

Chp (12) Appl<sup>n</sup>, petitions & Appeals  
under Companies Act, 2013.

classmate

Date \_\_\_\_\_  
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\* Procedure before NCLT → (Rule 20)

- ① Formats - English / translated to English
- ② Title - "Before the NCLT", <sup>specify.</sup> Bench name
- ③ Paragraph - Divided into paragraphs & no. consecutively.
- ④ Date - Gregorian (English) calendar
- ⑤ Description of parties - full name, age, address, parent's name etc
- ⑥ Numbering of parties - If > 1 party, should be no. consecutively, name & description of each party to be allotted.
- ⑦ mention of provision of law.

\* Particulars in the address → (Rule 21)

- Name of the road, street, division, house no., town, village, pin-code, fax, mobile, email etc.

\* Initialling alterations → (Rule 22)

- ↳ Any changes, correction, deletion in any appeal, petition or document must be initiated by party / auth. repre.

\* presentation of petition / appeal (Rule 23) →

- file petitions in duplicate with fees in person or through auth. representative.
- Include certified docs verified with originals
- Attach duplicate index with doc & fees.
- provide enough copies to opposite party
- serve copies to opposite party before filing.
- Submit processing fees with required envelopes + forms.

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\* presentation of joint petition → (Rule 23A) →

- NCLT may allow multiple people to file a joint petition if they share common interest and law permits.

\* No. of copies to be filed (Rule 24) →

- The appellant / petitioner must file 3 authenticated copies of appeal / petition & deliver one to each opposing party.

\* Lodging of caveat (Rule 25) →

- A person can file a caveat in triplicate for any appeal / petition, app<sup>n</sup> before NCLT by paying prescribed fees and serving a copy to expected appellant / petitioner.
- caveat must be filed in form NCLT 3C & must include details of appeal, relevant orders, contact info. etc.
- caveat is valid for 90 days & NCLT may issue interim order in urgent cases.

\* Endorsement & verification (Rule 26) →

- auth. repre.'s name & signature must appear at bottom of every petition / appeal.
- Every petition / appeal must be signed & verified by the party.

\* Translation of docs (Rule 27) →

- Documents in a language other than English must be submitted in English translation, certified by parties / auth. repres. / approved translator.
- Petition / appeal will not be heard until the docs are in English / translated to English & required copies are filed.

### \* Endorsement & scrutiny of petition / appeal / document (Rule 28) →

- when a doc is filed, it is stamped, recorded & assigned a daily no.
- Doc. is then scrutinized
- If defective - party is notified & given 7 days to <sup>work</sup> fix it
- If not fixed in 7 days, Registrar may take further action.
- Registrar may return a doc for correction & allow extra time - if sufficient cause & if not ratified within extra time - doc shall be rejected.

### \* Regn of proceedings admitted (Rule 29) →

- once a petition / appeal / appl<sup>n</sup> / caveat is admitted it will be assigned a no & registered in appropriate record.

### \* calling of records (Rule 30) →

- upon admitting petition / appeal, Registrar will retrieve relevant records from adjudicating authority if directed by NCLT.

### \* prod<sup>n</sup> of authorisation for & on behalf of an association (Rule 31) →

- when filing on behalf of an association, person must provide a copy of Resolution authorizing them to act. The Registrar may require add<sup>n</sup> materials to verify authorization & require a list of members benefiting from the proceedings.

### \* Interlocutory appl<sup>n</sup> (Rule 32) →

- Interlocutory appl<sup>n</sup> for stay, delay condonation or time ext<sup>n</sup> must be in prescribed form with affidavit supporting the request.

applicant petitions  
name / address of  
date of appln / petition  
date of hearing  
Adv. shall mention:  
① date of appln / petition  
② nature of appln / petition  
③ name / address of applicant  
④ date of hearing

\* General procedure (Rule 34) →

- NCLT can decide procedure in cases not covered by Rules, but follow principles of natural justice.
- Use NCLT 4 for headings in all proceedings / notices/...
- file petitions (appln in form NCLT-1) with form NCLT-2 and interlocutory appln in form NCLT-3.
- all appln must be verified by an affidavit in form NCLT 6 and notices in form NCLT-5.

\* Advertisement detailing petition → (Rule 35) →

- appln / petitions to be advertised in form NCLT 3A.
- 14 days before date of hearing in English & vernacular lang.
- copy of adv. in website of co.
- Affidavit to be filed 3 days before date of hearing.
- If Rules of adv. ≠ complied, NCLT may dismiss & issue further directions.
- NCLT can also dispense adv. requirements.

\* Notice to opposite party (Rule 37) →

- NCLT issues a notice to opp. party with hearing date and appln details. (NCLT-5)
- If respondent doesn't appear, NCLT may proceed ex-parte.
- If consented, respondent must file a reply with supporting docs before hearing.

\* Multiple remedies (Rule 38A) →

- A petition must have a single cause of action and may seek multiple + related reliefs.

### \* Service of notice (Rule 38) →

- Notices can be served by post / courier / email as petition specifies
- physical service can be done by hand, regd post, courier or by party themselves.
- party must file proof of service (acknowledgement) with the Registrar.
- NCLT can allow alternative / substituted service if needed. [where opp. party resides, works for gain, carries on business].
- Notices can be served on auth. repres.
- petitioner must pay any service charges as determined by NCLT.

### \* prod<sup>n</sup> of evidence by Affidavit (Rule ~~38~~<sup>39</sup>) →

✓  
evidence may be given by affidavit.

↓  
NCLT can order cross-examination (if necessary) via video conferencing / other modes.

↓ Affidavits must be in form  
NCLT-7.

### \* prod<sup>n</sup> of add<sup>n</sup> Evidence (Rule 40) →

- add<sup>n</sup> evidence not presented during investigation can only be allowed if the Bench requires it OR inspector didn't allow a fair opportunity.
- If allowed, evidence can be presented to Bench / other authority as specified
- After submission, evidence must be sent to Bench.
- other parties will have a chance to rebut (oppose) / challenge add<sup>n</sup> evidence.

\* filing of reply & other docs by Respondents (Rule 41) →

- Respondents must file a reply & docs with Registry, either in person / through auth. representative.
- They must send a copy of reply / docs to the applicant.
- The reply should address the facts in petition and include any add<sup>n</sup> relevant facts.

\* filing of rejoinder (Rule 42) →

- Bench may allow the petitioner to file a <sup>(reply)</sup> rejoinder if respondent introduces new facts

\* power of Bench to call for further <sup>info.</sup> evidence (Rule 43) →

Bench can require add<sup>n</sup> evidence to verify facts / gather necessary info. before making a decision.

The Bench may accept electronic records (eg. emails / accounts / transactions) as evidence.

In cases of alleged forgery, party can request forensic examination, & Bench may send records for testing at party's cost.

\* Hearing of petition / appln → (Rule 44) →

- NCLT will notify parties of hearing date & place as directed by President / member.
- If applicant wishes to withdraw the petition, they must apply to NCLT, which may allow withdrawal after cost, after hearing the parties involved.

## \* Rights of party to appear before NCLT (Rule 45) →

- parties can either appear in person or through authorised representative with a vakalatname / memorandum of appearance. (NCLT-12)
- govt. bodies can appoint officers / advocates to represent them. (co. prosecutor)
- NCLT can request info. from ROC
- No recording of proceedings is allowed by parties.

## \* consequences of non-appearance of applicant (Rule 48) →

- if applicant fails to appear for hearing, NCLT may dismiss the appl<sup>n</sup> or hear it on merit.
- If dismissed for default - applicant can request restoration within 30 day by showing sufficient cause for absence.
- If case was decided on merit - cannot be reopened.

## \* Ex parte hearing & disposal (Rule 49) →

- if respondent does not appear, NCLT may hear the case ex-parte.
- The respondent can request to set aside the ex-parte decree by providing lack of notice or valid cause (sufficient cause) of non-appearance.

## \* Registry to send certified copy (Rule 50) →

- The Registry will send a free certified copy of final order to the parties & charge for copies in other cases.

## \* power to regulate the procedure (Rule 51) →

- NCLT can regulate its procedure based on natural justice & equity to fulfill its functions under Co. Act, 2013.

### \* Summoning of witnesses & recording evidence (Rule 52) →

- NCLT will issue summons for witnesses if requested, unless their appearance is deemed unnecessary.
- Witnesses summoned are entitled to travel & daily allowances, to be paid by party as decided by the Registrar.

### \* Substitution of legal representatives (Rule 53) →

- proceedings continue after a party's death / insolvency through their legal representative / relevant officer (executor / liquidator etc)
- legal representatives must apply within 90 days to be substituted otherwise the case may be dismissed. NCLT may allow late submissions for valid reasons.

### \* pleadings before NCLT (Rule 55) →

- No pleadings can be filed after the reply without NCLT's permission.

### \* appl<sup>n</sup> for execution (Rule 56) →

- To execute an NCLT order, apply using form NCLT-8.

### \* Effect of non-compliance (Rule 58) →

- Non-compliance with Rules won't invalidate the proceedings unless it causes miscarriage of justice.

### \* Amicus curia → (Rule 61) →

not a party to the case BUT offers advice, info. / expert opinion to help the court make decision.

