



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

COMPANY LAW BOARD, NCLT AND NCLAT- A COMPARITIVE AND CRITICAL ANALYSIS

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LIST OF ABBREVIATIONS

- CLB - Company Law Board
NCLT - National Company Law Tribunal
NCLAT - National Company Law Appellate Tribunal

INTRODUCTION:

Any discipline of law, without due adjudicatory authority will not have a sound enforcing effect. Ministry of Corporate Affairs (MCA) in India, which governs the corporate and company law matters has constituted Company Law Board (CLB) which in 2016 was replaced by the National Company Law Tribunal (NCLT) and its appellate authority- National Company Law Appellate Tribunal (NCLAT) based on the Justice Eradi committee report on the laws of insolvency and winding up of the companies. There are a plethora of reasons why CLB was replaced by NCLT and NCLAT. This article discusses the features of CLB, NCLT and NCLAT and the reasons behind the constitution of NCLT and NCLAT replacing CLB. This article also compares the powers, attributes and functions of each of the adjudicatory authorities and critically analyse the same.

RESEARCH QUESTIONS:

1. What are the reasons for the replacement of Company Law Board (CLB) by the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT)?
2. Comparative Study of the CLB, NCLT and NCLAT

COMPANY LAW BOARD:

Company Law Board (CLB) which is lawfully known as the BOARD OF COMPANY LAW ADMINISTRATION was constituted in February, 1964 under Section 10E of the Companies Act, 1956 by the Central Government of India. CLB is the independent quasi-judicial authority constituted specifically to look into matters relating to company law and companies act. It was constituted in its then present form on May 31, 1991, under Section 10E of the Companies Act, 1956 replacing the erstwhile Company Law Board which was primarily as a delegate of the Central government since 1.2.1964.¹ The CLB is to exercise and discharge such powers and functions of the Central Government under this Act or any other law as may be conferred on it by the Central Government, by notification in the Official Gazette under the provisions of this Act or that other law.² The powers and functions of the CLB have been enlarged after the amendment of Companies Act in 1988. The new CLB constituted in 1991 has framed Company Law Board Regulations, 1991 for the purpose of regulating the proceedings before the board and the Company Law Board [fees on application and petitions] Rules, 1991 which prescribes the fees and procedures for the applications and petitions filed in the board regarding various company related issues.

CONSTITUTION OF THE COMPANY LAW BOARD:

Section 10E of the Companies Act, 1956 provides for the constitution of the Company Law Board.

Section 1A:³

The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it by the Central Government, by notification in the Official Gazette under the provisions of this Act or that other law.

The company law board shall consist of not more than 9 members of which one member is chosen to

¹ Biswajit Sarkar, 'Before The Company Law Board' (*Biswajitsarkar.com*, 2018) <<https://www.biswajitsarkar.com/before-the-company-law-board.php>> accessed 19 October 2018.

² About Us and others, 'Overview Of Companies Act, 1956 & Company Law Board (CLB) | Taxguru' (*Taxguru.in*, 2018) <<https://taxguru.in/company-law/overview-companies-act-1956-company-law-board-clb.html?amp>> accessed 19 October 2018.

³ 'The Companies Act, 1956' (*Indiankanoon.org*, 2018) <<https://indiankanoon.org/doc/1353758/>> accessed 19 October 2018.

be the chairman of the board. The board also has powers to constitute one or more benches for the purpose of performing and discharging certain specific functions and duties which the board shall specify in the order constituting the same. For all practical purposes the board shall be considered a civil court having jurisdiction over civil matters under the Code Of Civil Procedure, 1908 and under section 195 and chapter XXVI of the Code Of Criminal Procedure,1973.

APPEALS AGAINST THE DECISIONS OF THE COMPANY LAW BOARD:

Section 10F of the Companies Act,1956 provides for the appeals against the decisions of the Company Law Board. The aggrieved party shall apply for the appeal against the order or decision of the CLB within 60 days of communication of the order or the decision in the High Court. If the high court deems fit that there is a sufficient ground for proceeding, shall allow the appeal.

POWERS AND FUNCTIONS OF THE COMPANY LAW BOARD:

The company law board is an independent quasi-judicial and administrative authority that has a specific function of adjudicating the matters related to the company law. The powers of the company law board in solving issues related to oppression and mismanagement are provided under section 397-409 of the chapter VI of the companies act,1956. The CLB also has the power to recommend the removal of a managerial personnel from his office. The central government upon this recommendation can proceed with the removal provided under sections 388B-388E Of the chapter IVA of the act.

JUSTICE ERADI COMMITTEE REPORT FOR THE CONSTITUTION OF NCLT AND NCLAT TO REPLACE THE CLB:

In 1999, a committee consisting of various members under the supervision of Justice. V. Balakrishna Eradi, popularly known as the ERADI COMMITTEE was constituted to analyse the insolvency laws and laws regarding the winding up of the companies. The committee was also actively involved in the study relating to the delay in the judicial proceedings relating to company law matters. The committee was dedicated to suggest reformative measures for the avoidance of unreasonable delay in the adjudication of matters. The most significant reason for the massive delay in the dissolution of

companies was identified to the number and duplicity of the cases.

