

A STUDY ON THE IMPORTANCE OF NATIONAL COMPANY LAW TRIBUNAL IN INDIA

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ABSTRACT

National Company Law Tribunal (NCLT) is a quasi judicial body which takes care of the disputes arising out of the company. It is the most important jurisdiction of the company as the integral part lies towards maintaining the peacefulness of the company by settling the dispute. Since the industrial revolution and after independence the growth of the Indian economy as well as its approach towards company has gained importance and India is on the stage of being a developed country. Under Companies Act 2013, the National Company Law Tribunal was established by the central government with the view of settling down the companies dispute within a limited frame time and which is also estimated to be of less expensive while compared to others. The judgement framed by the National Company Law Tribunal can be appealed to National Company Law Appellate Tribunal. National Company Law Appellate Tribunal (NCLAT) is an appellate body which has the power to appeal the decision of National Company Law Tribunal but the decisions of national company law appellate tribunal can be appealed by the Supreme Court . The National Company Law Tribunal has replaced Company Law board . Under companies act 1956 the company law board was established to take care of the company disputes as it was said to be less sufficient thus it was replaced by the National Company Law Tribunal in India. Under Section 408 Of companies act 2013 the National Company Law Tribunal was formed and this research paper focuses on the importance of the National Company Law Tribunal and national company Law appellate tribunal to settle down the disputes arising from the company.

METHOD- This research paper has been made in a analytical and descriptive form in a sense that the issues has been resolved into elements and constituent parts not only that but also the structure of the issue has been described and classified.

RESULT - This research paper has been divided into 2 elements where the establishment of the NCLT and NCLAT its power and the effective role played by it has been discussed.

CONCLUSION- The main problem faced by the nclt is its inefficiency to solve the corporate dispute within a framed time. For speedy disposal of case proper implementation must be done by the central government.

KEYWORDS: Company, Tribunal , dispute, National Company Law Tribunal , national Company Law appellate tribunal, Company Law board, companies act 1956, companies act 2013.

INTRODUCTION:

This study mainly concentrates on the importance of the National Company Law Tribunal to control the dispute arising out of the company. The companies act has undergone several changes and now companies act 2013 is playing the key role . Under companies act 1956, Section 10f company law board was formed in order to resolve the company disputes which was later replaced by the National Company Law Tribunal in India . As the individuals approach toward the company is vast it needs its standard of own jurisdiction to resolve the dispute effectively within a limited frame time and less expensive. The national company law board is very beneficial to the shareholders, partners of the company and even to general people as if the dispute is arisen it is easily settled down. Section 408 of companies act 2013 is a virtue under which National Company Law Tribunal was formed by the central government . (Dignam & Lowry2016)(secretary2017)

The National Company Law Tribunal has dragged the attention of the country and many others as they described it with their own views towards it . The other authors research concludes that the National Company Law Tribunal is beneficial to the general population who are seeking for justice . The procedure towards the approach of this tribunal is different when compared to

other tribunals, where the National Company Law Tribunal stands to be more speedier and simpler and raises its own standards to resolve the dispute within a framed time . The main aim of the National Company Law Tribunal is to dissolve the corporate dispute . The national company law Tribunal is said to give instant remedy to maintain peace in the company and to have an efficient free flow of company management . In spite of several advantages of the national company law Tribunal there are also some mere disadvantages which were concluded by the authors as the NCLT is not efficient to close the dispute within a limited frame time but some other authors also have given their opinion that the effective administration of nclt and nclat may lead to effective settlement of Company disputes within a limited frame time . (Tyagi & Kumar 2003)(Anon 2016)

All the research by previous authors denotes the importance of the National Company Law Tribunal and its way of resolving dispute effectively . As the companies act as undergone several changes right from the date it formed till now , so this denotes that the government is playing prior role in developing the companies standard by resolving its dispute . Authors around the world has suggested that the National Company Law Tribunal needs to play more role in the resolution of the corporate dispute this means nclt is on the verge of being more effective when compared with Company Law board . This also drags me to the conclusion that the NCLT is not effective to the core as still there are many cases – matter relating to disputes are still pending in national Company Law Tribunal and national Company Law appellate tribunal.