- NCLT may allow experts / professionals to provide legal opinions on case issues. They may access case documents & parties can respond to their views.
  - NCLT may direct the parties to pay fees for amicus curiae's involvement.
  - finally the judgement + opinions shall be shared with both the parties and amicus curiae.
- \* presentation & scrutiny of petition / appl<sup>n</sup> (Rule 63) →
- If party is dissatisfied with Registrar's decision on petition / appl<sup>n</sup> scrutiny - they can appeal within 15 days to the president (Principal Bench) / designated member of Bench, whose decision is final.
- \* Appl<sup>n</sup> for calling / obtaining a direction to call AGM (Rule 74) →
- A member of co. can apply to NCLT for a direction to call AGM using form NCLT-1 + docs and must serve a copy on RoC before the hearing.
- \* Inspection of minutes book of GM → (Rule 75) →
- If a member's request for inspecting minute book of GM is denied - they can apply to NCLT in form NCLT-9 for a direction to the company.
- \* appl<sup>n</sup> u/s 230 (Tribunal) (Rule 10A) →
- appl<sup>n</sup> u/s 230 (12) should be made in form NCLT-1 accompanied by:

↓  
affidavit  
verifying  
petition.

↓  
memorandum of  
appearance / vakalat-  
nama

↓  
docs supporting  
grievance  
against Takeover

↓  
other  
relevant  
docs.

Right to apply to NCLT for relief in case of opp. & mismgmt!

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\* appl<sup>n</sup> u/s 241 (Rule 81) →

- appl<sup>n</sup> should be filed in NCLT-1, accompanied by:
  1. Docs as per annexure B.
  2. If filed on behalf of multiple members, consent letter from others with their name, address is required.
  3. A copy must be served on co., respondents and any other as may be directed.

\* withdrawal of appl<sup>n</sup> filed u/s 241 → (Rule 82) →

- cannot be withdrawn without NCLT'S permission.
- file NCLT-9 for withdrawal.

\* appl<sup>n</sup> under sec 243 (Rule 83) →

[merger & amalgamations]

- an appl<sup>n</sup> for leave (permission) to appoint / allow someone to act as MD, Director, manager of a co. must be filed in NCLT-1. + docs in Annexure B.
- appl<sup>n</sup> must state if a notice of intention has been sent to CG, as required under the Act. A copy of this notice must be included in the appl<sup>n</sup>.
- Send notice of hearing + copy of appl<sup>n</sup> to CG at least 15 days before the hearing.

\* appl<sup>n</sup> u/s 244 (Rule 83A) →

- appl<sup>n</sup> for waiver can be filed in form NCLT-9 with Annexure B docs.

## \* Right to apply u/s 245 → (Rule 84) →

- file appl<sup>n</sup> in form NCLT-9 u/s 245.
- Serve a copy to the company, other respondents and parties as NCLT directs.
- For companies with share capital, applicants must be:

✓  
5% of members @ 100  
w.e. less.

↓  
5% of SC (unlisted) OR  
2% of SC (listed)

- For depositors, applicants must be:

✓  
5% of depositors @ 100  
w.e. less.

↓ depositors owed  
5% of total  
deposits.

## \* conducting a class action suit (Rule 85) →

- NCLT looks into these factors for class actions:

✓  
too many  
members  
for individual  
suits.

↓  
common  
legal  
@ factual  
issues

↓  
Representative  
parties' claim  
match the  
class.

↓  
Representatives  
protects  
the class's  
interest.

- NCLT may also consider if separate actions would lead to:

✓  
cause  
conflicting  
judgements.

↓  
affect other  
members  
interest.

↓  
make it hard for  
others to protect  
their rights.

### \* Rule of opt out → (Rule 16) →

- A class member in class action suit can opt out anytime with NCLT's permission using form NCLT-1.
- A member is considered as part of class unless they opt out.
- opting out does not stop the member from pursuing a claim individually under other laws, with NCLT's condition.

### \* publication of notice (Rule 17) →

- After NCLT admits an appl<sup>n</sup>, a public notice must be served within 7 days in local lang. newspaper & English newspaper.
- Co. must also post the notice on its website and on websites of: NCLT, MCA, ROC, STX (for listed co.)
- Date of publication in newspaper is considered as official date of serving the notice to all members.
- contents of notice:

name of lead applicant	Brief details of appl <sup>n</sup> & relief sought.	confirmation that required no. of members filed the appl <sup>n</sup> .	statement that NCLT has admitted the appl <sup>n</sup> .
Hearing date & time.	time to file representations with NCLT	details of opt out form & submission deadline.	

- The applicant pays for the notice. If the applicant wins, co. / responsible party must cover the cost.

## \* Inspection of Records (Rule 114) →

parties or their representatives can inspect case records by requesting in writing + fees.

non-parties can inspect records only with written permission of Registrar.

\* ~~Inherent~~ powers (Rule 11) → NCLT can make orders to ensure justice (i) prevent misuse of its process.

\* power to exempt (Rule 14) → NCLT can exempt the parties to ensure fair justice.

\* power to extend time (Rule 15) → NCLT can extend deadlines, even after they expire.

### \* NCLAT Rules :

Similar provisions to NCLT Rules but also contain specific differences.

\* Sitting of NCLAT : NCLAT sits at its headquarters in New Delhi.

### \* presentation of appeal (Rule 22) →

- appeals must be filed in NCLAT-1 + fees in triplicate.
- include a certified copy of impugned (disputed) order.
- provide a index of documents.
- file sufficient copies for service on opposite party.
- for pending matters, serve copies in advance on opposite party.
- Submit processing fees, envelopes & notice forms.

\* title of affidavits (Rule 67) →

Affidavits must be titled "Before the National Company Law Appellate Tribunal."

\* suo moto summoning of docs (Rule 74) →

NCLAT can issue summons for public docs if necessary.

\* marking of documents → (Rule 75) →

- mark "A" for appellant's docs
- "B" for Respondents
- "C" for Tribunal exhibits.

Applicant may need to deposit fees to cover the cost of transmitting records, via demand draft / Indian postal order, before issuing summons.

\* orders (Rule 88) → NCLAT's final decision is delivered as judgement.

\* Supreme court orders (Rule 101) → SC orders related to NCLAT decisions must be placed before NCLAT for compliance.

\* filing through electronic media (Rule 103) → NCLAT allows filing through electronic media modes and provides for defect rectification via email / internet.

\* Do's for appearances →

- follow dress code and arrive early with imp. docs
- Study your case & key arguments thoroughly.
- prepare to counter opposing points & anticipate challenges.

- Be professional, confident & polite during hearing.
- provide copies of relevant legal sections for court's reference.
- make hearing atmosphere positive & appreciate court's efforts when appropriate.
- Respect NCLT's office.

### \* Don'ts for appearances →

- Don't guess, ask for time if unsure
- Don't forget imp. docs
- don't interrupt others
- Avoid using disrespectful language / acting superior.
- Never promise outcomes to your client.
- Avoid looking at personal / client's benefit.

### \* Appeal to NCLT against notice of refusal to transfer shares → (Sec 58) →

- if a private company - refuses to register share transfers, transferee can appeal to NCLT in form NCLT-1 within 30 days of receiving refusal notice  
 (a) 60 days if no notice is received.

- for public companies, appeal must be made within 60 days of refusal (a) 90 days if no notice is given.

↓  
 Tribunal after hearing the parties may either dismiss the appeal (a) by order direct the regn of transfer (a) transmission.

↓  
 Direct rectification of register & co. to pay damages

↓  
 person contravenes the order of tribunal  
 fine: 1-5 lakhs      Imp → 1-3 year.

## \* Refusal to transfer shares : whether permissible ?

- A public co can refuse to register transfer of shares for "sufficient cause", though the exact grounds are not specified in Co. Act, 2013.
- Co. can check if all formalities like sign, stamps are fulfilled & ensure that transfer complies with relevant laws like Co. Act, SEBI etc.
- However, Refusal should NOT be arbitrary & must be justifiable if challenged.

- Grounds for refusal may include :

transfer impacting  
co. mgt.

↓  
violating legal  
obligations

↓  
breaching  
contractual commit-  
ments etc.

## \* Proforma (format) of appeal → (Rule 70) →

- appeal in form NCLT-1
- document must be printed on legal-size paper (either white/green) with specific margin requirements - [1.5 inch on left & top and 0.5 inch on right & bottom]

- Required documents :

For co. petitioners : MoA, AOA

- latest audited B/s, auditor's report (AR), director's report (BR)
- copy of Register of members (ROM)
- BR
- Affidavit verifying petition (NCLT-C)
- Bank draft for applicable fees
- Vakalatnama and extra copies of petition.

For other petitioners : Documentary evidence supporting the petition.

- Affidavit verifying the petition
- Bank draft for applicable fees
- Vakalatnama
- 2 extra copies of petition.

Additional requirements :

↓  
petition should be page no. + proper index of memo of parties

↓  
list of dates & events [required in Delhi filings]

↓  
serve a copy of appeal to concerned co. at RO immediately after filing.

