



NATIONAL COMPANY LAW TRIBUNAL (NCLT) UNDER THE INDIAN COMPANY LAW REGIME

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ABSTRACT

This paper deals upon the subject matter on the implementation and establishment of the National Company Law Tribunal (NCLT) or the National Company Law Appellate Tribunal (NCLAT), which is a quasi-judicial body for adjudicating, resolving corporate matters. The NCLT was instituted on the 1st of June, 2016 by the Central Government followed by dissolution of an independent body named Company Law Board where all pending cases, matters and proceedings were reassigned to the NCLT under the approval of the Ministry of Corporate Affairs (MCA). This paper comments upon powers vested, constitution of members of NCLT in benches over the country, further conducts literature review of certain published papers in relation to the functioning, regularities and suggestions for the betterment of this tribunal followed by analysis of the constitutionality of NCLT, the gaps and ambiguities in the research arena, and suggestions or recommendations to fulfil those gaps.

Key Words: NCLT, CLB, MCA, constitutionality

INTRODUCTION

With increase in the demands of the common public in relation to wide-ranging products or services with respect to the type of commodity, and also with the impulsive

increase in competition and globalization, numerous companies have been incorporated since ages to fulfil the particular needs and also venture into areas of intervention concerning the needs and also to work upon the betterment of the same, henceforth resulting to establishment of several companies leading to either profits or losses.¹ Again due to this phenomenon, it makes it apparent that predicaments may ascend pertaining to company associated issues such as insolvency, takeover, reconstruction of sick industries, etc. and also history has witnessed innumerate similar happenings as the above. For the perseverance of the same an agency panel or a board has to play into action, for resolving or liquidating such cases in matter.

WHAT IS ALREADY KNOWN

In India, as stated earlier, the National Company Law Tribunal (NCLT) formed out of the Eradi Committee plays a fundamental role in facilitating the aforesaid matters to be resolved. With the increase of financial frauds occurring around the globe, and also securing the interests of the public, originally the Company Law Board, which was subsequently preceded over by the NCLT and NCLAT. The primary intention to establish NCLT and NCLAT was to quicker the process of company related insolvency or bankruptcy disputes leading to the desired administration of the bankruptcy code, reduce burden on courts, etc.

NCLT may be referred to as the culmination or as the resultant single product of the earlier tribunals or board later dissolved for adjudicating corporate justice or matters. Some of the following are

¹ Muhammad Faizan Malik et. al, —*Mergers and Acquisitions: A Conceptual Review*,



1. Company Law Board
2. Board for Industrial and Financial Reconstruction.
3. The Appellate Authority for Industrial and Financial Reconstruction.²

WHAT DOES THE RESEARCH PAPER DEAL IN?

The study predominantly conducted in this research paper concentrates upon, the prominence, operational significance of National Company Law Tribunal in terms of dissolution of company related disputes, along with exploration and scrutiny of various research steered by several authors, elucidating upon the importance, it's mode of administering disputes whether effective or not, also propositions, suggestions or recommendations put forward, for instance a mutual conclusion every author stressed upon the pendency of cases both in NCLT and NCLAT. Additional remarks containing predominantly working structure, developments or variations in the Companies Act, etc.

With the tenacity of analysing certain articles, literature review for examining the loopholes, ambiguities in such literatures, and some individual recommendations after assessing the above, concerning certain unique information which the reader

LITERATURE REVIEW

This section would primarily deal upon examining and interpreting the articles or papers published by certain authors, their

methodology of research, etc. The following are –

- **(S. Deepika Devi & M. Kannappan)**³ the research has a whole emphasizes on the value and worthiness of the NCLT over the Company Law Board, with the objectives of examining the historical patterns leading to the promulgation or establishment of NCLT, followed by circulation of authorities and functions laid down under the NCLT, and also lastly highlighting the indulgence of the NCLT in the matters of corporate governance.

The paper here, initially describes the transition of authority from the Company Law Board (CLB) to National Company Law Tribunal (NCLT). Each and every kind of Company related issues, disputes, cases, and even the due disputes were transferred to NCLT, on June 1, 2016. The paper for further elucidation also illustrates the Sections of Companies Act, involved which had been advised the Ministry of Corporate Affairs (MCA) which institutes the NCLT to drive into force. Here the reader may get cognizant to new areas such as powers vested extensively, even sections enumerating the transition.

