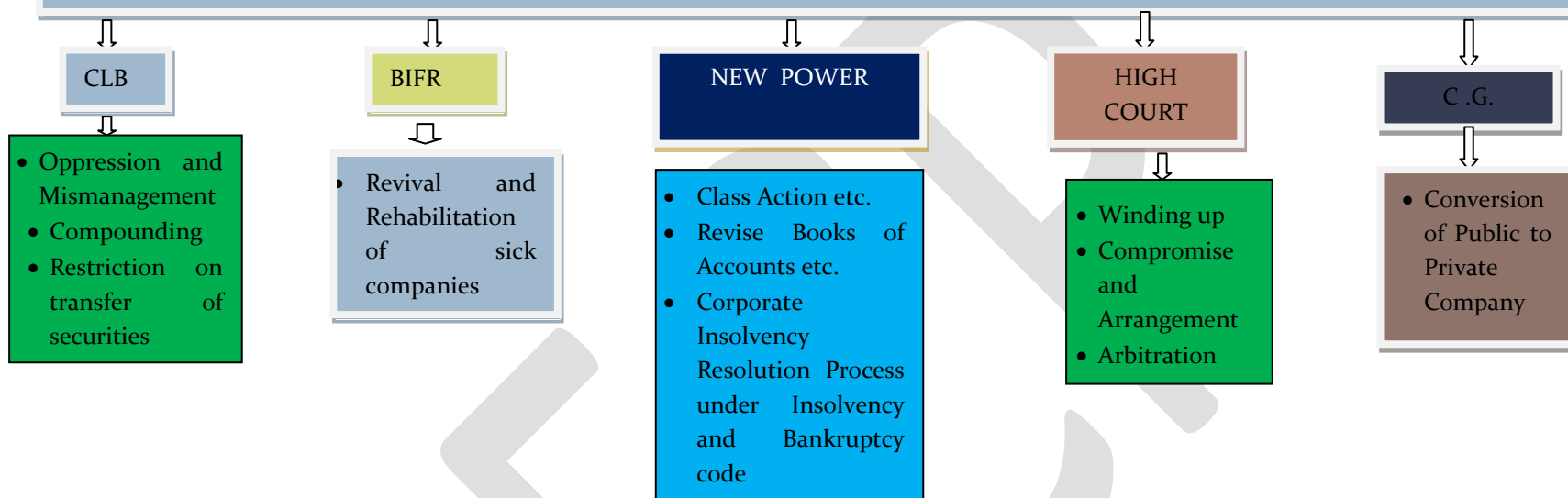




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NATIONAL COMPANY LAW TRIBUNAL(NCLT)



POWERS CONFERRED TO NCLT

S. No	Section Notified	Brief	Powers Conferred to NCLT
1.	Sec. 7(7), except clause (c) and (d)	Incorporation of the Company	Power of Tribunal to pass orders, etc. where a company has been incorporated by furnishing any false information/ suppressing any material fact or information or by any fraudulent action.
2.	Sec. 14(1)	Alteration of Articles	Provision relating to conversion of public company into a private company.
3.	Sec. 14(2)		
4.	Sec. 55(3)	Issue and Redemption of Preference Shares	Issue of fresh redeemable preference shares where a company is not in a position to redeem preference shares and to pay dividend.
5.	Sec. 61(1)(b)	Power of Limited Company to alter its Share Capital	Consolidation or division of share capital results in changes in voting percentage of shareholders.



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6.	Sec. 62(4) to (6)	Further Issue of Share Capital	Conversion of debentures issued or loan obtained from Government by a Company into shares – If terms of conversion not acceptable to the Company, appeal can be made with the Tribunal.
7.	Sec. 71(9) to (11)	Debentures	Petition to be filed with the Tribunal on failure by the company to redeem the debentures or pay interest on them. Action by Debenture Trustee once the secured assets become insufficient.
8.	Sec. 75	Damages for Fraud	Failure of the company to repay the deposit along with interest within the time limit.
9.	Sec. 97	Power of Tribunal to call Annual General Meeting	Power of the Tribunal to call Annual General Meeting, in specified cases.
10.	Sec. 98	Power of Tribunal to call meeting of Members, etc.	Power of the Tribunal to call Meetings of Members other than Annual General Meeting, in specified cases.
11.	Sec. 99	Punishment for default in complying with Sec. 96 to 98	Punishment for failure to comply with Tribunal Direction regarding Meetings (Section 96-98)
12.	Sec. 119(4)	Inspection of Minute books of General Meeting	Power of Tribunal to grant inspection of Minutes' Book of a General Meeting as requested by a member in a situation of refusal or default.
13.	Section 130	Re-opening of Accounts on Court's or Tribunal's orders	Power of the Tribunal to approve the re-opening of accounts on the order of Authorities.
14.	Section 131	Voluntary revision of Financial Statements or Board's Report	Power of the Tribunal to approve Voluntary revision of Financial Statements or Board's Report.
15.	Sec. 140(4)(ii) & (5)	Removal, Resignation of Auditors and giving of Special Notice	Powers granted to Tribunal to remove the auditor <i>suo moto</i> or on an application made by the Company or Aggrieved Person. However, where NCLT is satisfied that the Auditor has acted in a fraudulent manner it may order that the auditor may be changed.
16.	Sec. 169(4)	Removal of Director	Powers of Tribunal in relation to removal of director- representation and relaxation of provision in certain cases.
17.	Sec. 213	Investigation into Company's affairs in other cases	Powers of Tribunal to investigate into company's affairs in specified cases.
18.	Sec. 216(2)	Investigation of ownership of Company	Power of the Tribunal to investigate ownership of the Company.



