

12. APPLICATION, PETITION, APPEALS Under Co. Act. 2013

Tribunal : NCLT & NCLAT
Cases.

NCLT RULES :

petition, Application, appeal, counter order, caveat

Rule 20: Procedure of NCLT P/A/A/C

1. Format :

- P/A/A/C filed to NCLT shall be in english language & if not → should be translated.
- Each page should
 - paginated
 - indexed
 - stitched.

2. Cause title :

- must be mention → " Before NCLT " & the Bench before it is presented.

3. Mention the provision of law :

↳ to which case is related to.

4. Paragnaphed

5. DATE

6. Description & No. of parties.

Rule 23: Presentation of P/A/A/c.

1. **Presentation in Triplicate:**
All docs → 3 copies → to tribunal
by himself | authorised rep/lawyer.
2. **Verification:**
All attached docs, shall be verified by AR/ Auth. Rep. / Advocate
that they match original copies.
3. **Document with Index:**
4. **Additional copies to all other parties**
5. **Serving copies:**
→ in pending matters, any applicatⁿ
shall be presented only after serving copies in advance to
other parties
6. **Processing fees as may be prescribed.**

Rule 25: Lodging of caveat:

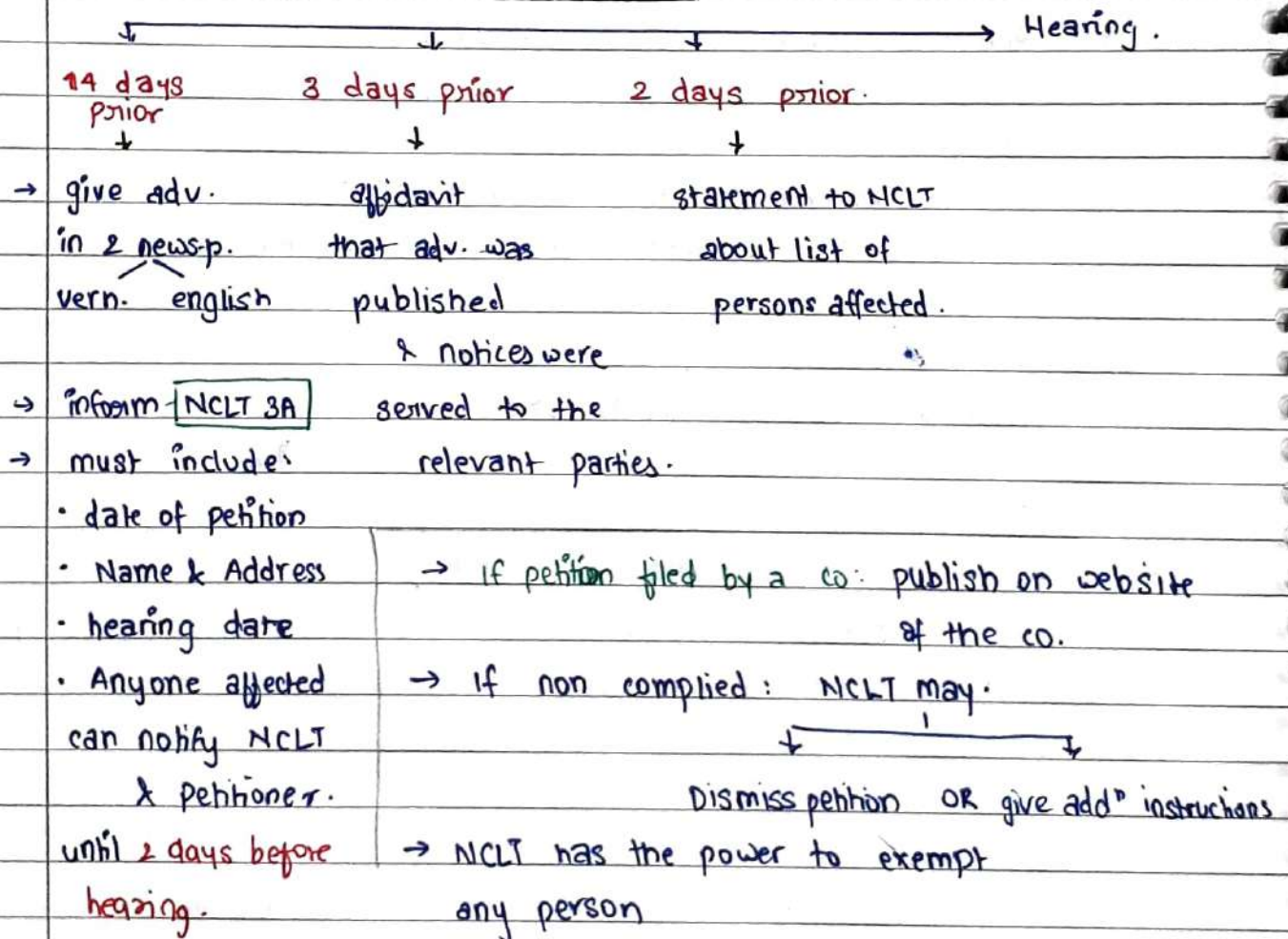
1. If you think someone might file a case against you in NCLT, caveat can be filed to NCLT before hand so that you get protection from ex-parte orders.
2. **How to lodge?**
3 copies to NCLT → Pay fees → send copies to of caveat
to party who might file a case.

3. Form NCLT - 3C : shall include:
- order that might be challenged.
 - details of party who may file case.
 - full address for communication.

4. can pass interim order in urgent cases.

5. validity → 90 days.

Rule 35 : Advertisement of P/A/AIC :



Rule 37: Notice to opposite Party:

1. NCLT to send notice in form NCLT-5 to opposite party to show cause on the hearing date.

hearing date: if appeared

→ by himself or
auth. Rep

→ reply with Affidavit

→ send copy of reply
in advance to petitioner.

if not appeared
↓
ex-parte.

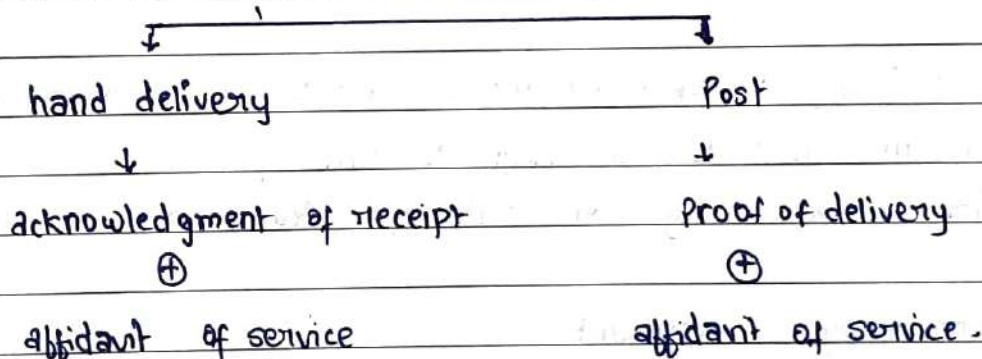
Rule 38: Service of Processes of

Rule 38: service of Processes and Notices:

1. notice shall be secured in following manner:

- email
- hand delivery
- post [only registered post] or speed post.

2. Proof of service:



3. substituted service:

- if address cannot be determined
- NCLT may direct ss
- Any method which is fair and convenient.
eg: newspaper.

