

# SAMVĀD:

## PARTNERS

### **Ready Reckoner on the National Company Law Tribunal**

On 01<sup>st</sup> June 2016, the Government of India, Ministry of Corporate Affairs issued a press release, stating that notifications (numbered S.O. 1934(E) and 1935(E)) have been issued for the constitution of the National Company Law Tribunal (“NCLT”) and National Company Law Appellate Tribunal (“NCLAT”) with effect from 01<sup>st</sup> June 2016. With the constitution of NCLT and NCLAT, the Company Law Board stands dissolved.

This table lists the various implications of the June 2016 notification, and its effect on pending as well as future litigation under the Companies Act, 2013.

<b>S.No.</b>	<b>Points of Importance</b>	<b>Implications – post enforcement of the relevant provisions relating to National Company Law Tribunal</b>
1.	<p><b><u>Benches of NCLT:</u></b></p> <p>As per the notification issued by the Central Government, (S.O. 1935(E)), benches of the NCLT have been constituted in the following places:</p> <ul style="list-style-type: none"><li>a. 2 benches in New Delhi (Principal Bench);</li><li>b. New Delhi;</li></ul>	<p><b>Decentralisation of the Company Law Tribunal Framework</b></p> <p>The jurisdiction of the Company Law Board benches were as follows:</p> <ul style="list-style-type: none"><li>a. New Delhi (Principal Bench);</li><li>b. New Delhi;</li></ul>

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	<ul style="list-style-type: none"> <li>c. Ahmedabad;</li> <li>d. Allahabad;</li> <li>e. Bengaluru;</li> <li>f. Chandigarh;</li> <li>g. Chennai;</li> <li>h. Guwahati;</li> <li>i. Hyderabad;</li> <li>j. Kolkata;</li> <li>k. Mumbai.</li> </ul>	<ul style="list-style-type: none"> <li>c. Chennai;</li> <li>d. Kolkata; and</li> <li>e. Mumbai.</li> </ul> <p>Pursuant to the present constitution of the NCLT, there are 11 benches of the NCLT as against 5 benches of the CLB. The newly constituted benches include <u>Ahmedabad, Allahabad, Bengaluru, Chandigarh, Guwahati and Hyderabad</u>. Notification no. S.O. 1935(E), provides further information on the territorial jurisdiction of each bench for NCLT to exercise jurisdiction.</p>
2.	<p><b><u>Transfer of pending proceedings(Section 434 of the Companies Act, 2013):</u></b> As per the provisions, it is noted that on a date notified by the Central government (“<b>Notification Date</b>”):</p> <ul style="list-style-type: none"> <li>a. the matters pending before the Company Law Board will be transferred to the NCLT;</li> </ul>	<p><b>Transfer of Proceedings</b></p> <p>As per notification S.O. 1934(E) read with Section 434(1)(a) and (b) of the Companies Act, 2013, all pending proceedings before the Company Law Board stand transferred to the NCLT.</p> <p>However, S.O. 1934(E) has not yet notified Section 434(1)(c) and (d) and, accordingly, the provisions pertaining to the</p>

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	<p>b. any order that was passed by Company Law Board, prior to the Notification Date, can be appealed within 60 days from the date of such order being passed;</p> <p>c. all proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, that are pending before any District Court or High Court, will be transferred to the NCLT and the NCLT may proceed to deal with such proceedings from the stage before their transfer.</p> <p>The Central Government may make rules to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts to the NCLT under this provision</p>	<p>transfer of all the appeals preferred, reference made, inquiry pending and/ or any other proceedings before the Board of Industrial and Financial Reconstruction under Sick Industrial Companies (Special Provisions) Act, 1985 and Appellate Authority for Industrial and Financial Reconstruction; and transfer of proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, which are pending before any District Court or High Court; have not yet been enforced. Until a further notification by the Central Government is issued with this regard, any proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies will be dealt by the respective District Court or the High Court.</p> <p>Upon further notification issued with regard to the provisions under section 434 (1) (c) and (d) and upon NCLT becoming fully functional, the corporate jurisdiction of:</p> <ul style="list-style-type: none"> <li>a. Company Law Board;</li> <li>b. Board of Industrial and Financial Reconstruction;</li> <li>c. Appellate Authority for Industrial and Financial Reconstruction; and</li> </ul>