- **(Sreyan Chatterjee, Gausia Shaikh & Bhargavi Zaveri)**⁴, the paper herein extensively formulates the working structure, effectiveness, of NCLT in relation to the insolvency cases by formulating statistical datasets on the basis of judgements passed by the NCLT, the efficacy of the judiciary under the Insolvency and Bankruptcy code (IBC)

² *Id.*

³ S. Deepika Devi, M. Kannappan, *A Study On National Company Law Tribunal*, 119 (17), INTERNATIONAL JOURNAL OF PURE AND APPLIED MATHEMATICS, 2018 723-734

⁴ Sreyan Chatterjee, Gausia Shaikh, et al., *Watching India's insolvency reforms: a new dataset of insolvency cases*, Indira Gandhi Institute of Development Research, Mumbai, August 2017.



and also the resulting economic effect and also enhancing the insolvency regime in India.

The paper intends make the readers cognizant of the difference in the dispute resolving process of both the IBC board and the NCLT. The average number of days, for instance the authors find that a period of 14 days was consumed by the IBC in a case, where 24 days were consumed by the NCLT to dispose off a case, with easy accessibility of data. The paper at a point also concludes the indicative nature of NCLT during insolvency matters which supposes an adverse – centric notion on the debtor, proving that the functioning of the same is not always in consonance to that of IBC.

- **(Advocate Rahul Tiwari)⁵** - This paper throws light upon the technicalities of NCLT, authorities assigned in dispute resolution of insolvency cases and in various judgements of high courts and Supreme Court. With the judgement delivered by the Supreme Court, in the case *Madras Bar association v. UOI* ⁶ which upheld lawfulness of NCLT. The paper enumerates upon the constitution of the members of NCLT constituting president and had 9 other members, also qualifications of Members of Judicial and Technical Member of the NCLT.

Among the various topics talked about in the paper, one of the crucial matters the author has talked about is powers vested in the NCLT. Some of the major powers vested are -

- (i) 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.
- (ii) Power to initiate class action - 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.
- (iii) Power to evaluate the financial accounts of the corporation - Section 131 allows a corporation to amend its accounting statements, there is little to think of resurrecting business documents.⁷

- **(Gayathri. U & Arya. R)⁸** - The paper deals with the objectives of studying the history and establishment of NCLT, the worthiness and prominence of the NCLT over the Company Law Board (CLB) over the period of time, review of materials such as major books pertaining to only that segment denoted to the significance of NCLT have been reviewed. Some of them are - Company law in India part 1, explaining the replacement of CLB by NCLT under Companies Act, 2013⁹. Then the Companies Act, 1956, stating the constitution of the members of the NCLT, consisting of president, judicial members, technical

⁵ Rahul Tiwari, *A Review of NCLT vis-à-vis Section 231 of the Companies Act, VIII, (V)*, RESEARCH CHRONICLER: INTERNATIONAL MULTIDISCIPLINARY REFEREED PEER REVIEWED INDEXED RESEARCH JOURNAL, July 2020.

⁶ *Madras Bar association. v. UOI*, (2015) 8 SCC 583.

⁷ Purushottam Grover, *National Company Law Tribunal- A Single Window Institution for Corporate*

Justice”, 67, 7th NAT’L CONFERENCE PRACTICING COMPANY SECRETARIES [hereinafter Grover].

⁸ Gayathri.U & Arya. R, *A Study on the importance of National Company Law Tribunal in India*, 120 (5), 41-55. INTERNATIONAL JOURNAL OF PURE AND APPLIED MATHEMATICS, 41-55, 2018.

⁹ SANDEEP BHALLA , *COMPANY LAW IN INDIA PART 1*, (IE Books Inc, 2nd Ed, 2016).



members and also the qualifications mandated.¹⁰ Followed by a proper description of precedents that played a major role in the institution of the NCLT have been cited in this paper.

