

**CHAPTER 16****SPECIAL COURTS, TRIBUNALS UNDER COMPANIES  
ACT AND OTHER LEGISLATIONS****Introduction:**

'Tribunal' is an administrative body established for the purpose of discharging quasi-judicial duties. An Administrative Tribunal is neither a Court nor an executive body. It stands somewhere midway between a Court and an administrative body. To overcome the situation that arose due to pendency of cases in various courts, domestic tribunals have been established under different states.

The term 'Tribunal' is derived from the word 'Tribunes', which means 'Magistrates of the Classical Roman Republic'. Tribunal is referred to as the office of the 'Tribunes' i.e., a Roman official under the monarchy and the republic with the function of protecting the plebeian citizen from arbitrary action by the patrician magistrates. A Tribunal, generally, is any person or institution having an authority to judge, adjudicate on, or to determine claims or disputes – whether or not it is called a tribunal in its title.

A 'tribunal' in the legal perspective is different from a domestic tribunal. The 'domestic tribunal' refers to the administrative agencies designed to regulate the professional conduct and to enforce discipline among the members by exercising investigatory and adjudicatory powers. Whereas, Tribunals are the quasi-judicial bodies established to adjudicate disputes related to specified matters which exercise the jurisdiction according to the Statute establishing them.

**BACKGROUND OF ESTABLISHMENT OF NCLT & NCLAT**

Tribunals play vital part of our Judiciary system, and it is necessary to ensure that a Tribunal is a setup to deal with those cases under special laws as may be applicable therein, thus providing specialized adjudications. The Tribunals cannot decide

- the disputes which are basically criminal in nature
- Cases which involves substantial question of law.

The Companies (Amendment) Act, 2002 introduced the NCLT as a dedicated Tribunal to handle certain matters under the Companies Act, 1956 and allied. Though it got knotted in a stretched litigation of 14 years. After this long journey of 14 years the controversial phase has come to an end with the constitution of the National Company Law Tribunal (NCLT) under section 408 and the National Company Law Appellate Tribunal under section 410 of Companies Act, 2013 as notified by the Central Government w.e.f. 1st June, 2016.

On the recommendations of the Justice Eradi Committee on Law Relating to Insolvency and Winding up of Companies, a specialized institution for corporate justice i.e. Tribunal was to be set up. 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 and the recommendations of the united Nations and International Monetary Fund Report - 'Orderly and Effective Insolvency Procedures- Key Issues'.

In *L. Chandrakumar v. Union of India* (A.I.R. 1997 SC 1125), a question was raised as to whether the setting up of the Tribunals and excluding the jurisdiction of the High Court was constitutional? A ruling was made by the seven-judge bench of the Supreme Court that the power of 'judicial analysis' of the High Court under

Article 226 of the Constitution cannot be eliminated by the Parliament.

The Supreme Court under Article 32 and High Court under Article 226 form the basic structure of the Constitution of India. The jurisdiction of the High Court cannot be exiled, and on the other hand, the Tribunals may function as the supplemental part of the judiciary system.

The Tribunals may continue to act like courts of first instance in respect of the areas of law for which they have been constituted. The following paragraph from R. Gandhi's judgement clarified the above point:

Parliament is thus competent to enact law with regard to the incorporation, regulation and winding up of Companies. The power of regulation would include the power to set up an adjudicatory machinery for resolving the matters litigated upon, and which concern the working of the companies in all their facets. The Law Commission, as noted by the Supreme Court in the case of L. Chandrakumar, had also recommended the creation of specialist Tribunals in places of generalist Courts. Creation of Tribunals and Appellate Tribunals and vesting in those Tribunals the powers exercised by the High Court with regard to company matters cannot be said to be unconstitutional.

It was further recommended in L. Chandrakumar's case that the Tribunals were playing vital part of our Judiciary system, and it is necessary to ensure that a Tribunal is a setup to deal with those cases under special laws as may be applicable therein, thus providing specialized adjudications. Further, the Tribunals cannot decide those disputes which are basically criminal in nature.

Likewise, where the case involves substantial question of law, it cannot be decided by tribunals as this comes under the purview of the higher judiciary.

