

A Review of NCLT vis-à-vis Section 231 of the Companies Act

Advocate Rahul Tiwari

LLM, KR Mangalam University, Gurugram, (Haryana) India

Abstract

In this paper, it complies with NCLT, which over an amount of time has collected suitability over the board of company law. The Company Law Board in India had been an independent quasi-judicial body that had the strength to conduct trial against organizational mis-conduct within the company law. Progressively, underneath the Companies Act 2013, authority of the High Court concerning the decrease of ordinary shares, winding-up and negotiation or configuration (merger, demerger, settlement) would be transported to NCLT under directives approved by the MCA. This paper deals with the various technicalities of the NCLT, powers of the NCLT and its role in the insolvency process and analysis various judgements of high court and supreme court accordingly.

Key Words: NCLT, high court, supreme court, winding up, MCA

Introduction

National Company Law Appellate Tribunal and National Company Law Tribunal were formed by the Central Government on the June 1 of the 2016. The Supreme Court has held the lawfulness of the NCLT and NCLAT in the matte of *Madras Bar association*ⁱ.

The Company Law Board had seen it before NCLT to examine the issues of corporate disagreement in India. NCLT's room was given by the business act 2013 under section 466 of the legislation^{ii iii}.

The board of corporate law board had a president and had 9 other members and this board was quasi -judicial in nature. Any proceedings before the bench was considered to have the scope of section 193 to section 228 of the IPC and section 195 of the Cr. P.C. Appeal against any verdict of the Company Law Board was brought before the High Court inside of 60 days of the verdict however the High Court might also, at its discretion, grant the enhancement.

But there was no ambiguity in the legislation that has been elaborated in the course of time by the courts, such as-In *Mineria National Limited*^{iv}, the Bombay HC submitted that the petition against the company law decision should be put to a single judge of the high court, instead the division bench of the higher judicial body and the apex judicial body ruled in the matter of *Satish Chanda*^v that the CLB is not an alternative for HC.

Power to Seek Assistance of Chief Metropolitan Magistrate

Under section 429^{vi} of the companies act when the tribunal is conducting a winding up proceeding under Insolvency and bankruptcy code, 2016 in can seek assistance of Chief Metropolitan magistrate, District collector, Chief judicial magistrate in order to take into custody or under its control of all property, books of accounts or other documents, of the accused or thee corporates falling under their jurisdiction.

Furthermore, section 430 also clarifies that no civil court has any jurisdiction in the matters which falls under the purview of the NCLT or NCLAT.^{vii}

Qualification of the Members of Judicial and Technical Member of the NCLT

- Judicial member

According to the section 409(2)^{viii} of the companies' act 2013 the judicial member of the NCLT should be –

- a. A judge or have been a judge of High Court
- b. A person who is a district judge for minimum 5 years
- c. An advocate with a court practise of 10 years.

- Technical Member

The NCLT also consists of technical members who assist the judicial members during the trial, considering the technical nature of the corporate law. According to the section 409(3)^{ix} of the act, in order to be qualified as a technical member of the tribunal a person should be

1. In the Indian Corporate law service for minimum 15 years
2. Practising CA for minimum 15 years
3. Practising Cost accountant for minimum 15 years
4. Practising CS for minimum 15 years
5. An officer in NCLT or in
6. An individual with established skill, reputation and expertise, not or less 15 years old, in corporate financing, industrial management, economic restoration, acquisition, accounting and finance.^x

Powers Vested in NCLT

A component of the major forces conferred on NCLT right now are:

1. Power to allow the merger and demerger of the companies. The NCLT also has the power to allow the merger of LLP and company which it forecasted in its judgments in the year 2018.^{xi} As of now section 230, 231 and 232 of the 2013 Act contains the provision for “*compromises, arrangements and amalgamations between ‘companies’ and its creditors and/or members*”. Moreover, section 234^{xii} of the same act contains the provisions for the merger of an Indian company and a “foreign company” or the other way round. In 2018, the Chennai bench of the NCLT emphasising upon the needs for the enactment of the law and its amendments in 2013 was to provide an environment for the ease of doing business and due to absence of any specific legislation regarding merger of Indian LLP and Indian company and on the other hand section 234 of the act allows the merger of foreign LLP with the company, hence keeping these points in consideration the bench allowed the merger of Indian LLP and Indian company it shows the power of the NCLT and the extent to which it can interpret the law.^{xiii}
2. Power during the Registration of the corporation - The Companies Act, 2013 today enables NCLT to examine any company its validity in the light of many legislative missteps during the enrolment and centralization period. NCLT is permitted to take different steps, from wiping out the registry to breaking down the firm. The Tribunal will add boundlessness to the cost or danger of entities.^{xiv}

3. Power to initiate class action: For shareholders who have been geographically spread and impacted by the corporation's misdeeds, a class action suit is beneficial. This may be a useful tool in which a pair can make legitimate step for the optimism of the giant.^{xv} The NCLT is now the specific body which takes up the cases of the corporates and where the jury and judges are specialist of the corporate law matters. Unlike earlier where the Company law board had its own limitations. Section 245^{xvi} was embedded into the Companies Act, 2013 to tear the hedge funds from of the corporation regime's evil deeds or from varying backgrounds and experts linked to the corporate entity. The class action lawsuit was its topic both of private sector and open segment institutions. This can be started in contravention of any corporation registered under the companies act, 2013 or any previous Companies Act, 1956
4. Power to block the share transfer: Furthermore, NCLT has the power to hear protests about the resignation of organizations for the restricting or blocking the share transfer and securities and the alteration of the registration of people u / s 58 and 59 of the Companies Act, 2013 that were initially covered by the CLB^{xvii}.
5. Power to evaluate the financial accounts of the corporation. Section 130 is a mandatory structure where the Tribunal or Court undertaking the matter has the authority to force the corporation to restore its accounting statements unless the business has violated or breached such predetermined conditions, and the same occurs under the close supervision of the appropriate court. Nevertheless, Section 131 allows a corporation to amend its accounting statements, there is little to think of resurrecting business documents. The company may, by means of its managers, approach the Tribunal (NCLT) in accordance with section 131 of the amended law to modify its finance expressiveness.^{xviii}
6. Transformation of the open enterprise into private corporations: The Tribunal does have the authority u / s 459 of the Companies Act, 2013 to compel specific confines or circumstances but may give those very approval for conversion
7. Debt Restructuring - In accordance with the NCLT reference model, when more than seventy-five per cent of the line of credit employers assume that the need to revitalize corporate obligations, they can reach the NCLT. This provision was absent in the company law of 1956. In addition, the applicant is also needed to reveal various topics via an evidence such as, investigators report changing the liquidity highly consistent CDR, loan boss insurance shields, financial institutions obligation statement and valuation report evaluated by able to enrol appraiser talking to the shareholdings etc.
8. NCLT has the power to convene annual general meeting (AGM) on specific issues, if the tribunal feels there is some misdeed or any irregularities in the working of the corporation or on the request of the majority of the shareholders of the company.
9. The companies' act 2013 also empowers the NCLT to conduct investigation of the working of the

company. This makes the most vital power of the tribunal. Part XIV of the companies' act 2013 contains the provision regarding this.

- Authority to organise investigation - Under the configuration of the Companies Act, 2013 investigation on the corporation's problems may be demanded on the request or complaint of 100 individuals, although 200 people have been needed for same purpose prior to the 2013 legislation. In fact, if a person who is not affiliated with the organization is able to convince NCLT of the existence of requirements for an investigation, the court has the discretion to order an investigation. The certain evaluation demanded by the NCLT may be conducted in either India or in any region of the globe.
- Authority to entrench the working assets of the corporation - The NCLT was not solely empowered to toughen the corporation's benefits in order to use them earlier whenever the corporation is investigated or inspected. Such review may also be undertaken on the request of certain persons under diverse circumstances.^{xix}