4. service → sent to Auth. Rep → proper service.

Rule 39: Production of Evidence Affidavit.

1. NCLT may ask direct any person to give evidence by affidavit
2. If necessary for natural justice, NCLT may allow **cross examination** of the person eg. through video conferencing
 ↳ FORM NCLT-27

Rule 40: Production of Additional evidence before the Bench

1. generally if a party has evidence during the investigation by central govt appointed inspector but did not present it during investigation; later cannot bring it in NCLT proceedings.
except: NCLT Bench thinks that:
 - additional evidence is necessary to make informed decision.
 - This allowed only if inspector did not give enough opportunity to present evidence during investigation.
2. any new documents / evidences admitted must be shared with all parties so that they may have a ~~chance~~ chance to rebut

Rule 41: Filing of Reply & other Documents by Respondents.

→ respondent shall file a reply to the petition:
 either **personally** or **through Auth. Rep.**

→ ⊕ send copy to applicant

→ reply must
 admit
 ↙ deny
 ↘ rebut
 } facts in petition

Rule 42: Filing of Rejoinder:

→ The respondent may state any addⁿ facts as may be necessary for decision of case. In this case the bench may allow the petitioner to file a rejoinder.

Rule 43: Power of the Bench to call for further info / evidence:

1. Bench can ask any party to provide extra evidence on documents if:

↓
needs to verify the truth.

↓
needs more info to make proper decision on case.

2. Evidence shall such as:-

- a. - e-mail
- BOA
- written communications
- contracts etc.

} must be as per relevant laws.

- * 3. In case of petition of oppression & mismanagement

↓
any party alleges on forged / fabricated docs

↓
can apply to the Bench for forensic examination.

↓
Then docs will be sent to Central Forensic Science Lab. for investigation.

↓
cost shall be borne by applicant & Bench may also reject the application for forensic examination, if no valid reason to allow it.

Rule 45: Rights of a party to appear before NCLT.

→ any person can appear $\begin{cases} \text{personally or} \\ \text{Auth. Rep.} \end{cases}$

↓

must have $\begin{cases} \text{vakalatnama} \\ \text{MOA.} \end{cases}$ } FORM NCLT-12

→ The CG/RO/ROC → can authorise an officer or advocate to appear before NCLT

↓

not below the rank of

$\swarrow \quad \searrow$

Junior time scale officer or Company Prosecutor

→ NCLT may request ROC for info about company's affairs from MCA

→ No audio-visual recording of Bench proceedings by any party or Auth. Rep.

Rule 48: consequence of non-appearance of applicant:

1. → on the date of hearing, the applicant did not appear. NCLT will.

↓

dismiss the case

↓

can apply for restoration within 30 days.

↓

hear & decide on merits

↓

case cannot be re-opened

Rule 49: Ex-parte Hearing & Disposal:

1. On the date of hearing the respondent did not appear:

NCLT will:

adjourn

pass ex-parte

↓

respondent may apply for ~~set~~

↓ set aside ↓

Here
there are
joint
respondents.

If the ~~ex~~ ex-parte order cannot
be set-aside for one respondent,

It may be set-aside for others.

Rule 53: Substitution of legal Representative:

If any party dies/insolvent during proceedings:

case won't abate ↓

→ It will be continued by or against the prosecutor
on legal rep if application made ~~at~~ within 90 days of event.

→ if failed within 90 days → case will abate

↳ except if NCLT has good sufficient reasons.

Rule 61: Amicus Curiae: "friend of the court"

1. NCLT at its discretion permit anyone to tender or communicate
views to NCLT as friend of court. on any point as
may be assigned to amicus curiae.

2. Amicus curiae shall have access to the pleadings.

3. Expenses informing amicus curiae shall be borne by either
or both of the parties.

4. The final judgement shall be transmitted to the parties and amicus curiae.

NCLAT RULES

Rule 101: Supreme Court orders before NCLAT:

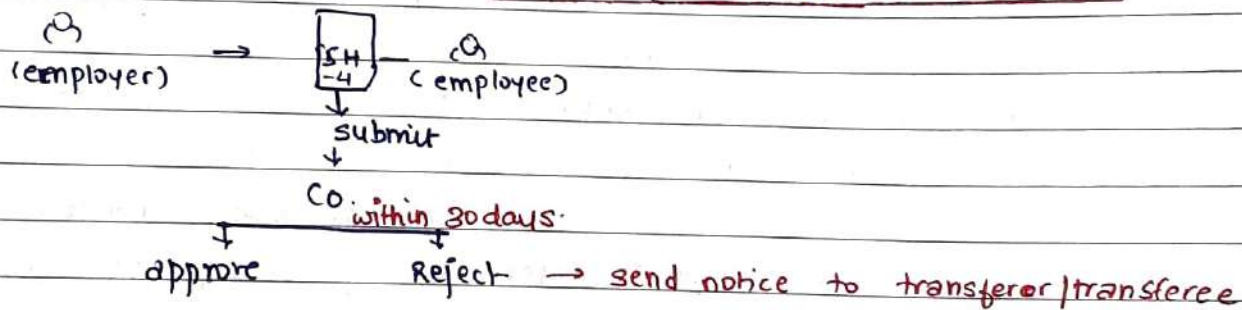
1. If SC passes order against NCLAT decision then.

such decision shall immediately brought to the attention of & must ensure the necessary actions are taken to comply with such order of SC.
Chairperson or members of NCLAT

Section 58: Refusal to ^{register} transfer of shares:

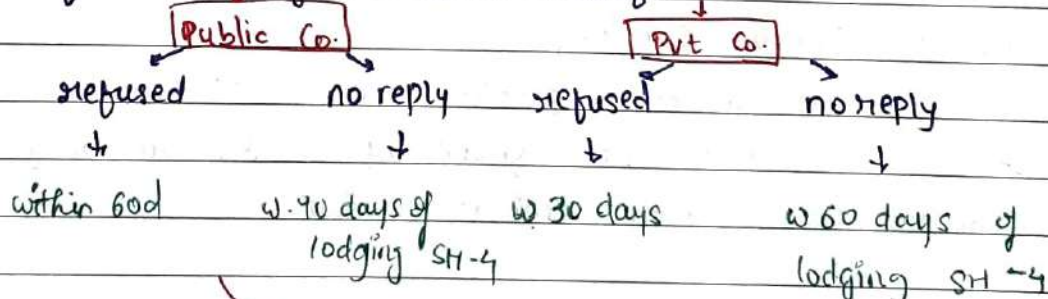
Phase - I :

ONLY TRANSFEREE CAN FILE APPEAL

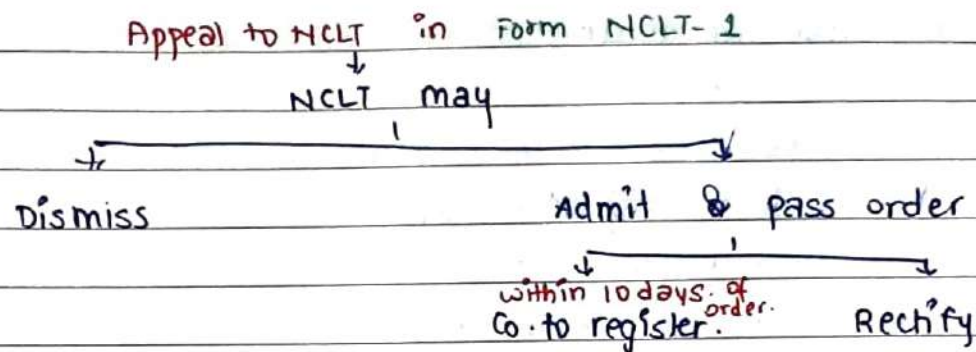


Phase - II:

Refusal to register share transfer



↑
appeal to NCLT in form NCLT-1.