- **(Ali Amerjee)**¹¹ - here the author deliberates upon the matter of winding up of companies in India under the Board of Industrial and Financial Reconstruction (BIFR) and Company Law Tribunal (CLT). Also the paper crucially emphasizes the perseverance of the National Company Law Tribunal (NCLT), its progress after the establishment, with a broad ranging distinction with BIFR, with prominent illustration and evidences concluded after explored by the author. The paper firstly introduces the reader briefly of the interrelation of BIFR and NCLT, starting with the explanation of the process of how it came into effect by citing the situations that prevailed in the 1980s pertaining to industrial sickness, where Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) or “SICA” enacted by the Government of India to prevent or handle matters as detailed above, resulting out of the Committee of Experts supervised by Mr. T.T Tiwari then.¹² For this purpose the BIFR was established, commencing its operations from 1987.

Subsequently, due to pendency, in resolving matters of industrial sickness, mergers and amalgamations, a committee was constituted named after Justice V. Balakrishna Eradi, who under Chairmanship led the committee set up by the Government, which eventually was passed by both the Houses of the Parliament with the assent of President of India forming the Companies (Amendment) Act, 2002 on 13th January, 2002.¹³

- **(Dignam & Lowry)**¹⁴ – this paper states the purpose of establishment of both NCLT and NCLAT in a way that the motive behind the same was to administer speedy adjudication of company related matters, also for upholding the tenacity of preserving shareholders’ and stakeholders’ rights and interests vested in a company.
- **(Shubhra Johri & Dr. Parag Narkhede)**¹⁵, this paper analyses the purpose, effectiveness, of Insolvency and Bankruptcy Code, with its impact on FDIs. It also emphasizes upon refining the insolvency structure in India by proposing certain amendments in Insolvency and Bankruptcy Code of India.

The author states that in order to prevent delays in proceedings the authority shall institute information utilities.¹⁶

¹⁰ The Companies Act, 1956, Universal Law Publishing, 2010

¹¹ Ali Amerjee, *BIFR & NCLT: An Analysis of Tribunalization in India*, 4 COMPANY LAW JOURNAL, pp.1-22, (October, 2013)

¹² Board of Industrial and Financial Reconstruction, ‘Introduction’, <http://bifr.nic.in/aboutus.htm>.

¹³ Gopal Dokania, ‘National Company Law Tribunal and Appellate Tribunal’, CHARTERED ACCOUNTANT, 147 (2003).

¹⁴ Dignam, A. & Lowry, J., 2016. 1. Introduction to company law BOOK

¹⁵ Shubhra Johri & Dr. Parag Narkhede, *A Study of Literature Review On Insolvency and Bankruptcy Code*, 8, (2) AEGAEUM JOURNAL, 2020

¹⁶ Dr. Rupinder Katoch (2017), *Insolvency and Bankruptcy Code, 2016: Features, Mechanism and Challenges in implementation*, 7 (9), INTERNATIONAL JOURNAL OF MANAGEMENT, IT & ENGINEERING, pp 71-89, September 2017



- **(Dr. Rupinder Katoch)**¹⁷ – the author reinstates the current position of the Insolvency and Bankruptcy Code's need of urgent reformation for the purpose of better administration of matters, the challenges avert the NCLT regime, such as time shortage, numerous cases impending, shortage of benches, lack of skilled professionals in the arena of IBC, unavailability of imminent readers to shape the regime, lack of constituent members in every bench. The paper also scrutinizes the dataset vital for the purpose of credit collection information from debtors, and also accelerate the process involved.

OBJECTIVES AND ISSUES

After discovery of the gaps or ambiguity existing in the research arena of NCLT, this paper would primarily deal upon the following objectives –

1. To study the history and establishment of NCLT.
2. To study and determine the reason behind the transition of powers and authorities from Company Law Board to the National Company Law Tribunal.
3. To study the intervention of NCLT in matters of corporate governance.

The above cited above would to an extent eliminate certain ambiguity in the research arena of NCLT.

METHDOLOGY - The research conducted in this paper, has been carried out on primarily the basis of secondary sources comprising of, books, journals, articles,

blogs, websites and e-sources relating to National Company Law Tribunal in India. In terms of secondary source, Questionnaire also supplemented for better assessment of the public and availing the public notion on the National Company Law Tribunal. A sample questionnaire is being also attached in the annexure of the paper.

LIMITATIONS -

This study is limited to the number of research articles and books referred, and from also a minor survey conducted for the same.

