

Unit 4

IMP TOPIC

1. Majority Minor Rule
2. Winding up
3. NCLT and NCLAT

Majority Rule and Minority Protection & Its Exceptions

1. Introduction

The principle of majority rule is a foundational aspect of company law. It ensures that the decisions of the majority shareholders prevail in managing the company. However, to prevent misuse of power and protect minority shareholders from oppression, the law provides certain exceptions and remedies.

Governing Principle: “The will of the majority shall prevail.” – Originating from the case of *Foss v. Harbottle* (1843)

2. Majority Rule – Principle in *Foss v. Harbottle*

2.1 Case Overview: *Foss v. Harbottle* (1843)

- Two minority shareholders sued directors for fraud.
- Held: Company is a separate legal entity; the majority must bring the action, not individuals.

2.2 Rule Laid Down

- Courts will not interfere in internal company matters if the majority is in agreement.
- Only the company itself (through a resolution) can sue for wrongs done to it.

2.3 Rationale

- Prevent multiple lawsuits.
- Maintain corporate autonomy.
- Uphold internal democratic governance.

3. Exceptions to the Majority Rule

The rule in *Foss v. Harbottle* is not absolute. Courts intervene in the following cases to protect minority shareholders:

3.1 Ultra Vires or Illegal Acts

- If the act is beyond the company’s powers or illegal, even the majority cannot ratify it.
- Example: A resolution to engage in gambling when

3.2 Fraud on Minority

- If the majority commits fraud or misuses power to the detriment of the minority, courts can intervene.

Case Law: Menier v. Hooper's Telegraph Works (1874)

The majority committed fraud by favoring another company they controlled.

3.3 Acts Requiring Special Majority

- If the act requires a special resolution (e.g. alteration of articles), a simple majority decision is invalid.

3.4 Infringement of Individual Rights

- When a shareholder's personal rights (like voting, dividend, inspection of books) are violated.

Case Law: Pender v. Lushington (1877)

Voting rights were wrongly denied. Court upheld minority rights.

3.5 Oppression and Mismanagement [Sections 241–246]

- If company affairs are being conducted in a manner oppressive to any member(s), a complaint can be filed before NCLT.

4. Legal Remedies for Minority Shareholders

4.1 Application to NCLT (Sections 241–242)

- Members can apply when:
 - There is oppression or mismanagement.
 - Company affairs are prejudicial to public interest.

4.2 Relief Measures by NCLT

- Regulation of affairs.
- Termination or modification of agreements.
- Removal of directors.

4.3 Derivative Action

- Minority shareholders can sue on behalf of the company if directors or majority shareholders are misusing power.

4.4 Class Action Suit [Section 245]

- Allows a class of members/depositors to file a suit for:
 - Breach of articles or memorandum.
 - Misconduct by directors or auditors.

5. Balance Between Majority Rule and Minority

Protection The Companies Act, 2013, recognizes both the supremacy of the majority and the need to shield minority interests.

The principle ensures:

- Efficient decision-making (via majority rule), and
- Fair treatment and justice (via legal remedies for the minority).

6. Conclusion

The doctrine of majority rule supports democratic functioning in corporate governance, but it is not unfettered. Law ensures that the minority is not exploited or ignored and provides statutory remedies when necessary. This balance sustains fairness and investor confidence in the corporate world.

National Company Law Tribunal (NCLT): Constitution, Powers and Functions of NCLT and NCLAT

1. Introduction

The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) were established under the Companies Act, 2013 to serve as quasi-judicial bodies. They aim to provide speedy resolution of corporate disputes, reduce the burden on civil courts, and ensure better enforcement of corporate laws in India.

2. Constitution of NCLT (Section 408)

- Constituted by the Central Government.
- Functions as a quasi-judicial authority.
- It consists of a President and judicial and technical members.

2.1 Composition

- President: Appointed by the Central Government in consultation with the Chief Justice of India.
- Judicial Members: Must be or have been a judge of a High Court or a District Judge for at least 5 years.
- Technical Members: Must have experience in company law, accounting, management, or related fields.

3. Constitution of NCLAT (Section 410)

- Constituted to hear appeals against orders passed by the NCLT.
- Consists of a Chairperson, Judicial Members, and Technical Members.

3.1 Appointment

- Appointed by the Central Government in consultation with the Chief Justice of India.

3.2 Jurisdiction

- Appeals against orders of:
 - NCLT
 - Insolvency and Bankruptcy Board of India (IBBI)
 - Competition Commission of India (CCI)

4. Powers and Functions of NCLT

4.1 Adjudicatory Powers

- Has powers similar to a civil court under the Code of Civil Procedure, 1908:
 - Summoning and enforcing attendance
 - Receiving evidence

- Issuing commissions
- Reviewing decisions

4.2 Core Functions under Companies Act

- Oppression and Mismanagement: Adjudicates matters under Sections 241–242.
- Class Action Suits: Entertains suits filed by shareholders under Section 245.
- Company Incorporation: Resolves disputes relating to incorporation, alteration of MOA and AOA.
- Rectification of Register of Members (Section 59)
- Conversion of Public to Private Company
- Investigation: Directs investigation into company affairs (Section 210).