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19.	Sec. 218	Protection of employees during investigation	Approval of Tribunal required for any action proposed against the employee and protection of employees during Investigation.
20.	Sec. 221	Freezing of Assets of Company on inquiry and investigation	Power of the Tribunal to Freeze the assets of company on inquiry and investigation.
21.	Sec. 222	Imposition of restrictions upon securities	Imposition of restrictions upon securities.
22.	Sec. 224(5)	Action to be taken in pursuance of Inspector's report	Power of the Tribunal to initiate action against Company or Directors on the basis of inspector's report.
23.	Sec. 241	Application to Tribunal for relief in cases of Oppression, etc.	Action against Prevention and Oppression and Mismanagement.
24.	Sec, 242, except (1) (b), (2)(c) & (g)	Powers of Tribunal notified except for certain High Court Matters.	
25.	Sec. 243	Consequence of the termination or modifications of certain Agreements	
26.	Sec. 244	Right to apply under Section 241 i.e., application to tribunal in case of Oppression etc.	
27.	Sec. 245	Class Action	
28.	Reference of word 'Tribunal' in Sec. 399(2)	Inspection, production and evidence of documents kept by Registrar	Leave of the word 'Tribunal' required for issuance of certain documents.
29.	Sec. 415 to 433 (both inclusive)	Constitution, Resignation & Removal of Members, Benches, Orders, Appeals, Procedure and Limitations, etc. about Tribunal	Detailed provisions in relation to operation, functioning of NCLT/NCLAT



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30.	Sec. 434(1)(a) & (b) and (2)	Transfer of certain pending proceedings	Power of the Tribunal to transfer pending proceedings and Appeal against CLB Order.
31.	Sec. 441	Compounding of certain Offences	Power of NCLT to compound offences
32.	Sec. 466	Dissolution of CLB and Consequential provisions	Dissolution of CLB and consequential provisions.

FORMS AND THEIR PURPOSE

Form	Purpose
Form NCLT-1, Form NCLT.2, Form NCLT. 3	Every petition or application or reference shall be filed in form as provided in Form No. NCLT. 1 with attachments thereto accompanied by Form No. NCLT.2 and in case of an interlocutory application, the same shall be filed in Form No. NCLT. 1 accompanied by such attachments thereto along with Form No. NCLT. 3.
Form NCLT. 3A	Where any application, petition or reference is required to be advertised, it shall, unless the Tribunal otherwise orders, or these rules otherwise provide, be advertised in Form NCLT-3A, not less than fourteen days before the date fixed for hearing, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situate, and at least once in English language in an English newspaper circulating in that district.
Form NCLT. 4	The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in Form No. NCLT. 4.
Form NCLT. 5	Notice to be issued by the Tribunal to the opposite party shall be in Form NCLT-5.
Form NCLT. 6	Every petition or application including interlocutory application shall be verified by an affidavit in Form No. NCLT.6.
Form NCLT. 7	Every affidavit to be filed before the Tribunal shall be in Form No. NCLT.7
Form NCLT. 8	For execution of order passed by the Tribunal, the holder of an order shall make an application to the Tribunal in Form NCLT.8.
Form NCLT. 9	Where any Government by virtue of provisions of sub-section (4) of section 62, in public interest, converts the debentures or loan or any part thereof into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even in terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion. If such terms and conditions of conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal, in Form NCLT. 9, which shall after hearing the company and the Government, pass such order as it deems fit.
Form NCLT. 10	An Authorized representative desirous of registering his intern shall make a petition or an application to the Registrar in Form NCLT 10 and on such application being allowed by the Registrar, his name shall be entered in the register of interns.
Form NCLT. 11	Application by depositor under section 73 (4) Or 76(2) Or by Company u/s 74(2) or by Debenture Holder or Debenture Trustee Under Section 71 (10) Of the act or section 45qa of The Reserve Bank Of India Act, 1934