ANALYSIS

The setting up of NCLT and NCLAT from the effect of June 01, 2016 by the Ministry of Corporate Affairs (MCA) was for the determination of delivering corporate justice such as, winding up proceedings of companies, insolvency, by the recommendations of the Justice Eradi Committee. The NCLT in contrast to CLB is proven to have played a much significant and an improved role, as NCLT has 11 branches all over the world and also functions on the basis of any other ordinary court, with certain restrictions, whereas on the other hand, NCLAT is the appellate authority, performing as a professional body for the oversights, lapses, errors committed by NCLT, and is perceived as an investigatory supervising authority over NCLT. There are numerous instances wherein, NCLT has availed backing as an authority, the Supreme Court has elucidated that High Court has the power to delegate cases falling under winding up to NCLT¹⁸ with the landmark

¹⁷ *Id*

¹⁸ Malak Bhatt, Atreyo Banerjee, *At what stage can Winding Up proceedings be transferred to NCLT? The dichotomy in contradictions*, BAR & BENCH, (Oct 28, 2019)

<https://www.barandbench.com/columns/at-what-stage-can-winding-up-proceedings-be-transferred-to-nclt-the-dichotomy-in-contradictions> (Last visited 29th Sept 2020)



precedent of Electricals Employees Organization¹⁹, wherein the same was held up under Section 434 of the Companies Act, 2013. Again the rudimentary integrity and purpose of NCLT pertaining to insolvency, winding up matter underneath the Insolvency and Bankruptcy Code.²⁰ The decision of the NCLAT shall be further appealed by the Supreme Court, proving that both NCLT and NCLAT are vital in terms of rendering corporate justice.²¹

It has also been determined that creditors constitute approximately 75% of filing cases, whereas the residual percentage of debtors file cases, which is absolutely in contrast to the common perspective that majority of debtors would file cases under the IBC regime.²²

THE BIFR & NCLT

Since as earlier mentioned, the Government for sick industries had established the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) or “SICA” in the 1980s. The Appellate Authority for Industrial and Financial Reconstruction (AAIFR) was constituted in April, 1987. The Law Commission of India in its *124th Report of 1988* pointed out that the different types of litigation coming before the High Court in exercise of its wide jurisdiction has to some extent been responsible for a very heavy institution of matters in the High Courts, took a cue from the Supreme Court judgement in

the **Sampath Kumar**²³ case and recommended for establishment of specialist Tribunals. Government companies were brought under the purview of SICA in 1991 when extensive changes were made in the Act including, *inter-alia*, changes in the criteria for determining industrial sickness.

CONSTITUTIONALITY OF THE NCLT

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The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) is a quasi-judicial authority under the regime of Companies Act 2013, for the mechanism of company related dispute resolution of civil nature possessing the authorities and formalities same as that of any other court under the restrictions of principles of natural justice within the limitations of normal court of law system in India, but there is no strict adherence to rules with regard to the procedural law or evidence appreciation.²⁴ In the case of Madras Bar Association, as previously pointed out in the paper, a writ petition was filed in the Madras High Court by Madras Bar Council, in 2004 challenging the constitutionality of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). The High Court in this case, after hearing both parties to the case, held that creation of both the tribunals is not unconstitutional, as the powers of High Court and the Company Law Tribunal is transferred

¹⁹ 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 014

²⁰ The Insolvency and Bankruptcy Code, 2016 No. 31 Of 2016, (available at <https://www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf>)

²¹ Parkinson, J.E., *Corporate Power. In Corporate Power and Responsibility Issues in the Theory of Company Law.* pp. 3–50, 1995

²² Sreyan Chatterjee, *Supra* note 4, at 3

²³ *Supra* note 27

²⁴ Prachi Manekar Wazalwar., *NCLT – Powers & Functions under Cos. Act, 2013.*, <http://lawstreetindia.com/experts/column?sid=164> (last updated Sep. 04, 2016).



to the NCLT or NCLAT which is prima facie constitutional. Being aggrieved by the High Court judgement, an appeal was filed in Supreme Court, and on 11th May 2010 along with the case of Union of India v. R. Gandhi, President, Madras Bar Association²⁵, the Constitutional Bench approved the nature of the tribunals as constitutional. Lastly, in 2015 the Court upheld the contentions laid down by the Constitutional Bench of 2010, and also indicated the gaps of the judgement as to reasoning being not properly substantiated.