The aim of this study is to analyse the role of national company law tribunal and national company law appellate tribunal in India and to find out the importance of the same.(Saharay 2008)

HYPOTHESIS:

The formation of NCLT plays an important role in the settlement of company dispute.

MATERIALS AND METHODS:

This research has been done only based on secondary sources which includes, books , journals , articles , blogs , websites and e-sources relating to National Company Law Tribunal in India.

Several books has been referred in order to understand the concept of the NCLT and NCLAT .

1) Company law in India part 1 , Sandeep Bhalla , IE Books inc. 2016

This book denotes that the national Company Law Tribunal has replaced Company Law board under companies act 2013. The National Company Law Tribunal as similar power as that of high court and nclt is also known as Company court. Section 407 to 434 Of companies act 2013 deals with nclt and nclat to dissolve the dispute arising out of corporate. This books also describes the national company law appellate tribunal which has power to appeal the decision of nclt.

2) India 2018: A reference annual, New media wing, Publications Division Ministry of information & Broadcasting, 2018

This book describes about Nclt with a view towards Company Law. The nclt and nclat was constituted in 2016. It provides faster resolution of corporate disputes . The company law board was dissolves after the formation of nclt. The cases pending in CLB was transferred to nclt. Insolvency & Bankrupting Code 2016 gave power to nclt to effectively dissolve insolvency and bankrupt disputes.

3) The companies act , 1956, Universal Law Publishing , 2010

A part of this book specifically deals with the members of nclt. This tribunal consist of president, judicial members, technical members. The qualification of these members for appointment is clearly given. Thus also states that no civil court has jurisdiction to refer for the matters referred in the tribunal. Nclat is an appellate tribunal which consist of a chairperson & not more than 2 members appointed by central government.

4) India 2016: A reference annual, New media wing, Publications Division Ministry of information & Broadcasting, 2016

The company law board has been described as quasi judicial body. Section 10F of the companies act 1956 deals with the CLB. Later the companies. Act 2013 replaces CLB & brought Nclt and nclat . Which exclusively deals with the dispute regarding companies. This protects the partners, shareholders, promoters from getting into trouble. In a short span of time it resolves dispute relating to insolvency and bankrupts.

5) Business law for managers, Prof. (Commodors), P.K Goel, Dreamteh press, 2006

The function and power of nclt has been defined in this book. Relief for oppression and mismanagement, winding up the business has been made easier . The companies amendment act has given power to the high court to transfer the cases of company dispute pending in high court to nclt .

6) Law ethics & comm-for CA – IPCC, Jolly, Tata MC Graw hill education.

The nclat has power to hear appeals against the order of nclt . The decisions of nclat can be appealed to Supreme Court . The nclt has all power as that of high court in-order to solve the disputes.

7) Indian Supreme Court On insolvency Law, Ketan jay , Ketan jay publication.

The nclt has adjudicating authority. Nclat cannot reverse the order of nclt is the order passed by nclt is not in contrary. But if the case goes for appeal then nclt will be bound by nclat order. This book states the power to appeal when it comes to the matter of contrary.

8) Law & Economics in India : Undertaking & Practice , Bimal N. Patel , Routledge , 2016

The 2nd amendment in Company act gave life to nclt and nclat over Company Law board . It deals only with dispute relating to corporate governance. Before nclt the disputes were divided between high court and CLB but now only nclt . The nclt has power of both high court and CLB.This also helps in time management & speedy disposal of case.

9) The Oxford handbook of the Indian constitution, Sujit choundary , Oxford university press, 2016

Many tribunals were created by the government. The nclt gives rise to a beneficiary tribunal for corporate sector. In order to resolve the dispute the nclt has special power as that of high court which was challenged as unconstitutional but all these views were overruled by the Supreme Court denoting nclt to be constitutional.

10) Advanced Accounts Vol-2, S.C. Gupta, S. Chand Publishing, 2008

This book states that company is creation of law and it can end only through the process of law. This book further states the importance of nclt in order to solve the dispute of company . The CLB was replaced by the nclt and through this nclt came into force . This book deals with both CLB and nclt . The nclt was challenged by many courts but Supreme Court overruled all the views by stating nclt is not violating any said principles.

