APPEALS FROM THE ORDERS OF NCLT

By
Pradeep K Mittal[1]
Advocate- PKMG Law Chambers

Section 420 of the 2013 Act states that the National Company Law Tribunal (hereinafter called Tribunal) may pass any orders it thinks fit, as long as it gives the parties before it, an opportunity of being heard. The powers of the Tribunal are, therefore, extremely wide and there are no restrictictions on the kind of relief that it can grant in a particular case.

The Tribunal may also rectify any mistake that is apparent on the face of the record within two years from the date of the order.

In view of the enormous powers of the Tribunal, an attempt is being made to highlight the provisions for making appeals from the orders of the Tribunal.

APPEAL FROM THE ORDERS OF TRIBUNAL –SECTION 421

(1) any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

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[1]Past Central Council Member, the Institute of Company Secretaries of India
E Mail pkmittal171@gmail.com

(2) no appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) every appeal under sub-section (1) 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:
Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of ***forty-five days*** from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.
(4) On the receipt of an appeal under sub-section *(1)*, 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.
(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

Section 421 of Companies Act 2013 which corresponds to Section 10FQ of the Companies Act,1956 seeks to provide appeal against the order of the Tribunal in the Appellate Tribunal. It provides that *appeal may be filed within* ***45 days*** from the date of order and in case Appellate Tribunal is satisfied that delay is justified then further period of 45 days is allowed. The Appellate Tribunal after according an opportunity of hearing may confirm, modify or set aside order of the Tribunal and provide copy of order to the Tribunal and parties to appeal.

At this point our enlightened reader's mind may be interrupted with many questions as to: who is a person aggrieved? What is the interpretation of limitation period in this clause? What all will be construed as sufficient cause? etc. Lets discuss each question in depth.

"ANY PERSON AGGRIEVED"

In common judicial parlance the term person aggrieved by a decision includes :

(a) a person whose interests are adversely affected by the decision; or

(b)in the case of a decision by way of the making of a report or recommendation—a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation.

A party or a person is aggrieved by a decision only when it operates directly and injuriously upon his personal, pecuniary or proprietory rights. A person who feels disappointed with the result of a case is not a person aggrieved. The order must cause him a legal grieveance by wrongfully depriving him of something. ADI PHEROZHSHAH GANDHI V.H.M. SEERVAI, AIR 1971 SC 385.

The word 'aggrieved' refers to a substantial grieviance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation.

A person against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand would be an "aggrieved person". Not every person who has suffered some disappoinment or whose expectations have not been realised as a result of te decision or order can claim to be an "aggrieved person".

Powers of CLB under Section 402 of the 1956 Act are of wide amplitude and, therefore, many persons,other than parties , may become affected by any of its orders. But it does not follow that any such person should be made a party to the proceedings and be heard. The High Court of Delhi held that this was the reason why the legislature in its wisdom used in section 10F of the 1956 Act the words “any aggrieved persons” instead of the “party aggrieved”. The Company Law Board is free to pass such orders as it considers expedient, just and reasonable. Any person aggrieved by an order is free to assail it before the Appellate authority. INDUSTRIAL DEVELOPMENT BANK OF INDIA LTD. V. CLB(2007) 81 CLA 356(DEL.).

Who is a 'person aggrieved' also was debated and decided in catena of judicial pronouncements. In FERTILIZER COOPERATION KAMGAR UNION VS. UNION OF INDIA, MANU/SC/0010/1980; AIR 1981 SC 344 and BANGALORE MEDICAL TRUST VS. MUDDAPPA, MANU/SC/0426/1991:;AIR 1991 SC 1902) the Court found that question of 'person aggrieved' is different from the question whether the petitioner is entitled to relief as prayed by him. The expression 'person aggrieved' denotes an elastic and to some extent an elusive concept. According to traditional theory, only a person whose right has been infringed can apply to the court but the later view as referred to above has liberalised the concept of aggrieved person and the right duty pattern commonly found in adversarial litigation has been given up. The only limitation is that such a person should not be a total stranger known as meddlesome interloper.