Case study: Gujarat Machinery Manufacturers Ltd V. Nile Ltd. (Khudke man se)

⇒ Refusal to register share transfer shall not be arbitrary.
The co. shall have a sufficient cause along with a reason to refusal.

Sec 59: Rectification of Register of Members:

Appeal to NCLT. If:

ROM. → entered name unjustly
→ did not enter name
→ unjustly delaying to enter the name.

Appeal in Form NCLT-1. ↓

He may decide upon:

↓

name entry
into ROM

↓

omit
from ROM

↓

any incidental
matter.

or

Proforma of Appeal:

1. 1. Appeal v/s 58 or 59
2. 2. must file NCLT-1 ← legal paper margin →

Left & top → 1.5 inch

Right & bottom → 0.5 inch.
3. 3. All pages must be numbered & index
4. 4. must sign all pages
↳ sign & stamp last page (if any).

5. Supporting documents of NCLT-1:

i. If petitioner is a company:

- copy of MOA & AOA
- Latest BS/PL/AR/BR
- extract of ROM
- copy of Board Res.
- NCLT-6 Affidavit → Verifying the petition.
- NCLT-12 vakalatnama

ii. If petitioner is any other person:

- Documentary evidence → a copy of letter sent to the co. requesting transfer.
 - Any document returned by Co.
 - other Supporting documents
 - NCLT-6
 - NCLT-12
 - copy of fees receipt (fees of NCLT)
- • Serve copy of appeal to company

6. 2 extra copies.

Sec 97: Power of NCLT to call AGM.

- i. If failed to take AGM u/s 96
Any member: can apply to NCLT for conducting AGM.

↓

So, here → one person ↗ in person or
↘ proxy

↓

forms a valid quorum

Sec 98 : Meeting other than AGM by NCLT.

Any Member | Director | NCLT suo moto :

can apply to NCL for conducting meeting other than AGM

↓
So, here one person $\begin{cases} \text{in person} \\ \text{proxy} \end{cases}$

↓
forms a valid quorum.

APPLICATION OF COMPOUNDING :

* Compounding : Sec 414

1. → Compounding means to settle a matter by a money payment in lieu of other liability.

2. Offences eligible for compounding:

offences punishable with $\begin{cases} \text{fine only or} \\ \text{fine or imprisonment or} \\ \text{Both.} \end{cases}$

3. Who can compound:

↓
RD

↓

if fine upto ₹ 25 lacs

↓
NCLT

↓

if fine exceeding ₹ 25 lacs.

4. conditions for compounding:

↓
amt paid for compounding shall not exceed max. fine amt.

↓
Any addⁿ fees paid shall be taken into consideration

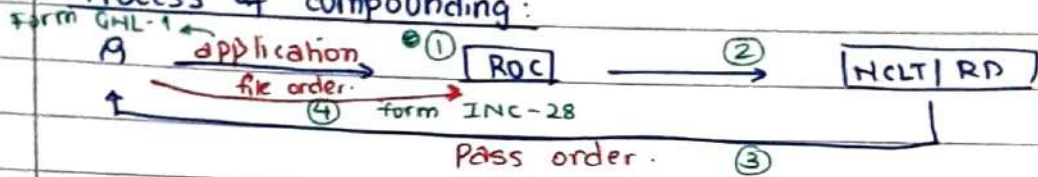
↓
if investigation is pending
↓

No. compounding.

5. Repeat compounding prohibited:

- similar offence committed within 3 years span.
 - ↳ No compounding.
- After 3 years → will be considered as 1st offence.

6. Process of compounding:



7. Prosecution:

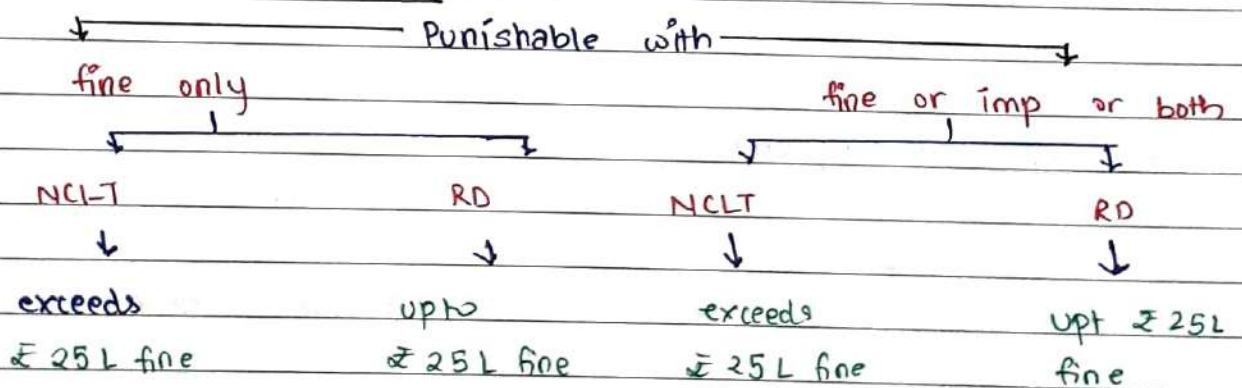
No prosecution
after compounding

Prosecution already started

↓
court will discharge offender
after receiving notice of
compounding.

Q

Who Will Compound?



with prior approval of
special court.

Procedure for Compounding of offence:

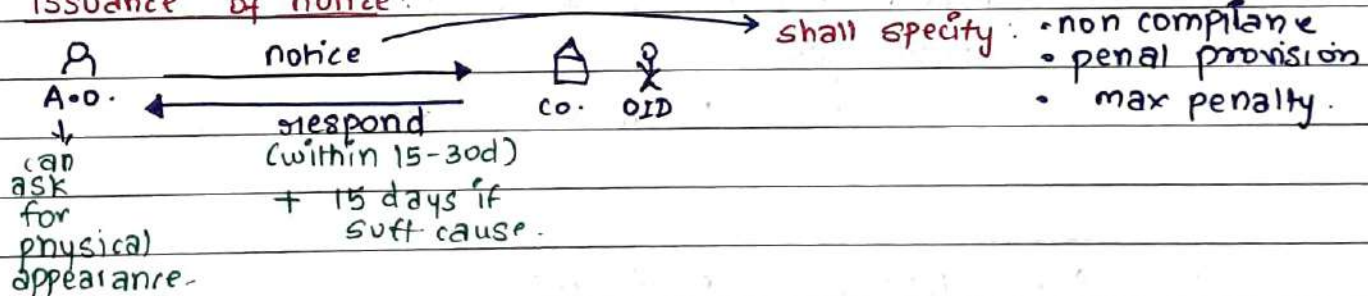
1. Prepare the compounding appⁿ along with the following docs:
 - Affidavit verifying the application.
 - Memorandum of appearance or Power of Attorney.
 - copy of notice from ROC if any.
 - other necessary docs.
2. File e e-form GNL 1
3. Joint appⁿ by co & officer in default can be made
4. Based on the quantum of penalty, ROC will forward appⁿ to RD/NCLT
5. Passing of order by RD/NCLT
6. File e-form INC-28 for intimation of order to ROC.