CASE ANALYSIS:

UNION OF INDIA v. R. GANDHI [2010 11 SCC 1]

FACT :

In this case the constitutional validity of the national company law tribunal and national company law appellate tribunal was challenged as the absolute power of solving the dispute was given to high court . Hence the formation of NCLT and NCLAT violates the basic structure of constitution has it is against the concept of separation of powers .

CONTENTION:

The contentions that were arising are:

- i. The parliament has no power to vest the main judicial function of the high court to the tribunal
- ii. Violation of separation of power has been raised due to transferring company disputes ultimately to the NCLT which was vested in high court.
- iii. No difference between NCLT and Company Law board
- iv. Formation of NCLT and NCLAT is affecting the constitutional validity of the companies act 1956

CONTENTIONS EXPLAINED:

The Madras Bar Association's contentions explained :

- i. The parliament has no power to vest the main judicial function of the high court to the tribunal (nclt)

In this the Supreme Court clearly states that the parliament has extreme power to vest the judicial power to the tribunal which was performed by the high court with the knowledge of the approval of high court for maintaining and solving certain disputes as upheld under the companies act .

ii. Violation of separation of power has been raised due to transferring company disputes ultimately to the nclt which was vested in high court.

The Supreme Court held that there no violation of separation of powers arising . The entire company jurisdiction of high court is given to the nclt . In case law Union of India vs Delhi High court bar association the constitutional validity of the recovery of debts due to bank and financial institutions act was given to a tribunal to perform its function narrowly, therefore in the case of nclt there arises no violation of separation of powers.

iii. No difference between nclt and Company Law board

Another contention arisen by the Madras Bar Association is that the formation of nclt and nclat is useless because it is as same as the company law board and the nclt's replacement of company law board was also useless .

The Supreme Court held that the aim of both theses bodies may be same but their nature differs.

The nclt and nclat has extra beneficial qualities in it –

- To reduce the prolonging period of disputes – winding up process to 2 years
- To reduce the litigation process of going to appeal in high court which prolongs the dispute.
- Nclat is given ultimate power to appeal so the victim can approach the nclat instead of going to appeal in high court
- The high courts burden is reduced as the cases pending in Company Law board will be transferred to nclt .

Therefore there is a huge difference between CLB and NCLT.

iv. Formation of nclt and nclat is affecting the constitutional validity of chapter 1B and 1C of the companies act 1956

The appointment of technical members as said in the companies act under these Tribunal was said to be followed the corrective measures like their qualifications must be followed.

The Union of India accepted that there were some defects in the mentioned provision – chapter 1B and 1C and the Supreme Court held that it would amend those defective parts to bring the constitutional validity of the nclt.

CONTENTION EXPLAINED THROUGH OTHER CASES:

S.P. Sampath Kumar v. UOI AIR 1897 1 SCC 124

[Contention 1] – The main judicial function of the high court is not given to the tribunal as both of them are different in nature.

In this case the Supreme Court clearly held the difference between high court and tribunal. The high court of the state generally deals with every issues taking place in that state but whereas the tribunal is said to be established under certain statute deals with the particular issue which takes place under that statute .

Rai Sahib Ram Jawaya Kapur v. The State Of Punjab AIR 1955 (2) SCR 225

[Contention 2] – The Indian constitution is said to be neither rigid nor flexible but it is moderate. The separation of powers is said to be moreover flexible which means one organ cannot completely encroach on the other organs power but it can to a limit .

JUDGEMENT:

The Supreme Court held that the formation of nclt and nclat is constitutionally valid as there is no violation of separation of powers and it also held that the prescribed format of appointment of technical members should be followed and for the appointments of members , president, chairperson and vice chairperson the selection committee must be prescribed.

RESULT OF THE STUDY:

The establishment of national company law tribunal and national company law appellate tribunal in India and its power as been researched as an outcome the NCLT has been categorised as the most important feature that a corporate sector should have. The effective role played by the NCLT and NCLAT has been further discussed in this research paper.