The controversial phase for the validity of the 'National Company Law Tribunal' (herein after referred as 'Tribunal') and 'National Company Law Appellate Tribunal' (herein after referred as 'Appellate Tribunal') was set in motion before the Court of Law and it seemed to be a never-ending fight. But such controversy was set to rest with the decision of Supreme Court in the case - Union of India v. R. Gandhi, President, Madras Bar Association (2010) 11 SCC, wherein the constitutional validity of the Tribunal and Appellate Tribunal was upheld as per the Supreme Court ruling on 14<sup>th</sup> May, 2015 and it has provided a path to the Central Government to notify the Tribunal and Appellate Tribunal in India under the provisions of the Companies, 2013 (hereinafter referred as 'CA, 2013')

After a long journey of fourteen years the controversial phase has come to an end with the constitution of the Tribunal and the Appellate Tribunal as notified by the Central Government w.e.f. 1st June, 2016. The new judicial forum, apart from exercising the powers of the erstwhile CLB, will also carry out the work, as currently being carried out by High Courts with regard to company matters for over the six decades and the same has to be done with great care so that the Tribunal will be efficient and effective alternate institutional forum to the High Courts and the Company Law Board (herein after referred as 'CLB'), Board of Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA Act, 1985) and for the other Authorities as well.

Tribunal is a quasi-judicial body and the primary objective of constituting the Tribunals is to provide a simpler, speedier and more accessible dispute resolution mechanism in Company Law matter specifically apart from other laws for which it is empowered. The Tribunal was established under Section 408 of the Companies Act, 2013 vide Notification No. S.O.1935 (E) dated 1<sup>st</sup> June, 2016 and become effective with the same date.

National Company Law Tribunal (NCLT) & the Appellate Tribunal have been constituted by the Central Govt. under section 408 & 410 of the Companies Act, 2013 (the Act) to exercise and discharge the powers and functions conferred on NCLT. The Appellate Tribunal is required to hear appeals against the orders of the NCLT.

**POWERS EXERCISE BY NCLT COMPANIES ACT, 2013**

<b><i>Powers of NCLT</i></b>	<b><i>Section under Companies Act, 2013</i></b>
<b>Chapter –I “Preliminary”</b>	
To allow certain companies or body corporate to have a different financial year.	2(41)
<b>Chapter –II “Incorporation of Company and matters incidental thereto”</b>	
In case a company has got incorporated by furnishing any false or incorrect information or by suppression of any material fact or information, NCLT can pass such orders as it thinks fit.	7(7)
Any assets remaining on wind-up of Section 8 company may be transferred to another company having similar objects with the approval of Tribunal or transferred to the Rehabilitation and Insolvency Fund u/s 269.	8(9)
Conversion of a public company into a private company requires the approval of NCLT.	Proviso of 14(1)
<b>Chapter -IV “Share Capital and Debentures”</b>	
Not less than 10% of the issued shares of a class, who did not consent to a variation, may apply to the Tribunal for cancelling the variation.	48(2)
NCLT can approve issue of further redeemable preference shares when a company is unable to redeem its existing unredeemed preference shares or to pay dividend thereon.	55(3)
NCLT can order forthwith redemption of such preference shares the holder of which have not consented to the issue of further redeemable preference shares.	Proviso of 55(3)
To make an order imposing prohibition on delivery of certificates for the securities issued by a company.	56(4)
The transferee of shares in a private company may appeal to the NCLT within one month from the receipt of notice of refusal or within sixty days from the date on which the instrument of transfer or intimation of transmission was delivered to the company.	58(3)
The transferee in a public company within sixty days of refusal to register transfer or transmission, or within ninety days of delivery of instrument of transfer or of intimation of transmission may apply to the NCLT for relief.	58(4)
To dismiss appeal against refusal to register transfer and transmission of shares OR to direct rectification of register and payment of damages by company.	58(5)
To order rectification of register of members on transfer or transmission of shares.	59(2)
To direct a Company or depository to set right a contravention of SCRA or SEBI Act or any other law, resulting by transfer of securities and to rectify concerned registers and records held by the Company or depository.	59 (4)
To approve Consolidation and division of share capital resulting in change in voting percentage of shareholders	Proviso under 61(1)(b)
Where the terms of conversion of debentures into shares of a company ordered by the Government are not acceptable to the company, the	Proviso under 62(4)