Section 454: Adjudication:

1. Appointment of Adj. officer (AO)
 - CG will appoint AO
 - not below the rank of Registrar.

2. Process of Adjudication:

step 1: Issuance of notice:



step 2: order by AO:

- After giving OOBH to person; AO may:
 - impose penalty
 - direct rectification of default
 - Adjourn the hearing.

• shall pass order within :

30 days
if no physical presence
is demanded

90 days.
if physical presence
is demanded.

extension given if suff. cause.

Step 3:

copy of order:

• AO shall send the copy of order passed to
1. * Company , 2. * OJD , 3. * CQ.

3-

Powers of AO:

- Summon and enforce attendance } from parties.
- Require evidence or docs
- If parties failed to respond → impose penalty.

4.

Factors considered while imposing penalty:

- i. Size of co.
- ii. Nature of business
- iii. Injury to public interest
- iv. Nature & repetition of default
- v. unfair gain
- vi. loss caused to investors / creditors.

#

Appeal Against order of A.O:

1.

Where to appeal?

- R.D
- within 60 days
- Forum ADJ.

2. Registration of Appeal:

→ RD shall endorse date & assign serial no.

→ R.D will 

Registers the appeal
If in order

Non register the appeal.
if not in order.

↓

will give

[+14d ← 14 days to rectify.
If suff. cause]

↓

If rectified

If not rectified.

↓

↓

send copy of to AO.

reject the appeal.

↓

AO shall respond within

21 days → +21 days if SC.

→ R.D to start hearing from date not earlier than 30 days
from date of issue of notification of approval

→ If Appellant or AO did not appear for hearing,

Ex parte → can apply for set-aside

→ once passing final order of RD
It shall be sent to 

#

AO may not impose Penalty in some cases of
non-compliance like:

→ non filing v/s 92 → AR → form MAT-7 (w60d - AGM)

→ non-filing v/s 137 → FS → form AOC 4 (w30d - AGM)

Section 272: Winding Up.

1. Winding up petition will be filed with NCLT

2.

2. Who can file petition:

- company voluntarily
- Shareholders hold shares min 6/18m 6%
- ROC with approval of CA
- CA/SC. If is in public interest

5. min 6% min shares hold kije
hai out of last 18 months

NCLT

3. Procedure:

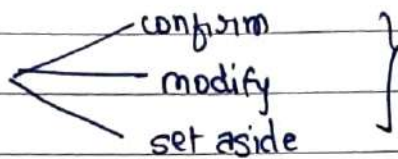
1. filing of form WIN-1 or WIN-2 to NCLT
2. In triplicate
3. Along with an affidavit verifying petition in Form WIN-3
 ↳ If co → affidavit given by Director/Secretary
4. Send copy of petition → to ROC.
5. ROC to submit views within 60 days to NCLT.

Section 420: Appeals Before NCLT:

If a person aggrieved by the decision of NCLT →
can appeal to NCLAT.

Section 421: Appeal from the order of NCLT:

1. who can appeal?
 → aggrieved party. except when order was passed with consent of all the parties.
2. Time limit:
 45 days + 45 days (if sufficient cause)
 iske baad NCLAT khud bhi case accept nahi kar sakti
 (appeal)

3. Decision:
- NCLAT may  } the order of NCLT.

Who is aggrieved person?

- AP is used to describe someone whose personal, financial, or property rights are directly & negatively affected by decision.
- It does not include: someone who unhappy or disappointed with the result.
- It includes: one having actual legal harm.
- cases laws related to this:
- i. Fertilizers Corporation Kamgar Union v/s Union of India.
 - appeals are allowed even if you're connected to the case & not properly purely an outsider.
 - ii. Ayaaz Khan Noor Pathan v/s State of Maharashtra.
 - SC clarified that only a person suffering a legal injury can challenge an order in court.

What is sufficient cause?

- In Balkrishna v/s M. Krishnamurthy, SC explained →
- reasonable delays should generally be forgiven unless:
- delay caused by bad faith, fraud or deliberate negligence
 - The delay was so long → that it becomes impossible to justify.

NCLT → District court para 106.1a2
 NCLAT → High court para 106.1a1
 Hence appeals from NCLAT direct go to Supreme court

1/1/

★ Very Important: **Section 422:**

- No extension after 45 + 45 days to appeal under any case
- NCLAT won't have any discretion.

Section 423: Appeal to Supreme Court:

- 60 days + 60 days (if sufficient cause)
- only appeal → in case of → question of law.

Power of High Court (Article 226 & 227) → COI.

- If violation of natural justice
 - Tribunal acted in excess of its jurisdiction
- Here, the H.C can intervene.

Pg 516 # **OPPORTUNITY OF BEING HEARD: Sec: 421(4)**

⇒ OOBH ordinarily includes 3 rights:

1. the right to receive fair notice of the hearing.
2. the right to secure the assistance of counsel &
3. the right to cross examine adverse witness.

FILING OF APPEAL BEFORE NCLAT.

1. File in form NCLAT-1
 2. Attach order of NCLT
 3. Index
 4. Triplicate copies
 5. sufficient no. of copies as equivalent to parties
 6. serving notice in advance to opposite parties
 7. Prescribed fees.
- must be accompanied by an affidavit form NCLAT-4

DRAFT ⇒

NCLT-1

(1) NCLT-1 (koi bhi application / petition / I.A / Appeal).

NCLT-1

Sec — of Companies Act, 2013.

Before NCLT

Mumbai Bench.

In the matter of:

DD Ltd

CIN:

Reg. Office:

Particulars of Petitioner:

Name:

Description:

Father Name:

Occupation:

Capacity:

Address:

Particulars of Respondent:

Name:

Description

Reg. office:

Jurisdiction of Bench:

The petitioner declares that subject matter on petition is within

jurisdiction of hon'ble NCLT, Mumbai Bench, as Regd office of respondent company is situated in Mumbai.

Limitation:

The petitioner further declared that petition is within the limitation laid down under section — of companies Act, 2013.

Fact of the case:

- 1.
- 2.
- 3.
- 4.

Relief Sought:

- 1.
- 2.
- 3.

Particulars of Bank draft evidencing payment of fee for petition.

1. Bank & Branch Name: _____
2. DD No: _____
3. Date: _____
4. Amount: _____

Dated this _____ day of _____ at _____.

signature of Petitioner / AR.

List of Annexures:

1.

2.

3.