After the analysis of the mechanisms in various countries, the committee came up with the idea of the constitution of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). The powers and functions of the High court in adjudicating company law matters such as restructuring and winding up of the companies, the powers and functions of the Company Law Tribunal (CLB), powers and jurisdiction of the Board For Industrial and Financial Reconstruction (BIFR) and its appellate authority constituted under the Sick Industrial Companies (special provisions) Act for the matters relating to the rehabilitation and revival of the companies.

The Companies Act was amended in 2002 with provisions relating to the constitution of NCLT but the process was stalled due to various judicial proceedings regarding the constitutionality and validity of the constitution of NCLT and NCLAT. In 2013, the section 408 was included in the companies (amendment) Act, 2013 which provided for the establishment and constitution of the tribunals. The Ministry of Corporate Affairs (MCA) issued a notification dated June 1, 2016 regarding the commencement and constitution of the NCLT and NCLAT in their official website and public notification. Thus, from the said date the matters before the CLB, BIFR and high court relating to the company law matters were transferred to the jurisdiction of the NCLT and NCLAT.

IMPACT OF THE RECOMMENDATION:

1. Provisions 1B and 1C relating to the definitions of NCLT and NCLAT were inserted in the companies act in the amendment made in 2002.
2. The powers and functions of the CLB, high court, BIFR and its appellate authority relating to the company affairs were transferred to the NCLT
3. Writ petition relating to the constitutional validity of the establishment of NCLT and NCLAT was filed by the Madras Bar Association which was quashed by the high court order stating that the constitution of the tribunal is not violative of article 323(b) of the Indian Constitution. Further, appeals were made in the apex court regarding the same by the Union of India, but in this case the apex court held that the provisions 1B and 1C are unconstitutional and ordered for the amendment of the same. The apex court also held that the establishment and

constitution of the NCLT and NCLAT are not unconstitutional and is not violative of the doctrine of separation of powers.

4. Thus, the Ministry Of Corporate Affairs, by notification dated June 1, 2016 notified for the establishment of the NCLT And NCLAT.

SCOPE and CONSTITUTION OF NCLT:

Chapter XXVII of the companies act,2013 provides for the constitution and procedures and functions of the NCLT And NCLAT. The scope of NCLT is the consolidation of the powers and functions of the following:⁴

1. High court in deciding matters relating to company law such as winding up of company and restructuring of the company
2. Company Law Board established under the Companies Act,1956 for adjudicating matters related to company affairs.
3. Board for Industrial and Financial Reconstruction (BIFR) and its appellate authority for Industrial and Financial Reconstruction (AAIFR) under the Sick Industrial Companies (special provisions) Act.

There are eleven benches of NCLT in present all over India. The principal bench is located in the national capital region, New Delhi. The other benches are located in Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guahati, Hyderabad, Kolkata, Mumbai, New Delhi.

IMPORTANT FEATURES OF THE NCLT AND NCLAT:

1. The NCLT replaced the Company Law Tribunal and all the cases dealt by the CLB was transferred to the NCLT.
2. The NCLAT became the sole appellate authority and the powers of the high court in hearing appeals was transferred to the NCLAT.
3. NCLT deals with all corporate affairs of the companies registered in India.
4. The most important feature was to reduce the multiplicity of litigation cases.

⁴ 'National Company Law Tribunal - Powers & Jurisdiction - Indiafilings - Learning Centre' (*IndiaFilings - Learning Centre*, 2018) <<https://www.indiafilings.com/learn/national-company-law-tribunal-powers-jurisdiction/>> accessed 19 October 2018.

5. The tribunals consist of members with Judicial knowledge and technical expertise making the functioning of the tribunal more effective and efficient.
6. The main reason of the constitution was to enable a speedy disposal of cases and protection of privacy of the companies.
7. The jurisdiction exercised by the NCLT and NCLAT are exclusive in nature. They are discussed below.

JURISDICTION and MAJOR FUNCTIONS OF THE NCLT AND NCLAT:

The tribunals follow the Code of Civil Procedure, 1908. The rules made by the central government are binding on the tribunals. One of the cardinal powers of the tribunal is that they can formulate their own rules provided that those rules are not violative of the features of the tribunals and not against the fundamental principles of the constitution.

1. REGISTRATION OF THE COMPANIES:

Any legality regarding the validity of the registration and incorporation of the companies under the Companies Act, 2013 can be questioned by the NCLT. The procedural errors are to be adjudicated by the NCLT. The tribunal also powers right from the registration, cancellation of registration of a company to the dissolving of the company. The tribunal has powers to deregister a company if the tribunal is of knowledge that the registration certificate was obtained illegally or through wrongful means under section 7(7) of the Companies Act, 2013.

2. TRANSFER OF SHARES:

If the transferor or transferee of the shares of the company is dissatisfied due to the non-transfer of shares or if the company refuses to register any such transfer, redressal shall be sought from the tribunal under sections 58 and 59 of the Companies Act, 2013. The Companies Act, 2013 provides for the redressal mechanism of all types of securities issued by the company unlike the Companies Act, 1956 which provides for the redressal for rejection of shares and debentures only.