In the case of AYAAUB KHAN NOOR KHAN PATHAN VS. STATE OF MAHARASHTRA [MANU/SC/0939/2012 : (2013) 4 SCC 465], the Hon'ble Supreme Court has held that only a person who has suffered a

legal injury can challenge an act/action/order etc. in a court of law by way of a writ under Article 226 of the Constitution of India. Writs under Article 226 of the Constitution of India are maintainable either for the purpose of enforcing a legal or fundamental right or when there is a sustainable complaint by the petitioner that there has been a breach of statutory duty on part of the authority qua him and to his prejudice thus making out a judicially enforceable right of his for enforcement. It has been held in the aforesaid case by the Hon'ble Supreme Court that it is implicit in the exercise of the extraordinary equitable jurisdiction of the High Courts that the relief prayed for must be for the enforcement of a legal right. A "legal right" has been held to mean entitlement arising out of legal rules. Concluding in para 17 of the aforesaid report on the question as to **who is a "person aggrieved"**, the Hon'ble Supreme Court has held that "in view of the above, law on the said point can be summarised to the effect that *a person who raises a grievance must show how he has suffered a legal injury".*

MANU/SC/0932/2010 : (2011) 1 SCC 125 - INFOSYS TECHNOLOGIES LTD. VS. JUPITER INFOSYS LTD. & ANR. - This case was cited to show that the applicant must not only be a person aggrieved on the date of the application but must continue to remain a person aggrieved until such time as the rectification application is finally decided and if the applicant is not shown to have ever traded or intended to trade in any goods covered by the appellant's registrations and as such the first respondent is not a "person aggrieved".

Intellectual Property Appellant Board in NEEDLE INDUSTRIES (INDIA) PRIVATE LIMITED VS.VINOD KUMAR AGARWAL TRADING AS PIONEER PLASTICS MANU/IC/0020/2008:

Persons who are in some way or the other substantially interested in having the mark removed from the Register are persons aggrieved. The fact that a person is engaged in the same trade will not make him an aggrieved person. The person aggrieved must establish that in some practical sense he may be damaged if the mark is allowed to continue on the Register.

The apex court in the case of MAHARAJ SINGH V. STATE OF U.P. MANU/SC/0361/1976 : (1977) 1 SCC 155, it was held:

20. The classical concept of a 'person aggrieved' is delineated in Re Sidebotham exp. Sidebotham. But the amplitude of 'legal grievance' has broadened with social compulsions. The State undertakes today activities whose beneficiaries may be the general community even though the legal right to the undertaking may not vest in the community. The State starts welfare projects whose effective implementation may call for collective action from the protected group or any member of them. New movements like consumerism, new people's organs like harijan or mahila samajams or labour unions, new protective institutions like legal aid societies operate on the socio-legal plane, not to beat 'their golden wings in the void' but to intervene on behalf of the weaker classes. Such burgeoning of collective social action has, in turn, generated gradual processual adaptations. Test suits, class actions and representative litigation are the beginning and the horizon is expanding, with persons and organisations not personally injured, but vicariously concerned being entitled to invoke the jurisdiction of the court for redressal of actual or imminent wrongs.

21. In this wider perspective, **who is a 'person aggrieved'**? Dabholkar gives the updated answer:

The test is whether the words 'person aggrieved' include a person who has a genuine grievance because an order has been made which prejudicially affects his interests'.
..The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busy body who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests." (p.324-325)".

LIMITATION PERIOD FOR FILLING APPEAL [SECTION 421(3) OF COMPANIES ACT, 2013]

The appeal lies to the Appellate Tribunal within 45 days from the date of communication of the order of the Tribunal. The limitation period can be further extended by 45 days if the Appellate Tribunal is satisfied that the appellant was prevented by sufficient cause from filling the appeal.
The Supreme Court in the case of N BALAKRISHNAN VS. M KRISHNAMURTHY AIR 1998 SC 3222 has held that unless there is a deliberate, malafide or gross negligence, reasonable delay should be condoned in as much as a person does not benefit by filing a petition with delay. Once no malafides or illegal motive can be imputed to a person to file a petition with delay, delay should ordinarily be condoned.