Lastly, in terms of constitutionality, the practical aspect may be highlighted wherein, the aim of both CLB and NCLT are the exact – to dissolve the corporate dispute, but the additional benefit vested with NCLT is primarily to solve matters within a framed time and the NCLAT has appellate jurisdiction which means if any party is aggrieved by the decision of NCLT then he may accordingly appeal under NCLAT.²⁶

This paper, illuminates upon the case, **Union Of India v. R. Gandhi**²⁷ where the facts, contentions laid down by both sides of the parties, were stated for the enhanced clarity of the reader behind the rationale of the case. Again other cases with certain relevance with the above case such as **S.P. Sampath Kumar v. UOI**²⁸, stating the difference of powers of both high court and tribunals with respect to judicial function, then **Rai Sahib Ram Jawaya Kapur v. The State Of Punjab**²⁹ stating the constitutionality of tribunals such as NCLT under the Indian Constitution in consonance to the doctrine of separation of powers that one organ (here referred as the

tribunal) is unauthorized to encroach upon the authorities and functions of an another organ.

In the case, Action Ispat & Power Pvt. Ltd v. Shyam Metalics & Energy Limited & Ors,³⁰ the Delhi High Court held that a court under the law even if passed by a High Court is sanctioned to transfer matters or cases to the NCLT specifically matters concerning winding up.

• **Gaps identified after literature review -**

After the completion of review of certain available literature in the arena of NCLT, a clear-cut notion may be perceived by a reader pertaining to the reason for establishment of the NCLT, its mission, functions and authorities delegated, validation and constitution of members assigned, the nature of its constitutionality in the form of a tribunal, followed by several outcomes of the establishment as to whether it is able to resolve the matters delegated in a prescribed manner also whether is able to solve the same effectively as expected when legislated. It has also been observed that the authors have deliberated upon the efficiency or the accomplishment rate of NCLT after dissolution of CLB, where majority of the views inclined towards the crucial question of pendency of cases under NCLT.

Provided, after the analysis of the same, it was perceived that though the authors have delightfully pondered upon serious areas of

²⁵ Union of India v. R. Gandhi, President, Madras Bar Association, (2010) 11 SCC 1 (India)

²⁶ Backhaus, J.G., Company Board Representation. The Elgar Companion to Law and Economics, Second Edition. Available at:

<http://dx.doi.org/10.4337/9781845425500.00030>.

²⁷ Union of India v. R. Gandhi [2010 11 SCC 1]

²⁸ S.P. Sampath Kumar v. UOI AIR 1897 1 SCC 124

²⁹ Rai Sahib Ram Jawaya Kapur v. The State of Punjab AIR 1955 (2) SCR 225

³⁰ Action Ispat & Power Pvt. Ltd v. Shyam Metalics & Energy Limited & Ors., CM-31047/2019-HC, Co. App 11/2019 & C.M. No. 31047/2019, C.M. No. 34726/2019



intervention, such as practicality of NCLT, explanation of transition of CLB to NCLT, difference of level of operations within IBC Board and NCLT, also the nature of constitutionality of NCLT, the scope of intervention which I observed to be filled to eliminate such gaps in the research arena is that how and why was there a sudden need for the transition of CLB to NCLT, with no research information available with satisfactory adequate reasoning, and also a need of a mechanism to be implemented for the smooth proficient functioning of NCLT with no backlog of cases, because raving upon the problem isn't enough discovering the way out is, as the saying goes "*Necessity is the mother of invention...*".

The transition from Company Law Board (CLB) to National Company Law Tribunal (NCLT)

In the previous segments of this paper, it has explained the description of powers and authorities being shifted from the CLB to the NCLT along with the illustrations such as sections involved in the same.

The CLB was constituted under the Companies Act, 1956 i.e. the (Old Act), which had all the powers and applications which now is transferred to NCLT. The CLB wasn't able to administer the cases at par to its mission, and later was undergoing delays. Datasets reveal that around 4,000 cases were pending under CLB, which had to be transferred to NCLT³¹. Earlier, even the

Eradi Committee stated about the loopholes present under CLB, lack of infrastructure and emphasized upon the implementation of instantaneous reforms after investigating the delays of cases under the BIFR and later the need to institute a National Proposal³². For this specific reason the NCLT was established, standing dissolved per section 466 of Companies Act 2013, for hearing all matters concerning to the act.