\* NCLT to dismiss appeal / direct rectification →

- NCLT may issue order (incl. injunctions / stays), impose costs, and make orders on dividends or share allotments.

\* Appeal for rectification of ROM → (Sec 59) →

If a name is wrongly added / removed or delayed to be entered in ROM, an appeal can be made to NCLT :

↓  
NCLT can decide title disputes regarding right to have name added / removed from ROM

↓  
It may resolve necessary issue related to rectification appln.

\* Who can file an appeal :

- member / aggrieved person / company
- foreign members / debenture holders (competent court outside India).

## \* Time limit for filing an appeal →

- No time limit, approach court within reasonable time.
- Limitation Act: 3 years from cause of action.

## \* power of Tribunal to call AGM → (Sec 97) →

- if a company fails to hold AGM, Tribunal can order the meeting to be held on request of any member.
- Tribunal may allow a single member present in person or through proxy to constitute the meeting.
- Meeting held under Tribunal's order will be considered an official AGM.

## \* power of tribunal to call meeting other than AGM → (Sec 98) →

- if it's not possible to hold meeting (other than AGM) as usual, Tribunal can direct how the meeting should be conducted.
- Tribunal can allow 1 member to constitute the meeting.
- meetings held under these directions are valid.
- Sec 97 is for AGM, Sec 98 covers other meetings.

## \* Docs with appl<sup>n</sup> u/s 97:

- Affidavit in form NCLT-G
- Bank draft for fees
- Relevant docs
  - BR
  - MOA/AOA
  - audited financials.

- send a copy to ROC before the hearing.

\* can a company apply for calling AGM?

A company cannot apply to call its AGM, only a member can do so! If the co. applies, request will be rejected. Also, a person whose membership is disputed by the company cannot apply!

\* procedure of appl<sup>n</sup> before NCLT →

① preparation of appl<sup>n</sup> → Bench must have territorial jurisdiction, appl<sup>n</sup> in form NCLT-1 - prepare in duplicate.

- By separate appl<sup>n</sup> to President, apply for Bench other than one having territorial jurisdiction.

② Sequence → General heading in form NCLT-4

- Jurisdiction

- limitation period

- facts of case

- relief sought

- details of fees paid etc.

③ Affidavit → in form NCLT 6

④ filing of vakalatnamā in form NCLT-12

⑤ memo of appearance in form NCLT-12 - CA/CS/CMA in practice.

⑥ Interlocutory appl<sup>n</sup> → form NCLT-1 + attachments in NCLT-3.

⑦ Non-appearance of applicant - dismiss/decide on merit.

⑧ Appl<sup>n</sup> for restoration → 30 days.

cannot be restored

⑨ Appl<sup>n</sup> should be advertised in form NCLT 3A  
14 days before hearing (English lang newspaper  
vernacular lang newspapers.)

# \* (COMPROMISE & ARRANGEMENTS) \*

## \* appl<sup>n</sup> for order of meeting (Rule 3)

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① submit appl<sup>n</sup> in NCLT-1 for compromise/arrangement u/s 230 ind.   
↳ notice of admission - (NCLT-2)  
↳ Affidavit (NCLT-6)  
↳ scheme details.  
↳ prescribed appl<sup>n</sup> fees.

② multiple co. can file joint appl<sup>n</sup> together.

③ If co. is not the applicant, serve docs to co. / liquidator 14 days before hearing.

④ Disclose how members / creditors are grouped for approval.

⑤ A member holding 75% of shares can apply for takeover arrangement.

⑥ Takeover requirements:   
↳ valuation report by registered valuer.

↳ Deposit atleast 50% of offer amount. in separate Bank a/c

⑦ Tribunal can order a meeting of creditors / members for approval of proposed compromise / arrangement.

Compromise /   
Arrangement   
↳ b/w a co. & creditors.

↳ b/w a co. & its members.

### Rule 5: Directions at hearing of appl<sup>n</sup> : →

- decide which class of creditors / members need to hold meetings @ if meetings can be skipped.
- set time / place for meetings.
- appoint chairperson / scrutinizer for meetings & determine their role / remuneration.
- Set quorum & voting methods
- decide the value of creditors / members for voting purposes.

- Issue notices for meetings & advertise them.
- notify sectoral regulators & authorities if required.
- set deadline for chairperson to report meeting results to the tribunal.
- any other matters as tribunal deems necessary.

### Rule 6: Notice of meeting → (CAA.2) →

When Tribunal orders a meeting, co. must:

- ① Send individual notices to creditors, members & debenture holders in form (CAA.2)
- ② Include details of proposed arrangement, valuation reports & its impact of stakeholders.
- ③ Publish the notice on co.'s website and on STX, SEBI for listed companies.
- ④ Advertise the notice in newspaper & provide free access to arrangement details at co.'s Ro.

### Rule 7: Advertisement of notice of meeting → (CAA.2) →

Notice of meeting as above to be advertised in form CAA.2 in 1 English, one vernacular newspaper with wide circulation. The notice must be placed on co.'s website, SEBI's site and STX website atleast 30 days before the meeting.

- If separate meetings for different classes of creditors/members are held: joint advertisement can be given!

## Rule 8: Notice to statutory authorities →

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- A notice in form CAA-3 must be sent to govt. bodies, regulators (like SEBI, RBI) and STX with scheme details.
- The notice should be sent by
  - registered post
  - courier
  - hand delivery.
- Authorities have 30 days to respond. If no response is received, it is assumed that they have no objections.

**Rule 14: Chairperson's Report** → The chairperson submits a report on meeting<sup>ing</sup> result to Tribunal within 3 days or as directed.

**Rule 15: Petition for sanction** → If the scheme is approved, co. must file a petition with Tribunal within 7 days for approval of scheme.

**Rule 21: Statement of compliance in Merger & amalgamations** →

- Companies must file an annual compliance report in form CAA-8 with Registrar until merger/scheme is complete. This must be certified by a professional & filed within 210 days of financial year end.
- The Tribunal approves the merger, & decides on:
  - Transfer of assets / liabilities from Tor to Tee co.
  - Share allotment by Tee co. to other parties
  - ongoing legal proceedings (Tor - Tee)
  - Dissolution of Tor co.
  - protection to dissenting sh
  - Special provision (FPI) for non-resident sh
  - Employee transfer (Tor - Tee)

- If T<sup>or</sup> co. = listed BUT T<sup>ee</sup> co. = unlisted, it will remain unlisted until listed.
- set off of fees related to authorised cap. b/w T<sup>or</sup> & T<sup>ee</sup> company.
- Co. must ensure that the scheme is fully implemented and follow all Tribunal's order.

### Rule 25: Merger & amalgamation of certain companies →

Applicability:   
 { 2 or more startups.  
 { one startup one small co.  
 { Holding co. & its wor.

Notice of proposed scheme: Co. must issue notice in form CAA.9 to invite objections / suggestions from Roc, official liquidator, and others affected by the scheme

Declaration of solvency: Co. must file in form CAA.10 before convening meetings for approval.

Notice to members / creditors: must include -   
 { declaration of solvency  
 { copy of scheme

- After members, creditors approve the scheme, T<sup>ee</sup> co. must file copy of scheme & meeting results in form CAA.11 with Cg, Roc and official liquidator.

- if no objections are received within 30 days, Cg will issue confirmation order. If objections raised, govt. decides whether to approve / refer matter to tribunal.

↓  
 Once confirmed, order must be filed with Roc in form INC-28 within 30 days.

- Scheme must be approved by 90% s/h / creditors (in value)

## Rule 25A: Merger & amalgamation of Indian & foreign company →

- foreign co. can merge with an Indian co. with prior RBI approval and following Co. Act procedure.
- Indian co. can merge with foreign co. with prior RBI approval and must ensure international valuation standards are followed.
- After RBI approval, co. must file appl<sup>n</sup> with NCLT for merger.
- If merger involves a co. from land-border country, a declaration in form CAA-16 is needed when filing with Tribunal.

## Rule 26: Notice to dissenting sh →

if 90% of sh approve the transfer of shares, the co. can acquire the shares of dissenting sh within 2m from end of 4m offer period.

The co. must send notice in form CAA-14 to dissenting sh at their last known address to acquire their shares.

## Rule 22: Circular containing scheme of merger / amal. →

A circular offering scheme involving share transfers must include details listed in form CAA-15.

circular must be registered with Roc.

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\* (CAA 1) \*  
(Creditors Responsibility statement)

I/we, \_\_\_\_\_ creditors of M/s \_\_\_\_\_, for an amt. of Rs. \_\_\_\_\_ as of \_\_\_\_\_, hereby declare that we have read & understood the proposed corporate debt restructuring scheme & believe that it is in our best interest to agree to it. I/we further declare that the debt is owed to us by the company and it was created in good faith and in ordinary course of co.'s business. I/we confirm that the scheme does not provide any fraudulent preferences to us at the expense of any other secured / unsecured creditors.

Signature of creditors :

Date:

Place:

\* (CAA. 2) \*

(Notice of meeting of creditors/members)

Notice is given that, by an order dated \_\_\_\_\_, National Co. law Tribunal has directed a meeting of creditors/mem. of co. to consider & approve proposed compromise, arrangement, amalgamation with the co. The meeting will be held on date, time, venue.