To Which Point Will Cases on Winding up be Moved to NCLT? Contradictory Juxtaposition

The Supreme Court has, on many occasions, explained and also encouraged the transition to the National Company Law Tribunal (NCLT) underneath the Insolvency and Bankruptcy Code^{xx} regarding the winding up procedures instituted underneath the Companies Act,

1956. Section 434 of the companies act too states that high court has the power to transfer the winding up proceeding to the NCLT^{xxi xxii}. Also in the matter of *Jaipur Metals & Electricals Employees Organization*^{xxiii}, the apex court held that the High Court should transfer the winding up cases to NCLT under section 434 of the case, which their earlier refused.

Likewise in the matter of *Forech India Ltd*^{xxiv}, the Court emphasized that the modified stipulation of Section 434 of the 2013 Act specified that any individual may request for the transferring of these grievances to the NCLT under the Law, including in the winding-up of petitions whereby notice has also been given and awaiting in high courts. The Court will move the trial if such an appeal is produced.

- **Latest Discrepancy**

The situation becomes confusion when two High court gave contradicting views on the insolvency matter and regarding the transfer of the case from the HC to NCLT. The aforementioned problem hasn't ever arisen even before Supreme Court, it is appropriate to take into consideration that, in *Forech case*^{xxv} the Court dealt with a circumstance where winding up hearings have been awaiting before the High Court without passing a winding up order.

At first in the case of *Action Ispat*^{xxvi}, The Delhi High Court, ordered that the court is empowered to recall order of winding up and can transfer the proceedings to the NCLT even if the order is passed by the High Court and in the contrast the Madras HC in the matter of *Vasan Health care*^{xxvii} held that when a winding-up decision is carried by the High Court underneath the Companies Act and an official liquidator is assigned who assumes responsibility for

insolvency of the firm's profits, no deliberations may be brought underneath the IBC on the grounds that the winding-up decision was already handed.

It also seems that perhaps the Delhi High judge's opinion in Action Ispat is in compliance with the constitution set out in Forech case decided by the Supreme Court, i.e. that now the appointment of a temporary liquidator is not diametrically opposed to trying to seek remedy underneath the Code. Also, it clearly shows The Madras High court has given priority to an approval of an authorized liquidator as an official ban imposed in order to protect the rights of the shareholder, on any hearings against corporate debtor underneath the Code. Therefore, in the context of the reverse rule imposed by two high courts, it needs to be included if this could be hauled up by Supreme Court.

Recommendation by the Researcher

1. The Apex court must intervene in order to provide clarity on the concept regarding the winding up cases so that tussle between high court and the NCLT is reduced.
2. There judicial members seats should be increased in the NCLT at present.
3. In a state where private sector is claimed to be large, there must be at least 2 or 3 divisions, such that lawsuits are not pending outside their time limit. As well as the period-limit must also be properly adhered for each scenario.

Conclusion

It is important that the government comes up with a strong political will and avoid frequent amendments in the corporate law and in the insolvency laws. The current article evaluated the part of a national Companies Law Tribunal under separate regulations after its enforcement this legislation gave huge timesaver to the business area because after its use some judges who are master in this sector will make judgments the cases and give liquidity as early as normally assumed. NCLT / NCLAT creation is indeed a lengthy past owing transition that everybody has been invited to make. Equivalently, the Tribunal would have the potential to manipulate its very own specific systems, there'll be fast remedy and makes a difference to be quickly thrown away. Currently, the tribunal does have the authority to grant class action lawsuits which will brought about the next new minority of majority shareholder rule system in India which has been accompanied in various Western nations. It will help Indian organizations achieve more useful company management builds and broaden the value to business. Currently the challenge of MCA is to handle the period of going from CLB to NCLT, which could be dealt with intentionally by them, besides this may not have happened if CLB had to be broken down while NCLT was formed, this should encourage the process. Thus one should assume that NCLT decreases the multiplicity of lawsuits before different courts and tribunals.