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Form NCLT. 12	Every party may appear before a Tribunal in person or through an authorized representative, duly authorized in writing in this behalf. The authorized representative shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in Form No. NCLT. 12 representing the respective parties to the proceedings.
Form NCLT. 13	Public Notice of petition under Section 245
Form NCLT. 14	Where an affidavit is sworn or affirmed by any person who appears to be illiterate, visually challenged or unacquainted with the language in which the affidavit is written, the attester shall certify that the affidavit was read, explained or translated by him or in his presence to the deponent and that he seemed to understand it, and made his signature or mark in the presence of the attester in Form NCLT-14.
Form NCLT. 15	A summons for production of documents in the custody of a public officer other than a court shall be in Form NCLT-15 and shall be addressed to the concerned Head of the Department or such other authority as may be specified by the Tribunal.
Form NCLT. 16	The Deposition of a witness shall be recorded in Form NCLT-16.
Form NCLT. 17	Witness discharged by the Tribunal may be granted a certificate in Form NCLT-17 by the Registrar.
Form NCLT. 18	A Register in Form NCLT-18 shall be maintained in regard to appeals, petitions, etc., against the orders of the Tribunal to the National Company Law Appellate Tribunal and necessary entries therein be promptly made by the judicial branch.

<u>SCHEDULE OF FEES</u>			
S.No.	Section of the Companies Act, 2013	Nature of application / petition	Fees
1.	Sec. 2 (41)	Application for change in financial year	5,000/-
2.	Sec. 7 (7)	Application to Tribunal where company has been incorporated by furnishing false or incorrect info or by any fraudulent action	5,000/-
3.	Sec. 14 (1)	Conversion of public company into a private company.	5,000/-
4.	Sec. 55 (3)	Application for issue further redeemable preference shares.	5,000/-
5.	Sec. 58 (3)	Appeal against refusal of registration of shares.	1,000/-
6.	Sec. 59	Appeal for rectification of register of member.	1,000/-
7.	Sec. 62 (4)	Appeal against order of Govt. fixing terms and conditions for conversion of debentures and shares.	5,000/-
8.	Sec. 71 (9)	Petition by Debenture-trustees.	2,000/-
9.	Sec. 71 (10)	Application in the event of failure of redeeming of debentures.	1,000/-
10.	Sec. 73 (4)	Application by deposition for repayment of deposit or interest. 5	500/-
11.	Sec. 74 (2)	Application to allow further time as considered reasonable to the company to repay deposits	5,000/-
12.	Sec. 97 (1)	Application for calling of Annual General meeting.	1,000/-
13.	Sec. 98 (1)	Application for calling of general meeting of company other than annual general meeting	1,000/-
14.	Sec. 119 (4)	Petition to pass an order directing immediate inspection of minute's books or directing a copy thereof be sent	500/-



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		forthwith to person requiring it.	
15.	Sec. 130 (1)	Application for re-opening of books of account, if made by any person other than Central Government, Income Tax authorities, SEBI or any other statutory regulatory body or authority.	5,000/-
16.	Sec. 131 (1)	Application by company for voluntary revision of financial statement on Board's report.	5,000/-
17.	Sec. 140 (4)	Application for not sending the copy of representation of auditor to the members.	1,000/-
18.	Sec. 140 (5)	Application by any other person concerned for change of auditors	2,000/-
19.	Sec. 169 (4)	Application for not sending copies of representation	1,000/-
20.	Sec. 213	Application to Tribunal for investigation into company affairs.	5,000/-
21.	Sec. 218 (1)	Application for approval for action proposed against employee.	1,000/-
22.	Sec. 222 (1)	Application for imposition of restrictions on securities.	2,500/-
23.	Sec. 241 (1)	Application in cases of oppression and mismanagement.	10,000/-
24.	Sec. 242 (4)	Application for regulating the conduct of company.	2,500/-
25.	Sec. 243 (1) (b)	Application for appointment as Managing Director	5,000/-
26.	Sec. 244 (1)	Application for waiver of requirement specified in clause (a) or (b) of Sec. 244 (1)	2,500/-
27.	Sec 245	Class action suits	5000/-
28.	Sec. 441	Application for compounding of certain offences.	1,000/-
29.	Section 421	Appeals to NCLAT	5,000/-
30.	Application under any other provisions specifically not mentioned herein above		1,000/-
31.	Fee for obtaining certified true copy of final order passed to parties other than the concerned parties under Rule 50		5/- per page.

NCLT RULES ALONG WITH CORRESPONDENCE SECTION OF THE COMPANIES ACT,2013:

Sl. No.	Section	Detail provisions of the Companies Act,2013	NCLT Rules
1.	Sub-section (7) of section 7 [except clause (c) and (d)]	<u>Incorporation of company.</u> 7) Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the	<u>Rule 66: Application under sub- section (7) of section 7.</u> An Application under sub-section (7) of Section 7 shall be filed to the Tribunal in Form No. NCLT 1 and shall be accompanied with such documents as are mentioned in Annexure –B . Every application filed under sub rule (1) shall also set out the following particulars, namely: Name of the company and other details including date of incorporation, name and address of the subscribers, promoters and first directors; and The details of false or incorrect information or representation or material facts or information suppressed.