CLASS ACTION SUIT U/S 245 :

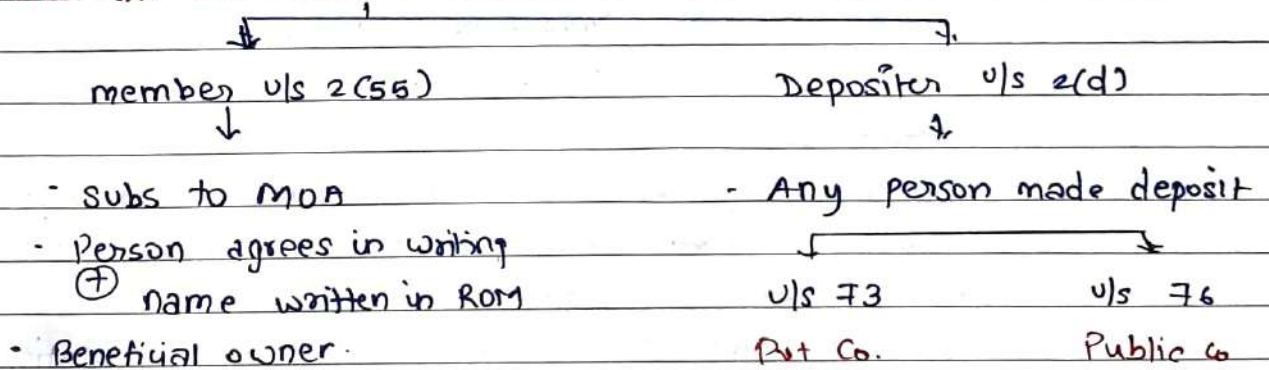
1. Basic condition for CAS:

1. common issue
2. large group.

2. How it helps?

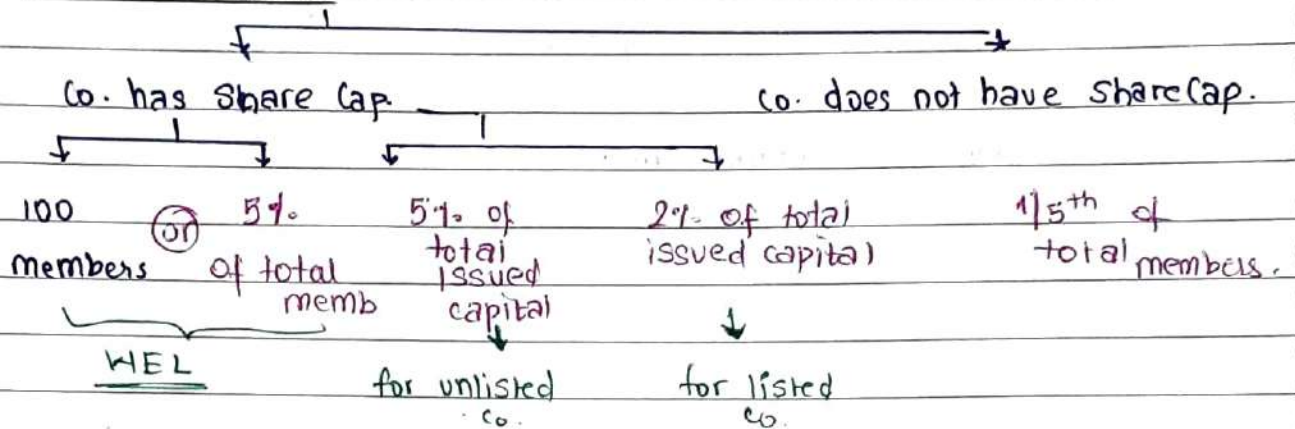
1. gives power to small SH
2. to fight against big co.
3. affordable justice.

3. Who can file CAS?

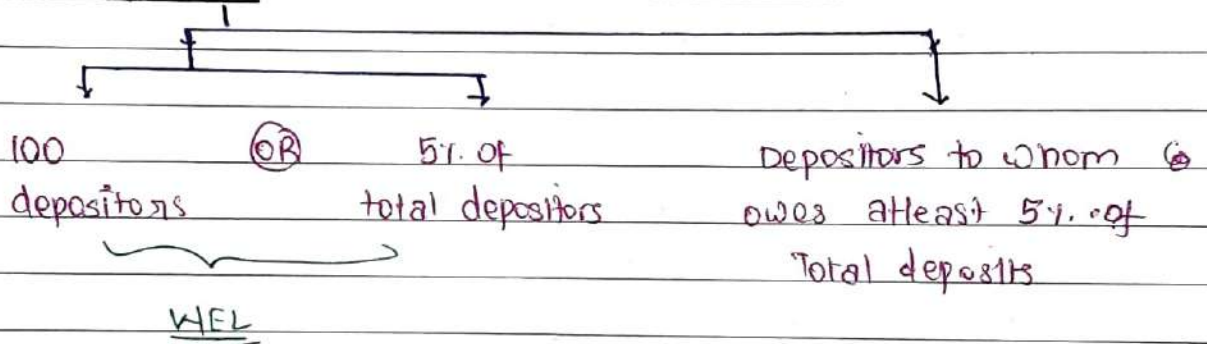


4. Min. no. of member or depositors?

I. For Members.



II. For depositors:



5. When affairs of ~~one~~ co. are prejudicial to the interest of co. / its members; then

member
OR

Depositor

File ~~for~~ Class Action Suit →

NCLT

May Demand order:



I. Restrain co:

1. commit any act → ultra vires to MOA / AOA
2. Commit ~~Breach~~ Breach of any provision of MOA / AOA
3. Any act which is against law.
4. to take any action contrary to any resolution passed by members.

II. Declare MOA/ AOA altering resolution as 'void' → if resolution is passed by suppressing material facts to members or depositors

6. Class Action Suit can be filed against :

- Co & directors
- Auditors
- Any expert / Advisor.

7. Once application is accepted by NCLT; the applicant shall:

1. Publish a Public Notice in newspaper & sent to every member or depositor

2.

2. cost borne by Co.

3. 2 class Action Suit = same cause of Action is not allowed

4. Similar application → consolidate as one.

8. orders passed by NCLT — shall bind:

- | | |
|-----------------------------|-------------|
| 1 - company | 4. - member |
| 2 - depositor | 5 - Auditor |
| 3 - Any person as directed. | |

9. Co. fails to comply Tribunal orders

→ Co → 5 lacs to 25 lacs

→ ODP → 25,000 to 1 Lac & Jail max 3 years

NCLT RULES regarding CLASS ACTION SUIT.

1. File application in
2. Serve copy of appⁿ to co, other persons
3. While admitting NCLT will consider:
 - common issue to all
 - applicant fairly represent entire class
 - CAS is best way to resolve the issue.
4. Opt out (Rule 86):
 - i. Member of the class can opt-out any time
 - ii. NCLT permission is required
 - iii. If not opt-out $\Rightarrow$ deemed considered as part of the class
 - iv. opt-out in Form NCLT-1
 - v. If opt-out $\rightarrow$ still can file individual case under other applicable law, subject to conditions imposed by NCLT.
5. Rule 87: Publication of Notice:
 1. once application is accepted $\rightarrow$ give public notice in Form NCLT-13 to all members of class.
 2. Also publish in Eng/Vern. News paper within 7 days.
 3. Publish on website of 
 - CO
 - NCLT
 - ROC
 - SE
 4. Date of notice publish $\rightarrow$ Date of newspaper.
 - 5.

5. contents of Public notice:

- name of lead applicant
- Brief detail of case
- Relief sought
- Statement confirming that min no of members have filed the application
- Statement → that NCLT accepted the application
- Date and Time of hearing
- Details of opt-out
- Details of time-limit within which representation can be filed with Tribunal.