The backlog of cases under NCLT

Even though the NCLT was established after the dissolution of the CLB, for proficient administration of company related matters and issues such as insolvency, mergers and acquisition, etc., and the same has been effectively witnessed, but still has to confront issue of the pendency of millions of cases, and as revealed earlier as per research many authors in the arena of research have weighted upon this specific issue. The latest government datasets reveal that, as on January 31, 2018 around -

Total number of matters pending under NCLT- **9,073**

Other cases falling under Companies Act - **4,932**

Insolvency cases - **2,511**

Merger and amalgamation - **1,630**³³

Lately, considering the situation mentioned above, the Ministry had recently in the month of May, 2020 according to the branches of company related matters, for instance matters concerning insolvency, shall be designated to specific benches to deal in that specific field,

³¹ THE NATIONAL COMPANY LAW TRIBUNAL (NCLT) READINESS Insolvency and Bankruptcy Code

https://www.alvarezandmarsal.com/sites/default/files/restructuringindia_nclt.pdf

³² NCLT = BIFR + CLB + DRT + Lipstick? Payaswini

Upadhyay: <https://www.bloomberquint.com/law-and-policy/nclt-bifr-clb-drt-lipstick> March 1, 2017

³³ Over 1,600 merger cases pile up before NCLT as insolvency takes precedence, Shrimi Choudhary, https://www.business-standard.com/article/companies/over-1-600-merger-cases-pile-up-before-nclt-as-insolvency-takes-precedence-118051600270_1.html, May 16, 2018

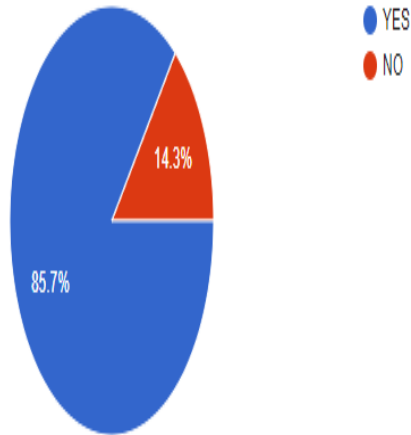


and also the benches of Delhi and Mumbai, which are extra burdened as compared to other benches, this would significantly shrink the burden of cases all over the benches equivalently. This was added by K V R Murty, joint secretary in the Ministry of Corporate Affairs.

A survey was conducted for ascertaining the general conception of the NCLT as a tribunal and following are the results –

Are you aware of the National Company Law Tribunal ?

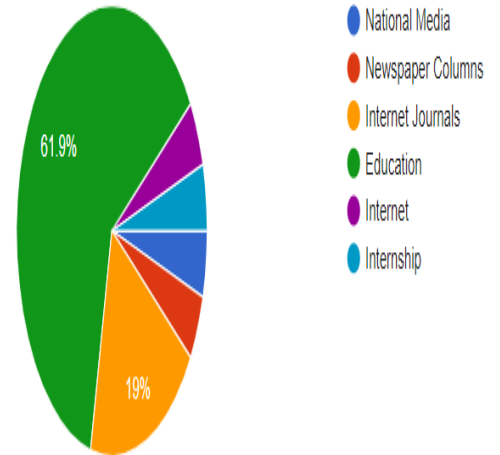
21 responses



Here as we may observe 85.7% of the respondents are aware of the presence of a tribunal called NCLT, which proves that there is general awareness of the same.

How are you aware of the NCLT ?

21 responses

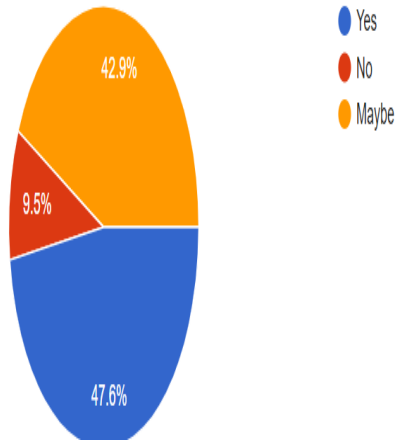


Again, in terms of the source of knowledge majority of the respondents voted for education which stands for 61.9% of the total votes, and internet journals as the second option where the knowledge was availed from, which proves that mostly students are cognizant from the education where others primarily from the internet.