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		situation so warrants,— (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or (b) direct that liability of the members shall be unlimited; or (c) direct removal of the name of the company from the register of companies; or (d) pass an order for the winding up of the company; or (e) pass such other orders as it may deem fit: Provided that before making any order under this sub-section,— (i) the company shall be given a reasonable opportunity of being heard in the matter; and (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.	The details of such documents in or declaration filed or made for incorporating such company, The involvement of promoters, subscribers and first directors in committing fraud during the course of incorporation; Subject to the provisions contained in Proviso to sub-section (7) of Section 7, the Tribunal may pass such orders, as it may think fit in accordance with clauses (a), (b), (c), (d) and (e) of sub-section (7) of section 7.
2.	Section 2(41)	“financial year”, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up: Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for	<u>Rule-67:Petition under sub-section (41) of section 2:</u> The petition under sub-section (41) of Section 2 shall be filed to the Tribunal in Form No. NCLT 1 and shall be accompanied with such documents as are mentioned in Annexure –B.



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		consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year: Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;	
3.	Second proviso to sub-section (1) of section 14	<u>Alteration of articles.</u> Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.	<u>Rule: 68. Petition under section 14.</u> A petition under second provision to sub-section (1) of section 14 for the conversion of a public company into a private company, <i>shall, not less than three months from the date of passing of special resolution</i>, be filed to the Tribunal in Form No. NCLT. 1 and shall be accompanied with such documents as are mentioned in Annexure B. Every petition filed under sub-rule (1) shall set out the following particulars: - the date of the Board meeting at which the proposal for alteration of Articles was approved; - the date of the general meeting at which the proposed alteration was approved; - state at which the registered office of the company was situated; - number of members in the company, number of members attended the meeting and number of members of voted for and against; - reason for conversion into a private company effect of such conversion on shareholders, creditors, debenture holders and other related parties. - state listed or unlisted public company. - state the nature of the company that is a company limited by shares, a company limited by guarantee (having share capital or not having share capital) and unlimited company - state whether a company registered under section 8 of the Act. There shall be attached to the application, a <i>list of creditors</i> and debenture holders, drawn up to the latest practicable date preceding the date of filing of petition <i>by not more than two months</i>, setting forth the following details: (a) the names and address of every creditor and debenture holder of the



			company; (b) the nature and respective amounts due to them in respect of debts, claims or liabilities; (c) in respect of any contingent or unascertained debt or any such claim admissible to proof in winding up of the company, the value, so far as can be justly estimated of such debt or claim: Provided that the petitioner company shall file an affidavit, signed by the company secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of , or claims against, the company to their knowledge. A duly authenticated copy of such list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees ten per page to the company. The company shall at least 14 days before the date of hearing: advertise the petition in accordance with rule 7; serve, by registered post with acknowledgement due, individual notice(s) in Form NCLT. No. 3B to the effect set out in sub-rule (a) above on each debenture-holder and creditor of the company; and serve, by registered post with acknowledgement due, a notice together with the copy of the petition to the Central Government, Registrar of companies and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act: Where any objection of any person whose interest is likely to be affected by the
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			proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar of Companies on or before the date of hearing: While passing an order, the Tribunal may, if it is satisfied, having regard to all the circumstances of the case, that the conversion would not be in the interest of the company or is being made with a view to contravene or to avoid complying with the provisions of the Act, disallow the conversion with reasons to be recorded in writing.
4.	Sub-section (3) of section 55	<u>Issue and redemption of preference shares.</u> (3) Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed: Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares. <i>Explanation.</i>—For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an	<u>Rule 69: Petition under sub-section (3) of section 55</u> The petition in Form No. NCLT. 1 shall be accompanied by documents mentioned in Annexure Band shall set out: (a) the particulars of registration (b) the capital structure, the different classes of shares into which the share capital of the company is divided; (c) the provisions of the memorandum or articles authorizing the issue of preference shares; (d) the total number of preference shares issued; (e) Details of such preference shares which are not redeemed or unable to pay dividend. (f) Terms and conditions of issue of such existing preference shares. (g) The total number of such preference shares (unredeemed) and number of holders consented for with value of such preference shares and percentage of holders who have consented for. (h) The date or dates on which the consent was given or the resolution was passed. On any such petition, the Tribunal, after hearing the petitioner and any other person as appears to it to be interested in the petition, may, if it is satisfied, having regard to all the circumstances of the case may approve for issue of further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of unredeemable preference shares. Provided that the Tribunal shall, while giving approval, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares; Provided further that the Tribunal may, at its discretion, make such orders as to cost as it



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		increase or, as the case may be, a reduction, in the share capital of the company.	thinks fit. The decision of the Tribunal on any such petition shall be final.
5.	Section 58 and 59	<u>Refusal of registration and appeal against refusal./Rectification of register of members.</u>	<u>Rule 70: Appeal under sections 58 and 59.</u> The appeals against the refusal for registration of transfer or transmission of securities under section 58 or for rectification of Register of members under section 59 shall be made to the Tribunal by way of a petition in Form No. NCLT. 1 and shall be accompanied by such documents as are mentioned in Annexure B: Provided that a copy of such appeal shall be served on the concerned company at its registered office immediately after filing of the petition with the Tribunal. The petitioner shall at least 14 days before the date of hearing advertise the petition in accordance with rule 7. Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar of Companies and Regional Director on or before the date of hearing: The Tribunal may, while dealing with a petition under section 58 or 59, at its discretion, make- (a) order or any interim order, including any orders as to injunction or stay, as it may deem fit and just; (b) such orders as to costs as it thinks fit; and (c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares. On any petition under section 59, the Tribunal may- (a) decide any question relating to the title of any person who is a party to the petition to have his name entered in, or omitted from, the register; (b) generally decide any question which is necessary or expedient to decide in connection with the application for rectification. The decision of the tribunal on any such petition shall be final.