ⁱ Madras Bar association v. UOI, (2015) 8 SCC 583

ⁱⁱ NV Paranjape, Company Law, 9th edition, 2018, central law publication, pg. 453

ⁱⁱⁱ THE COMPANIES ACT, 2013, ARRANGEMENT OF SECTIONS (available at <http://uputd.gov.in/site/writereaddata/siteContent/CompaniesAct2013.pdf>)

- ^{iv} *Mineria National Limited v. Sociedade de fornento Industrial Pvt. Ltd*
- ^v *Satish Chanda v. Union of India*, AIR 1995 SC 138
- ^{vi} *Ibid* 2, pg. 455
- ^{vii} *Ibid* 2, pg. 463
- ^{viii} *Ibid* 2, pg. 357
- ^{ix} *Ibid* 2, pg. 458
- ^x Mittal, Selected Decision of the Company Law Board - Appellate Jurisdiction Under Section 111 of the Companies Act, 1956, 1978 edition
- ^{xi} M. Shah, A. Yagnik, A. Pai, Khaitan & Co., NCLT settles the laws on mergers of an LLP with a company, Dec. 18, 2019
(available at <https://www.lexology.com/library/detail.aspx?g=dab2e6b3-fa85-4289-b544-0e1e52858d08>)
- ^{xii} *Ibid* 2, pg. 487
- ^{xiii} Companies Act, 2013 Key highlights and analysis, by PWC
(available at <https://www.pwc.in/assets/pdfs/publications/2013/companies-act-2013-key-highlights-and-analysis.pdf>)
- ^{xiv} Gopal Dokania, „National Company Law Tribunal and Appellate Tribunal“, CHARTERED ACCOUNTANT, 147 (2003).
- ^{xv} Ali Amerjee, BIFR & NCLT: An Analysis of Tribunalization in India, *Company Law Journal*, Vol. 4 (October, 2013), PP.1-22
- ^{xvi} *Ibid* 2, pg. 494
- ^{xvii} Arvind P. Datar, Tribunals: A Tragic Obsession, INDIA SEMINAR 642 (2013), available at: http://india-seminar.com/2013/642/642_arvind_p_datar.htm [hereinafter Datar]
- ^{xviii} Purushottam Grover, „National Company Law Tribunal- A Single Window Institution for Corporate Justice“, 67, 7th NAT'L CONFERENCE PRACTICING COMPANY SECRETARIES [hereinafter Grover]
- ^{xix} Acharya, Viral V., "Corporate governance and value creation - Evidence from private equity" *Review of Financial Studies* 26.2 (2013), page - 368
- ^{xx} THE INSOLVENCY AND BANKRUPTCY CODE, 2016 NO. 31 OF 2016, (available at <https://www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf>)
- ^{xxi} *Ibid* 2, pg. 478
- ^{xxii} *Malak Bhatt and Atreyo Banerjee*, at what stage can Winding Up proceedings be transferred to NCLT? The dichotomy in contradictions, *Bar & Bench*, Oct 28, 2019
- ^{xxiii} *Jaipur Metals & Electricals Employees Organization v. Jaipur Metals Electricals*, 2019 TaxPub (CL) 0100 (SC): (2019) 151 SCL 0196: (2019) 213 CompCas 0025: (2019) 148 CLA 0143
- ^{xxiv} *Forech India Ltd. Vs. Edelweiss Assets Reconstruction Co. Ltd.*, 90(IBC)16/2019, Civil Appeal No. 818 Of 2018
- ^{xxv} *Supra* 24
- ^{xxvi} *Action Ispat & Power Pvt. Ltd Vs. Shyam Metalics & Energy Limited & Ors.*, CM-31047/2019-HC, Co. App 11/2019 & C.M. No. 31047/2019, C.M. No. 34726/2019
- ^{xxvii} *M/s. Alcon Laboratories (India) Pvt. Ltd. Vs. M/s. Vasan Health Care Pvt. Ltd.*, 210(IBC)15/2017, CA/1/(IB)/2017