

ALL YOU NEED TO KNOW ABOUT THE NCLT

On June 1, 2016, the Ministry of Corporate Affairs, exercising the powers conferred by Sections 408 and 410 of the Companies Act 2013 (Act), [published a notification](#) regarding the constitution of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT).

The constitution of these Tribunals marks the dissolution of the Company Law Board (CLB).

Fourteen years after its introduction in the Companies (Second Amendment) Act, 2002, and after several rounds of litigation, the Government has finally constituted these tribunals. The primary objective of these tribunals is to provide simpler, speedier and more accessible dispute resolution mechanism for company related disputes, by unburdening the courts.

National Company Law Tribunal (NCLT)

Chairperson of NCLAT is Justice S.J Mukhopadhaya while President of NCLT is Justice MM Kumar.

It was year 2002, when we first heard about NCLT and NCLAT. The Companies (2nd Amendment) Act, 2002 provided setting up of National Company Law Tribunal and National Company Law Appellate Tribunal to replace the existing Company Law Board and The Board for Industrial and Financial Reconstruction. The establishment of NCLT as a specialized institution for corporate adjudication system is based on the recommendation of Justice Erani Committee, a committee set up to examine the law relating to winding up and Insolvency in order to re-model it in line with latest developments and innovations in corporate law & governance.

WHY IT TOOK SO LONG ?

Madras Bar Association v. Union of India

The Petitioner Madras Bar Association via Writ Petition no. 1072 of 2013 had 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 by rejecting the contention of the Petitioner held that a Legislature can enact a law transferring the jurisdiction exercised by court in regard to any specific subject to any tribunal and any Tribunal to which any existing jurisdiction of court is transferred should also be Judicial Tribunal and should have members, person of rank, status and capacity of the court which was then dealing with the matter.

The Supreme Court did not uphold the issue raised by the Petitioner which resulted into formation of NCLT and NCLAT.

NCLT AS A MEGA TRIBUNAL

NCLT had consolidate the jurisdiction of the following :-

- Company Law Board
- The Board for Industrial and Financial Reconstruction
- Appellate authority for Industrial and Financial Construction
- Jurisdiction and Power of High Court relating to winding up.

CONSTITUTION OF NCLT AND NCLAT

- There are 2 Classes of members to NCLT viz a) Judicial Members b) Technical Members.
- Tribunal is headed by the President and Appellate Tribunal is headed by the Chairperson.
- NCLAT shall not exceed 11 members for hearing appeals against the order of Tribunal.

NUMBER OF BENCHES

SR NO	Title of the Bench	Location	Territorial Jurisdiction of the Bench
1.	(a) National Company Law Tribunal, Principal Bench. (b) National Company Law Tribunal, New Delhi Bench.	New Delhi	(1) State of Haryana. (2) State of Rajasthan. (3) Union territory of Delhi.
2.	National Company Law Tribunal, Ahmedabad Bench.	Ahmedabad	(1) State of Gujarat. (2) State of Madhya Pradesh. (3) Union territory of Dadra and Nagar Haveli. (4) Union territory of Daman and Diu.
3.	National Company Law Tribunal, Allahabad Bench.	Allahabad	(1) State of Uttar Pradesh. (2) State of Uttarakhand.
4.	National Company Law	Bengaluru	(1) State of Karnataka.

	Tribunal, Bengaluru Bench.		
5.	National Company Law Tribunal, Chandigarh Bench.	Chandigarh	(1) State of Himachal Pradesh. (2) State of Jammu and Kashmir. (3) State of Punjab. (4) Union territory of Chandigarh.
6.	National Company Law Tribunal, Chennai Bench.	Chennai	(1) State of Kerala. (2) State of Tamil Nadu. (3) Union territory of Lakshadweep. (4) Union territory of Puducherry.
7.	National Company Law Tribunal, Guwahati Bench.	Guwahati	(1) State of Arunachal Pradesh. (2) State of Assam. (3) State of Manipur. (4) State of Mizoram. (5) State of Meghalaya. (6) State of Nagaland. (7) State of Sikkim. (8) State of Tripura.
8.	National Company Law Tribunal, Hyderabad Bench.	Hyderabad	(1) State of Andhra Pradesh. (2) State of Telangana.
9.	National Company Law Tribunal, Kolkata Bench.	Kolkata	(1) State of Bihar. (2) State of Jharkhand. (3) State of Odisha. (4) State of West Bengal. (5) Union territory of Andaman and Nicobar Islands.
10.	National Company Law Tribunal, Mumbai Bench.	Mumbai	(1) State of Chhattisgarh. (2) State of Goa.

			(3) State of Maharashtra.
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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.

