

NCLT AND NCLAT

✚ The CG has constituted NCLT (quasi judicial body) under Section 408 of CA 2013 w.e.f 01/06/16 and have present eleven branches with principal office at New Delhi. President for Tribunal and Chairperson for appellate tribunal

✚ The NCLT has the power under the Companies Act to adjudicate proceedings:

1. Initiated before the Company Law Board under the previous act (the Companies Act 1956);
2. Pending before the Board for Industrial and Financial Reconstruction (BIFR), including those pending under the Sick Industrial Companies (Special Provisions) Act, 1985;
3. Pending before the Appellate Authority for Industrial and Financial Reconstruction; and
4. Pertaining to claims of oppression and mismanagement of a company, winding up of companies and all other powers prescribed under the Companies Act.

✚ Any person aggrieved by the decision of NCLT may prefer an appeal to NCLAT. NCLT and NCLAT has provided a single window for settlement of all disputes relating to companies

✚ NCLT consist of chairperson and such number of judicial and technical members, not exceeding 11, as the Central Government may deem fit

✚ Section 407 includes the definition of Chairperson, Judicial Member, member, President, Technical member and section 410 deals with constitution of appellate tribunal

SEC-408 NCLT, 410-NCLAT	
NCLT	NCLAT
NCLT shall be constituted by the CG by notification in official gazette	NCLAT shall be constituted by the CG by notification in official gazette
Shall consist of a president and such number of judicial and technical members, as the CG deems fit	Shall consist of a chairperson and such number of judicial and technical members, not exceeding 11 as the CG deems fit
The president and the members of the NCLT shall be appointed by CG	The chairperson and the members of the NCLAT shall be appointed by CG
The president and the number of NCLT shall exercise such powers and discharge such functions as are conferred on them under this act or any other act	NCLAT shall hear appeal against the orders of tribunal or of NFRA (NFRA and competition act 2002)

QUALIFICATIONS SECTION 409, 410 & 411(NCLT & NCLAT CONSTITUTION AND QUALIFICATIONS)		
President	Judicial member	Technical member
has been a Judge of a High Court/Ex judge for five years	1) a judge of a High Court; or (2) a District Judge sitting/Ex for at least five years; or	has been a member of the Indian Corporate Law Service or Indian Legal Service for at least fifteen years out of which

	(3) an advocate of a court for at least ten years.(Including member of judicial office/office of member of tribunal or post under CG)	at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service; or (2) is or has been in practice as a chartered accountant, or a cost accountant , or as a company secretary for at least fifteen years (3) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in industrial finance, management or administration, reconstruction, investment, accountancy, labour matters or such other disciplines which are related to the management of the affairs including reconstruction, rehabilitation and winding up of companies, (4) is or has been a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 for at least five years.
The chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court	has been a Judge of a High Court or is a Judicial Member of the Tribunal for 5 years	A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience, of not less than 25 years in various specified disciplines related to the management, conduct of affairs, revival, rehabilitation and winding up of companies.

Manner of appointment

- ✓ The president of tribunal and the chairperson and judicial members of NCLAT shall be appointed after consultation with CJI
- ✓ The members of the tribunal and the technical members of the appellate tribunal shall be appointed on recommendation of a selection committee consist of following

- a) CJI or his nominee : Chairperson
- b) A senior judge of SC or CJI of HC : Member
- c) Secretary in MCA : Member
- d) Secretary in ministry of law and justice : Member
- e) Secretary in department of financial service, Ministry of finance : Member

- ✓ If equality of vote, chairman has casting vote
- ✓ No appointment of any member of the tribunal or the appellate tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of selection committee.

✚ **SECTION 413-TERM PERIOD**- President and chairperson for 5 years and can reappoint for another term of 5

- Age minimum 50, Max age 65 (Member) & 67 (president)
- Appellate tribunal Min-50, Max 70 (Chairperson), 67(Member)

✚ Salary and allowances – Section 414

✚ Acting President and Chairperson of Tribunal or Appellate Tribunal [Section 415]

✚ **RESIGNATION -SECTION 416**-President, the Chairperson or any Member may, by notice in writing under his hand addressed to the Central Government, resign from his office.

✚ Section 417 deals with removal of members- its grounds, giving reasonable opportunity of being heard, **Suspension by Central Government in concurrence with CJI**, Central Government to make regulation for inquiry procedure:

✚ CG shall provide staff and power to make rules

✚ If members have different opinion then decision is based on majority opinion

✚ Tribunal shall make order after reasonable opportunity of being heard and may within 2 years can rectify any mistake if found and copy of order shall send to parties

✚ **APPEAL TO NCLAT** can be made within 45 days +45 (in addition maximum), if consent of parties no appeal can be made

- ✚ Disposal of application made within 3 months, if not reasons for delay must be recorded and can extend the period not exceeding 90 days
- ✚ Within 60 days of order received from NCLAT APPEAL CAN BE MADE TO SUPREME COURT (question of law), can be extended to 60 days more
- ✚ Tribunal regulate their own procedure based on natural justice and vested with powers of civil court and decree proceeds like as same manner of court and its nature of proceedings include (CPC, IPC, CrPC) and has the power to punish for contempt
- ✚ Can delegate the powers and members and president shall treated as public servants and has the protection of immunity if actions taken in good faith
- ✚ Civil court has no jurisdiction and the vacancy in tribunal or appellate shall not invalidate acts for proceedings
- ✚ The powers shall be exercisable by benches of two members one whom shall be technical and other shall be judicial member
- ✚ Parties have right for legal representation(CA, CS, CMA, Legal practitioners or any person)
- ✚ Limitation act may apply

OTHER POINTS

- ✚ The salary and allowances and other terms and conditions of service of the members shall not be varied to their disadvantage after their appointment
- ✚ In occurrence of any vacancy in office of president or chairperson the senior most member shall act as president and chairperson
- ✚ CG has the power to make an order of suspension pending removal
- ✚ The tribunal shall make an order after show cause notice and may amend the order either by suo moto or mistake is brought to its notice by any of the parties within 2 years from the date of order and copies of order to be sent to the parties
- ✚ NCLT and NCLAT has power to punish for contempt
- ✚ Power to seek assistance of chief metropolitan magistrate
- ✚ President, members , officers etc to be public servants