6.	Proviso to Clause (b) of sub-section (1) of section 61	<u>Power of limited company to alter its share capital.</u> Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;	<u>Rule 71: Application under proviso to clause (b) of sub-section (1) of section 61.</u> An application for obtaining the approval of the Tribunal for the consolidation and division of all or any of share capital into shares of a larger amount than its existing shares which results in changes in the voting percentage of shareholders shall be filed in Form No. NCLT. 1 and shall be accompanied with such documents as are mentioned in Annexure B. The application shall, inter alia, set forth the following: (a) provision of articles authorizing such consolidation or division; (b) existing capital structure of the company; (c) new capital structure of the company after the consolidation or division; (d) class of shares being consolidated or divided; (e) face value of shares pre and post consolidation or division; (f) justification for such consolidation or division. The company shall at least 14 days before the date of hearing (a) advertise the petition in accordance with rule 7; and (b) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Central Government, Registrar of Companies and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act: Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central government Registrar of Companies and Securities Exchange Board of India, in the case of listed companies and to regulated body, if the company is regulated under any Special Act on or before the date of hearing: Upon hearing the application or any adjourned hearing thereof, the Tribunal may pass such order, subject to such terms and conditions, as thinks fit.
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7.	Sub-sections (4) to (6) of section 62	<u>Further issue of share capital.</u> (4) Notwithstanding anything contained in sub-section (3), where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion: Provided that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit. (5) In determining the terms and conditions of conversion under sub-section (4), the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary. (6) Where the Government has, by an order made under sub-section (4), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred	<u>Rule 72: Appeal against the order of the Government under Section 62(4)</u> Where any Government by virtue of provisions of sub-section (4) of section 62, in public interest, converts the debentures or loan or any part thereof into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even in terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion. If such terms and conditions of conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal, in Form – NCLT-9, which shall after hearing the company and the Government, pass such order as it deems fit.
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		to the Tribunal under sub-section (4) or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.	
8.	Sub-sections (9) to (11) of section 71	<u>Debentures.</u> (9) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders. (10) Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon. (11) If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three	<u>Rule 73: Application under sections 71 (9),71(10), section 73(4) or section 74(2) and 76(2).</u> Where a company fails to redeem the debentures or repay the deposits or any part thereof or any interest thereon, an application under <i>sub-section (10) of section 71</i> or under sub-section (4) of section 73 of the Act or section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934), shall be filed to the Tribunal, in Form No. NCLT. 11 in duplicate and shall be accompanied by such documents as are mentioned in Annexure B, by- (a) in case of debentures, all or any of the debenture holders(s) concerned, or debenture trustee; or (b) in case of deposits, all or any of the depositor(s) concerned, or where the deposits are secured, by the deposit trustee. There shall be attached to the application, a list of depositors or debenture holders, as the case may be, setting forth the following details in respect of every such depositor or debenture holder: Full name, age, father's/ mother's/ spouse's name, occupation and full residential address Fixed deposit receipt number or debenture certificate number, as the case may be. Date of maturity; Amount due to such person by the company; Amount already paid by the company, if any; Total amount due as on the date on the application: Provided that where the company is the applicant, it shall file an affidavit stating the list of depositor(s) or debenture holder (s), as the case may be, is correct, and that the estimated value as given in the list of the amount payable to such depositors or



		years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both. <u>Section 73(4) Prohibition on acceptance of deposits from public.</u> (4) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit. <u>Section 74(2) Repayment of deposits, etc., accepted before commencement of this Act.</u> (2) The Tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit. <u>Section 76 (2) Acceptance of deposits from public by certain companies.</u> The provisions of this Chapter shall, <i>mutatis mutandis</i>, apply to the acceptance of deposits from public under this section.	debenture holders are proper estimates of the values of such debts and claims. The Tribunal shall pass an appropriate order within a period of sixty days from the date of receipt of application under sub-rule (1): Provided that the Tribunal shall, before making any order under this rule, give a reasonable opportunity of being heard to the company and the other persons interested in the matter. The Tribunal may, if it is satisfied, on the application filed under sub-rule (1), that it is necessary so to do, to safeguard the interests of the company, the debenture holder(s) or the depositor(s), as the case may be, or in the public interest, direct, by order, the company to make repayment of such deposit or debenture or part thereof forthwith or within such time and subject to such conditions as may be specified in the order: Provided that while passing such an order, the Tribunal shall consider the financial condition of the company, the amount or deposit or debenture or part thereof and the interest payable thereon. The application under <i>section 74(2) and 76(2)</i> read with section 74(2) shall be in Form No. NCLT 1 and shall accompanied with the documents as per Annexure B. A copy of the application made under: section 74(2) and 76(2) shall be served on the Regional Director and the Registrar of Companies before the date of hearing. The Registrar of Companies in consultation with Regional Director shall submit before the Tribunal, the report on the affairs of the company within thirty days from the date of the receipt of the application and Tribunal may consider such observations made by the Registrar of Companies before passing an order.
9.	<u>Section 97</u>	<u>Power of Tribunal to call annual general meeting.</u> 97. (1) If any default is made in holding the annual general meeting of a company under section 96, the	<u>Rule 74: Application under section 97 for calling or obtaining a direction to call annual general meeting.</u> An application under section 97 for calling or obtaining a direction to call the annual general meeting of the company shall be made by any member of the company. Such



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		Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient: Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting. (2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.	application shall be made in Form No. NCLT. 1 and shall be accompanied by the documents specified in Annexure B. A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.
10.	Section 98	<u>Power of Tribunal to call meetings of members,etc.</u> 98. (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either <i>suo motu</i> or on the application of any director or member of the company who would be entitled to vote at the meeting,— (a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and (b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company: Provided that such directions may include a direction that one member of the company present in person or	<u>Rule75: Application for obtaining an order for calling of general meeting (other than Annual General Meeting) under section 98</u> An application under section 98 for obtaining an order for calling of a general meeting (other than Annual General Meeting) shall be made by any director or member of the company who would be entitled to vote at the meeting. Such application shall be made in Form No. NCLT. 1 and shall be accompanied by the documents specified in Annexure B. A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.



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		by proxy shall be deemed to constitute a meeting. (2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.	
11.	Sub-section (4) of section 119	<u>Inspection of minute-books of general meeting.</u> (4) In the case of any such refusal or default, the Tribunal may, without prejudice to any action being taken under sub-section (3), by order, direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.	<u>Rule 76: Inspection of minute-books of general meeting</u> Where any member has requested the company for inspection of minute-book of general meeting on payment of requisite fee and the company refused to give such inspection, he may apply to the Tribunal in Form No NCLT-9 for direction to the company for inspection of minute-book of general meeting.
12.	Section 131	<u>Voluntary revision of financial statements or Board's report.</u> (1) If it appears to the directors of a company that— (a) the financial statement of the company; or (b) the report of the Board, do not comply with the provisions of section 129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar: Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:	<u>Rule 77: Application under section 131.</u> Where it appears to the Directors of a Company that the financial statement of the Company or the report of the Board do not comply with the provisions of section 129 or section 134, the application shall be filed with the Tribunal in Form No. NCLT. 1 within 14 days of the decision taken by the Board. In case the majority of the directors of company or the auditor of the company has changed immediately before the decision is taken to apply under section 131, the company shall disclose such facts in the application. The application shall, inter alia, set forth the following particulars: • financial year or period to which such accounts relates; • the name and contact details of the Managing Director, Chief Financial Officer, directors, Company Secretary and officer of the company responsible for making and maintaining such books of accounts and financial statement; • where such accounts are audited, the name and contact details of the auditor or any former auditor who audited such accounts; • copy of the Board resolution passed by the Board of Directors; • ground for seeking revision of financial statement or Board's Report.



		Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year: Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made. (2) Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to— (a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and (b) the making of any necessary consequential alternation. (3) The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular— (a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made; (b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report; (c) require the directors to take such steps as may be prescribed.	The company shall at least 14 days before the date of hearing advertise the application in accordance with rule 35; The Tribunal shall issue notice and hear the auditor of the original financial statement, if present auditor is different and after considering the application and hearing the auditor and any other person as the Tribunal may deem fit, may pass appropriate order in the matter. A certified copy of the order of the Tribunal shall be filed with the Registrar of Companies within thirty days of the date of receipt of the certified copy. On receipt of approval from Tribunal a general meeting may be called and notice of such general meeting along with reasons for change in financial statements may be published in newspaper in English and in vernacular language. In the general meeting, the revised financial statements, statement of directors and the statement of auditors may be put up for consideration before a decision is taken on adoption of the revised financial statements. On approval of the general meeting, the revised financial statements along with the statement of auditors or revised report of the Board, as the case may be, shall be filed with the Registrar of Companies within thirty days of the date of approval by the general meeting.
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13.	Second proviso to sub-section (4) and sub-section (5) of section 140	<u>Removal resignation of auditor and giving of special notice.</u> (4) (i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139. (ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor. (iii) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,— (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company, and if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting: Provided that if a copy of representation is not sent as	<u>Rule 78: Application under Section 140</u> An application may be filed by the director on behalf of the company or the aggrieved auditor to the Tribunal in Form NCLT-1 and shall be accompanied by such documents as are mentioned in Annexure "B". Where the Tribunal is satisfied on an application of the company or the aggrieved person that the rights conferred by the provisions of section 140 are being abused by the auditor, then, the copy of the representation need not be sent and the representation need not be read out at the meeting. If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application make an order that the auditor shall not function as an auditor and the Central Government may appoint another auditor in his place.
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	aforesaid, a copy thereof shall be filed with the Registrar: Provided further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this subsection are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting. (5) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either <i>suo motu</i> or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors: Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place: Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.	
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		<i>Explanation I.</i>—It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers. <i>Explanation II.</i>—For the purposes of this Chapter the word “auditor” includes a firm of auditors.	
14.	Sub-section (4) of section 169	<u>Removal of directors.</u> (4) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,— (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company’s default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting: Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to	<u>Rule 79: Application under section 169</u> The Company or any other person who claims to be aggrieved may make an application to the Tribunal in Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.



		secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.	
15.	Section 213	<u>Investigation Into company's affairs in other cases.</u> The Tribunal may,— (a) on an application made by— (i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or (ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or (b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that— (i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose; (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or (iii) the members of the company have not been given all the information with respect to its affairs which	<u>Rule 80: Application under Section 213 for investigation</u> An application under section 213 may be made in Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.



they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that—
(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or
(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.



16.	Sections 241, 242 [except clause (b) of sub-section (1), clause (c) & (g) of sub-section (2)], 243 and 244, Prevention of Oppression And Mismanagement	<u>Application to Tribunal for relief in cases of oppression, etc.</u> (1) Any member of a company who complains that— (a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or (b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter. (2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter. <u>Powers of Tribunal.</u> 242. (1) If, on any application made under section 241, the Tribunal is of the opinion— (a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to	<u>Rule 81 : Application under section 241</u> An application under clause (a) or clause (b) of sub-section(1) of section 241 of the Act, shall be filed in the Form No. NCLT. 1 and shall be accompanied by the documents specified in Annexure B. Where an application is presented under section 241 on behalf of any members of the company entitled to apply under sub-section(1) of the said section, by anyone or more of them, the letter of consent signed by the rest of the members so entitled authorizing the applicant or the applicants to present the petition on their behalf, shall be annexed to the application, and the names and addresses of all the members on whose behalf the application is presented shall be set out in a schedule to the application, and where the company has a share capital, the application shall state whether the applicants have paid all calls and other sums due on their respective shares. A copy of every such application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act shall be served on the concerned company and on such person as the Tribunal directs. <u>Rule 82: Withdrawal of application filed under section 241</u> Application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act shall not be withdrawn without the leave of the Tribunal. An application for withdrawal under sub-rule (1) shall be filed in the Form NCLT-9. <u>Rule 83: Application under section 243</u> An application under clause (b) of sub-section (1) of section 243 for leave to any of the persons mentioned therein as to be appointed or to act as the managing director or other director or manager of the company, shall be filed as per the appropriate Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure-B. An application under sub-rule (1) shall state that whether a notice of intention to apply for such leave, as required under the proviso to sub-section(1) of section 243 of the Act, has been given to the Central Government and such application shall also be accompanied by a copy of such notice.
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	any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and (b) that to wind 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, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit. (2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for— (a) the regulation of conduct of affairs of the company in future; (b) the purchase of shares or interests of any members of the company by other members thereof or by the company; (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital; (d) restrictions on the transfer or allotment of the shares of the company; (e) the termination, setting aside or modification, of any agreement, howsoever 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 Tribunal, be just and equitable in the circumstances of the case; (f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e): Provided that no such agreement shall be terminated,	The notice of the date of hearing of the application together with a copy of the application shall be served on the Central Government not less than fifteen days before the date fixed for the hearing.
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	set aside or modified except after due notice and after obtaining the consent of the party concerned; (g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference; (h) removal of the managing director, manager or any of the directors of the company; (i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims; (j) the 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 under clause (h); (k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct; (l) imposition of costs as may be deemed fit by the Tribunal; (m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made. (3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of	
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	the order of the Tribunal. (4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable. (5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles. (6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered. (7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same. (8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may	
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		extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.	
17.	<u>Section 245</u>	<u>Class Action</u> (1) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:— (a) to restrain the company from committing an act which is <i>ultra vires</i> the articles or memorandum of the company; (b) to restrain the company from committing breach of any provision of the company's memorandum or articles; (c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors; (d) to restrain the company and its directors from acting on such resolution; (e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force; (f) to restrain the company from taking action contrary to any resolution passed by the members; (g) to claim damages or compensation or demand any other suitable action from or against— (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any	<u>Rule 84: Right to apply under section 245</u> An application under sub-section (1) of section 245, read with sub-section (3) of section 245 of the Act, shall be filed in Form NCLT-9. A copy of every application under sub-rule(1) shall be served on the company, other respondents and all such persons as the Tribunal may direct. <u>Rule 85: Conducting a class action suit</u> Without prejudice to the generality of the provisions of sub-section (4) of section 245 of the Act, the Tribunal may, while considering the admissibility of the application under the said section, in addition to the grounds specified therein, take into account the following: • whether the class has so many members that joining them individually would be impractical, making a class action desirable; • whether there are questions of law or fact common to the class; • whether the claims or defences of the representative parties are typical of the claims; • whether the representative parties will fairly and adequately protect the interests of the class. For the purpose of clause (c) of sub-section 4 of section 245, while considering the desirability of an individual or separate action as , opposed to a class action, the Tribunal may take into account, in particular, whether admitting separate actions by member or members or depositor or depositors would create a risk of:- inconsistent or varying adjudication in such separate actions; or adjudications that, as a practical matter, would be dispositive of the interests of the other members; adjudications which would substantially impair or impede the ability of other members of the class to protect their interests. <u>Rule 86: Rule of opt-out</u> A member of a class action under section 245 of the Act is entitled to opt-out of the proceedings at any time after the institutions of the class action, with the permission of