A question arises, Whether provisions of Section 5 of Limitation Act, 1963, are applicable to an appeal filed under Section 421 of Companies Act 2013 (corresponding to Section 10F of Act, 1956) ? - Words used in (3) proviso to Section 421 of 2013 Act are "not exceeding 45 days" thereby clearly prescribing time limit of only 45 days, in addition to initial period of 45 days allowed under Section 421(3), to enable a party to file an appeal against the orders of Tribunal. The said proviso clearly

shows that power vested in Appellant Tribunal to condone delay on sufficient cause being shown is directory and subject to discretion vested in the Appellant Tribunal. However, maximum period to extent of which such delay is capable of being condoned is mandatorily prescribed and not open to exercise of any discretion. Therefore, words "not exceeding 45 days" would amount to an express exclusion within meaning of Section 29(2) of the Limitation Act, 1963 and would therefore bar application of Section 5 of Act, 1963 to Section 421 of Companies Act 2013. In view thereof, scheme of Act, 2013, surely supports curtailment of Appellant Tribunal's powers by exclusion of operation of Section 5 of Act, 1963.

The legislative intent as reflected from the Companies Act, 2013, resulting in the constitution of the NCLAT and the Section 421 providing for a limited appeal make it abundantly clear that the Legislature intended to restrict the power of the Appellant Tribunal to condone the delay beyond the period exceeding 45 days and thus prescribed in a mandatory language as under:
Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period ***not exceeding forty-five days****, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period*

The hon'ble Supreme Court in UNION OF INDIA V. POPULAR CONSTRUCTION CO. [2001] 8 SCC 470, if there were any residual doubt on the interpretation of the language used in Section 10F, the legislative intent behind the constitution of the Company Law Board and the object of insertion of Section10F would resolve the issue

involved of curtailment of the court's power with the exclusion of the operation of Section 5 of the Limitation Act, 1963.

"Delay shall be condoned when special statute itself expressly provides for it."

MANOHAR LAL SHARMA VS. UNION OF INDIA (UOI) AND ANR. 2009(6)ALD315, [2009]152CompCas412(AP), (2010)1CompLJ19(AP), MANU/AP/0430/2009 :
As to the applicability of Section 5 of the Limitation Act, the learned judge considered the question in the light of the law laid down by the apex court in UNION OF INDIA V. POPULAR CONSTRUCTION CO. MANU/SC/0613/2001; [2001] 8 SCC 470 : AIR 2001 SC 4010 and GOPAL SARDAR V. KARUNA SARDAR MANU/SC/0195/2004; [2004] 4 SCC 252, and laid down as follows):
"There is no dispute that the Companies Act, 1956, is a special law. Under the normal circumstances, the provisions of the Limitation Act will have application to all appeals and applications under the Companies Act, unless a different period of limitation is prescribed. As noticed herein above, the company law itself has prescribed a period of limitation for filing the appeal and also for condonation of delay. Hence, condonation of delay for filing the appeal beyond the prescribed period of limitation is by virtue of the proviso to Section 10F. This proviso can be considered to be akin to Section 5 of the Limitation Act. However, the proviso imposes limitation for extension of time in filing the appeal beyond the prescribed period of limitation, the expression used in Section 10F being 'further period not exceeding, sixty days'... The proviso to Section 10F has created an absolute bar for extension of period of limitation beyond sixty days apart from the period of limitation

of sixty days prescribed under Section 10F. The expression 'not exceeding' does not permit any further extension and it seems that the true import, purport and construction of the proviso is to restrict the total period of limitation to 120 days, i.e., sixty days principal and sixty days by extension subject to existence of sufficient cause in a given case. Any other interpretation would amount to committing violence to the statute itself which is impermissible under law.