Do you think the NCLT is able to serve justice in the realm of corporate world ?

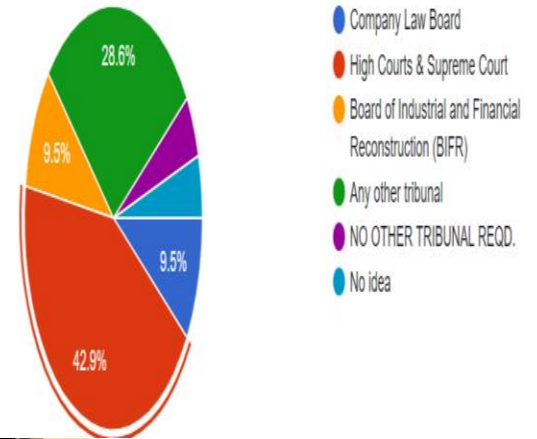
21 responses



This particular question was asked to the respondents to realise the confidence of the general public in regard to delivery of justice by NCLT. As we may observe, though it may be a positive indication that majority of the votes align to 47.6%, who entrust their belief with NCLT, but on the other hand, 42.9% are either unconfident or have lost their faith in the same, which shall obviously not be considered healthy.

Which is of the Board do you think was a better alternative to NCLT ?

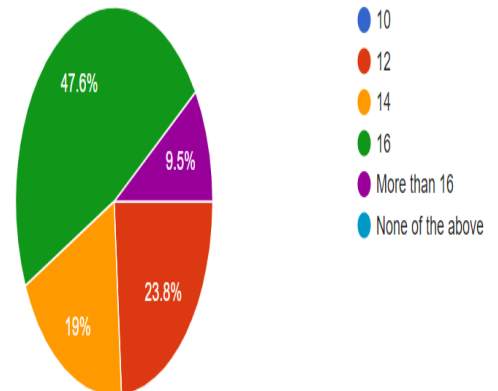
21 responses



Now in the previous segments of this paper the earlier forms of boards and tribunals were explained, and also intervening the alternatives open for reformation of the NCLT, the respondents were requested to put in their views as to a better alternative, and as we can conclude, majority have entrusted their vote on High Courts and Supreme Court, followed by 28.6% who believe a new board or tribunal shall be reinstated.

How many benches are there under NCLT regime in India ?

21 responses

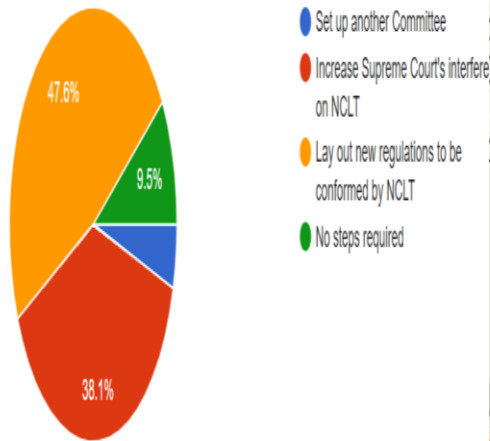




At present India has 16 benches under the NCLT regime, and as observed from the above chart, majority of the respondents have rightly voted 16 benches i.e. 47.6%, proving the basic cognizance of the tribunal’s existence. This question was directed so as to enable the analysis concerning basic awareness if required among the general public.

Which of the following steps would you recommend for an enhanced efficiency of NCLT?

21 responses



Yet, the final question for suggestions as to enhancing the efficacy of the NCLT in terms of its functioning, the respondents have primarily voted for the option of laying out new regulations to be conformed by NCLT, as to setting up of new rules and procedures.