#

Sec 241 : Application to Tribunal for opp & Mgmt

Sec 242 : Powers of Tribunal

Sec 243 : Consequences of Termination of Agreement

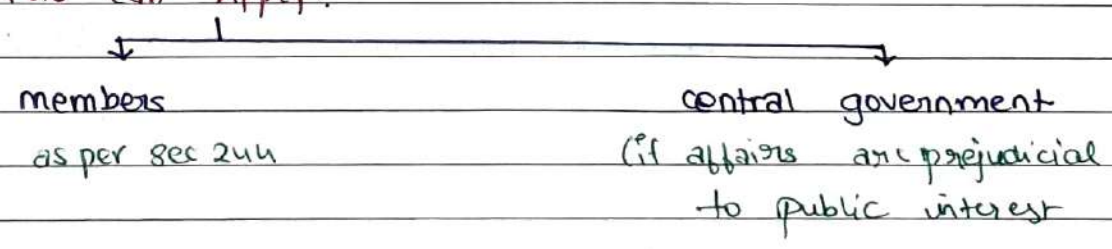
Sec 244 : Right to apply u/s 241

Sec 245 : Class Action Suit

#

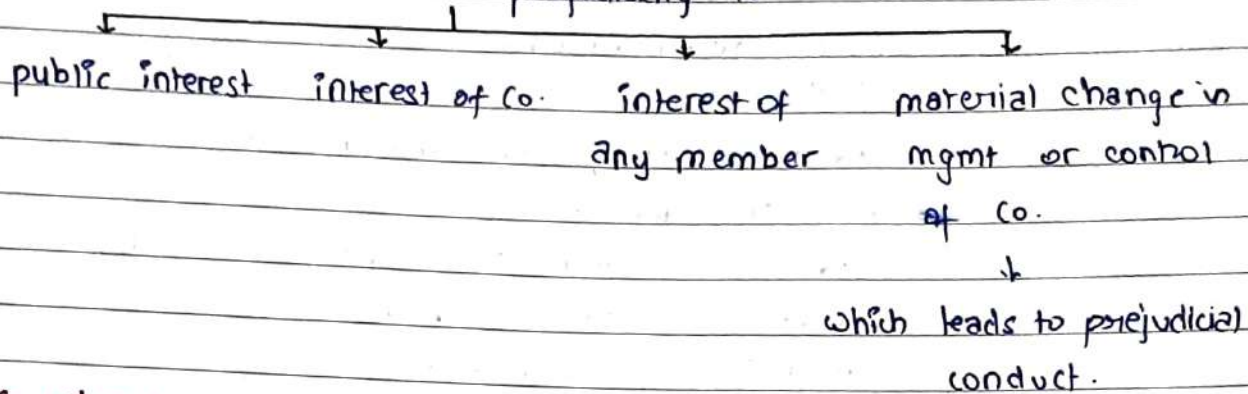
Section 241 : Application to Tribunal for Oppression & Mgmt:

1. Who can Apply?



2. Member when?

If affairs are conducted prejudicially to:



3. CG when?

If co's affairs are against the public interest

may initiate action against any person in mgmt, if there is suspicion of:

1. Fraud, negligence, breach of trust.
2. Poor business practice.
3. mismanagement causing serious harm to business / industry.
4. fraudulent conduct affecting creditors / members.

When CG applies to Tribunal it must:

clearly state the allegation
ad & supporting docs

& Be signed &
verified as per
CPC 1908

Section 242: Powers of Tribunal :

1. The tribunal can intervene if:

- Co. affairs are prejudicial & oppressive against members, public interest or co's interest.
- winding up → just & equitable grounds.

2. Tribunal may pass following orders?

- i. Regulate company's future conduct
- ii. orders members to purchase shares
- iii. Reduce share capital → BuyBack
- iv. Restrict share t/f or allotment.
- v. Modify or cancel agreements between company & directors/managers (Ref. Sec 243)
- vi. Modify or cancel agreements between co. & other persons.
- vii. Set aside fraudulent transfers done within 3 months before the complaint.
- viii. Remove directors / MD / Managers.
- ix. Recover undue gains made by directors / managers.
- x. Impose costs & penalties
- xi. Appoint directors to oversee the mgmt of co.
- xii. Any other just and equitable orders.

3. Compliance of Tribunal orders:

- Co. must file certified copy of order of NCLT to ROC within 30 days.
- If NCLT orders and alters MoA/AOA, Co cannot further alter without NCLT Approval.

&

certified copy of changes must be registered to ROC within 30 days.

Sec 10.
(37:30)
remaining

4. Tribunal may issue final order. Also if the case involves removal of director, NCLT shall declare whether the respondent is fit to hold office or not.

5. Non compliance of NCLT order:
 company → 1 lac to 25 lacs
 IND → 5K to 1 lac

Sec 243: Consequences of Termination of Agreement

1. If agreement of any director / manager / MD is terminated then such affected person:

→ cannot claim damages, compensation or any benefits from the co

→ No re-appointment for ~~5 years~~ 5 years

↳ except when NCLT gives special permission

→ Declared as 'unfit & not proper' u/s 243 242

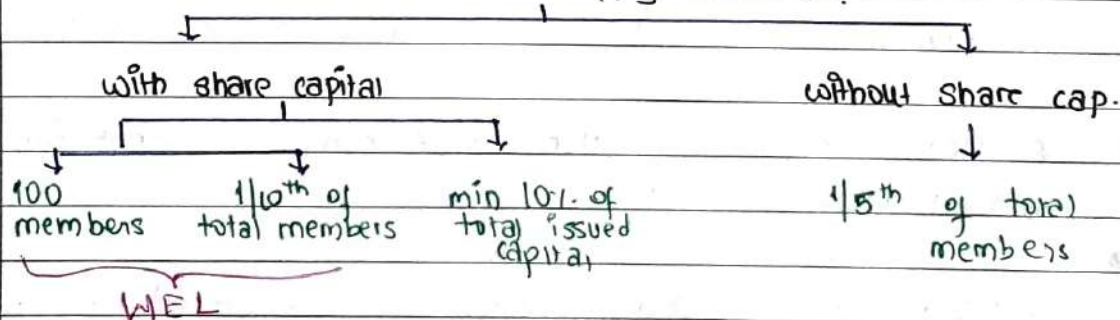
↳ not to hold office for 5 years.

except when approved by CG ~~NCLT~~ and NCLT

2. Non-compliance:

5 lakhs fine

which means members can apply u/s 241?



- Note:
- Limit can be waived by NCLT
 - Joint SH → count as one
 - One or more members can file on behalf of all, with written consent of others.

NCLT Rules (241 & 245)

1. If any rule does not cover a situation, NCLT may decide the procedure on grounds of p. natural justice.
2. Application & petition in form NCLT-1
 - + Attachments (NCLT 2)
 - + Interlocutory application (NCLT 2)
 - + General heading (NCLT-4)
3. Affidavit verifying petition NCLT-6
4. Notices issued (NCLT-5)

APPLICATION U/S 241 :

- filed in NCLT-1 with annexure B.
- consent letters of all members, if one is representing all
- Name, addresses, etc must be included.
- copy of application served to $\leq^{co}$ other members.

Application of Withdrawal U/s 241 :

- No withdrawal w/o NCLT permission
- Form NCLT-9.

OUTLINE

#

Application of Withdrawal of 241:→ Sec 230: Compromise And Arrangement.