ADVANTAGES OF CONSTITUTING NCLT AND NCLAT

- It shall avoid multiplicity of litigation before various Forums (CLB, BIFR, High Courts, AAIFR).
- The Tribunal comprises of Technical Experts who will provide more concrete & precise decisions.
- There would be a reduction in pendency of cases.
- There are 11 benches of NCLT which provides justice at one doorstep.
- There would be reduction in period of winding up from 20-25 years to 2 years.

SCOPE OF SERVICES FOR PRACTISING 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. Areas opened up for company secretaries in practice under NCLT are briefly stated hereunder: -

1. Compromise and Arrangement

- With the establishment of NCLT, a whole new area of practice opened 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 is able to render services in preparing schemes, appearing before NCLT/NCLAT for approval of schemes and post merger formalities.

2. Sick Companies

- Timely detection of sick company
- The Practising Company Secretary can identify the sickness of the company as defined under the Act and place the matter before the Board of Directors of the company to take necessary action for making reference to the Tribunal for revival and rehabilitation of the Company.

3. Making a reference of sick industrial company to NCLT

- Practising Company Secretary may assist and advise the Sick Company in making reference to the Tribunal, preparing scheme of rehabilitation, seeking various approvals from the Tribunal as may be required. Reference is to be made to the NCLT within a period of 180 days from the date on which Board of Directors of the company or the Central Government, Reserve Bank of India or State Government or a Public Financial Institution or a State level institution or a Scheduled Bank as the case may be come to know of the relevant fact giving rise to causes of such reference or within 60 days of final adoption of accounts whichever is earlier.

4. Winding up

- The National Company Law Tribunal has also been empowered to pass an order for winding up of a company. Therefore Practising 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 Practising Company Secretaries have been permitted to act as Liquidator in case of winding up by the Tribunal.

5. Reduction of Capital

- 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 Practising Company Secretaries will be able to represent cases of reduction of capital before the Tribunal.

6. PCS as Member of NCLT

- A Practising 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 Practising Company Secretary has been authorised to appear before National Company Law Appellate Tribunal.

CONCLUSION

In view of vast opportunities emerging with the establishment of National Company Law Tribunal, the Practising 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.

BRIEF SUMMARY OF THE DIFFERENCES BETWEEN THE CLB AND THE NCLT.

1. Number of Benches

- While the CLB was functioning with only five benches, the NCLT will commence action with eleven benches. It is expected to eventually have benches across each state in India.

2. Jurisdiction

- While provisions relating to mergers, restructuring and winding-up have not been notified yet, the NCLT, once fully functional, will consolidate the corporate jurisdiction of the CLB;
- Board of Industrial and Financial Reconstruction;
- Appellate Authority for Industrial and Financial Reconstruction and;
- Jurisdiction and powers relating to winding up, restructuring and other such provisions, currently vested in the High Courts.
- Once notified, the provisions relating to mergers, restructuring and winding up will no longer be under the jurisdiction of the High Court.

3. Amicus curiae

- The Draft National Company Law Tribunal Rules, 2013 (Draft Rules) enable the NCLT to appoint Amicus Curiae for opinion on various specialised legal issues.

4. Other professionals allowed to represent

- Until now, Company Secretaries, Chartered Accountants, Cost Accountants could represent their clients only before the CLB, the scope of which was limited. The Draft Rules enable other professionals to represent their clients in matters pertaining to mergers/ winding-up before the NCLT.

5. Class action suits

- With the constitution of the NCLT, shareholders and creditors can now file class action suits against the company for breaching the provisions of the Act.
- While shareholders have always been allowed to protest against the wrong doings of the management, class action suits takes this a step further. The key difference between oppression, mismanagement (Sections 241-244) and class action suits (Section 245) can be summed up in the following points:
- Under Section 245, members as well as deposit holders can file an application as opposed to only member;

- Application can be filed, in addition to company and its statutory appointees, against audit firms and any other independent consultants;
- Application can be filed for future activities as well in addition to current or past activities.

6. Dedicated online portal

- The Draft Rules introduce a 'dedicated online portal' through which all the parties or central or state government agencies and local government bodies may electronically send and receive documents to or from the NCLT and make required payments.

7. Electronic filing

- As per the Draft Rules, electronic filing and serving of Tribunal documents shall be mandatory except as provided otherwise, with effect from the date to be notified in the official gazette

8. Members of the Technical Committee and Selection Committee

- In the NCLT, only officers holding ranks of Secretaries or Additional Secretaries can be considered for appointment as technical members. While the CLB did not have a selection committee, the selection committee for the NCLT comprises of four members including the Chief Justice of India, who will have a casting vote.

9. Appeals

- Appeals from the NCLT will go to the NCLAT, and thereafter to the Supreme Court. The High Courts have been eliminated from the chain of appeals.

10. Ousting of Civil Court jurisdiction

- 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 of the Act expressly ousts the jurisdiction of Civil Courts.