13. Yet again, the court ruled

...it is abundantly clear that where particular statute does not apply to Section 5 of the Limitation Act expressly or even impliedly in a special or local law itself, it shall be presumed that the exclusion is express. Section 29(2) of the Act not only excludes the application of Section 5 of the Limitation Act but also other sections from Sections 4 - 24 (inclusive). Thus, Section 14 also stands excluded from its application for purposes of either condoning the delay or exclusion of the period on the ground envisaged therein notwithstanding existence of sufficient cause. Thus, even if the period spent before the Honble Delhi High Court constitutes sufficient cause for extension of period under Section 5 read with Section 14 of the Limitation Act, these sections cannot be applied de hors proviso to Section 10F to extend the limitation beyond sixty days in addition to the original period of sixty days (total 120 days) for filing an appeal as proviso to Section 10F does not permit such extension."

Any appeal filed beyond the maximum period prescribed in the special statutes will be barred by limitation. KABUL CHAWLA VS. CPI INDIA REAL ESTATE VENTURES LIMITED AND ORS. MANU/PH/0818/2015. Therefore no appeal will be entertained by the Apppellate Tribunal after the expiry of 45+45=90 days.

In 'Union of India vs. M/s.Popular Construction Co.', MANU/SC/0613/2001 : AIR 2001 SC 4010 the Supreme Court has held that the provisions of Section 5 cannot be invoked since in Section 34(3) of Arbitration Act, 1996, while fixing the time
period for filing objections challenging the Award of the Arbitral Tribunal, the words used "but not thereafter" – meaning thereby the legislature intended that no further time can be granted to the petitioner for filing objections under Section 34(3) of Arbitration Act, 1996 by invoking the provisions of Section 5 of Limitation Act. Therefore, to sum up, if the words used in any particular legislation convey legislative intent that the petitioner shall not be entitled to further time by invoking the principle of Section 5 of Limitation Act, then the provisions Limitation Act, 1963 shall not apply.

"SUFFICIENT CAUSE"

A litigant who failed to file an Appeal before the appellant Tribunal within the permissible time period as fixed then he can file it after the expiry of the prescribed time period provided he has "sufficient cause" for non-filing the Appeal within the time period.In DINABANDHU SAHU V. JADUMONI, MANGARAJ, AIR 1954 SC 411, the supreme court approve of the dicta in KRISHNA V. CHATHAPPAN, MANU/TN/0148/1889 that 'sufficient cause' should receive a liberal construction so as to advance substantial justice, when no negligence, nor inaction, nor want of bonfide is imputablle to the appellant. If sufficient cause is shown, the court has to exerciseits discretion in favour of the appellant. The true guide for the court in its exercise of such discretion is wether the appellant had acted with reasonable diligence in prosecuting his appeal. But the circumstances of each case must be examined to see whether they fall within or without the terms of this

general rule. BRIJ INDER SINGH V. KANSHI RAM, MANU/PR/0033/ 1917, ILR(1918) 45 CAL 94.

In MANIBEN DEVRAJ SHAH V. MUNICIPAL CORPORATION OF BRIHAN MUMBAI
MANU/SC/0298/2012 : (2012) 5 SCC 157, the Supreme Court has ruled thus:

23. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is

satisfactory. N. BALAKRISHNAN VS. M. KRISHNAMURTHY MANU/SC/0573/1998

What is sufficient cause cannot be described with certainity for the reasons that facts on which questions may arise may not be identical. What may be sufficient cause in one case may be otherwise in another.

Where the appellant suffering from low blood pressure ws medically advised not to move, and if he does not move, he acts in good faith. There is 'sufficient cause'. HISARIA PLASTIC PRODUCTS V. COMMISSIONER OF SALES TAX, MANU/UP/ 0200/1980. Counsel initially advised for filing revision and realising mistake, the revision was withdrawn and an appeal was preferred. Mistaken advice cannot be considered as suuficient cause. BABARAM V.DEVINDER, AIR 1981 Del 14 .

When a party allows limitation to expire and pleads sufficient cause for not filling the appeal earlier, he must establish that because of some event or circumstances arising before the limitation expire, it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. AJIT V.STATE AIR 1981 SC 733.
Each day's delay after expiry of limitation is to be explained. BALRAM V. SARATHI, AIR 1988 ORI 10.

In a landmark judgment in which all previous judgments of the have been discussed and the Supreme Court in the case of ESHA BHATTACHARJEE VS. RAGHUNATHA NAFAR ACADEMY, MANUSC/0932/2013 = 2013(12) SCC 649 has summarized the principle emerged from all previous decisions.

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the

scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.
(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.
(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.
(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

"The expression "sufficient cause" is to be construed liberally with a view to advance justice, the purpose for which Section 5 of the Limitation Act has been enacted. However the Court is required to scrutinize the cause shown and would be justified in considering the merits of the evidence led to establish the cause."
MINERIA NACIONAL LIMITADA VS. SOCIEDADE DE FOMENTO INDUSTRIAL PVT. LTD. MANU/MH/0172/2007
Applicant cannot be put to prejudice on account of the misguidance from their lawyer provided Applicant - Applicant approached the other Court on wrong advice and approached the present Court without much delay - Held, while condoning delay what matters is not the length of the period but the acceptability of the explanation offered to condone the delay.

“APPEAL FROM AN ORDER OR DECISION”

A similar phrase has been used in several statutes. The expression "any decision or order", is of wide amplitude and would include all orders or decisions passed by the Board. CF.KANTILAL SHAH V. CC 1982 ELT 902(CAL). The expression is wide enough to include interlocutory orders passed by the board. CF. M.S.NAINA V. CC 1975 TAX LR 1351(CAL). An appeal against an order which did not decide the rights of the parties is maintainable. GHARIB RAM SHARMA V. DAULAT RAM KASHYAB, (1994) 80 Com Cases.

Where in a case before the Bombay High Court, during the pendency of an appeal against dismissal of a winding up petition, an application was made to CLB [now Tribunal under the 2013 Act] for appointment of an administrator for prevention of mismangement under scetopn 398 of 1956 Act[corresponding to section 241 of the 2013 Act] and the same was admitted under an order that the matters of mismanagement would not be raised in the winding up petition and an appeal was made to the same High Court against this order also. The court refused to dismiss it summarily but ordered that if an adminsitrator was appointed by the CLB, 14 days' time should be given to any aggrieved party to prefer an appeal against an order. THAKUR SAVADIKAR & Co. (P) LTD. V. S.S. THAKUR,(1996) 23, CORPT LA 170(BOM).

An order of the CLB in a matter for reference to arbitration under section 8 of the Arbitration and Conciliation Act,1996 is not appealable in view of the fact that scetion 5 of that Act permits appeals to judicial authorities only in the matters specified in that section and the order of reference is not one of those matters. HIND SAMACHAR LTD. VS. UNION OF INDIA (UOI) AND ORS. MANU/PH/0502/2008.

In MANU/MH/0666/2007: [2009] 149 CompCas 345 (Bom) VARDHAMAN DYE-STUFF INDUSTRIES P. LTD. V. MRS. M. R. SHAH, it has been held as follows (headnote):
In a petition filed under sections and 398 of the Companies Act, 1956, the Company Law Board held that no case of oppression had been made out by the shareholder. The Board, however, directed the company to purchase the shares of the shareholder. On appeal, the company, challenged the operative part of the order of the Board as being contrary to law and impermissible:

Held, allowing the appeal, that the shareholder had not made out any case for exercise of equitable jurisdiction to grant such relief as granted by the Board. There was no case of oppression and mismanagement or for winding up of the company on any just or equitable ground to bring the case under section 397 or 398 and/or even section 402 of the 1956 Act. The submission that the High Court may not disturb the order of the Company Law Board as section 10F referred to an appeal only on a question of law was not correct. The order, specially its operative portion, was perverse and not sustainable. The order was to be quashed and set aside.

It is admitted case of the parties that the appellants herein had filed two petitions underSections 397-398 of the Companies Act alleging oppression and mismanagement before the CLB in the affairs of M/s TINNA AGRO INDUSTRIES LIMITED AND TINNA OIL AND CHEMICALS LIMITED. During the pendency of the said petitions, applications under Sections 8 and 45 of the Arbitration Act were filed and by the impugned orders dated 20th July, 2010 passed by the CLB, the applications have been allowed and the matters have been referred to arbitration to be conducted in accordance with the rules of the conciliation and arbitration of the International Chamber of Commerce

in London. What has been decided by the CLB are the applications filed underSections 8 and 45 of the Arbitration Act and not the petitions under Section 397-398 of the Companies Act. The disputes raised in the main petitions under Sections 397-398 of the Companies Act have not been adjudicated. Rights of the parties C.A. NOS. 1701-1702/2010 in CO.A. (SB) Nos. 31-32/2010 5 under the Companies Act have not been decided. The CLB while passing the impugned orders dated 20th July, 2010 has adjudicated these applications underSections 8 and 45 of the Arbitration Act and whether in view of the conditions stipulated in the aforesaid Sections, the applications should be allowed. While doing so, CLB may have incidentally examined the provisions of the Companies Act but only for the purpose of deciding whether or not conditions stipulated in Sections 8 and 45 of the Arbitration Act are satisfied or not; and not for deciding the petitions under Sections 397-398 of the Companies Act.

"OPPORTUNITY OF BEING HEARD" [SECTION 421(4) OF COMPANIES ACT 2013]

Opportunity to be heard means the chance to appear before a court or Tribunal to present evidence and argument before being punished by governmental authority. An opportunity to be heard before penalty or punishment is imposed for contempt is an indispensable essential to the administration of due process of law as contemplated by the constitutional inhibition. Notice and an opportunity to be heard are the hallmarks of due process. However, due process does not always require an adversarial hearing. The violation of a state statute outlining procedure does not necessarily equate to a due process violation under

the federal constitution. An opportunity to be heard ordinarily includes the following three rights:
the right to receive fair notice of the hearing;
the right to secure the assistance of counsel; and
the right to cross examine adverse witnesses.

What is "opportunity of being heard"? The Karnataka High Court in KARIBASAPPA KURAVATEPPA MARADIBANKAR VS .ASSISTANT COMMISSIONER, ILR 1997 KARNATAKA 2236 **;** MANU/KA/0329/1994 held:
It is well settled that the right of oral or personal hearing is not an essential element of natural justice. No doubt, a person sought to be proceeded against is entitled to a right of defence, but that does not necessarily imply a personal hearing. Even an opportunity to file a written representation complies with the principles based on the requirement of natural justice... It is well settled that whether oral hearing should be given or written representation will meet the ends of justice depends on the facts of each case. It is only in such cases which require determination of disputed question of fact, where personal hearing becomes incumbent. If not otherwise provided in the statute itself, 'hearing' does not mean grant of a personal hearing as mandatory. In the present case, the facts were not at all in dispute. The decision of the Assistant Commissioner is based on clear and unambiguous provisions of law. Therefore, non-grant of personal hearing cannot be said to be fatal.

The requirement of the rule of natural justice is that the parties whose civil rights are to be affected by a quasi judicial authority must have a reasonable opportunity of being heard in their defence. “stating it broadly and without intending it to be exhaustive…..rules of natural

justice require that a party should have the opportunity of addcuing all relevant evidence on which it relies, that the evidence of opponent should be taken in his presence and he should be given the opportunity of cross examining the witness examined by the party, and that no materials should be relied on against him without his being given an opportunity of explaining them." UNION OF INDIA V. T.R VERMA, AIR 1957 SC 882.

The Hon'ble Orissa High Court in the case OF RADHIKA CHARAN BANERJEE V. SAMBHALPUR MUNICIPALITY AND OTHERS reported at 1979 AIR 69 (Orissa) relied upon in KINGFISHER AIRLINES LTD. VS. ASSISTANT COMMISSIONER OF INCOME TAX (2014) has held as under:-

" A right of appeal wherever conferred includes a right of being afforded an opportunity of being heard, irrespective of the language used in conferring such a right. That is a part and parcel of the principle of natural justice. Where an authority is required to act in a quasi judicial capacity, it is imperative to give the appellant an adequate opportunity of being heard before deciding the appeal. Opportunity of hearing does not always necessarily mean giving a personal hearing. A written representation, if complete and elaborate in all respects fully explaining the points of view of the appellant, when accepted, may, in some cases amount to affording effective opportunity of hearing. What particulars of natural justice should apply to a given case must also depend to a great extent on the facts and circumstances of that case."