4.3 Powers under Other Laws

- Insolvency and Bankruptcy Code, 2016 (IBC): Acts as the adjudicating authority for corporate insolvency.
- Depositor and Shareholder Protection
- Revival and Rehabilitation of sick companies.

5. Powers and Functions of NCLAT

5.1 Appellate Authority

- Hears appeals from:
 - NCLT
 - IBBI
 - CCI (in some cases)

5.2 Scope of Jurisdiction

- Reviews questions of law and fact from NCLT orders.
- Ensures uniformity in legal interpretation across different benches.

5.3 Further Appeals • Appeal from NCLAT decisions lies to the Supreme Court, but only on a question of law (Section 423).

6. Significance of NCLT and NCLAT

- Efficiency: Quicker resolution of corporate disputes.
- Expertise: Specialized body with judicial and technical experts.
- Cost-effective: Reduces litigation costs for companies and stakeholders.
- Integrated Authority: Consolidates powers under Companies Act, IBC, etc.

7. Conclusion

The NCLT and NCLAT represent a significant reform in corporate adjudication in India. By providing specialized, speedy, and effective dispute resolution, these tribunals enhance corporate governance, promote investor confidence, and ensure smoother implementation of company law and insolvency frameworks.

Winding Up: Modes of Winding Up – By Tribunal (Court), Voluntary Winding Up by Members and Creditors under Insolvency and Bankruptcy Code, 2016

1. Introduction

Winding up is the legal process of dissolving a company, during which its assets are realized and liabilities paid off. The company ceases to exist after its name is struck off from the register of companies. The Companies Act, 2013 initially governed winding up, but after the enforcement of the Insolvency and Bankruptcy Code (IBC), 2016, most provisions were repealed and replaced under the new law.

2. Meaning of Winding Up

Winding up is the process through which a company's legal existence is brought to an end by liquidating its assets, paying off liabilities, and distributing the surplus (if any) to shareholders.

3. Modes of Winding Up (Post-IBC)

After the enforcement of IBC, 2016, there are two main modes of winding up:

3.1 Winding Up by Tribunal (Compulsory Winding Up)

Under Section 271 of the Companies Act, 2013. A company may be wound up by the National Company Law Tribunal (NCLT) on the following grounds:

- Inability to pay debts (now dealt with under IBC)
- If the company has acted against the sovereignty or integrity of India
- If the company has made a default in filing financial statements or annual returns for 5 consecutive years
- If the Tribunal is of the opinion that it is just and equitable to wind up the company

3.2 Voluntary Winding Up (Now Under IBC, 2016)

Earlier governed by the Companies Act, 2013, voluntary winding up is now covered under Section 59 of the IBC, 2016, applicable to corporate persons who are solvent.

A. Voluntary Winding Up by Members (Solvent Companies)

- Initiated when the company has no debt or is able to pay its debts in full.
- Requires a special resolution passed by the members in a general meeting.
- A declaration of solvency must be filed by the directors.
- A liquidator is appointed to carry out the winding-up process.
- Creditors are repaid and the surplus, if any, is returned to shareholders.

B. Voluntary Winding Up by Creditors (Insolvent Companies)

- Applies when the company is unable to pay its debts. • Initiated under Section 7, 9, or 10 of the IBC, 2016.
- Creditors (financial or operational) or the company itself can initiate insolvency proceedings.
- An insolvency resolution professional (IRP) is appointed.
- If resolution fails, company moves into liquidation, leading to winding up.

4. Role of NCLT under IBC

The NCLT acts as the adjudicating authority for corporate insolvency and liquidation under the IBC.

- It passes orders for winding up.
- Approves liquidation and distribution of assets.
- Ensures fair treatment of creditors and stakeholders.

5. Priority in Distribution of Assets (Waterfall Mechanism) Section 53 of the IBC, 2016

During liquidation, assets are distributed in the following order:

1. Insolvency resolution process costs and liquidation costs
2. Workmen's dues and secured creditors (unrealized security)
3. Employee dues (up to 12 months)
4. Unsecured creditors
5. Government dues and unpaid secured creditors
6. Preference shareholders
7. Equity shareholders

6. Significance of IBC in Winding Up

- Speedy resolution of insolvency and winding up
- Maximization of value of assets
- Ensures discipline and accountability
- Provides structured legal remedy to creditors and debtors

7. Conclusion

The process of winding up under the IBC, 2016 marks a modern shift in corporate dissolution in India. It provides a time-bound, creditor-friendly, and judicially regulated framework. The Tribunal plays a pivotal role in both compulsory and voluntary winding up, ensuring that the process is conducted fairly and in accordance with the law.