Copies of proposal & related docs can be obtained free of charge at co.'s RO (a) from auth. representative. Attendees can vote in person, through proxy, submitted 48 hrs before the meeting.

Tribunal has appointed Shri \_\_\_\_\_ as chairperson of meeting. Approval by meeting will be subject to further Tribunal approval.

Date:

Chairperson.

classmate  
Date \_\_\_\_\_  
Page 82

\* (CAA 3) \*  
(Notice to Govt. & Authorities)

To,  
CG, ROC, IT Authorities, RBI, SEBI, STX & other relevant authorities.

Notice is given that as per the order of NCLT, a meeting of members / creditors of [co. name] will be held on (date) to consider proposal of compromise / arrangement with (transferee) at (venue)

You may send any representations to NCLT within 30 days. If no representations are received, it will be assumed that there are no objections.

Date:

Place:

Enclosure - Notice + statement  
Scheme of compromise / arrangement.

\* (CAA 5) \*  
(Petition to sanction compromise / arrangement)

The petition of ABC Ltd, the petitioner is as follows:

1. The petitioner seeks Tribunal sanction for compromise or arrangement   
 (merger, acquisition  
 or restructuring / sale of assets, biz etc.)
2. The company was incorporated under Co. Act, 1956 with a nominal capital of ₹ 50,00,000 divided into shares of ₹ 100 each.
3. The company's objective are stated in Memorandum of Association.

4. The company carried out manufacturing business and the compromise is needed due to financial situation. Benefits sought from arrangement are :
- Preventing insolvency
  - saving business.
5. The compromise / arrangement terms are as follows :
- Right to existing i/h
  - settlement in installment
  - Retention of key employees
6. The tribunal ordered a meeting of class of creditors / members to approve the Arrangement. Mr. Ram was appointed to chair the meeting & report back.
7. Notices were sent to creditors / members along with details and proxy form, as well as adv. in newspapers.
8. A meeting was held on 9<sup>th</sup> September '2024, chaired by Mr. Ram & the results were reported to Tribunal.
9. The meeting had 1000 attendees, representing 100% of company's total debts / shares. Resolution was passed by majority.
10. The compromise / arrangement will benefit the company.
11. Notice of this petition need not be served on any person.

Prayer :

- The Tribunal is requested to sanction the compromise / arrangement, binding it on all relevant creditors / members.
- or such other order as Tribunal deems fit.

Verification :

Petitioner.

\* (CAA. 8) \*  
(Statement to be filed with ROC)

CIN :

GLN (Global location no-) :

Co. name :

Ro address :

Email ID :

Board Resolution Date :

Tribunal order date :

Completed actions -

Pending actions -

I, Director / company secretary of XYZ Ltd, confirm that the company is in compliance with Tribunal's order dated 9<sup>th</sup> September, 2024.

A copy of scheme of compromise / arrangement is attached.

Signed by :

Director / CS :

Date :

Place :

\* (CAA 9) \*  
{ Notice of scheme inviting  $\subseteq$  objections & suggestions }

Notice is given by M/s XYZ Ltd about a proposed merger / amalgamation with M/s ABC Ltd. Objections & suggestions are invited from :

1. Registrar
2. Official liquidator
3. Any affected person.

Deadline: Submit objections / suggestions within 30 days to CG and authorised representative of transferor company.

Date:

Place:

Authorised Representative

Enclosure: Scheme copy.

\* (CAA. II) \*

(Notice of Approval of Scheme of merger)

Company details: CIN / GLN

Transferee co.: Name / Address / Email

Nature of co.: Small companies / Holding & subsi.

Transferor co.: CIN / GLN / Name / Address / Email.

Brief details of merger arrangement.

Approval by transferee company -

Members' approval:   
 { Notice sent meeting date }   
 { approval date }   
 { majority 90% shares. }   
 } same for creditor's approval.

Approval by transferor company - (mem. / cred. approval)  
 Declaration:

I, Mr. Ram, Director of transferor co. declare that:

1. Notice of scheme was sent to RoC, off-liqui. affected parties
2. Objections have been addressed to satisfaction of all parties
3. Scheme was approved by required majority of mem. / creditor.
4. All requirements u/s 233 have been met.
5. The info. provided is accurate & complete.

Place:

Date:

Signature:

Attachments: Approved scheme / notice sent / optional attachments.

## \* (CAA 14) \*

### (Notice to Dissenting s/h)

M/S XYZ Ltd informs you that an offer to acquire shares in M/S ABC Ltd at ₹ 90 has been approved by s/h holding atleast 90% of shares. The transferee company now intends to acquire your shares at the same price.

If you disagree, you may apply to Tribunal within one month. If no appl<sup>n</sup> is made, the transferee company will acquire your shares as per the offer terms.

Date:

Place:

Signature

(On Behalf of Transferee co.)

### APPLICATION IN CASE OF OPPRESSION & MISMGT →

Sec 241: Any member of the company who complains that:

- Sec 241 of Co. Act, 2013: Right of members to apply to Tribunal if they believe that the co.'s affairs are being conducted in a oppressive / prejudicial manner.

- A member of co. can apply to tribunal if:

Co. affairs are being conducted in a manner prejudicial to public interest / members int.

There is a material change in mgt of company that is detrimental to company / its members.

- CG can also apply to Tribunal if it believes that affairs of co. are being conducted in a manner harmful to public interest.

- If Cg believes that :

↓  
person managing  
the co. is involved  
in fraud, misfeasance,  
persistent negligence

↓  
co. business is being  
mismgmt / conducted  
in a way that  
harms industry,  
public interest.

↓  
co.'s mgmt is  
defrauding  
creditors /  
members.

↓  
govt can refer the matter to Tribunal to determine whether  
the person is fit to continue managing the company.

- person against whom case is referred will be included as  
Respondent in the proceedings.

- appl<sup>n</sup> by Cg must include details of allegations ~~like~~.  
It must be signed & verified as per CPC, 1908.

Oppression: actions that are harsh, burdensome or wrongful.

mismgmt: poor / improper mgmt of co.'s affairs.

[vs krishnan v. westfort Hi-tech Hospital Ltd] →

oppression can arise if :

↓  
conduct is  
harsh /  
burdensome

↓  
actions are  
taken in bad  
faith / personal  
advantage, even  
if it ultimately  
benefits the co.

↓  
conduct is  
against expected  
standard of  
fairness.

↓  
Even legally  
permissible actions  
can be oppressive  
if they are  
wrongful /  
unethical.

[Berje Laxmi cotton mills Ltd] → Court emphasized that when alleging fraud / misconduct, applicant must provide specific details. Vague allegations will not suffice.

[Shanti Prasad Jain] → oppression requires continuous unfair conduct by majority towards the minority. oppression = harsh, burdensome should be by majority towards the minority.

Sec 242: Powers of Tribunal → Gives power to tribunal to resolve issues of oppression & mismt in a company. If co.'s affairs are prejudicial / oppressive to members / public interest - Tribunal can take action without winding up the company.

General orders → Tribunal can make orders to address the issues, like regulating co.'s conduct, buying back shares, removing directors instead of winding up.

Specific Remedies → orders can include:

- Buying shares from members
- modifying / terminating agreements with directors
- setting aside fraudulent transactions.
- Removing / appointing directors
- Recovering undue gains from directors.

Tribunal can make temp. orders to regulate co.'s affairs during the proceedings.

- Changes made by tribunal to co.'s MOA / AOA have same effect as if the co. has made them itself.
- Co. must file these changes with Roc within 30 days.

- Dale & Carrington investment → Tribunal set aside the issue of shares to a managing director for personal gain as it was Malafide & against co.'s interest.

\* Summary of key legal principles →

Removal of Director without proper notice / meeting →

↓  
Directors removed without proper notice / valid meetings are considered unlawful and may be reinstated.

↓  
In closely held / family co., removal of Director without following due process is an act of oppression & affected directors may claim their pending remuneration & challenge the removal.

Removal of <sup>managing</sup> Director / Promoter Director →

↓  
fraudulent reduction of MD's s/holding requires reinstatement to their original shares & compensation.

↓  
if MD breaches a compromise, remaining director can manage the company.

↓  
Issues related to qualification shares are secondary to main issue of oppression in MD removal.

Allotment of shares & oppression →

↓  
issuing shares to alter control unfairly (eg. creating a new majority) is oppressive.

↓  
if share allotments harm others s/h, they may be entitled to maintain their ownership ratio & sell their shares.

↓  
Allotments made to raise funds for legitimate needs are valid, but affected s/h can sell their shares.

## Removal of Directors in family companies →

changes in s/holding that disturb the balance in family-run co. are considered oppressive. A fair share valuation by an independent valuer is required.

Disputes among family s/h should not be resolved arbitrarily during civil suits, proper procedures must be followed.

## Arbitration v. company law Board Jurisdiction →

only company law Board has the authority to handle oppression and mismgmt claims even if arbitration clause exists in s/h agreements.

Arbitration cannot resolve matters related to oppression/mismgmt, only CLB can grant relief in such cases.

## \* Consequences of termination / modification of certain agreements u/s 242 →

- If an agreement is terminated / modified u/s 242 :

no claim for damages / compensation can be made by affected person.