Whether a reasonable opportunity has been given in a particular case will depend on its own circumstances, there being no uniform formula or rigid rules for the purpose.

Appearance of a lawyer cannot be claimed as a matter of right. But in a case where complicated questions of law and fact arise, where the evidence is elaborate and the party concerned may not be in a postion to meet the situation himself effectively, denial of legal assisstance may amount to a denial of natural justice. MRS. RITA PRASAD W/O RANJAN KUMAR, MS. TANYA TANVI, MS. REETU RANJAN AND MS.REECHA RANJAN ALL D/O LATE RANJAN KUMAR VS. THE BOARD OF DIRECTORS, THROUGH ITS CHAIRMAN, NALANDA GRAMIN BANK, THE CHAIRMAN, NALANDA GRAMIN BANK AND SENIOR MANAGER, NALANDA GRAMIN BANK, MANU/BH/1068/2010.

WHAT'S NEW?

Under the erstwhile s. 10F of the 1956 Act, an appeal from the order or decision of the CLB was provided to the High Court only on questions of law.

"The Legislature has consciously restricted the right of appeal under Section 10F of the Companies Act, 1956, only to the questions of law so as to ensure that there is as far as possible an early finality to the issues and consequent redressal of grievances. All decisions on the questions of fact as decided by the Company Law Board are final and conclusive. Therefore, any liberal construction of the discretion vested under the proviso to Section 10F would render the provision otiose and defeat the purpose for the establishment of the Special Tribunal (being Company Law Board) for the speedy adjudication of the disputes." SMT. HETAL ALPESH MUCHHALA VS. ADITYESH EDUCATIONAL INSTITUTE AND ORS. MANU/MH/1349/2009

The provisions regarding appeal to the NCLAT are in harmony with the provisions relating to a first appeal under s. 96 of the Code of Civil Procedure, 1908. Therefore, ***the NCLAT will hear appeals on both questions of fact and law***. Under Section 96 the Code of Civil Procedure,1908, it was held that an appeal is a continuation of the suit proceedings. The court has the power to examine questions of law or fact or mixed questions of law and fact. MANIK CHANDRA NANDY V. DEBDAS NANDY, AIR 1986 SC 446.

Appeals from NCLT will go to National Company Law Appellate Tribunal and from the decisions of the Appellate Tribunal to the Supreme Court of India. Earlier, the decisions of the Company Law Board were challenged before the Hon'ble High Court and then in Supreme Court. This will help in getting uniform decision on a particular subject by the Appellate Tribunal instead of getting different decisions on the same matter by different High Courts.

EXPEDITIOUS DISPOSAL BY TRIBUNAL AND APPELLATE TRIBUNAL

Section 422 of the Companies Act 2013 provides for expeditious disposal of applications and petitions filed before the Tribunal and and Appellate Tribunal. Where the Tribunal or the Appeallate Tribunal does not dispose of the matter before it within three months of its presentation, the Tribunal or the Appellete Tribunal is required to record to record the reasons for such delay. And after considering the reasons so recorded the President or the Chairperson, as the case may be, has the discretion to extend the period for disposal of the matter, not exceeding ninety days.

APPEAL TO SUPREME COURT (SECTION 423):

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

The Supreme Court may allow it to be filed within a further period not exceeding sixty days, if it is satisfied, that the appellant was prevented by sufficient cause from filing the appeal with this period.

POWER UNDER ARTICLES 226 AND 227 NOT TAKEN AWAY

It was held in L.CHANDRA KUMAR V. UNION OF INDIA (MANU/SC/0261/1997) and SATYANARAYAN V. ATMARAM (MANU/MP/0855/2015) that the High Court's power under Articles 226 & 227, being a part of the basic structure of the Constitution, can never be taken away. Practically, however, since a direct appeal has been provided to the Supreme Court under section 423 of the Companies Act, 2013, the High Court will not interfere in a writ petition from the order of the Tribunal or the Appellate Tribunal unless there is a vioaltion of the principles of natural justice or a lack of jurisdiction.