

NCLT – An Anecdote or Antidote to Consolidation of Corporate Jurisdiction

The modern business is characterized by three major things:

- ❖ A consistently changing business environment.
- ❖ An increasing inclination towards specialization.
- ❖ A mushrooming Diaspora of activities, making businesses more complicated and interconnected.

This has led to a discerning trend across the globe towards rationalization of business processes and simplification of legislations governing them. Along with other factors that have redefined business, is the use of electronic communication and information technology that has speeded up business transactions as well as made them international. This therefore demands that steps be taken to ensure that dispensation of justice and disposal of business matters by the Court and Authorities should be in tune with the speed with which business is being transacted. Further, our Courts may not be competent enough to comprehend the intricacies of commerce thoroughly as certain business matters require specialized domain knowledge for dealing with the matters justifiably.

All this, had for long led to increasing voices in favor of setting up of specialized courts for discharging the responsibility of adjudicating the matters involving intricate issues relating to business.

Heeding to all this (and after a long run towards resolving issues including the formation of such judicial / quasi judicial body), the Ministry of Corporate Affairs, (MCA) has, vide notifications dated June 1, 2016 notified the constitution of NCLT (National Company Law Tribunal) and NCLAT (National Company Law Appellate Tribunal) by Central Government under the provisions of the Companies Act, 2013. MCA has also notified certain provisions of the Companies Act 2013, thereby making NCLT and NCLAT operative from June 1, 2016.

Follow-up towards the formation of NCLT

The Justice Eradi Committee on Law Relating to Insolvency and Winding up of Companies, in its Report noted that there are at present **three** different agencies namely, the **High Courts**, which have powers to order winding up of Companies under the provisions of the Companies Act, 1956; secondly, the **Company Law Board** set up under Section 10E of the Companies

Act, 1956 to exercise powers conferred on it by the Act or the powers of the Central Government delegated to it and finally, **Board for Industrial and Financial Reconstruction (BIFR)** which deals with the references relating to rehabilitation and revival of companies.

It was realized that the High Courts were not able to devote exclusive attention to winding up cases which was essential to conclude the winding up of companies quickly. Also the experiment with BIFR for speedy revival of companies had also not been encouraging. The committee after a detailed analysis of the working of High Courts with respect to winding up of companies and the working of BIFR, with respect to revival of sick companies, recommended for the formation of a composite legal forum to address all aspects of Companies Act 1956 rather than have separate Acts (SICA 1985 etc.) and multiple forums (BIFR, High Court) for various sections of the Companies Act 1956.

The **Companies (Second Amendment) Act, 2002** has first time provided for the setting up of a National Company Law Tribunal and Appellate Tribunal to replace the coeval Company Law Board and Board for Industrial and Financial Reconstruction. However a writ petition was filed by the Madras Bar Association ('the Petitioner') with the Madras High Court challenging the constitutional validity of the NCLT and NCLAT. The Madras High Court in its judgment in the year 2004 upheld that the creation of NCLT and vesting the powers hitherto exercised by the High Court and the Company Law Board in the said Tribunal was not unconstitutional. Even after this, the road to the formation of NCLT was occluded by various petitions until the matter was presented against the Supreme Court (twice, in 2010 & 2015). In the year 2010 the Supreme Court has, even under the Provisions of Companies Act, 1956, upheld the validity for constitution of NCLT & NCLAT in re. **Union of India V/s R. Gandhi**. Thereafter, the Companies Act, 2013 came into picture, which provides for specific provisions with respect to formation of NCLT and NCLAT, but the same was again challenged by Madras Bar Association. However, the Constitutional Bench of Apex Court has reiterated the validity of constitution of NCLT and NCLAT with a few changes with respect to appointment of Members to the Tribunals relying upon its earlier ruling.

And, finally on the eve of June 1, 2016 a pleasant surprise was received from the Ministry of Corporate Affairs, Government of India vide a Notification for Formation of NCLT and NCLAT along with some part of Companies Act, 2013 and that June 1, 2016 becomes a historic day on which the long awaited NCLT and NCLAT saw the day light.

Where does NCLT stands today?

The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) have been constituted by Central Government through MCA Notification dated June 1, 2016. With the constitution of NCLT and NCLAT, the Company Law Board (CLB) stands dissolved with immediate effect. As per the Notification all the matters /

proceedings / cases pending before the CLB stand transferred to NCLT and the same shall now be disposed of by Tribunal.

The NCLT will start functioning with **eleven Benches** – two at New Delhi and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. The Principal Bench of the NCLT will be at New Delhi. **Justice SJ Mukhopadhaya, Judge (Retd.), Supreme Court of India** is appointed as the Chairperson of the NCLAT while Justice **MM Kumar, Judge (Retd.)** is appointed as the President of the NCLT.