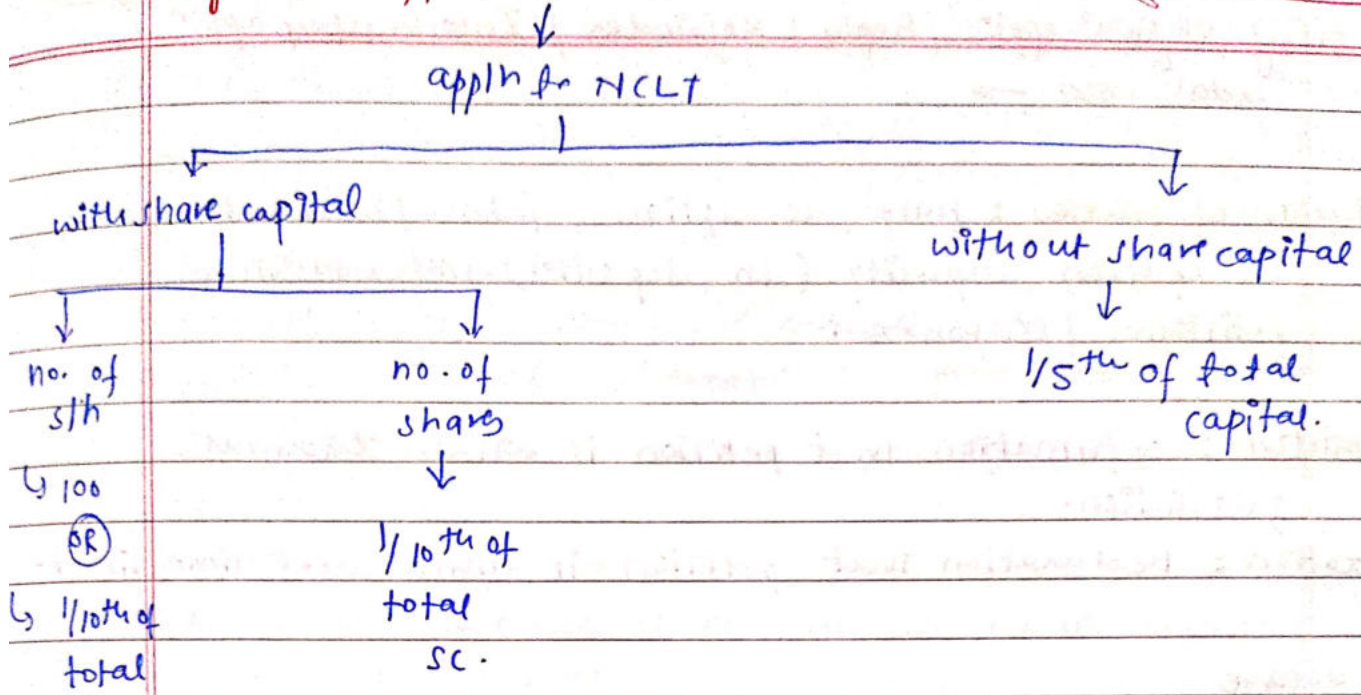
The person cannot be reappointed as Director / manager for 5 years, unless the tribunal permits.

- if a person is deemed unfit to hold office - They cannot hold any directorial / managerial position for 5 years, unless allowed by CG / Tribunal.

- Individuals removed from office are not entitled to compensation for loss of office, regardless of agreements.

- If someone knowingly violates these Rules and acts as a Director / manager during the restricted period, fine upto 5 lakhs.

\* Right to apply u/s 241 → opp. & mismgmt.



\* Following points apply to appl<sup>n</sup> under Sec 241 related to oppression & mismgmt →

General procedure :  
↳ tribunal can set procedure based on natural justice.  
↳ petitions in NCLT-1 with attachments & affidavit in NCLT-6.

Transfer of cases from Company Law Board :

- pending cases before CLB are transferred to tribunal.
- Tribunal may reopen reserved cases if request more evidence if required.

Filing petitions : Appl<sup>n</sup> u/s 241 must be filed with required docs + member consent. A copy of appl<sup>n</sup> is served on company & relevant parties.

Withdrawal of appl<sup>n</sup> : appl<sup>n</sup> u/s 241 cannot be withdrawn without Tribunal approval.

- withdrawal requests must be made using NCLT-9.

## \* (NCLT-1) \*

For filing original appl<sup>n</sup> / Reply / Rejoinder / Interlocutory appl<sup>n</sup> /  
add<sup>n</sup> Docs →

**Particulars of parties** : name, description, father / husband's name, occupation, capacity (i.e. depositor) and address of petitioner / respondent.

**Jurisdiction** : confirmation that petition is within tribunal's jurisdiction.

**Limitation** : Declaration that petition is within legal time limit.

**Facts of case**

**Relief sought**

**Fee payment** : Bank draft and details.

**Signature** : of petitioner, auth. ~~re~~ signatory, date & place.

## (NCLT-9)

Company petition no. \_\_\_\_\_ of 2024

Details of appl<sup>n</sup> / petition

Applicant info.

← Name  
← R/o address

← address for service of notice  
← phone / fax & email

} same inf. of  
Respondent

I \_\_\_\_\_ solemnly affirm & say as follows:

1. I have read & confirm petitioner's statements are true.
2. Facts of order being challenged (summary of facts)
3. Jurisdiction : matter is within Tribunal's Jurisdiction.
4. Limitation : petition is within legal time limit.
5. Pending matters : matter is not before any other authority.

6. Fees details :  
← Amt.  
← Bank name  
← DP no.

7. Index of docs
8. List of enclosures.

Relief sought :

Describe reliefs with legal grounds  
Interim relief (if required)

Date :

Signature of Applicant

Affirmed before me at Mumbai on (date)

Signature of Notary / public officer.

### \* Appl<sup>n</sup> for class actions →

- slh activism in India means slh getting involved in to improve <sup>corporate</sup> actions / governance and wrong doings. Co. Act, 2013 introduced class Action suit, allowing small slh to join together in one lawsuit, making it easier and cheaper to take actions against the company!

### \* Types of class Action suit →

- ① Product liability / personal injury → when a defective product harms many people.
- ② Consumer → when co. harm consumers through illegal practices.
- ③ Employment → when ee face violations like unpaid overtime / discrimination.
- ④ Securities → when investors are harmed by co.'s misconduct.

- class action suits have 2 key points:

↙  
issue affects everyone  
in the group.

↓  
There are too many people  
involved in suit individually.

## \* Actions under CPC →

- Individuals / groups can file a lawsuit on behalf of many people, but they need court permission. Key points are:

↓  
many people  
must be  
involved.

↓  
All must  
have same  
interest.

↓  
Court  
permission  
is required.

↓  
Court must  
notify  
every one  
involved.

↓  
No part of  
case can be  
changed  
without  
notifying  
everyone.

↓  
If the representative isn't  
acting properly - court can replace them.

- People can file a suit for public nuisances / wrongful acts affecting the public, even if they haven't suffered any wrongful / direct harm.

## \* Actions under COPRA →

- COPRA provides a fast way to resolve consumer disputes through 3 forums:

- District forums: claim upto 20L

- State comm<sup>n</sup>: 20L - 1 CR

- National comm<sup>n</sup>: claim > 1 CR.

- Consumers with common issues can file complaints, but they need permission from appropriate forum.

## \* Actions under Competition Act →

- under Competition Act, people affected by anti-competitive behaviour can file compensation claims with the Competition Appellate Tribunal (COMPAT). If a group of people has same issues, they can file class actions for compensation.

- claims can be made only if -  
 ✓ CCI / COMPAT has already found a violation.      ↓  
 There's damage from not following CCI / COMPAT orders.

### \* public interest litigation →

- It is legal action for public's benefit, usually against the govt. Unlike class actions, which can be against any entity PIL can only target public authorities.
- person filing PIL doesn't need to be directly affected.

### \* Industrial disputes / collective bargaining under IDA →

IDA supports collective bargaining by unions, allowing workers to unite in addressing ER issues.

### \* class action suit under Co. Act, 2013 / NCLT Rules →

- Sec 37 of Co. Act, 2013 allows people to file securities class action if they are affected by misleading statements / omission in co.'s prospectus. The action can be based on criminal / civil liability for misstatement / fraud. There is no min. no. of people required to file a suit.