Rule 3 : Application to NCLT

Rule 4:

Rule 5: NCLT directors

Rule 6: Notice of meeting

Rule 7: Adv of meeting notice

Rule 8: Notice to stat Authority

Rule 14: Report of Meeting results.

Rule 15: Petition for approval of Tribunal

Sec 233: Fast track Merger Process

Rule 25: Merger & Acquisition of certain cos.

Sec 235: Power to acquire shares of Dissenting SH.

Rule 26: Notice to Dissenting SH. to acquire shares.

Rule 25A: M & A of foreign company with Indian Co. & vice versa.

Sec 232: Merger & Amalgamation → Tribunal powers.

SEC 230: compromise & Arrangement:

1. C&A can be proposed between:
 - co & creditors OR
 - co & members.
2. NCLT on receiving application → may order a meeting of concerned stakeholders.
3. Notice of such meeting shall be sent individually to all creditors, members, deb H.

Notice shall include:

 - details of C&A
 - valuation report (if any)
 - Impact on creditors, KMP, etc.
 - If listed Co.
 - upload on co. website
 - sent to SEBI & stock exchange
 - publish in newspaper.
4. Notice shall also be sent to regulatory bodies:
 - ⊕ CG, RBI, SEBI, ROC, OL, CCI, & other relevant regulators.

→ These authorities shall submit their representation within 30 days.
If not → deem no objection.

RULES:

NCLT RULES

Rule 3:

1. Application in form NCLT-1
 - ⊕ Notice of Admission NCLT-2
 - ⊕ Affidavit (NCLT-6)
 - ⊕ copy of scheme of C&A
 - ⊕ prescribed fees.

2. If co. is not the applicant i.e. applicant is members or creditors.

↓

Notice of admission + Affidavit shall be served on Co. at least 14 days before hearing day, date.

Rule 5:

Upon hearing application under sec 230 NCLT may issue necessary directions regarding:

- which class shall hold meeting
- fixing time & place of meeting
- chairman & scrutinizer of meeting
- Quorum & voting procedure
- Any other.

Rule 6:

→ Notice of meeting shall be set individually to members / Creditors in Form CAA 2

→

→ It shall also be published in Newspaper { vernacular
english
tribunal decides.

→ Notice shall also be posted on website of:

Co., SEBI, RSE ⇒ at least 30 days prior to hearing.

Rule 8:

→ Notice also shared to Regulators in Form CAA 3.

→ Sent to: mandatory others (if applicable)

CG

RBI

RO

SEBI

IT dep.

CCI

any others.

- shall be sent immediately after sent to members/creditors
u/s 6/7.
- Sent via └─ Reg. post / sped post
└─ Hand delivery / courier
- Represent within 30 days to NCLT
↳ if not → deemed approval.

Rule 14:

- chairperson of meeting shall submit a Report of meeting to NCLT in form CAA-4
- within time fixed by tribunal.
(OR)
- 3 days of meeting → if not specified by NCLT.

Rule 15:

- If creditors/ members approves any C&A a petition to that effect shall be filed to NCLT in Form CAA-5
- Who can file?
CA or Liquidator
- file within 7 days after filing of report under rule 14.

Section 233: Fast Track Merger Process:

- ⇒ Applies to mergers between:
 - Two or more small co.
 - Holding co. & 140s
 - Two or more startups
 - one startup & one small co.

⇒

Steps:

1. Transferor & Transferee → shall issue notice of merger ^{CAA-9}
 - such notice shall invite objection from
 - ROC
 - OL
 - Any affected person.
 - such objections shall be read w30d.
2. Such scheme shall be approved by 90% of shareholders.
3. Co. shall file "Declaration of solvency" with ROC before meeting of creditors.
4. Approval of 90% creditors in value & creditors must have given 21 days prior notice.
5. After all approval → transferee co. must file copy of scheme with :
 - CG → CAA-11
 - ROC → ANL-1
 - OL
 within 7 days of meetings
6. If ROC & OL have no obligation, the CG registers the scheme.
 - ↳ CG will give time of 30 days
 - If after 30 days → no obligation by ROC or OL.
 - within 30 next 15 days CG will pass a confirmation order in Form CAA-12
 - If no order issued by CG within 60 days
 - ↳ deemed approval granted.

Section 235: Power to Acquire shares from Dissenting SH:

- The transferee co. makes an offer to acquire shares in ^{transferor} ~~the~~ Cos.
exit opportunity.
- After approval of Shareholders, within 4 months → transferee co. offers all shareholders of transferor co to sell their shares to them.
- After the period of 4 months → within next 2 months give notice to dissenting SH. in Form CAA-14 intending to acquire shares compulsorily

Rule 25 A: Merger / Amalgamation of foreign with Ind. co. & vice versa.

1. FC can merge with ~~FC~~ IC.
2. Prior RBI approval
3. Comply with sec 230-232 & applicable rules.

→ * Can IC merge a FC?

1. Yes
2. RBI approval
3. Transferee shall ensure:
 - Valuation is conducted by recognised body.
 - valuation follows 'internationally accepted Accounting & Valuation principles
 - a statement of declaration confirming compliance shall be submitted to RBI.

⇒ 1. After RBI's approval → apply to NCLT u/s 230-232

2. If merger with countries sharing land border with India
→ shall submit additional declaration in Form CAA-16 at appⁿ stage to NCLT. This ensures additional scrutiny & clearance.

#

Sec 232 : Tribunal Powers & Compliance for M&A.**I. Sec 232(2) : Tribunal Power.**

1. can order ^{transfer} of Asset & Liability of transferor co. to transferee co.
2. All pending cases transferred to transferee co.
3. Dissolution of transferor co. without winding up.
4. Ensure fair & treatment of dissenting SH. & employees of ~~transferee~~ transferor co.

II. Sec 232(7) : Annual Compliance Requirement:

1. Co shall file Annual Statement with ROC until completion of Scheme.
↓
certified by PCA / Pcs / PCMA

NCLT-9.

NCLT-9

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL.

MUMBAI BENCH

Company Petition No. 12 of 2025

IN THE MATTER OF:

The companies Act, 2013

&

IN THE MATTER OF:

XYZ shareholders' Associations:

VERSUS

~~IN THE MATTER OF:~~

* 1. ABC Limited (company)

CIN: _____

RO: _____

* 2. Mr. Rohan Rohra (Managing Director)

Add: _____

A. Particulars of Applicant:

Name: XYZ Shareholders Association

R- Add: _____

Email: _____

Phone No: _____

Authorised Representative: Mr. Darshan Dhoke

(President of Association)

B. Particulars of Respondent(s):

- ABC Ltd - A listed co. engaged in manufacturing of consumer electronics.
- Mr. Rohan Rohra - Managing Director, responsible for overall operations of financial decisions of company.

C. Jurisdiction of Tribunal:

The honourable tribunal has jurisdiction u/s 245 of Companies Act, 2013, as the applicant is a group of 105 shareholders of ABC Ltd.

D. Facts of the case:

- ABC Ltd has fraudulently misrepresented its financial statements for past two financial years i.e 2022-23 and FY 2023-24
- The company failed to disclose non-performing assets & diverted funds to subsidiary with shareholders' approval
- Investors suffered subsidiary a loss of Rs 500 crores due to sudden stock price crash following the misrepresentation of financial statements.
- The company's Board ignored repeated shareholder's complaints leading to a breach of trust.