company may appeal to the Tribunal for making such order as it may deem fit.	
Confirmation by NCLT for reduction of capital in a company limited by shares or guarantee and having share capital.	66(1)
Where the assets of a company are insufficient to discharge the debentures, the debenture trustee may apply to the NCLT.	71(9)
NCLT to order redemption of debentures forthwith by payment of principal and interest due thereon.	71(10)
<b>Chapter V “Acceptance of Deposits by Companies”</b>	
To direct the company to make repayment of the matured deposits or for any loss or damage incurred by him as a result of non-payment.	73(4)
On an application by the company, NCLT may allow further time to the company to repay the amount of deposit or part thereof and the interest payable.	74(2)
<b>Chapter –VII “Management and Administration”</b>	
On the application of a member, the Tribunal may call or direct the calling of an annual general meeting if default is made in holding the Annual General Meeting.	97(1)
In case it is impracticable to call a meeting, the Tribunal may either <i>suomoto</i> , or on application of a director or member of the company who is entitled to vote at the meeting, order to call meeting i.e extra ordinary general meetings and give such directions as may be necessary.	98(1)
The Tribunal may direct that inspection of minute book of general meeting be given to a member.	119(4)
<b>Chapter –VIII “ Declaration and Payment of Dividend”</b>	
To sanction utilization of IEPF for reimbursement of legal expenses incurred on class action suits by members, debentures or depositors.	125(3)(d)
<b>Chapter –IX “Accounts of Companies”</b>	
The Tribunal may allow a company to recast its financial statements.	130(1)
With the approval of NCLT, company may prepare revised financial statement for any of the three preceding financial years.	131(1)
<b>Chapter-X “Audit and Auditors”</b>	
To restrict copies of representation of the auditor to be removed to be sent out.	140(4)
The Tribunal may, on the application of the company or any aggrieved person, order that copy of representation by the Auditor need not be sent to members nor read at the meeting.	Second proviso of 140(4)(iii)(b)
Where NCLT is satisfied that the Auditor has acted in a fraudulent manner, it may order that the Auditor may be changed	140(5)
<b>Chapter- XI “Appointment and Qualifications of Directors”</b>	
Regarding removal of director, NCLT may order that representation from the director need not be sent to the members and nor read at the meeting.	169(4)(b) proviso
<b>Chapter –XIV “ Inspection, Inquiry and Investigation”</b>	
To order investigation of the affairs of the company.	210(2)
The Tribunal may ask the Central Government to investigate into the affairs of the company in other cases on application where the business of the company is being conducted with intent to defraud creditors, persons concerned in the formation of the company or management of its affairs have been guilty of fraud, misfeasance or other misconduct and members have not been given all the information with respect to the affairs of the	213

Company.	
To order investigation of ownership of Company.	216 (2)
NCLT may pass suitable orders for the protection of the employees in respect of investigation under section 210,212,213 or 219.	218(1)
To order freezing of assets of company on inquiry and investigation in case of complaint made by its members, for a period of three years.	221(1)
To impose restrictions in connection with securities.	222(1)
To entertain petition for winding up of a Company or Body Corporate in pursuance of Inspector's report.	224(2)
To hear petition for winding up of a Company presented by Central Govt	224(2)
NCLT may, on application of Central Government, pass order for disgorgement of assets and other matters	224(5)
To pass orders after inspector's intimation of pendency in investigation proceedings.	226 1st Proviso
<b>Chapter –XV “Compromises, Arrangements and Amalgamations”</b>	
With reference to compromise or arrangements between the company and its creditors and members, Tribunal may order a meeting of creditors or class of creditors or members of the company.	230(1)
To sanction compromise or arrangement agreed to at the meeting of creditors/ members ordered by the Tribunal.	230 (6)
To dispense with calling of meeting of members/ creditors for approving compromise or arrangement.	230 (9)
To pass orders on an application on grievance in respect of takeover offer of companies other than listed companies.	230 (12)
To enforce compromise and arrangement as sanctioned under Section 230.	231 (1)
If the Tribunal is satisfied that the compromise or arrangement sanctioned under Section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company.	231(2)
To sanction the scheme of merger and amalgamation.	232(1)
To call meeting of creditors or members for facilitating merger and amalgamation of companies.	232(2)
If the Central Government is of the opinion that the scheme filed under section 233 is not in public interest, it may file an application before the Tribunal within Sixty days of receipt of the scheme under sub section (2).	233(5)
To entertain the application made by the dissenting shareholders of the scheme approved by the majority	235(2)
Any aggrieved person in respect of compensation made by the prescribed authority may make appeal to the Tribunal within 30 days.	237(4)
Appeal to the tribunal against the refusal of the Registrar to register the circular.	238(2)
<b>Chapter- XVI “Prevention of Oppression and Mismanagement”</b>	
Complaints of oppression and mismanagement will be heard by the Tribunal.	241(1)
Where the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company, Tribunal may pass necessary orders.	242(1)(a)
To make an order where winding up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the	242(1)(b)