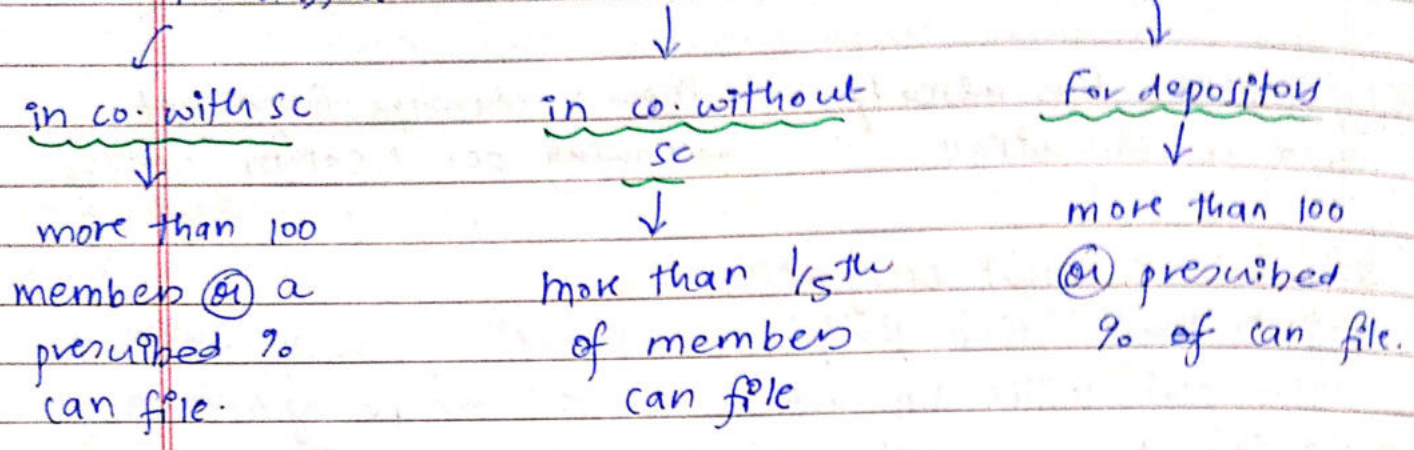
### \* persons eligible to launch class action suits →

- only members (s/h) & depositors of co. can file class action suits.

✓  
 members include those who subscribe to co.'s memorandum, agree to join or hold shares listed on a depository.

↓  
 depositors are those who have deposited money with the co.

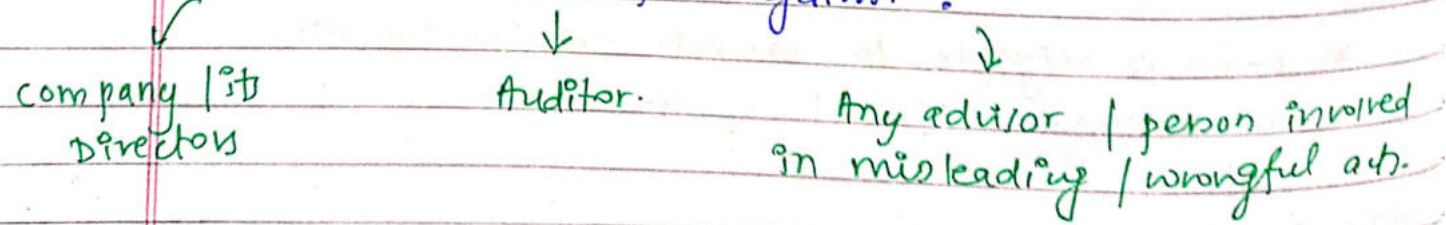
For class actions -



\* Orders that may be sought from Tribunal →  
Tribunal can order:

1. Stop the co. from acting against its rules
2. prevent breaches of co.'s MoA / AOA
3. Declare a resolution invalid if passed through fraud / misstatements.
4. Stop the company & directors from acting on such resolution.
5. prevent actions that violate the law.
6. Stop actions against resolutions passed by members.
7. Claim damages / compensation.
8. Any other suitable remedy.

\* persons against whom action class can be filed →  
class actions can be filed against:



\* factors taken into ac by NCLT →

NCLT considers following for class actions:

- whether applicants are acting in good faith
- Involvement of others besides the directors.
- whether the applicants could act individually.

- views of uninterested members (depositors)
- whether the co. can approve / ratify the action
- whether co. can ratify for past actions.

### NCLT Rules also check if :

- class is too large for individual suits
- There are common issues
- The representative's claim match the class's
- The representative will protect the class's interest.

### \* place of institution →

- Class action suits under Co. Act must be filed before NCLT.

### \* cost & exp<sup>n</sup> →

- In class action suits, the co. and the responsible person pays the cost. If the case is accepted, Tribunal combines similar cases & issues a public notice. The NCLT's decision is binding on co and its associated parties.

### \* Non-compliance with NCLT's Tribunal →

Company  
↓

fine 5 lakh - 25 lakh

officers in default  
↓

imp → upto 3 years  
fine → 25000 - 1 lakh.

### \* Compounding → (Meaning) →

- Compounding → settle by paying a fine
- Outcome → avoid prosecution & lengthy legal process.

\* nature of offences that can be compounded →

- offences punishable with only a fine can be compounded, while those involving imprisonment cannot.
- compounding is handled by the NCLT / RD with/ without special court.

\* power of <sup>mpo.</sup> compounding → as u/s 441 of Co. Act, 2013 →  
Sec 441 of Co. Act, 2013 allows for compounding of offences for certain violations that are punishable with fine only (not imprisonment). compounding can be done by NCLT / RD [for fines upto 25 lakhs]

Key points:

- ① offences punishable with imp. cannot be compounded.
- ② Companies may apply to Registrar, who forwards it to appropriate authority.
- ③ After compounding, co. must inform Roc within 7 days. If compounded before prosecution, no legal action can be taken.
- ④ offences cannot be compounded if committed within 3 yrs of similar offence being compounded.

\* Jurisdiction for compounding of offence →

- fines upto 25 lakh : compounded by RD / authorized officer
- fines > 25 lakh : compounded by NCLT.
- Imp. ① Both imp & fine : can be compounded with special court's permission.

Appl<sup>n</sup> are ~~form~~ filed through eform GNL-1.

## \* procedure for compounding of offence →

classmate

Date

Page

99

① prepare compounding appl<sup>n</sup> along with following docs:

↓ affidavit verifying petition	↓ memorandum of appearance / POA	↓ copy of notice from ROC	↓ other imp. docs.
---	---	------------------------------------	--------------------------

- ② file eform GNL - 1 online.
- ③ Joint appl<sup>n</sup> by co. f officer in default can be made.
- ④ passing of order by NCLT / RD.
- ⑤ file eform INC - 28 : Inform ROC of the order.

## \* Specimen of appl<sup>n</sup> for compounding of offence under Co. Act, 2013 →

### APPLICATION / PETITION

BEFORE THE NATIONAL CO. LAW TRIBUNAL

COMPANY PETITION NO. \_\_\_\_\_ of 2024.

IN MATTER OF SECTION 441 of COMPANIES ACT, 2013.

For offence committed u/s \_\_\_\_\_ of Co. Act, 2013.

### IN MATTER OF

XYZ Ltd, a company formed & registered under Co. Act, 1956, having its RO at Mumbai. .... Petitioner 1

AND

Mr. Shyam, Director, Sp \_\_\_\_\_, No \_\_\_\_\_

.... Petitioner 2.

### INDEX OF DOCUMENTS

1. Petition u/s 441 of Co. Act, 2013
2. Affidavit verifying petition.
3. Relevant annexures as per circumstances of case.

### I PARTICULARS OF COMPANY :

1. Company XYZ Ltd was incorporated under Co. Act, 1956 and has its Ro at Mumbai.
2. The current authorised, issued and paidup capital is ₹ \_\_\_\_\_, \_\_\_\_\_ respectively, divided into 10,000 shares of ₹ 100 each.
3. The company is involved in manufacturing business.
4. Annexure 1 : Certified copy of Certificate of Incorporation ) MOA / AOA.

### II PARTICULARS OF PETITIONERS : same as in starting.

- Petitioner 1 → XYZ Ltd
- Petitioner 2 → Mr. Shyam (Director)
- Detailed particulars of petitioners are mentioned in attached affidavit.

### III JURISDICTION :

1. The petition is being filed in jurisdiction of NCLT based on location of company's Registered office.
2. The subject matter of this petition falls u/s 441 of Co. Act, 2013.

### IV LIMITATION :

1. Petition is filed within prescribed period for compounding offences under sec 441 of Co. Act, 2013.

### V FACTS OF CASE :

1. Company committed a default u/s \_\_\_\_\_ of Co. Act, 2013 due to \_\_\_\_\_.
2. The default has been made good by passing a BR for the same.

3. Petitioner no. 2 (Director) is officer in default for this non-compliance
4. The petitioners are filing the appl<sup>n</sup> for compounding of offence suo mot.

#### (VI) NO PENDING CASE:

1. The petitioners declare that no similar offence, petition, writ, case is pending before any court/ authority.
2. There is no ongoing prosecution in relation to this offence.

#### (VII) RELIEF SOUGHT:

1. The petitioners respectfully request the Hon'ble Tribunal to compound the offence committed u/s — of Co. Act, 2013.
2. Any others orders deemed necessary by Hon'ble Tribunal for justice in the case.

#### FOR PETITIONER 1

Name  
Director  
DIN  
Email ID  
Contact no.

#### FOR PETITIONER 2.

Name  
Designation  
Residential address  
Email ID  
Contact no.

