. The arrangement of the NCLT would have assumed a significant job in the settlement of the organization contest if it works all the more effectively and directed appropriately. For quick removal of the settlement, the best possible usage must be done by the central government.

### **References**

#### **Legislation**

- Companies Act 2013
- Companies (Amendment) Act, 2002

#### **Case Laws**

- Madras Bar association v the Union of India

## Websites

- Nclt.gov.in. 2020. *National Company Law Tribunal / NCLT*. [online] Available at: <https://nclt.gov.in/content/national-company-law-tribunal> [Accessed 12 June 2020].
- The Economic Times. 2020. *National Company Law Tribunal: Latest News On National Company Law Tribunal / Top Stories & Photos On EconomicTimes.Com*. [online] Available at: <https://economictimes.indiatimes.com/topic/National-Company-Law-Tribunal> [Accessed 12 June 2020].
- Mondaq.com. 2020. *Constitution Of National Company Law Tribunal (NCLT) And National Company Law Appellate Tribunal (NCLAT): Comprehensive Analysis - Corporate/Commercial Law - India*. [online] Available at: <https://www.mondaq.com/india/corporate-and-company-law/518892/constitution-of-national-company-law-tribunal-nclt-and-national-company-law-appellate-tribunal-nclat-comprehensive-analysis> [Accessed 13 June 2020].
- Lawstreetindia.com. 2020. *NCLT – Powers & Functions Under Cos. Act, 2013 / Lawstreetindia.Com*. [online] Available at: <http://www.lawstreetindia.com/experts/column?sid=164> [Accessed 13 June 2020].
- IndiaFilings - Learning Centre. 2020. *National Company Law Tribunal - Powers & Jurisdiction*. [online] Available at: <https://www.indiafilings.com/learn/national-company-law-tribunal-powers-jurisdiction/> [Accessed 14 June 2020].
- Cleartax.in. 2020. *NCLT - Understanding National Company Law Tribunal And Its Functions*. [online] Available at: <https://cleartax.in/s/national-company-law-tribunal> [Accessed 14 June 2020].