making of a winding up order on the ground that it was just and equitable that the Company should be wound up.	
Tribunal may pass orders for regulation of conduct of affairs of the company in future	242(2)(a)
To make an order for purchase of shares or interests of any members of the company by other members thereof or by the company.	242(2)(b)
To make an order for reduction of share capital consequent to purchase of shares of the company in the manner envisaged under Section 242(2)(b)	242(2)(c)
The Tribunal can restrict on the transfer or allotment of the shares of the company.	242(2)(d)
To terminate, set aside or modify any agreement, however arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the NCLT, be just and equitable in the circumstances of the case.	242(2)(e)
To terminate, set aside or modify any agreement between the company and any person other than the managing director, any other director or manager referred to in Clause (e) of sub-section (2) of Section 242. Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned.	242(2)(f)
To set aside any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within 3 months before the date of the application made pursuant to section 241, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference.	242(2)(g)
Removal of the managing director, manager or any of the directors of the company.	242(2)(h)
Recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilization of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims.	242(2)(i)
Manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made.	242(2)(j)
Appointment of such number of persons as directors, who may be required by the NCLT to report to be NCLT on such matters as the NCLT may direct.	242(2)(k)
Imposition of costs as may be deemed fit by the NCLT	242(2)(l)
Any other matter for which, in the opinion of the NCLT, it is just and equitable that provision should be made	242(2)(m)
In case of termination or modification of certain agreements by the Company with managing directors or other directors, leave be granted by the NCLT	243 (1)
To pass specified order in receipt of application by members or depositors or any class of them in case if they are of the opinion that the management or conduct of the affairs of the company is being conducted in a manner prejudicial to the interests of the company or its members or depositors.	245 (1)
To punish for the contempt of the Tribunal in cases where a fraudulent	246

application is made u/s 241(Oppression and Mismanagement) and 245(Class Action Suits). This power shall apply for Sections 337 to 341.	
<b>Chapter –XVIII “Removal of Name of Companies from the Register of Companies”</b>	
To wind up a company the name of which has been struck off by registrar from Register of Companies.	248 (8)
Tribunal may order restoration of the name of a company to the Register of companies in case of an appeal made to the tribunal within three years of the order of the Registrar	252(1)
To entertain the application made by the secured creditors of a company representing 50 per cent or more of its outstanding amount of debt and the company has failed to pay the debt within a period of 30 days of the service of the notice of demand.	253(1)
NCLT may appoint an interim administrator within seven days of receipt of application under Section 256.	254 (1), (3)
NCLT may appoint interim administrator to be the company administrator in case of an application made by the creditors that the company can be revived.	258
NCLT can delineate or direct the functions and duties of the Company administrator	260
To sanction the scheme of revival and rehabilitation of sick industrial companies as prepared in Section 261, Companies Act, 2013.	262
To implement the scheme of revival and rehabilitation of sick industrial companies.	264
Where the scheme is not approved by the creditors, NCLT may issue orders for the winding up of the sick company.	265
To assess damages against the delinquent Directors in the course of the scrutiny or implementation of any scheme or proposal and pass suitable orders.	266
To punish in case of making a false or incorrect evidence to the NCLT or the NCLAT	267
<b>Chapter-XX “Winding Up”</b>	
To pass order of winding up of the company.	270(1)
To wind up companies under various circumstances.	271(1)
To decide about the inability of the company to pay its debts.	271(2)( c)
To grant leave to prospective creditor for filing petition of winding up.	272 (6)
On receipt of petition for winding up, NCLT may either dismiss the petition with or without costs; make any interim order as it thinks fit; appoint a provisional liquidator of the company till the making of a winding up order, make an order for the winding up of the company with or without costs; or any other order as the NCLT thinks fit.	273(1)
NCLT may ask the company to file its objections, if any, along with a statement of its affairs within 30 days of the order in the manner prescribed.	274
NCLT shall appoint Official Liquidator from the panel maintained by the Central Government, as the Company Liquidator.	275(1)