#### LIST OF ANNEXURES:

1. Petition u/s 441 of Co. Act, 2013.
2. Affidavit verifying petition
3. Relevant annexures depending on case

## AFFIDAVIT VERIFYING PETITION

I, Mr. <sup>Shyam</sup> ~~Ram~~, Director of XYZ Ltd, solemnly affirm and state:

- ✓ 1. I am the authorized representative of petitioner 1
- ✓ 2. I have read the petition & confirm that the statements in Paragraph I to VI are true to my knowledge.
- ✓ 3. The contents in Paragraph VII represent the prayer and paragraph X consists list of annexures

DEPONENT

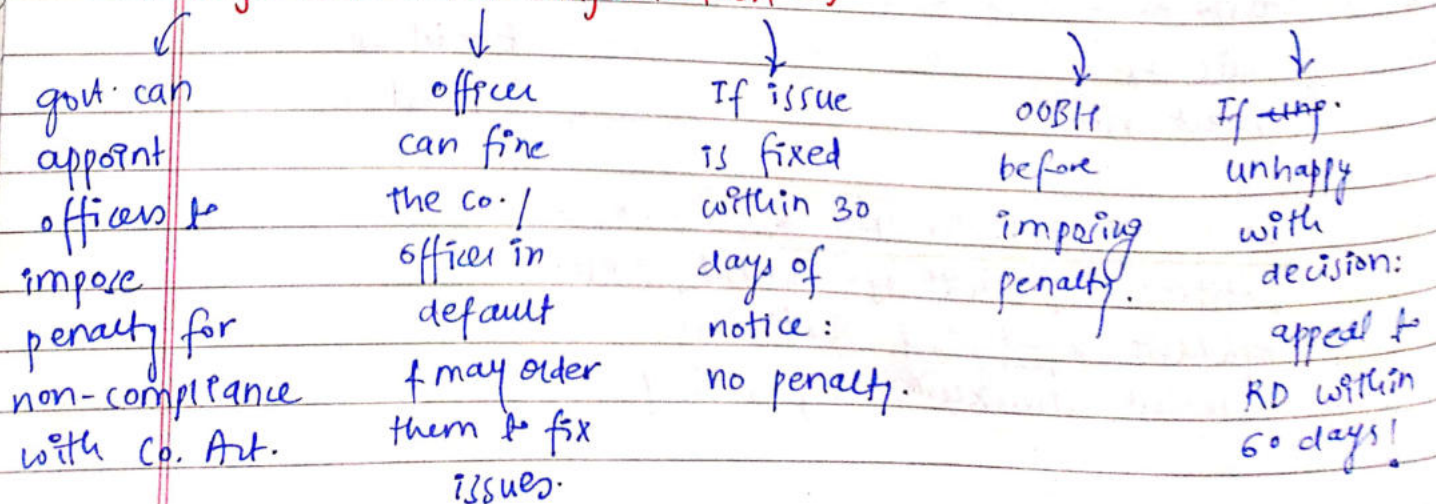
### VERIFICATION

I, above named deponent, do hereby verify that the above affidavit are true & correct to the best of my knowledge and that no part hereof is false and nothing material has been concealed therefrom.

Verified at \_\_\_\_\_ on this 1<sup>st</sup> April of 2024

DEPONENT.

### \* Adjudication & e-adjudication →



## \* Adjudication of Penalties (Rule 3) →

- govt. appoints officers to impose penalty on co. in default.
- Before imposing penalty: officer will send notice to co./ person to explain within 15-30 days.
- if needed: officer may ask the person to appear in person.
- Decision must be made within 30 days → if ~~X~~ appearance needed  
     ↳ 90 days → if appearance ✓
- The officer considers company size, public interest, nature of default while deciding the penalty.
- penalty cannot be lower than prescribed.
- If a fixed penalty is specified - it will be imposed.

## \* Appeal against Adjudicating officer's order →

file appeal within 60 days of receiving order.	use form ADJ with order copy & grounds for appeal.	include authorisa- tion if represented by someone.	appeal can only challenge one order unless stated.
--	--	--	---

## \* Regn of Appeal →

- appeal is checked & dated by RD.
- If defective: appellant has 14 days to fix it
- If defects aren't fixed: appeal can be rejected.
- The fix period can be extended by 14 days with a valid reason.

## \* Disposal of appeal by RD →

- Adjudicating officer has 21 days (extendable) to reply to the notice.
- hearing atleast 30 days later.
- If someone misses the hearing: appeal can be decided ex-parte, but can be reversed if there exists sufficient cause.
- RD issues & sends a signed decision to all parties.

## \* petition for winding up →

Who can file? co., contributories, Registrar, auth. persons (or) government.

Contributory rights: A contributory can file winding up petition even if the company has no assets (or) if they have held ~~assets~~ shares for atleast 6 months in past 18 months!

Registrar's Role: Registrar can file without prior approval from CG.

Statement of affairs: A co. petition must include statement of affairs.

Registrar's Input: The Registrar must submit their views to Tribunal within 60 days.

- petition must be filed in Form WIN 1 (or) WIN 2 in duplicate.
- petition must be verified by an affidavit (WIN 3), signed by petitioner / auth. representative.

FORM WIN - 1  
BEFORE THE NCLT BENCH AT \_\_\_\_\_

In Matter of XYZ Ltd

Petition no. 001 of 2024.

Petition for winding up.

The petition of XYZ Ltd, a company registered & formed under Co. Act, 2013, showeth:

1. The address of petitioner for service of all notices, processes etc. is. \_\_\_\_\_
2. The company XYZ Ltd was incorporated in year 1997 under Co. Act, 1956.
3. The Ro of co. is situated in Mumbai.
4. The nominal <sup>capital</sup> of company is ₹ 10,000 divided into 1000 shares of ₹ 10 each.
5. The objects for which company was formed were: \_\_\_\_\_
6. Facts that support winding up petition [continuous losses for 5 years - BR ✓ - SR ✓]
7. If filed by Registrar / auth. person - sanction / authorisation order required.

PRAYER -

The petitioner, therefore prays as follows:

1. That XYZ Ltd be wound up by Tribunal under provisions of Co. Act, 1956.
2. Any other orders as deemed appropriate

Representative of petitioner

Petitioner

Enclosures:

- sanction / auth. order from CG.
- statement of affairs (form WIN-4) if filed by company.

## FORM WIN - 2

classmate

Date \_\_\_\_\_  
Page 166

BEFORE THE NCLT BENCH OF \_\_\_\_\_

In matter of ABC Ltd

Petition no. 001 of 2024

ABC Ltd - Petitioner

Petition by company.

The petition of ABC Ltd, the petitioner showeth:

1. The address for service is \_\_\_\_\_
2. ABC Ltd was a company, formed & registered under Co. Act, 1956, having its Ro at Mumbai.
3. The Nominal capital of co. is ₹ 100,000 divided into 1000 shares of 100 ₹ each.
4. The main objects of co. are \_\_\_\_\_
5. Reasons for inability to continue voluntary / tribunal winding up
6. A SR was passed on \_\_\_\_\_ due to winding up.

### PRAYER:

1. Winding up of ABC Ltd by tribunal under Co. Act, 1956.
2. Any other just order.

Representative for petitioner

petitioner.

### \* Appeals before NCLAT → (Sec 421) →

- a. person aggrieved by order of NCLT - appeal to NCLAT
- b. within 45 days of receiving NCLT's order (extn for valid reason)
- c. Appellate tribunal can 

confirm	} order of NCLT.
modify	
set aside	
- d. Copy of ~~NCLAT's~~ <sup>NCLAT's</sup> order is sent to NCLT + parties involved.

\* person aggrieved →

↓  
person whose legal rights / interests are harmed by an order. It is NOT about disappointment, decision must cause legal harm.

- courts have expanded the meaning beyond someone whose rights are directly infringed. Even if person's interests are affected → aggrieved person ✓
- "meddlesome interloper": [someone who has no direct stake] cannot file an appeal.
- legal injury = imp. to show that any person is aggrieved.

\* limitation period for filing appeal →

- appeal must be made within 45 days, if sufficient cause, extension for more 45 days.
- Delay ✓ → should not be (gross negligence  
↳ malafide intention.
- max 90 days - cannot be extended further.
- court held that special statutes (like Co. Act, 2013) that set specific time limits for appeals exclude the appl<sup>n</sup> of limitation Act.
- Any appeal filed beyond 90 days - barred by limitation Act and will NOT be entertained.

\* sufficient cause →

- If someone misses a deadline to file an appeal: they can still file it late if they have a good reason (sufficient cause)
- courts allow delays if there's no  
↳ negligence (⊗)  
↳ bad faith.

- SC held that: "sufficient cause" should be interpreted generously to ensure fairness.
- Courts check if appellant tried reasonably hard to get the appeal filed on time.

\* Appeal from an order / decision →  
 "orders & decisions" include all types of decision including interlocutory orders

- orders under A & C Act, 1996 are not ~~appellate~~ appellable.

\* OOBH →

meaning: It means having a chance to ~~represent~~ present your case before court / tribunal before any decision is made up.

core rights: You must be informed about the hearing

- You can get legal help.
- You can question other party's witnesses.

You don't always need personal (oral) hearings. written hearings may be enough if facts are clear.

You must get a chance to defend yourself & present all your evidence!

\* Expedious Disposal of cases by { NCLT / NCLAT } →

3 month time for disposing of matter.

It delayed, reasons must be stated / recorded.

extn of upto 90 days possible with approval.

