

**NATIONAL COMPANY LAW TRIBUNAL (NCLT) &
NATIONAL COMPANY LAW APPELLANT TRIBUNAL (NCLAT)
(SECTIONS 407 TO 434)**

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National Company Law Tribunal (hereinafter referred as NCLT) and National Company Law Appellate Tribunal (hereinafter referred as NCLAT) provided under Companies Act, 2013, Chapter- XXVII, Sections 407 to 434. MCA Notification dated 1st June, 2016 in exercise of the powers conferred by section 408 of the Companies Act, 2013, the Central Government hereby constitutes the NCLT & NCLAT to exercise and discharge the powers and functions as are, or may be, conferred on it by or under the said Act or any other law for the time being in force with effect from the 1st day of June, 2016. This is a *quasi judicial* body.

It is established based on the Supreme Court judgment *S.P. Sampath Kumar Etc vs Union Of India & Ors*,¹ and on recommendation of the **V. Balakrishna Eradi committee**² on law relating to the insolvency and the winding up of companies. In *S.P. Sampath Kumar csae*,³ SC say that while adopting the theory of alternative institutional mechanism for Supreme Court referred to the fact that since independence, the population explosion and the increase in litigation had greatly increased the burden of pendency in high courts. The supreme court also referred to studies conducted towards relieving the high courts of their increase load; the recommendations of the **Shah committee**⁴ for setting up independent tribunals as also the suggestion of the administrative reforms commission for setting up of Civil Service tribunals.

In the first phase the MCA have set up **eleven Benches**, one Principal Bench at New Delhi and one each Regional Benches at New Delhi, Ahmadabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Jaipur, Hyderabad, Kolkata and Mumbai. Subsequently more benches at Cuttack, Kochi, Amravati, and Indore have been setup.

There are some objections raise in the court on making a tribunals. In *Madras Bar Association vs. Union of India*⁵, vires of the Companies Act, 2013 which contemplated establishment of National Company Law Tribunal (NCLT) and National Company Law

¹ AIR 1987 SC 386: 1987 SCR (1) 435.

² Consisting On 22nd Oct.1999 and submitted its report on 31st Aug 2000.

³ AIR 1987 SC 386: 1987 SCR (1) 435.

⁴ The High Court Arrears Committee constituted with Justice J. C. Shah as Chairperson in 1969 recommended the constitution of an independent tribunal to handle service matters pending before the High Courts and the Supreme Court.

⁵ (2015) 8 SCC 583

Appellate Tribunal (NCLAT) were challenged. Interestingly, while examining Chapter XXVII of Companies Act, 2013 i.e. Sections 407 to 434, this Court held that although the establishment of NCLT and NCLAT was not unconstitutional but there was a need for curing defects in accordance with the dictum of *R. Gandhi*⁶ (*infra*). Finally, in *Gujarat Urja Vikas Ltd. Vs. Essar Power Ltd.*⁷, while examining the composition and working of Tribunals and statutory framework thereof, this Court reiterated its earlier decisions in *L. Chandra Kumar*⁸ and *Madras Bar Association*⁹ (2014), observing that remedy of appeal to this Court was in effect, being obliterated due to cost and inaccessibility. In addition to this, a flood of appeals from all the Tribunals directly to this Court hindered its efficiency in fulfilling its primary Constitutional role. Since appellate tribunals, manned by non-judicial members, were adjudging complex questions of law, the composition of Tribunals was put under review by this Court and in reference to the Law Commission of India was made in this regard. Pursuant to this, the Law Commission of India, in its 272nd Report titled 'Assessment of Statutory Frameworks of Tribunals in India' gave a detailed analysis of statutory framework with respect to Tribunal's action in India.

In *Union of India vs. R. Gandhi, President, Madras Bar Association*,¹⁰ a Constitution Bench of five judges of this Court reviewed the Constitutional validity of Parts I-B and I-C of The Companies Act, 1956 inserted by the Companies (2nd Amendment) Act, 2002. The bench observed that if Tribunals are established in substitution of Courts, they must also possess independence, security and capacity. Additionally, with transfer of jurisdiction from a traditional Court to a Tribunal, it would be imperative to include members of the judiciary as presiding officers/members of the Tribunal. Technical members could only be in addition to judicial members and that also only when specialized knowledge or know-how is required. Any inclusion of technical members in the absence of any discernible requirement of specialization would amount to dilution and encroachment upon the independence of the judiciary. This Court also observed that higher administrative experience does not necessarily result in better adjudication and that there had been a gradual encroachment on the independence of the judiciary through inclusion of more administrative/technical members in the Tribunals.

⁶ (2010) 11 SCC 1

⁷ (2016) 9 SCC 103

⁸ (1997) 3 SCC 261

⁹ (2014) 10 SCC 1

¹⁰ (2010) 11 SCC 1

NCLT exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force (Section 408). NCLT can be called as Super Tribunal. Because NCLT will consolidate the corporate jurisdiction of the followings and under Section 434 the Central Government in this behalf Transfer of certain pending proceedings to NCLT from the followings —

- Company Law Board
- The Board for Industrial and Financial Reconstruction
- The Appellate authority for Industrial and Financial Reconstruction
- 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 winding up companies
- Power to Review its own orders
- Power to adjudicating authority for the insolvency resolution process of companies and Limited Liability Partnerships under the Insolvency and Bankruptcy Code, 2016.