THE ESTABLISHMENT OF NATIONAL COMPANY LAW TRIBUNAL AND NATIONAL COMPANY LAW APPELLATE TRIBUNAL IN INDIA AND ITS POWER.

The Central government is responsible for the establishment of the National Company Law Tribunal and the National Company Law Appellate Tribunal in India . The NCLT arises only after the replacement of Company Law board . The several other provisions under the

companies act 2013 deals with the members of NCLT and NCLAT such as the president, technical members, judicial members, chairman, vice chairman etc. The qualification of these members are been strictly followed . The companies act has gone through several amendments and the major changes where brought down by the companies act 2013 which vested the judiciary power to the companies . Thus the NCLT is a quasi judicial body, there were many criticisms faced by this body but still after breaking all these barriers the NCLT has upon its strong base. (Anon n.d.)(Tyagi & Kumar 2003)

The NCLT has similar power as that of high court and central government as it has its own procedure to follow. The NCLT and NCLAT is not governed by the Cr.pc but by natural justice . Both the parties are being heard and given time to produce evidence. The civil court has no power to solve the corporate dispute as it is being solved under NCLT. (Jells 2011)

The company law board did not have a separate jurisdiction for appeal if any party is aggrieved by the judgement of CLB then he has to go for appeal under high court which resulted in prolongation Of time and said to be more expensive . But whereas the NCLT has its own jurisdiction of appeal – NCLAT – National Company Law Appellate Tribunal. The NCLAT is exclusively meant for the appeal . In this case if any party is aggrieved of the decision of the nclt then he would be liable to go for appeal against nclt in nclat and not under high court this reduces the prolongation Of time to settle down the dispute . If the aggrieved party thinks he didn't get proper justice then he can go for appeal in Supreme Court.(Cohen 1951)

Both the NCLT and NCLAT plays an important role in rendering speedial justice in a less expensive way. The nclt has some specific power to deal with the problem more efficiently. The nclt and nclat unlike Company Law board concentrates on a specific area in order to promote and safeguard the interests of shareholders, promoters, creditors, etc. (Dignam & Lowry 2016)

Powers vested in National Company Law Tribunal:

Protects the interest of members (Worthington 2016)

The nclt not only protects the interest of the stakeholders, shareholders, promoters but also the non promoters as they were the backbone of the company. And as it is mandatory for corporate world to protect its own people from harm the nclt has been established in a way were it could completely give protection and faith to the corporate members(Anon n.d.)

Relief to investors (Worthington 2016)

The nclt provides relief to its investors for the fraud committed by the management . In case of fraud arising in the management then the investors won't be made liable if they are not a part in that fraud . Thus in this way the nclt focuses on the investors and also it provides compensation to them .(Anon n.d.)

De registration of the company (Shehzad 2010)

The other powers of nclt is to take away the registration of a company in case if the company is found to be having more members than required or if the company is said to be bound by any illegal activities or any illegal association. Thus nclt protects the inner peace of the corporate world.

Other powers (Hannigan 2015)

Under nclt the process of winding up of a company has been made more easier instead of prolongation of time . The conversion of the company from public limited to private limited is also made easier . (Parkinson 1995)

The nclt not only solves corporate dispute but also helps the company to lead their business peacefully.

THE EFFECTIVE ROLE PLAYED BY NATIONAL COMPANY LAW TRIBUNAL AND NATIONAL COMPANY LAW APPELLATE TRIBUNAL.

The National Company Law Tribunal and National Company Law Appellate Tribunal was created by the central government. NCLT is same as a court which has the power to decide , dissolve the dispute and give judgement . But nclt deals only with dispute relating to corporate sector and none other than that . Nclt is following the principles of natural justice rather than Cpc and Crpc . The role of the nclt is to solve the civil corporate dispute which means it does not deal with criminal dispute in regard with corporate. (Anon 1973)

The effective steps are taken by the nclt to dissolve the dispute within a framed time and to render proper justice through natural justice principle. Once a case is filed under National Company Law Tribunal then the nclt would perform its duty like any other Court by analysing the facts , collecting evidence , hearing both the parties as per natural justice , and finally coming into conclusion by imposing penalty.