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		<p>d. Any District Court or High Court with regard to all proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies,</p> <p>Will stand vested in the NCLT.</p>
3.	<p><b><u>Dedicated online portals (Rule 79 of Draft Rules) and e-filing of applications (Rule 75 of Draft Rules)</u></b></p> <p>As per the Draft Rules, Dedicated Online Portals, have been introduced, through which all the parties or Central or State Government agencies and local government's bodies may electronically send and receive documents to or from the Tribunal and make required payments.</p> <p>Further, as per Rule 75 of the Draft Rules, every document that is to filed with NCLT with regard to the proceedings will be filed electronically unless NCLT states otherwise.</p>	<p>It is noted that as per Rule 2 sub rule 54, the documents may be filed physically before the NCLT until the rule pertaining to electronic filing has been enforced. At present, the draft rules have not been notified yet. Once notified, all the documents pertaining to any proceedings will be filed with NCLT electronically.</p>
4.	<p><b><u>Disposal of Application or Petition (Section 422 of Companies Act, 2013):</u></b></p>	<p><b>Speedy Disposal of Applications</b></p>

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	<p>An application or petition filed before NCLT should be disposed of within 3 months from the date of its presentation before the NCLT.</p>	<p>This is an important new provision which provides a deadline for disposition of applications or petitions filed before the NCLT.</p> <p>As per the provisions of the Companies Act, 2013, further provisions are in place to enforce the expeditious disposition of the proceedings before NCLT.</p> <p>If an application or petition is not disposed within the stipulated period of 3 months from the date of its presentation, then a reason for not disposing such application or petition is to be given to the chairperson or the president and after taking the reason into consideration the disposal of the said application or petition will not be extended for a period more than 90 days.</p>
5.	<p><b><u>Amicus Curiae (Rule 96 of the draft National Company Law Tribunal Rules, 2013 “Draft Rules”):</u></b></p> <p><u>As per rule 96 of the Draft rules, NCLT shall have the power to appoint Amicus Curiae (meaning any person or persons, including the professionals and professional bodies permitted by NCLT to render or to communicate its views to the NCLT) for the purpose of:</u></p>	<p><b>Expert legal opinion taken into consideration for the purpose of Judgement</b></p> <p>The Draft Rules enable NCLT to appoint Amicus Curiae for opinion on various specialized legal issues.</p>

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	<p>i. Rendering any point or points or legal issues; and</p> <p>ii. Accessing the pleadings of the parties in a case for their opinion.</p> <p>The expenses or fee will be paid to Amicus Curie by either of the parties or both the parties to the proceedings, as may be ordered by the NCLT.</p> <p>The judgement and any appended opinions of the NCLT will be transmitted to the parties and to <i>Amicus Curiae</i>.</p>	
6.	<p><b><u>Right to legal representation (Section 432 of the Companies Act, 2013):</u></b></p> <p>As per the provision, any person being a party to the proceedings before NCLT may appear in person, or through one or more chartered accountants, cost accountants, legal practitioners or authorize any other person to present his case before the NCLT.</p>	<p><b>Other Professionals allowed to represent</b></p> <p>Until now, Company Secretaries, Chartered Accountants, Cost Accountants could represent their clients only before Company Law Board. The current provision enables other persons authorized by the party to the proceedings to appear and represent a party before the proceedings in a suit.</p>
7.	<p><b><u>Class Action (Section 245 of the Companies Act, 2013):</u></b></p>	<p>With the constitution of NCLT, shareholders and creditors can now file class action suits against the company for breaching the provisions of the Companies Act, 2013.</p>

