

Adjudicatory Bodies: NCLT & NCLAT

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Central Government constituted a quasi-judicial body National Company Law Tribunal on 1st June 2016.

NCLAT came into effect from 1st June 2016. On 21st July 2016, the Central Government also notified the National Company Law Appellate Tribunal (NCLAT referred to as Appellate Tribunal)

NCLAT is higher body for making any appeals against the order of NCLT.

Constitution of NCLT

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The Tribunal consist of one President and specified number of judicial and technical members as appointed by the government.

	President	Judicial Member	Technical Member
Qualification Section 409	A person who is or has been the Judge of High Court for 5 years.	A person who is or has been: i. a Judge of a High Court or ii. a Judge is a district judge for at least 5 years or iii. Has been an advocate of a court for at least 10 years.	A person who has been: i. as member of Indian corporate law service or Indian legal services or has been in practices as Chartered Accountant or Company Secretary or Cost Accountant for at least 15 years or presiding officer of labour court for at least 5 years or ii. a person of proven ability, integrity and standing having special knowledge and professional experience of not less than 15 years in industrial finance, industrial management. iii. is or has been a presiding officer of a labour court, Tribunal or National Tribunal constituted under the Industrial Dispute Act 1947.
Tenure (Section 413)	Attain age of 67 years or such for a term of five years from the date on which he enters upon his office; whichever is earlier.	Attain age of 65 years or such for a term of five years from the date on which he enters upon his office; whichever is earlier. Note: A person who has not completed 55 years of age shall not be eligible for appointment as member.	Age of 67 years or such for a term of five years from the date on which he/she enters upon office; whichever is earlier.

Constitution of NCLAT

- NCLAT consists of not more than eleven members and is headed by the Chairperson. It serves as a superior legal forum compared to NCLT. NCLAT is the also Appellate Tribunal for hearing appeals against the orders passed by Insolvency and Bankruptcy Board of India.

	Chairperson	Judicial Member	Technical Member
Qualification (Section 411)	Chairperson will be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.	A person who: <ul style="list-style-type: none"> • is or has been a Judge of a High Court, or • is a Judicial Member of the Tribunal for 5 years. 	A person of: <ul style="list-style-type: none"> • proven ability, integrity and standing having special knowledge and professional experience of not less than 25 years in industrial finance, industrial management & reconstruction, investment and accountancy or labour matter etc.
Tenure (Section 413)	Age of 70 years or such for a term of five years from the date on which he enters upon his office; whichever is earlier.	Age of 67 years or such for a term of five years from the date on which he enters upon his office; whichever is earlier.	Age of 67 years or such for a term of five years from the date on which he enters upon his office; Whichever is Earlier.

Jurisdiction of NCLT

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The jurisdiction of the National Company Law Tribunal (NCLT) refers to the extent of its authority and legal power to hear and decide matters related to company law and insolvency proceedings.

- a) Territorial jurisdiction: The NCLT before which the application is to be filed depends upon the location of registered office of the debtor.
- b) Monetary jurisdiction: refers to the authority of the tribunal to hear cases based on the value of the subject matter involved. NCLT, Principal Bench can take up cases of the companies having the paid-up share capital of more than Rs. 50 Lakhs or for any other matter which shall be notified by the Hon'ble president of the NCLT.
- c) Any appeal against the order of all the NCLT benches shall be filed at NCLAT situated at New Delhi.

Jurisdiction of NCLAT

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- (i) An appeal can be filed to the Appellate Tribunal within 30 days of the order of NCLAT.
- (ii) Tribunal may extend the period by another 15 days if the person was prevented from filing the appeal within 30 days.
- (iii) The Appellate Tribunal checks the evidence provided to the Tribunal. Accordingly change or confirm or modify the order.
- (iv) Appellate Tribunal has to send a copy of the order to the Tribunal and all the parties to appeal.
- (v) No appeal to the Appellate Tribunal is possible if the order is made with the consent of the parties.
- Appeal to the Supreme Court: Any person aggrieved by the order of Appellate Tribunal may file an appeal to the Supreme Court within 60 days of the receipt of the order. This period may be extendable by another 60 days if the person was prevented by sufficient cause to file within time.
- Benches of Appellate Tribunal: There is only one bench of Appellate Tribunal which is located in New Delhi.

POWERS OF TRIBUNAL AND APPELLATE TRIBUNAL

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- I. Power to determine procedure: Bound by the procedure laid down in the Code but shall be guided by the principles of natural justice. Have power to regulate their own procedure.
- II. Powers as a civil court: Enjoy the same powers on the following matters:
 - a) Summoning and enforcing the attendance of any person and examining him on oath;
 - b) Requiring the discovery and production of documents;
 - c) Receiving evidence on affidavits;
 - d) Issuing commissions for the examination of witness or documents;
 - e) Dismissing a representation for default or deciding it ex parte;
 - f) Setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
 - g) Any other matter which may be prescribed.
- III. Execution of an order:
 - a) The Tribunal and Appellate Tribunal may send its order for execution of to the court within the local limits of whose jurisdiction the registered office of the company is situated against whom the order is issued or in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.
 - b) All proceedings shall be deemed to be judicial proceedings.
- IV. Power to Punish for Contempt: Any contempt of an order of the Tribunal, they shall have the same powers and authority to punish for contempt as the High Court.
- V. Power to seek assistance of Chief Metropolitan Magistrate etc.: The tribunal may seek the help of Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector for the purpose of taking into custody of property, books of account or other documents, in case of any proceeding relating to winding up of a company, rehabilitation of a sick company.

Winding up

Companies Act 2013 provides only one mode of winding up, that is, winding up by the Tribunal.

The concept of voluntary winding up has been removed from the Companies Act which now comes under the Insolvency and Bankruptcy Code (IBC) 2016.

Therefore, there are two methods of winding up a company in India:

- 1. Winding up by the National Company Law Tribunal (NCLT)
- 2. Voluntary winding up [Insolvency and Bankruptcy Code 2016]

Compulsory Winding up

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Winding up by the Tribunal is a legal process in which National Company Law Tribunal (NCLT) orders a company to close down its business operations and liquidate its assets. The Tribunal may appoint a liquidator to take charge of the assets of the company and distribute the proceeds among the creditors and members.

Circumstances in which Company may be Wound Up by Tribunal.

- special resolution to wind up the company
- if the company has acted in ways that are opposed to the interests of India's sovereignty and integrity, state security, friendly relations with foreign countries, public order, decency, or morality;
- if the Tribunal believes that the company has been operating fraudulently, or was established for illegal or fraudulent purposes, or that those involved in the formation or management of its affairs have engaged in fraud, misfeasance or misconduct in connection with the company;
- if the company has failed to file its financial statements or annual returns with the registrar for five consecutive financial years;
- if the Tribunal deems it just and equitable to wind up the company. This relies to the wisdom and discretion of the Tribunal.

If the Tribunal believes that the petitioners have other remedies available to them other than winding up and petitioners are unreasonably seeking the company winding up instead of pursuing those remedies, then Tribunal may not grant the order of winding up.

Voluntary Winding up

- The Insolvency and Bankruptcy Code (IBC), 2016, governs the voluntary winding up process. A corporate body can liquidate itself voluntarily if it has not committed any default.
- If the company is solvent, it may be wound up voluntarily by passing a special resolution to that effect. The company should appoint a liquidator, who shall take charge of the assets of the company, realize them, and distribute the proceeds among the creditors and members.

Thank You