RECOMMENDATIONS

Previously in the segment of gaps identified in the review literature, one of the above was to improve the position of NCLT in terms of cases getting impending over the years and also to recover this situation, hence this segment of the paper recommends the suggestions in order to recover the same,

develop the efficacy of NCLT. Some of them are as follows –

1. As quantified formerly about the MCA’s efforts of designating specific matters to various benches over the country, the same though has been planned by the MCA has to be implemented.
2. Secondly a time constraint has to be set up in every case, and the same has to be suitably conformed with, instead of unlimited time designated in every case.
3. There shall also be additions in the number of benches with respect to the specific states considering the aggregate of the kind of sectors, e.g., if a state has majority constituent of private sector, the Government shall establish additional 2 to 3 benches.
4. For the determination of solution of due of cases, the constitution of the benches has also kept in consideration, and since the number of members are comparatively small, the seats for judicial members should be increased in the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT), by bringing the same in force currently.
5. Finally, after various findings derived, the Companies (Second Amendment) Act, 2002 with the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, (SARFESI) 2002 absolutely disregards the Eradi Committee’s recommendations pertaining to introducing authorisation of inter- country insolvency matters to be adjudicated, for which the Indian Insolvency regime is devoid of extra-territorial jurisdiction. The same has to be re-enacted and brought into force.

CONCLUSION

For safeguarding the welfares of the general public, the Government has to repeatedly



come up with new laws, amendments, legislations for upholding the same. Here for instance, the Government has introduced several tribunals and boards for solving company related disputes, such as insolvency laws, and currently in persistence the NCLT and NCLAT. The paper initially introduces the readers with that of NCLT and NCLAT, by providing the previous alternatives for solving company related matters, e.g. Company Law Board (CLB) later succeeded by NCLT. The NCLT has been playing an inevitable and a crucial role, in dissolving company disputes, as a dedicated beneficiary tribunal specialised in corporate matters. The paper subsequently discusses certain literatures available in the research domain pertaining to NCLT, for the resolution of in-depth understanding, which discusses the motive behind the setting of the tribunal, the constitution of benches, basic functions, prominent sections that enabled the functioning of NCLT, and also personal recommendations as to reformation of the tribunal, where later certain loopholes or gaps present in the research arena which was later established in the analysis section, where along identification of gaps, possible scopes of intervention was supplemented, for instance the reason behind the transition of CLB to NCLT. The next section arrives the analysis of the concept of NCLT, which again deliberates upon the NCLT in detail, stating its basic elements and vital information relating to its functions, etc., followed by the making the reader cognizant of the Board of Industrial and Financial Reconstruction (BIFR) and its applicability, significance and relevance with that of NCLT. It also lists the relevant landmark precedents that state the implication of the tribunal, followed by the nature of the

tribunal in purview of its nature in terms of constitutionality where the matter has been pondered upon whether the same is unconstitutional backed up by landmark precedents and substantiated by adequate theory to prove the same, several precedents in the timeline, one of which Union of India v. R. Gandhi was the landmark precedent. Findings after research have suggested that the company jurisdiction of India had to come this many years for establishment of NCLT from its transformation of the Company Law Board (CLB) also the challenges that had to be encountered in terms of transition of matters, cases, etc.

The paper has also analysed the literature available in the domain, analysed the same, identified the ambiguity present in the research arena and has accordingly, provided the suggestions or reasons behind, with supplementation of solutions for the reformation of the same along with recommendations, for instance recommendations proposed for improving or curtailing the time gap or pendency of cases.

ANNEXURE



A SURVEY - EFFECTIVENESS OF THE NATIONAL COMPANY LAW TRIBUNAL (NCLT)

This form is for the purpose of ascertaining the general notion of the National Company Law Tribunal among the public with respect to its corresponding awareness and availing suggestions for its betterment.

* Required

Which is of the Board do you think was a better alternative to NCLT? *

- Company Law Board
- High Courts & Supreme Court
- Board of Industrial and Financial Reconstruction (BIFR)
- Any other tribunal
- Other: _____

Are you aware of the National Company Law Tribunal? *

- YES
- NO
- Other: _____

How many benches are there under NCLT regime in India? *

- 10
- 12
- 14
- 16
- More than 16
- None of the above

Which of the following steps would you recommend for an enhanced efficiency of NCLT? *

- Set up another Committee
- Increase Supreme Court's interference on NCLT
- Lay out new regulations to be conformed by NCLT
- No steps required
- Other: _____



Do you think the NCLT is able to serve justice in the realm of corporate world? *

- Yes
- No
- Maybe
- Other: _____

If yes what do you know about it?

Your answer _____

How are you aware of the NCLT? *

- National Media
- Newspaper Columns
- Internet Journals
- Education
- Other: _____

Do you think the NCLT is able to serve justice in the realm of corporate world? *

- Yes
- No
- Maybe