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	<p>Class action application can be filed by a members or depositors before the NCLT for :</p> <ol style="list-style-type: none"> <li>a. Restraining the company from committing any act which is ultra virus to the article of association of the company;</li> <li>b. Restraining the company from committing any breach of the provisions in the article of association of the company;</li> <li>c. Restraining the company and its director to act on any resolution passed with regard to altering the charter documents of the company pursuant to suppression of material facts or pursuant to misstatement provided to the members or depositors;</li> <li>d. Restraining the company and its director to do any acts contrary to the Act or any other law;</li> <li>e. Restraining the company and its director from performing any act contrary to any resolution passed by its members;</li> <li>f. Claiming any damages from the company and its directors; from auditor or audit firm of the</li> </ol>	<p>While shareholders have always been allowed to protest against the wrong doings of the management, class actions suits takes this a step further.</p> <p>The key difference between the petition filed in Company Law Board under the old Companies Act, 1956 and the application filed under the new Companies Act, 2013 under section 245 can be summed up in the following points:</p> <ol style="list-style-type: none"> <li>a. Application can be filed by members or depositors before NCLT as against only the members before the Company Law Board;</li> <li>b. Before the NCLT, an application can also be filed against the audit firm or auditors for their misstatement;</li> <li>c. Further, before the NCLT, an application for future activities as well in addition to current and past activities can also be filed.</li> </ol>

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	<p>company; and from any expert or advisor or consultant or any other person pursuant to any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act; and</p> <p>g. Seeking any other remedy from NCLT.</p> <p>On application being filed with regard to the above, the NCLT will take into account the following:</p> <p>a. Whether the application is made in good faith;</p> <p>b. Any evidence brought before the NCLT wherein any person other than company or director is involved;</p> <p>c. The cause of action is one which the member or depositor could pursue his own right rather than an order under this section;</p> <p>d. Any evidence brought before NCLT as to its views of the members or depositors have no personal interest, direct or indirect, in the matter being proceeded under this section;</p>	

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	<p>e. The cause of action if yet to occur, is likely to be authorized by the company before it occurs and likely to be ratified after it occurs; and</p> <p>f. The cause of action, if already occurred, is likely to be ratified after it occurs.</p>	
8.	<p><b><u>Appeal against order passed by the Tribunal (Section 421 and 423 of Companies Act, 2013):</u></b></p> <p>a. An <u>appeal</u> can be filed <u>from the order of NCLT in the NCLAT, within 45 days</u> from the date on which a copy of the order being made available to the aggrieved party to the proceedings; and</p> <p>b. <u>An appeal</u> can be filed <u>from the order of NCLAT in the Supreme Court within 60 days</u> from the date of receipt of order.</p>	<p><b>Shorter appeal period</b></p> <p>As per Section 10F of the Companies Act, 1956, an appeal was to be filed against the order of the Company Law Board before the High Court within 60 days of receipt of such order.</p> <p>Now an appeal may be filed against the order of the NCLT before the NCLAT alone, and within 45 days of the date of making available a copy of the order.</p> <p>An appeal can be filed against the order of the NCLAT in Supreme Court.</p>
9.	<p><b><u>Civil Court not to have jurisdiction (Rule 430 of the Companies Act, 2013).</u></b></p> <p>As per the provision, no civil court will have jurisdiction to entertain any suit or proceeding relating to any matter</p>	<p><b>Ousting of civil court jurisdiction</b></p> <p>Under the old regime, there was no express provision ousting the jurisdiction of the civil courts. Further, various judicial</p>

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	<p>that NCLT or NCLAT is empowered to try as per the provisions of Companies Act, 2013.</p> <p>Further, no injunction will be granted by any authority or court in respect of any actions to be taken or not to be taken in pursuance of any power conferred by or under the Companies Act, 2013 or any other law in force, by NCLT or NCLAT.</p>	<p>pronouncements have time and again reiterated the express provision for ousting the civil court jurisdiction.</p> <p>The present provision expressly ousts the jurisdiction of civil courts.</p>

***This is an update for general information purposes only and does not constitute legal advice. Should you have any queries please write to us at [infosamvad@samvadpartners.com](mailto:infosamvad@samvadpartners.com).***

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