(Tyagi & Kumar 2003)The nclt is focusing on the promoters , shareholders, investors, members of the company as they are the person in priority for the proper functioning of company. The winding up process of the company has also been made easier so that aggrieved party won't be suffering more. This doesn't mean the nclt completely focuses only on the welfare of company business by disowning others . The nclt has also has other powers like deregistering a company if the company is found to be engaged in any illegal activities or illegal association by employing more members than needed.

The NCLAT is also known as appellate tribunal which corrects the mistake of the nclt . The decision of the appellate tribunal shall be further appealed by the Supreme Court. The nclt has ground level jurisdiction whereas the nclat has appellate jurisdiction . The nclt would give order and derives into conclusion whereas the nclat would review the order of nclt . But both of these bodies plays an important role in rendering justice . (Parkinson 1995)

COMPARATIVE STUDY:

National Company Law Tribunal compared with Company Law Board
(Bhalla 2016) (Jones 2017)

The judicial power was given to the companies under companies act 1956 in order to solve the company disputes with the interest of protecting promoters, shareholders , creditors from facing loss and difficulties. The Company Law Board was formed which had powers of the court and known as quasi judicial body . The CLB had its own procedure of solving disputes and maintaining peace in the corporate world. It had four branches all over India to perform its function effectively. The principle of Natural Justice has been followed. If any party is aggrieved by the decision of the CLB then he can go to appeal in high court. But the company law board was later replaced by the national company law tribunal in 2013 . The reasons were the the CLB was continuously facing more difficulties in handling disputes and it was very complicated as the CLB was missing various important jurisdiction. (Mittal 1978)

The aim of both CLB and NCLT are same – to dissolve the corporate dispute and to maintain peace in the society . But the formation of NCLT has brought some extra beneficial – to solve the dispute within a framed time and the NCLAT has appellate jurisdiction which means if any party is aggrieved by the decision of NCLT then he can go to appeal in NCLAT. (Backhaus n.d.)

The NCLT has 11 branches all over India and it is playing a better role in solving the companies disputes. There lies a thin line of difference between the company law board and national company law tribunal but the NCLT prevails over CLB due to its proper administration and functions.

CONCLUSION:

The formation of national company law tribunal and national company law appellate tribunal has been playing an important role in dissolving the corporate dispute. It has been denoted as beneficiary in the eyes of law to give some special protection and care to the corporate side (Bowman 2011) as the countries, financial growth depends on the growth of the business . In order to have an healthier corporate governance the nclt has been established. (Jones 2017)

(Jones 2017; Petrakis 2015)

There has been marked a change in the companies sector due to the formation and effective function of the nclt and nclat . And it was also further held that there would be no violation in separation of powers as only a limited power has been given to the company as upheld in UNION OF INDIA v. R. GANDHI [2010 11 SCC 1] . And the constitutional validity was given to the nclt in this case for maintaining the inner and outer peace of the company sector.

The formation of nclt would have played an important role in the settlement of company dispute if it was implemented effectively and administered properly. The main problem faced by the nclt is its inefficiency to solve the corporate dispute within a framed time . For speedy disposal of case proper implementation must be done by the central government.

RECOMMENDATIONS:

From the researchers point of view the only reason why the cases are still pending is due to the less branches available for nclt . The sources conclude that there are only 11 branches for the nclt . And there should at least be 2 or more branches in a state where the corporate sector is said to be high so that cases won't be pending beyond its framed time. And also the time limit for each case should be strictly followed .

HYPOTHESIS PROVED OR DISPROVED ?

The hypothesis has been proved because the formation of NCLT plays a leading role in solving corporate dispute but it takes time to solve the dispute.

As stated before the NCLT need to have more branches so that it can work more effectively in order to solve the issue efficiently. The percentage of corporate dispute evolving has been simultaneously reduced due to the establishment of NCLT but the time limit mentioned for each case has not been followed thus due to evolvement of more branches of NCLT this can be solved.

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