E. Relief Sought:

- Declare the financial statements for FY 2022-2023 & FY 2023-2024 as fraudulent & order forensic audit
- Direct the respondent to compensate the SH for financial loss suffered
- Remove the current mgmt & appoint ID's.
- Direct SEBI & ROC to investigate ABC Ltd's corporate

Governance failure.

F. Interim Relief sought:

Restrain the respondents from alienating company's assets.

G. List of supporting documents:

- copy copies of misleading financial statements.
- shareholder complaints submitted to Board
- Affidavit verifying application

The Applicant confirms that the statements made in this petition are true & Best of their knowledge.

Dated this ____ day of ____ 20__

(signature of the applicant / petitioner / appellant)

Solemnly affirmed before me at on this (month) ____ day of 20__
(signature).

WIN-1

WIN-1

BEFORE NATIONAL COMPANY LAW TRIBUNAL
Bench at Mumbai

IN THE MATTER OF ABC INFO Ltd.
company incorporated under companies Act, 2013.

Petition No. ____ of 2025.

IN THE MATTER OF:
Petition for winding up u/s 272 of Companies Act, 2013.

Particulars of Petitioner:

Mr. Ram Roje

Description: Shareholder

Occupation: Business

Address: _____

Particulars of Respondent:

ABC Info Ltd.

Registered office: _____

The humble petition of Mr Rajesh Sharma, the petitioner above named, sheweth as follows:

1. The address of the petitioner for service of all the notices is _____

2. The co. ABC Info Ltd was Incorporated in May 2010 under companies Act, 1956. as public company limited by shares.
3. Registered office of the company is situated at _____
4. The nominal capital of the company is Rs 50 crores, divided into 5 crores equity shares of Rs 10 each. The paid-up share capital of the co. is Rs 30 crores.
5. The object of the company is to develop & provide IT solutions, software services & cloud based infrastructure.
6. The petitioner is filing this application for winding up on following grounds:
 - i. company failed to pay its creditors & also defaulted on bank loan amounting Rs 20 crores
 - ii. The company has ceased its ~~op~~ operation due to severe financial distress & employees have not been paid for last ~~a~~ six months.
7. Relief sought: (Prayer)
 - i. The ABC Info Ltd be wound up by honourable Tribunal under the provisions of companies Act, 2013.
 - ii. Appoint an official liquidator to take charge of company's Assets & liabilities.

Place: _____

Date: _____

Ram Raje
(Petitioner).

(Authorized Representative)
Darshan Dhoka
Advocate.

* Enclosures:

- Financial statements of Company (last 3 years)
- Bank notice of default
- creditor complaints.
- Affidavit verifying petition
- Any other.

WIN-2

WIN - 2

BEFORE NATIONAL COMPANY LAW TRIBUNAL
Bench at Mumbai.

IN THE MATTERS OF

XYZ Tech Solutions Ltd.

(Co. incorporated under Companies Act, 2013)

(Co. Petition No. _____ of 2025.

Petition By Co:

The petition of XYZ Tech Solutions Ltd, the petitioner here in, sheweth as follows:

1. The address of the petitioner for service of all the notices is address of Co. (same as WIN-1)
2. The Co. XYZ tech Solutions Ltd was incorporated in May 2015 under Companies Act, 2013 as public Co. limited by shares. (same as WIN-1)
3. Registered office of the company is situated at _____ (same as WIN-1)
4. The nominal capital of the company is 50 crores (same as WIN-1) divided into 5 crores equity shares of Rs 10 each. The paid up share capital of the company is Rs 30 crores.

5. The object of the company is to provide & develop IT solutions, software services and cloud based infrastructure. (same as WIN-1)

6. The petitioner is filing the application for voluntary winding up of the co. on following grounds/reasons:

i. The company is already defaulting their creditors and there is financial complexities. For the protection of interest of creditors & other contributors the tribunal's intervention is required.

ii. The company has passed a special Resolution by the shareholders u/s 271 of companies Act, 2013 for voluntary winding up.

iii. The company has defaulted on multiple loans amounting to Rs 40 crores.

iv. The company's networth eroded and operations have ceased since december 2024.

Prayer (Relief Sought)

1. XYZ tech solutions Ltd be wound up by the honourable Tribunal under the provisions of companies Act, 2013
2. Appoint an official Liquidator to take charge of the company's assets & liabilities

Place: _____

Date: _____

(Auth. Representative
Darshan Bhoka
Advocate

(Signature of
Authorise Representative.)

COMPOUNDING PETITION.

PETITION FOR COMPOUNDING.

BEFORE NATIONAL COMPANY LAW TRIBUNAL.

BENCH MUMBA.

Company Petition NO: _____

(For the offence committed u/s 92 of Companies Act, 2013)

IN THE MATTERS OF SECTION 491 of COMPANIES ACT, 2013.

AND

IN THE MATTERS ABC INFO PVT LTD.

(Petitioner 1)

AND

IN THE MATTERS of

MR. Rajesh Kumar, Director

s/o Mr. Vinod Kumar, residing at _____

(Petitioner 2)

The humble petition of the petitioners above named most respectfully sheweth:

1. Particulars of Company:

- ABC Infotech Pvt Ltd was incorporated ~~as~~ as a Private company on 5th March 2018 under Companies Act, 2013 via DIN. _____
- Registered office of the company is situated at _____
- The authorised capital of the company is ₹ 10,00,000 comprising of 1,00,000 lakh shares of ₹ 10 each. and the Paidup capital of the company is ₹ 5,00,000.

~~The paid up capital of the company is ₹ 5,00,000.~~

- Company is engaged in business of software development and IT consultancy.

2. Particulars of Petitioners.

Petitioner 1 is the company & petitioner ~~to~~ 2 is Mr Rajesh Kumar. The details of both the Petitioners are given above.

3. Jurisdiction:

The honourable Tribunal has jurisdiction u/s 92 of companies Act, 2013.

4. Limitation:

The limitation is filed within the prescribed limit as mentioned under section 441 of companies Act and also in conserth with Limitation Act, ~~20~~ 1963.

5. Facts of the case:

• The company is required to file its Annual Return (Form MGT-7) for financial year 2022-23 within 60 days from the date of Acm.

• However due to inadvertent oversight & administrative delays the company failed to file its annual return on time.

• The delay was not intentional & was caused due to internal restructuring & transition of compliance officer.

- As soon as the oversight were discovered the company immediately rectified the non-compliance and filed MGT-7. on 10th January 2024.
 - The company and director accept the default and wish to compound offence u/s 441 of companies Act, 2013.
6. Relief sought:
- The offence under section 92 of companies Act, 2013 be compounded
 - Any further relief as deem fit & proper may be granted.
7. Interim order:
- NA.
8. Particulars of Bank Draft:
- (details attached)
9. List of Annexures:
- Annexure - 1 : Certificate of incorporation of company
MOA and AOA.
 - Annexure - 2 : Affidavit verifying petition
 - Annexure - 3 : Copy of filed MGT-7 and RoC acknowledgment
 - Annexure - 4 : Bank payment details.

For Petitioner 1:

ABC INFOTECH PVT LTD.

For Petitioner 2:

Authorized Signatory

Director

DIN: _____

Contact: _____

Date: _____

Place: _____

Rajesh Kumar.

Director

R/o: _____