To limit and restrict the powers of the Official Liquidator or Provisional Liquidator as the case may be.	275(3)
It can remove the Provisional Liquidator or the Company Liquidator as the Liquidator of the company on specified grounds.	276(1)
Where loss or damage is caused due to fraud or misfeasance or where liquidator fails to exercise due care or diligence in the performance of its powers, NCLT can pass orders to recover loss or damage from the liquidator.	276(3)
To give intimation of order for winding up to Company Liquidator, Provisional Liquidator and Registrar of Companies.	277(1)
On application of company liquidator, NCLT to constitute winding up committee.	277(4)
To put stay on suits or other legal proceedings on winding up order.	279(1)
To give directions on report of Company Liquidator	282(1)
During liquidation the custody of companies' property passes to the NCLT.	283(1)
The list of contributories and application of assets in all cases where rectification is required will be settled by the Tribunal.	285(1)
To constitute an advisory committee to advise the Company Liquidator and to report to the NCLT.	287(1)
To stay the proceedings of winding up on application of promoter, shareholders or creditors or any other interested person.	289(1)
To issue directions and to exercise control on the powers of the Company liquidator.	290
To issue directions and to exercise overall control on the powers of the liquidator.	290 (1)
To sanction the appointment of professionals (CA, CS, CWA or Legal Practitioners) for assistance to Company Liquidator in the performance of his functions and duties.	291 (1)
To Confirm, reverse or modify the act or decision complained of for the company liquidator.	292 (4)
For better accountability in company's winding up, NCLT to order the audit of accounts of Company Liquidator.	294 (1)
To exercise control on inspection of books by creditor or contributory.	293 (2)
To cause accounts of the company liquidator to be audited.	294 (3)
To pass an order requiring any contributory for the time being on the list of contributories to pay any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call.	295(1)
To make calls on the contributories on the list for payment of money to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.	296
To adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.	297
To make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up	298
To summon persons suspected of having property of company in case the person is capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, of affairs of the company.	299
To order examination of promoters, directors in case the Company	300



Liquidator is of the opinion that a fraud has been committed by any person in the promotion, formation, business or conduct of affairs of the company since its formation.	
In case a person is having property, accounts or papers of the company in his possession and is trying to leave India or abscond NCLT to order detention and arrest of such person.	301
NCLT, after considering the report of the company liquidator, shall pass order dissolving the company.	302
To hear winding up petition where company is being wound up voluntarily.	306 (3) (b)
Where in a voluntary winding-up the company liquidator reports that a fraud has been committed, NCLT may pass such order and give such directions as are necessary.	317
When the affairs of the company have been completely wound up, NCLT can pass order for dissolution of the company in a voluntary winding up.	318(5)
To vary, confirm or set aside arrangement between the company and its creditors.	321 (2)
To determine questions in winding up or exercise powers as to staying of proceedings etc.	322 (1)
NCLT determines the questions arising out of winding up of the company where an application has been made for determining any question arising in the course of winding up of the Company, or exercise the staying of proceedings or any other matter with respect to the enforcing of the calls.	322 (3)
To give an option to company to declare the transaction relating to transfer of property, delivery of goods etc as fraudulent preference and to restore the position as if the company had not given such preference.	328 (1),(2)
To determine liabilities and rights of certain fraudulently preferred persons who acted as surety or guarantor or creditor to the company.	331 (3)
To grant leave to disclaim the onerous property in case of a company likely to be wound up.	333
To pass orders against avoidance of transfers including actionable claims or alteration in the status of members of company etc, after commencement of winding up.	334 (2)
To grant permission to enforce any attachment, distress or execution after the commencement of winding up.	335 (1)
To direct liability for fraudulent conduct of business to any person on application of Company Liquidator.	339 (1)
To assess damages against delinquent directors, manager, liquidator or officer of the Company for misapplication, retainer, misfeasance or breach of trust.	340
Liability of partners or directors of the company under Section 339, Companies Act, 2013 relating to fraudulent conduct of business or under section 340, Companies Act, 2013 relating to misfeasance or breach of trust can be extended by the NCLT.	341
The delinquent officers and members of the Company who are found to be guilty of any offence in relation to the company are liable to be prosecuted by the NCLT.	342
To sanction powers to be exercised by liquidator for payment to creditors in full etc.	343 (1)
To direct the manner for disposal of books and papers of company after the complete winding up of the company or of the company likely to be dissolved.	347 (1)(a)