3. **CLASS ACTION:**

Under section 245 of the companies act, the fraud and improprieties committed by the company will have a direct impact on the shareholders and investors of the company. Under such circumstances, the shareholders and investors shall seek redressal and the matters will be adjudicated by the NCLT. Effective measures for reducing such offences and offenders have been provided by the companies act, 2013 through strict punishment to the guilty officials etc. section 245 provides a great relief to the investors by protecting their assets from unlawful mishandling and ensuring their rights are safeguarded.

4. **OPPRESSION AND MISMANAGEMENT:**

Section 241 of the companies act,2013 provides for the relief sought due to oppression and mismanagement of the company. Thus, setting forth remedies for any member or ex-member of a company or Central Government subjected to the crime under scrutiny.⁵ Thus, a member of the company can file an application in the tribunal if the operations of the company are against the public interest and in cases of mismanagement and oppression.

5. **REVISION OF FINANCIAL STATEMENTS AND REOPENING OF ACCOUNTS:**

Sections 130 and 131 read with section 448 and 449 of the companies act,2013 provides for the procedures to be followed by the tribunal if any cases are filed or brought to the knowledge of the tribunal regarding the falsification of accounts of the company. In such cases, the tribunal shall order for investigation and revision of the financial statements and reopening of the accounts of the company.

6. **CONVERSION OF A PUBLIC COMPANY TO PRIVATE COMPANY:**

According to sections 13-18 of the act, the tribunal has powers to consent for the conversion.

7. **POWERS TO INVESTIGATE:**

Chapter XIV of the companies act, 2013 provides for the powers and procedures of the tribunal in investigating various matters. The tribunal has powers to authorize investigation if the case is filed

⁵ Rose Mathew, 'NCLT & NCLAT Jurisdiction - All You Need To Know' (*iPleaders*, 2018) <<https://blog.ipleaders.in/jurisdiction-nclt-nclat/>> accessed 19 October 2018.

by the members of the company. If the person who is not a member of the company files a case but the tribunal is convinced that it is indispensable to order an investigation, the tribunal can do so.

8. POWER TO CONVENE ANNUAL GENERAL MEETINGS AND EXTRAORDINARY GENERAL MEETINGS:

AGM and UOGM are held annually or periodically to revise the opinions of the investors and shareholders. According to the companies act,2013, it is mandatory to conduct the annual and periodical meetings. But, under any unavoidable circumstances if the company is not able to conduct the meetings, the tribunal shall convene the same for the benefit of the investors and shareholders.

POWERS OF THE NATIONAL COMPANY LAW TRIBUNAL(NCLT)

1. Deregistration of the companies under the proof that registration and incorporation was made unlawfully.
2. Power to obtain assistance from the chief judicial magistrate.
3. Declaration of unlimited liability on the members of the limited company.
4. Redressal of oppression and mismanagement of companies.
5. Powers to adjudicate matters relating to the non-transfer of securities and safeguarding of the interest of various stakeholders and to impose restrictions on the securities of the company.
6. Power to address the issues and provide relief to the shareholders for any malpractice or unlawful actions of the associates, consultants and advisors of the company.
7. Powers to direct revision of financial statements and reopening of the accounts.
8. Powers to authorize investigation before initiation of proceedings.
9. Powers to freeze assets of the company and to convene AGM and EOGM.
10. Powers to alter the financial year registered in India.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT):

The party or the person who is aggrieved by the order or decision of any of the NCLTs across India shall within 45 days of receiving the order or decision apply for the appeal to the National Company Law Appellate Tribunal (NCLAT). On the receipt of an appeal from an aggrieved person, the Appellate Tribunal would pass such orders, after giving an opportunity of being heard, as it considers fit, confirming, changing or setting aside the order that is appealed against.⁶ The Tribunal Court is in charge of finding and gathering evidence while the Appellate Court decides cases based on the already collected evidence.⁷

If the outcome is not satisfactory even then, one should approach the Supreme Court.⁸

CONCLUSION:

This article, I believe gives a detailed study about the Company Law Board (CLB), National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). This comprehensive study thus leads to the inference that the loopholes and disadvantages of the CLB are sorted and redressed by the NCLT and NCLAT.

I sincerely thank Prof. Avinash Bhagwan Awaghade for providing me this opportunity to conduct a detailed research about this subject and facilitating the process.

⁶ 'National Company Law Tribunal - Powers & Jurisdiction - Indiafilings - Learning Centre' (*IndiaFilings - Learning Centre*, 2018) <<https://www.indiafilings.com/learn/national-company-law-tribunal-powers-jurisdiction/>> accessed 19 October 2018.

⁷ Rose Mathew, 'NCLT & NCLAT Jurisdiction - All You Need To Know' (*iPleaders*, 2018) <<https://blog.iplayers.in/jurisdiction-nclt-nclat/>> accessed 19 October 2018.

⁸ Rose Mathew, 'NCLT & NCLAT Jurisdiction - All You Need To Know' (*iPleaders*, 2018) <<https://blog.iplayers.in/jurisdiction-nclt-nclat/>> accessed 19 October 2018.