

# MCA constitutes NCLT and NCLAT and notifies certain provisions of Companies Act, 2013 to make them operative

June 2, 2016

## In brief

The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) have been constituted by Central Government with effect from 1 June, 2016. This would effectively dissolve the Company Law Board (CLB) as constituted under the Companies Act, 1956 from the same day.

The NCLT will start functioning with eleven Benches – two at New Delhi and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. The Principal Bench of the NCLT will be at New Delhi.

Some provisions of the Companies Act, 2013 (mainly pertaining to powers of the CLB) relating to powers of Tribunal have also been notified by the Government (which were not effective due to non-constitution of NCLT) except provisions pertaining to compromise and arrangement, winding up etc.

## In detail

The Ministry of Corporate Affairs, (MCA) has, *vide* notifications<sup>1</sup> dated 1 June, 2016 notified the constitution of NCLT and NCLAT by Central

Government under the provisions of the Companies Act, 2013 (the 2013 Act). MCA has further notified certain provisions of the 2013 Act, thereby making the

functioning of NCLT and NCLAT operative from 1 June, 2016. The table below summarises the key provisions of the 2013 Act notified by MCA to be operative from 1 June, 2016:

Cluses	Particulars	Remarks
<b>Incorporation of Company</b>	Power of NCLT to pass orders, where a company has been incorporated by furnishing any false information/ suppressing any material fact or information or by any fraudulent action.	<ul style="list-style-type: none"> <li>The power to remove the name of the company from the register of companies would still continue with the Registrar of Companies; and</li> <li>The power to orders for winding up of the company would still continue with the High Courts.</li> </ul>

<sup>1</sup> Notification Nos. S.O.1935(E) & 1932(E)

Clauses	Particulars
<b>Alteration of Articles</b>	Alteration of articles having the effect of conversion of a public company into a private company.
<b>Issue &amp; redemption of Preference Shares</b>	Issue of fresh redeemable preference shares where the company is not in a position to redeem preference shares and to pay dividend.
<b>Alteration of share capital</b>	Consolidation and division of share capital results in changes in voting percentage of shareholders.
<b>Further issue of share capital</b>	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.
<b>Debentures</b>	Petition to be filed with the Tribunal on failure by the company to redeem the debentures or pay interest on them.
<b>AGMs, meeting of members</b>	Power of the Tribunal to call annual general meeting, meetings of members in specified cases.
<b>Inspection of minutes book of general meeting</b>	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.
<b>Re-opening of accounts and voluntary revisions of financial statements or Board's report</b>	Re-opening of accounts to be done only on approval of Tribunal. Approval of the Tribunal required for Voluntary revision of financial statements or Boards Report.
<b>Removal, resignation of auditor and giving special notice</b>	Powers granted to Tribunal to remove the auditor <i>suo moto</i> or on application made by the Central Government.
<b>Removal of Directors</b>	Powers of Tribunal in relation to removal of director.
<b>Investigation into company's affairs in other cases</b>	Powers of Tribunal to investigate into company's affairs in specified cases.
<b>Investigation of ownership of the company</b>	Powers of Tribunal to investigate into of the ownership of the company.
<b>Protection of employees during investigation</b>	Approval of Tribunal required for any action proposed against the employee Protection of employees during Investigation.
<b>Freezing of assets of company on inquiry and investigation</b>	Tribunal to have powers for the said sections.
<b>Imposition of Restrictions upon securities</b>	
<b>Damages for Fraud</b>	Failure of the company to repay the deposit along with interest within the time limit (extension if any granted by the Tribunal as per section 74) or acceptance of deposit with an intention to defraud the depositors, or for any other fraudulent purposes. See Note 1 below.
<b>National Company Law Tribunal &amp; Appellate Tribunal</b>	Detailed provisions in relation to operation, functioning of the Tribunal and its members.
<b>Compounding of Offences</b>	Power of NCLT to compound offences. See Note 2. below

#### Notes

1. The reference to Tribunal is arrived from section 74. However, section 74 has not been notified to include NCLT as the regulatory authority for granting extension in the time limit.
2. Offences where the fine exceeds INR 0.5 million will be dealt by NCLT and offences with fine below INR 0.5 million will be dealt by officer authorized by Government or Regional Director.

### **The takeaways**

While notifying these provisions, the MCA has not considered the Companies (Amendment) Bill 2016 (pending before the Parliamentary Standing Committee) which provides for amendments to the Companies Act, 2013, including amendment to be made on constitution of NCLT and NCLAT in line with the judgement of the Supreme Court in Madras Bar Association's<sup>2</sup> case.

The MCA may gradually notify provisions relating to powers of

High Court under the Companies Act 2013/ 1956 in respect of reduction of share capital, winding-up and compromise or arrangement (merger/ demerger) and these matters may get transferred to NCLT later on.

It appears that provisions relating to reduction of share capital, winding-up and compromise or arrangement (merger/demerger), etc., will remain under the jurisdiction of High Court till the time these provisions are made effective. Further, one will wait for rules to be notified.

### **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact:

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<sup>2</sup> Madras Bar Association v. Union of India [2010] 11 SCC 1 (SC)

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