To permit company liquidator to open account in a bank other than scheduled bank for the deposit of the money received.	Proviso of 350 (1)
To disallow the payment of remuneration in part or in full to the liquidator in case money is required to be deposited in Company Liquidation Account and Undistributed assets Account is not deposited by the liquidator.	352 (8) (c)
To pass order to make the default good by filing the returns etc to the company liquidator on request of any creditor or contributory or the Registrar.	353
To ascertain the wishes of creditors or contributors by calling their meetings in all matters relating to winding up of the company.	354
To declare dissolution of company void on an application made by the Company Liquidator of the Company or by any other person at any time within 2 years from the date of dissolution.	356
<b>Chapter- XXI “ Companies Authorised to Register under this Act”</b>	
To grant leave to initiate suits or any legal proceedings against the company or any contributory after passing of winding up order.	373
Powers regarding winding up of unregistered company in case of inability of the Company to pay its debts or it is consider equitable and just to wind up the company or the company is carrying business only for the purpose of winding up.	375 (3)
To exercise powers or to do nay act for winding up of Unregistered Companies.	377
<b>Chapter- XXVII “National Company Law Tribunal and Appellate Tribunal ”</b>	
NCLT can rectify any mistake in any order passed by it, within 2 years from the date of order.	420
General Power to amend any defect or error in any proceeding before NCLT and to make all necessary amendments for the purpose of determining the real question or issue raised by or depending on such proceeding.	
The NCLT shall have the powers of a Civil Court under the Code of Civil Procedure, 1908. In this regard, the NCLT can pass order in the following circumstances:  a) Summoning and enforcing the attendance of any person and examining him on oath;  b) requiring the discovery and production of documents;  c) receiving evidence on affidavits;  d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act 1872, requisitioning any public record or document or copy of such record or document from any office;  e) issuing commissions for the examination of witnesses or documents  f) dismissing a representation for default or deciding it ex-parte;  g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and  h) any other matter which may be prescribed by the Central Government.	424 (2)

<p>Matters prescribed by the Central Government for the purpose, are as under:-</p> <ol style="list-style-type: none"> <li>1. Granting stay or order status quo</li> <li>2. Ordering injunction or cease and desist;</li> <li>3. Appointing commissioner(s) for the purpose under Companies Act, 2013</li> <li>4. Exercising limited power to review its decision to the extent of correcting clerical or arithmetical mistakes or any accidental slip or omission as provided in rule 140 of NCLT Rules, 2013;</li> <li>5. Passing such order or orders as it may deem fit and proper in the interest of justice.</li> </ol>	
Power of Bench of NCLT to call for further information or evidence.	
Where the applicant appears but respondent does not appear at the hearing, NCLT	
NCLT to dispose of application or petition expeditiously within 3 months from the date of presentation before it. Extension period of 90 days may be granted for disposal.	422
NCLT has the power to regulate its own procedure for the purpose of discharging its functions under the Companies Act, 2013.	424 (1)
Power to pass order after giving the parties to any proceeding before it a reasonable opportunity of being heard, thereby observing the principles of natural justice. The NCLT shall send a copy of every order passed to the parties concerned.	424
Power of NCLT to pass orders and directions to prevent abuse of its process or to secure the ends of justice.	
Power of NCLT to make orders necessary for meeting the ends of justice or to prevent abuse of process of NCLT is absolute and inherent and nothing in the NCLT Rules, 2013 shall limit such power of the NCLT.	
NCLT has the powers to issue commission for examination of witnesses or documents.	424(2)(e)
<p>Power to punish for contempt</p> <p>The NCLT shall have the same jurisdiction, powers and authority in respect of contempt of themselves as a High Court has and may exercise, for the purpose, the powers under the provisions of the Contempt of Courts Act, 1971.</p> <p>Powers of High Court under Contempt of Courts Act, 1971</p> <p>The High Court has and exercises the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself.</p> <p>Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such</p>	425

