

The Role Of National Company Law Tribunal in Companies Act,2013

By
CS Pradeep K Mittal¹
Advocate

An attempt has been made by the Author to present a short synopsis of NCLT/NCLAT which is a "Single Window Institution of Corporate Justice." In other words, it is a consolidation of corporate jurisdiction. The establishment of NCLT/NCLAT will, in all likelihood, reduce delays in corporate laws proceedings as well as multiplicity of litigations involved in such proceedings.

2. The NCLT and NCLAT are emerging after protracted litigation. Several Commissions and High-Level Committees have been suggesting

¹ **Past Central Council Member, The Institute of Company Secretaries of India.**
e-mail id: pkmittal171@gmail.com

formation of NCLT/NCLATs in order to reduce litigations before various authorities:

- CLB under Companies Act;
- BIFR/AIFR under Sick Industrial Companies (Special Provisions) Act, 1985;
- High Court which have jurisdiction and powers relating to Corporate Restructuring, Arrangement, Amalgamation, Reduction of Share Capital and Winding up Proceedings.

There will be atleast 16 benches of NCLT, thereby providing justice at the doorstep. NCLT will be a statutory body and it would enjoy all the powers being conferred under Companies Act, 2013. The proposed NCLT will have judicial and technical experts who will handle all matters presently being handled by CLB, Company Court and BIFR with much wider jurisdiction in terms of scope of the subjects.

In this article, the author delves into the powers being conferred to NCLT in the Companies Act, 2013 which has been presented in tabular format as highlighted under:

**POWERS CONFERRED ON NATIONAL
COMPANY LAW TRIBUNAL**

**TABLE SHOWING CHAPTER WISE VARIOUS
SECTIONS UNDER COMPANIES ACT, 2013
UNDER WHICH POWERS CAN BE EXERCISED
BY NCLT**

Powers of NCLT	Section under Companies Act, 2013
Chapter –I “ Preliminary”	
To allow certain companies or body corporate to have a different financial year	2(41)
Chapter –II “Incorporation of Company and matters incidental thereto”	
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)
Chapter -IV “Share Capital and Debentures”	
Not less than ten percent 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	55(3)

preference shares when a company is unable to redeem its existing unredeemed preference shares or to pay dividend thereon.	
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	Proviso

shares of a company ordered by the Government are not acceptable to the company, the company may appeal to the Tribunal for making such order as it may deem fit.	under 62(4)
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)
Chapter V "Acceptance of Deposits by Companies"	
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)
Chapter –VII "Management and Administration"	
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)
Chapter –VIII " Declaration and Payment of Dividend"	
To sanction utilization of IEPF for reimbursement of legal expenses incurred on class action suits by members, debentures or depositors.	125 (3)(d)
Chapter –IX "Accounts of Companies"	

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)
Chapter-X "Audit and Auditors"	
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)
Chapter- XI "Appointment and Qualifications of Directors"	
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
Chapter –XIV " Inspection, Inquiry and Investigation"	
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 Company.	213
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 1 st Proviso
Chapter –XV “Compromises, Arrangements and Amalgamations”	
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	231(2)

its debts as per the scheme, it may make an order for winding up the company.	
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)
Chapter- XVI "Prevention of Oppression and Mismanagement"	
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 making of a winding up order on the ground that it was just and equitable that the Company should be wound up.	242(1)(b)
Tribunal may pass orders for regulation of conduct	242(2)(a)

of affairs of the company in future.	
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	242(2)(i)

utilization of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims.	
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 application is made u/s 241(Oppression and Mismanagement) and 245(Class Action Suits). This power shall apply for Sections 337 to 341.	246
Chapter –XVIII “Removal of Name of Companies from the Register of Companies”	
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	252(1)

company to the Register of companies in case of an appeal made to the tribunal within three years of the order of the Registrar.	
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
Chapter-XX "Winding Up"	
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	285(1)

in all cases where rectification is required will be settled by the Tribunal.	
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	297

themselves and distribute any surplus among the persons entitled thereto.	
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 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.	300
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	322(3)

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.	
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	342

prosecuted by the NCLT.	
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 monie 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 asstes 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
Chapter- XXI " Companies Authorised to Register under this Act"	
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	377

of Unregistered Companies.	
Chapter- XXVII "National Company Law Tribunal and Appellate Tribunal "	
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.	
<p>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:</p> <p>(a) Summoning and enforcing the attendance of any person and examining him on oath;</p> <p>(b) requiring the discovery and production of documents;</p> <p>(c) receiving evidence on affidavits;</p> <p>(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;</p> <p>(e) issuing commissions for the examination of witnesses or documents</p> <p>(f) dismissing a representation for default or deciding it ex-parte;</p> <p>(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and</p> <p>(h) any other matter which may be prescribed by the Central Government.</p> <p>Matters prescribed by the Central Government for the purpose, are as under: -</p> <p>(1) Granting stay or order status quo</p> <p>(2) Ordering injunction or cease and desist;</p>	424(2)

(3) Appointing commissioner(s) for the purpose under the Companies Act, 2013 (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; (5) Passing such order or orders as it may deem fit and proper in the interest of justice.	
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 has the Power to hear and decide a petition or application ex parte.	
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)
Power to punish for contempt	425

<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 exercise 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 contempt is an offence punishable under the Indian Penal Code (45 of 1860)</p> <p>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: -</p> <p>(a) The reference to a High Court shall be construed as including a reference to the NCLT and the NCALT; and</p> <p>(b) 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.</p>	
<p>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</p>	<p>426</p>

report to it.	
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
Chapter- XXVIII "Special Courts"	
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 NCLT.	441
Chapter- XXIX "Miscellaneous"	
Power to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter.	459

The Table shows various provisions of the Companies Act, 2013 where the petition shall lie to the National Company Law Tribunal and shall be of immense help to the members both who are in practice as well as who in Job.