Powers of NCLT

Practically the NCLT and NCLAT has been subsumed with all the powers in respect of corporate matters which are hitherto being exercised by the Company law Board, High Courts of respective States, BIFR & AAIFR. The same can be summarized as under:

1. Powers of the erstwhile Company Law Board under the Companies Act, 1956.
2. Powers of High Court in the matters of mergers, demergers, amalgamations, winding up, etc.;
3. 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;
4. Powers of BIFR for revival and rehabilitation of sick industrial companies;
5. Power to wind up companies; within the provisions of Insolvency & Bankruptcy Code 2016;
6. Power to Review its own orders;
7. Power to Punish for Contempt;
8. Power to seek assistance of Chief Metropolitan Magistrate; and
9. The Bar on the exercise of Jurisdiction of Civil Courts on any matter on which Tribunal or Appellate Tribunal has the powers.

Consolidation of Corporate Jurisdiction

A Paradigm shift expected from the constitution of NCLT and NCLAT is a step moved towards consolidation of all Corporate Jurisdiction, which hitherto is scattered at various levels viz. High Courts of different States, Company Law Board, Company Courts of appropriate Jurisdiction, BIFR / AAIFR shall henceforth be exercised by the NCLT & NCLAT. In the case of disputes relating to company matters, it was divided between the High Court and the Company Law Board. The disputes relating to reduction of capital, merger, amalgamation and winding up of companies were with the High Courts and the power of rectification of Members register, refusal to transfer/transmission of Shares & Securities, Oppression and Mismanagement and similar other issues were adjudicated by CLB. However, with the introduction of NCLT, the Tribunal has become the only redressal mechanism body available to Corporate for all their disputes.

With the enactment of Insolvency and Bankruptcy Code, 2016, NCLT has been entrusted with one more important jurisdiction, which is with respect to corporate liquidation and Bankruptcy, and henceforth, all insolvency matters of Bodies Corporate will fall under the jurisdiction of NCLT

Though establishment of a single forum, dedicated to corporate matters, is a welcome move, and once fully functional it will definitely be going to remove the problem of multifold governance and regulations. However, a big challenge as on date is how it transpires into reality in days to come. Although, MCA by its notification has paved the way for functioning of NCLT, yet there are Rules pending to be notified. Similarly, provisions of Companies Act, 2013 with respect to amalgamation or scheme of arrangements, capital reduction and so on are yet to be notified and till then these remain to be governed by the jurisdictional High Courts and as per the erstwhile provisions of Companies Act, 1956. Still there is strong ambiguity on the time, which may have been taken up by the NCLT to actually become operational in the fashion it is designed for, the MCA may gradually notify provisions relating to powers of High Court under the Companies Act 2013/ 1956 in respect of reduction of share capital, winding-up and compromise or arrangement (merger/ demerger) and these matters may get transferred to NCLT later on.

So far as provisions relating to investigation of Company's accounts, class action suits, conversion of public company to private company and other matters, but these will in future be governed by NCLT whereas the matters relating to reduction of share capital, winding-up and compromise or arrangement (merger/demerger), etc. will remain under the jurisdiction of respective High Courts till the time these provisions are made effective. On the other hand there are various other unanswered questions which need to be addressed by the MCA on a priority basis e.g how much time the erstwhile CLB will take to actually transfer the case files to respective Benches of NCLT, what will be the fate of matters already registered under the BIFR and Appellate Authority for Industrial and Financial Reconstruction (AAIFR) which are pending for revival/rehabilitation, specially those which are at final stages, whether they are required to file a fresh petition / scheme as there is no provision till date for shifting of BIFR / AAIFR matters to NCLT. However, today it appears that the same will stand vacated as it is and the corporate will be required to file afresh under the provisions of Companies Act, 2013.

Conclusion

Undoubtedly, there was an impeccable need of this kind of fast track judicial bodies as due to increased number of proceedings pending at various places the real motive of justice could not be achieved and it's an established principal of law that "justice delayed is justice denied". But the Government has to put lots of efforts to actually achieve the objectives of formation of NCLT and NCLAT. A strong determination of bureaucratic machinery is required especially in the matters pertaining to shifting of existing Jurisdiction of High courts e.g. the erstwhile jurisdiction under Section 391 to 396 of 1956 Act, as it's a cumbersome process of approval

in consultation with the Chief Justices of all the High Courts and the Chief Justice of India to actually shift the Jurisdiction, and then the other administrative and practical difficulties e.g physical shifting of case files to the respective Benches and so on. Here, there is the chance for Government to prove its intention and make a strong impression on the faces of competing parties. Making rules is just as important as its enforcement and regulations, and the same are expected to be notified very soon. There is a big question before everyone that now only a few proceedings are delegated to NCLT, a large pool of pending proceedings is waiting, will this scheme help the law to cover up all such cases or will it create a menace?

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