contempt is an offence punishable under the Indian Penal Code (45 of 1860)	
These powers of the NCLT shall have the effect subject to the modification prescribed in Section 425 of the Companies Act, 2013, namely as under:-	
The reference to a High Court shall be construed as including a reference to the NCLT and the NCALT; and	
The reference to Advocate-General in section 15 of the Contempt of Courts Act, 1971 shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.	
NCLT has the power to delegate powers to any officer or employee or any person to inquire in to the matter connected with any proceeding and report to it.	426
To impose such conditions or restrictions as it thinks fit subject to the payment of fee, while according approval, sanction, consent, confirmation etc. giving directions or granting exemptions.	426
NCLT can seek assistance of Chief Metropolitan Magistrate, Chief Judicial Magistrate, or District Collector to take possession of property, books of accounts or other documents on behalf of the NCLT	429
<b>Chapter- XXVIII “Special Courts”</b>	
NCLT can compound certain offences in certain cases before the investigation has been initiated or pending.	441
Offences punishable with fine only, either before or after the institution of any prosecution, can be compounded by 22NCLT.	441
<b>Chapter- XXIX “Miscellaneous”</b>	
Power to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter.	459

**CONSTITUTION OF APPELLATE TRIBUNAL.**

The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding 11, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against the orders of the Tribunal or of the National Financial Authority.

**BENCHES OF TRIBUNAL**

- (1) There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.
- (2) The Principal Bench of the Tribunal shall be at New Delhi which shall be presided over by the President of the Tribunal.

**Power Exercise by Tribunal**

- The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member.

- The power of the tribunal shall be exercisable by benches.
- If at any stage of the hearing of any such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit.

### **ORDERS OF TRIBUNAL**

- (1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.
- (2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.

- (3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

### **APPEAL FROM ORDERS OF TRIBUNAL**

- (1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.
- (2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.
- (3) Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.
- (4) On the receipt of an appeal, the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against. The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

### **EXPEDITIOUS DISPOSAL BY TRIBUNAL AND APPELLATE TRIBUNAL**

Every application made to the Tribunal and appeal made to Appellate Tribunal shall be disposed of as soon as possible and not later than 3 Months.

The authority can apply for extension of not exceeding 90 days to President or chairperson on giving recorded reasons.

### **APPEAL TO SUPREME COURT.**

Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

**PROCEDURE BEFORE TRIBUNAL AND APPELLATE TRIBUNAL**

- The Tribunal and the Appellate Tribunal shall while disposing of any proceeding before it be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act or of the Insolvency and Bankruptcy Code, 2016 and of any rules made thereunder.
- The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act while trying a suit in respect of the following matters, namely:—
  - (a) summoning and enforcing the attendance of any person and examining him on oath;
  - (b) requiring the discovery and production of documents;
  - (c) receiving evidence on affidavits;
  - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
  - (e) issuing commissions for the examination of witnesses or documents;
  - (f) dismissing a representation for default or deciding it ex parte;
  - (g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
  - (h) any other matter which may be prescribed.
- Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction.

**POWER TO PUNISH FOR CONTEMPT**

The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court subject to modifications that—

- (a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and
- (b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.

**INSTITUTION OF PROCEEDINGS, PETITION, APPEALS ETC. BEFORE NCLT****Procedure of Appeal**

- (1) Every appeal or petition or application shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimetre width on top and with a right margin of 2.5. cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form;
- (2) The appeal or petition or application shall state “Before the National Company Law Tribunal” and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.
- (3) The appeal or petition or application shall be divided into paragraphs and shall be numbered consecutively.

- (4) Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated.
- (5) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party.  
Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.
- (6) Every proceeding shall state immediately after the cause title the provision of law under which it is preferred.

**Particulars to be set out in the address for service**

The address for service of summons shall be filed with every appeal or petition or application or caveat on behalf of a party and shall as far as possible contain the following items namely:-

- (a) the name of the road, street, lane and Municipal Division or Ward, Municipal Door and other number of the house;
- (b) the name of the town or village;
- (c) the post office, postal district and PIN Code, and
- (d) any other particulars necessary to locate and identify the addressee such as fax number, mobile number, valid e-mail address, if any .

**Presentation of petition or appeal**

- (1) Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter
- (2) The petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition.
- (3) All the documents filed in the Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or petition or application or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

**Endorsement and Verification**

- (1) At the foot of every petition or appeal or pleading there shall appear the name and signature of the authorised representative.

**SPECIAL COURTS**

As per Section 435 of the Companies Act, the Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

A Special Court may consists of –

- A single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and
- A Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—
- (a) all offences specified under sub-section (1) of section 435 shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;
  - (b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive

Magistrate:

Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

- (c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section; and
- (d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years:

Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed.