

Submissions and Appearance before the National Company Law Appellate Tribunal

National Company Law Appellate Tribunal (NCLAT) was constituted under Section 410 of the Companies Act, 2013 for hearing appeals against the orders of National Company Law Tribunal(s) (NCLT) with effect from 1st June, 2016. The Competition Appellate Authority was merged with NCLAT.

BACKGROUND

- The idea of setting up NCLT was proposed for the first time by the Justice Eradi Committee constituted in 1999 to examine the laws relating to Insolvency and Winding up of Companies.
- In furtherance to the recommendations of Justice Eradi Committee, the Companies (Second Amendment) Act, 2002 (2002 Amendment Act) vide insertion of new Parts provided the provisions for setting up of NCLT and NCLAT to replace the existing CLB
- The said 2002 Amendment Act was never notified as it was challenged in the High Court at Madras by the Madras Bar Association

BACKGROUND CONTINUED

- The Hon'ble Supreme Court upheld the legislative competence of Parliament to create the NCLT and the NCLAT, but the particular structure of the NCLT and NCLAT proposed by the 2002 Amendment Act was held to be unconstitutional.
- Hon'ble Supreme Court judgment in May 2010 with respect to constitutional validity of setting up of NCLT and NCLAT
- Companies Act, 2013 notified
- Constitution Bench of the Apex Court on May 14, 2015 in *Madras Bar Association vs Union of India & Anr [(2015) 8 SCC 583]* whereby the Apex Court held that constitution of both NCLT and NCLAT is constitutionally valid,

COMPOSITION

- The NCLAT, consists of a chairperson and a maximum of eleven judicial and technical members.
- the chairperson and Judicial Members of the Appellate Tribunal shall be *appointed after consultation with the Chief Justice of India.*
- The chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court
- A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for five years
- A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience, of not less than twenty-five years, 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.

QUALIFICATION OF CHAIRPERSON AND OTHER JUDGES OF NCLAT

As per Section 411 of the Companies Act, 2013

- The chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court. Age of chairperson should be at least 50 but not more than 70 years.
- A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for five years and must be atleast 50 years but not more than 67 years of age.
- A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy. The age must be atleast 50 years but not more than 67 years of age.

BENCHES

- PRINCIPAL BENCH, NEW DELHI
- Chennai Bench w.e.f. 18th march, 2020 consisting of Hon'ble Mr. Justice Venugopal M., Member (Judicial) And Hon'ble Mr. Justice Kanthi Narahari, Member (Technical) to hear and dispose of appeals arising for Southern States
- At present 10 members other than Chairperson

NCLAT is currently adjudicates appeals from following forums:

1. The National Company Law Tribunal

- Companies Act, 2013.
- Insolvency and Bankruptcy Code, 2016

2. Competition Commission of India

- Appeal from the Competition Commission of India under Section 53A of the Competition Act, 2002 (The fee structure for filing appeal is prescribed under Competition Appellate Tribunal (Form & Fee for Filing of Appeal and fee for filing compensation application) Rules, 2009 read with Competition Act, 2002 and The Competition Appellate Tribunal (Procedure) Regulations, 2011.)

RULES THAT WE GENERALLY SKIP

- National Company Law Appellate Tribunal Rules, 2016
- Computation of time period
- Listing of cases
- FORMAT NCLAT-1- IN TRIPLICATE
- CERTIFIED COPY OF IMPUGNED ORDER
- ADVANCE SERVICE
- FEE & File, don't post
- Endorsement and scrutiny of petition or appeal or document (filing)
- Removal of defects within 7 days of being notified
- Application for condonation in refiling the appeal (refiling)
- Registration of Appeal

Filing of Appeals/ Applications in the NCLAT

- Appeals to be filed in NCLAT-1 with an affidavit (In triplicate) along with an affidavit Form NCLAT 4 of the NCLAT Rules, 2016
- Stitched together in form of a paper book
- Demand Draft of Rs. 5,000/- for appeals
- Demand Draft of Rs. 1,000/- in case of Interlocutory Application

FORMATTING

- Double Line Spacing; Right Margin 2.5 CM; Left Margin 5 CM.
- Must be in English and paginated.

Filing of Appeals/ Applications in the NCLAT

- Interlocutory applications- FORM NCLAT-2
- Listing-Issuance of Notice
- Caveat can be filed
- Appear in person or through authorized representatives

LODGING OF CAVEAT IN NCLAT

- Any person(s) in person or through its authorized representative may lodge a caveat in triplicate in any appeal or application. (Fee: Rs. 1000)
- Time Period: Valid for 90 days from the date of filing.
- A caveat on being taken on record shall be numbered and registered in the appropriate register

INTERLOCUTORY APPLICATION

- Interlocutory Application can be filed separately or with the appeal which will be listed along with the appeal on the appropriate date.
- For early hearing of the application, mentioning to the Chairperson is required.
- If there is a clerical mistake or typographical error in any of the order already passed and an Interlocutory Application is filed for correction.

CAUSE TITLE, LIST OF EVENTS AND MEMO OF PARTIES

- Cause Title to state “In the National Company Law Appellate Tribunal”
- Company Appeal (AT) No.____/ 2020 or Company Appeal (AT) (Insolvency) No.____/2020.
- The provision in which the appeal is preferred. (Section 421 of the Companies Act, 2013; Section 61, 202, 211 of the Insolvency and Bankruptcy Code, 2016 & Section 53A of the Competition Act, 2002)
- For memo of parties, state full name, parentage and other details as prescribed under the Rule 20 of the NCLAT Rules, 2016.

PLEADINGS

- To be divided into paragraphs and numbered consecutively
- Every correction in pleading should be initialled by the party or authorized representative.

DOCUMENTS REQUIRED

- Every Appeal must be accompanied by the certified copy of the impugned order.
- Application should be filed for service on the opposite parties. In pending matters, all applications to be filed after serving copies in advance on the opposite side.
- Signature of the Authorized Representative on the bottom of the pleadings and will be verified by the party.

AFFIDAVIT

- Title should be same as the Pleading filed.
- Identification of deponent, must be in conformity with 71, 72 NCLAT Rules. 2016.

Limitation

- Insolvency and Bankruptcy, Code- within 30 days of receipt of the certified copy of the Order, period may be extended by 15 days
- Companies Act, 2013- within 45 days which may be extended by another 45 days
- Competition Act, 2020- within 60 days which may be extended on showing sufficient cause of delay.

Listing- Cause List of NCLAT

- For Admission (Fresh Case)
- Admission (after notice)
- For orders
- Hearing

Pleading- Appeal not a matter of right

- Insolvency and Bankruptcy Code, 2016
- Aggrieved by any order of AA
- Order passed u/s 31 can be challenged on the following grounds:
 - (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;
 - (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
 - (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
 - (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
 - (v) the resolution plan does not comply with any other criteria specified by the Board.
 - (vi) An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

IBC

NOT AN ADVERSARIAL PROCEEDING

APPEARANCE IN THE NCLAT

The Section 432 of the Companies Act, 2013- A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

Inherent Power- NCLAT

- Rule 11 of NCLAT Rules, 2016

“11. Inherent powers.- Noting in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal.”

IMPORTANT JUDGMENTS OF NCLAT

- *Indison Agro Foods Ltd. v. Registrar & Anr*: NCLAT Asks NCLT To Constitute A Two Member Bench To Dispose Matter In Conformity With SC Directions.
- *Srikanth Dwarakanath, Liquidator of Surana Power Limited v. Bharat Heavy Electricals Limited*, Company Appeal: where a secured creditor has only 26.24% of share in value of the asset then such creditor will have to "relinquish" their share as per Section 52 of IBC.
- *Arti Meenakshi Muthiah v. MCTM Global Investments Pvt. Ltd. & ors.*: Appointment of Additional Director in absentia of minority shareholder does not amount to oppression and mismanagement.

- *Hyundai Motors Ltd. v. Competition Commission of India & Ors* the CCI found Hyundai in violation of Section 3 (4) of the Competition Act for its resale price maintenance policy and tie-in arrangements, with its dealers. The NCLAT set aside the order and directed a refund of the penalty as the CCI had based its decision only on the opinion expressed by the Director General (DG) in his report, which is merely an investigation report and had not undertaken any analysis of the evidence to arrive at its finding of contravention.

Thank You

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