	likely act or omission or conduct on its or their part; (ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or (iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part; (h) to seek any other remedy as the Tribunal may deem fit. (2) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner. (3) (i) The requisite number of members provided in sub-section (1) shall be as under:— (a) in the case of a company having a share capital, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares; (b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.	the Tribunal, as per Form No.NCLT-1. For the purpose of this rule, a class member who receives a notice under clause(a) of sub-section (5) of section 245 of the Act shall be deemed to be the member of a class, unless he expressly opts out of the proceedings, as per the requirements of the notice issued by the Tribunal in accordance with rule 38. A class member opting out shall not be precluded from pursuing a claim against the company on an individual basis under any other law, where a remedy may be available, subject to any conditions imposed by the Tribunal. <u>Rule 87: Publication of notice:</u> For the purposes of clause (a) of sub section (5) of section 245, on the admission of the class action application filed under sub-section (1) of section 245, a public notice shall be issued by the Tribunal as per Form No.NCLT-13, to all the members of the class - (i) by publishing the same within seven days of admission of the application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the state in which the registered office of the company is situated and circulating in that state and at least once in English in an English newspaper circulating in that State; (ii) the Tribunal shall require the company to place the public notice on the website of such company, if any, till the time the suit is not disposed of, in addition to publication of such public notice in newspaper under (i) above: Provided that such notice shall also be placed on the website of the Tribunal, if any, on the website of Ministry of Corporate Affairs, on the website, if any, of the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange(s) where the company has any of its securities listed, until the application is disposed of by the Tribunal. The date of issue of the newspaper in which such notice appears shall be taken as the date of serving the public notice to all the members of the class. The public notice shall, <i>inter alia</i>, contain the following- • name of the lead applicant; • brief particulars of the grounds of application;
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	(ii) The requisite number of depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed. (4) In considering an application under sub section (1), the Tribunal shall take into account, in particular— (a) whether the member or depositor is acting in good faith in making the application for seeking an order; (b) any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of subsection (1); (c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section; (d) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section; (e) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be— (i) authorised by the company before it occurs; or (ii) ratified by the company after it occurs; (f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company. (5) If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the	• relief sought by such application; • statement to the effect that application has been made by the requisite number of members/depositors; • statement to the effect that the application has been admitted by the Tribunal after considering the matters stated under sub-section (4) of section 245 and it is satisfied that the application may be admitted; • date and time of the hearing of the said application; • time within which any representation may be filed with the Tribunal on the application; and • the details of the admission of the application and the date by which the form of opt out has to be completed and sent as per Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure-“B”, and such other particulars as the Tribunal thinks fit. The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant. <u>Rule 88: Reference to the Tribunal :</u> Any reference to the Tribunal by the Registrar of Companies under section 441 of the Act, or any reference to the Tribunal by the Central Government under proviso to sub-section (5) of section 140, 221, sub-section(2) of section 224, sub-section(5) of section 224, sub-section (2) of section 241 of the Act, or reference under sub-section (2) of section 75 or any complaint by any person under sub section(1) of section 222, or any reference by a company under clause(c) of sub-section(4) of section 22A of the Securities Contracts (Regulations) Act, 1956 shall be made by way of a petition or application in Form No. NCLT-9 in Annexure-A and shall be accompanied by documents mentioned in Annexure-B.
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	following, namely:— (a) public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed; (b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side; (c) two class action applications for the same cause of action shall not be allowed; (d) the cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act. (6) Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company. (7) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. (8) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and	
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		make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order. (9) Nothing contained in this section shall apply to a banking company. (10) Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in sub-section (1).	
18.	Section 441	<u>Compounding of certain offences.</u> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by— (a) the Tribunal; or (b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be, may specify: Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded: Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account: Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act. (2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section. Explanation. -- For the purposes of this section,-- (a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously	



	compounded, shall be deemed to be a first offence; (b) "Regional Director" means a person appointed by the Central Government as a Regional Director for the purposes of this Act. (3) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be. (b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded. (c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded. (d) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged. (4) The Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order. (5) Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both. (6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-- (a) any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;
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		(b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.
		(7) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.

---THANK YOU---

We welcome your suggestions, if any, addressed to the undersigned.

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