## \* appeal to Supreme Court →

→ appeal can be made to SC within 60 days from NCLAT's order on any legal question.

→ SC can <sup>provide</sup> extn of 60 days if sufficient cause exists for delay.

## \* power under A226 / 227 of COI → not taken away:

- HC's power under A226 / 227 remains, but it will NOT interfere in Tribunal appeals unless there are issues of natural justice & / jurisdiction.

## \* procedure for filing an appeal before NCLAT →

- file appeal in NCLAT-1, in triplicate + fees + certified copy of NCLT's order
- provide an index & sufficient copies for service to opposite party.
- All docs must be filed with an index.
- file 3 authenticated copies and deliver one to each opposite party.
- appeal / pleading must be signed by party / auth. representative.
- Docs in language other than English - must be translated to English.
- fees for filing appeal = ₹5000, payable by demand draft / postal order
- fees may be waived in certain cases based on financial conditions

\* NCLAT Affidavit Rules →

- Affidavits must be filled with case details.
- Use form NCLAT-4 following the CPC.
- must be sworn by Notary public / oath commn
- use form NCLAT-5 for illiterate / visually impaired.
- verify deponent's identity if unknown.
- Dow must be marked as "annexure" and signed by attester.

\* filing of interlocutory appl<sup>n</sup> →

in form NCLAT-2

affidavit supporting appl<sup>n</sup>; required.\* Imp. points to be kept in mind → for appeal →

- appeals must be in English @ with English translation.
- Double spaced, paginated, indexed & stitched
- Include tribunal's name & order being appealed.
- Use no. paragraphs, each with separate point/fact
- Include both saka & Gregorian dates.
- ~~ps~~ provide full details of each party, incl. heir (if applicable)
- mention law under which appeal is filed right after the clause title.

\* E-filing of docs before NCLT / NCLAT →

adopted e-filing for all legal docs (appeals/appl<sup>n</sup> etc) through dedicated portals. This system, introduced on Jan 4, 2021, makes filing faster & easier eliminating need for hard copies. Both tribunals offer online access to case updates, judgements & orders.

## \* Case study on merger & amalgamation:

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENCH AT \_\_\_\_\_

In matter of amalgamation

I Kall Ltd (Transferor company)  
with

HIJ Infocom Ltd (transferee company)  
petition no. 001 of 2024

Petition for approval of Amalgamation under Section 230-232 of Co. Act, 2013.

### Details of companies :

(T<sup>ee</sup> Co.) HIJ Infocom Ltd, a listed company with market capital of ₹ 21.3 crore engaged in IT solutions, hardware and BPO services generating a revenue of ₹ 70 crore in FY 2022-23.

(T<sup>or</sup> Co.) I Kall Ltd, a listed co. with market capital of ₹ 15.7 CR, a global leader in networking & connection devices generating a revenue of RS. 155 crore operating in more than 40 countries with 1500+ employees.

Rationale of Amalgamation: The amalgamation is aimed at achieving the following benefits -

1. Cost reduction, enhanced revenue through expanded product offerings and optimized operations.
2. Entry into global markets, increased consumer base.
3. Pooling of R & D resources for new product development, combining hardware & IT expertise.
4. Improved B/S, greater capital access & greater liquidity.

Details of amalgamation:

- Shareholders of I Kall Ltd will receive 1 share of HIJ Infocom Ltd for every 1 share held.
- All assets & liabilities of I Kall Ltd shall be transferred to HIJ Infocom Ltd with I Kall Ltd being dissolved.

Approval & compliance:

- scheme has been approved by s/h of both co.
- ~~Reg~~ Necessary regulatory approvals have been obtained
- Amalgamation complies with all legal requirements under Co. Act, 2013.

PRAYER: The petitioner therefore prays that:

1. The Hon'ble Tribunal sanction the scheme of amalgamation between I Kall Ltd and HIJ Infocom Ltd.
2. The amalgamation shall be effective from a date to be directed by tribunal.
3. The cost of petition be borne by the petitioners

Place:

Date:

For HIJ Infocom Ltd  
Auth. signatory  
Designation  
Common Seal

} Same for  
I Kall Ltd

Enclosures:

- Scheme of Amalgamation
- s/h approval
- Regulatory approvals
- Board Resolutions.

BEFORE THE NATIONAL CO. LAW TRIBUNAL  
BENCH AT \_\_\_\_\_

In matter of BELL CEMENTS LTD

Petition no. 001 of 2024

Petitioner: Mr. Ram [s/h of company]

Background:

Bell cements Ltd, incorporated in 1989, a leading cement manufacturer with revenue of ₹ 9499 + crore and market capitalisation of ₹ 45,11 crore.

The petitioner holds shares in the company & submits that the mgt is conducting its affairs in a manner prejudicial to the company's interest.

Grounds for petition:

1. Key decisions (loan, investments etc) were taken without conducting Board meetings, sending notices or filing resolutions with ROC.
2. No proper resolutions / documentation, undermining transparency & accountability in co.'s operations.
3. Material decisions were made without informing / consulting shareholders, which is harmful to co.'s interest.

Relief sought:

1. The mgt's actions be declared oppressive & prejudicial to interest of s/h.
2. All decisions taken without following due process be declared invalid.

Appoint

3. Independent expert to audit co.'s financial decisions & practices.

Declaration:

The petitioner affirms that petition is filed in good faith and no prior petition on same matter has been made.

Place:

Date:

For petitioner

Mr Ram

(signature)

Auth. representative

(Name & contact info.)

Enclosures:

- Slh certificate
- Evidence of misngt
- Supporting docs

## \* Case study on class Action →

### BEFORE THE NATIONAL CO. LAW TRIBUNAL BENCH AT \_\_\_\_\_

In matter of EBC JCK Ltd

Petition no. 001 of 2024.

Petitioners: Name of J/H, collectively holding 15% of eq. shares.

#### Introduction:

The petitioners, shareholders of EBC JCK Ltd, a listed co. with market cap of ₹ 36.3 CR, file a class action suit u/s 246 of Co. Act, 2013.

The petitioners collectively hold 15% of equity shares in the company and seek to address acts of oppression & mismgmt by co.'s directors.

#### Grounds of petition:

1. Directors have transferred co.'s funds to personal etc.
2. Co. properties have been used for personal gain by directors.
3. Directors have failed to follow co.'s rules & regulations.
4. The directors have violated / acted beyond the authority granted by memorandum / articles of association, prejudicing company & J/H.

#### Relief sought:

- a. Restrain directors from engaging in unauthorised actions that harm the company.
- b. Appoint an independent auditor to investigate the misuse of funds & assets.
- c. Direct the directors to return misappropriated funds & co. property.
- d. Ensure that co. follows corporate governance & regulatory filings.

Declaration: The petitioners confirm that no similar petition has been filed & that the petition is made in good faith for protection of sh & co.'s interests.

Place :

Date :

For the petitioners  
(Name & signature)

Auth. Representative  
(Name & contact details)

Enclosures:

- sh in details
- co.'s MOA / AOA
- Evidence of mismgf
- co.'s financial statements.

**\* Case study on Compounding \***

BEFORE THE NATIONAL CO. LAW TRIBUNAL

BENCH AT \_\_\_\_\_

In matter of Timber Ind. Pvt. Ltd  
petition no 001 of 2024

Petitioner:

Timber Industries Pvt. Ltd

Through Director

Mr. Ram

(Co.'s Address)

Introduction →

- Timber Ind. Pvt. Ltd is a leading aluminium extrusion manufacturer with a turnover of ₹ 171 Cr.
- Due to financial difficulties, co. has failed to file its financial statements for last 3 years and did not comply with CSR provisions under Co. Act, 2013.
- The new director has rectified the defaults & now seeks compounding under section 441 of Co. Act, 2013.

Grounds for appl<sup>n</sup> →

- failure to file FS for 3 years
- non compliance with CSR provisions for 3 years
- Both defaults have been rectified by new mgmt, and all filings are up to date.

Relief sought →

1. Compounding of offence u/s 135 & 137.
2. Waiver / reduction of penalty due to rectification efforts.
3. Direction for future compliance with Co. Act, 2013.

Declaration → The petition is filed in good faith & the petitioner undertakes to comply with all provisions of Companies Act going forward.

Place:

Date:

for petitioner

(Signature)

(Name &amp; Designation)

Enclosures:

- Copy of FS
- proof of CSR compliance
- any other supporting docs.

## \* Case study on winding up \*

BEFORE THE NCLT

BENCH AT \_\_\_\_\_

In matter of DVR Ltd

Petition no. 001 of 2024

Petitioner: DVR Ltd [co. address]

### Introduction:

- DVR Ltd is a listed co. with a market cap of ₹ 111 Cr. It specializes in drone solutions but has faced increasing losses (₹ 115 Cr) and is unable to meet its financial obligations.
- The company has pledged its shares, failed to pay employee salaries & defaulted in secured loans.
- Due to financial distress, all directors have resigned & the company is seeking voluntary winding up u/s 304 of Co. Act, 2013.

### Grounds for winding up:

1. Co.'s losses have increased, & it cannot repay its debts
2. operations have stopped due to financial inability.
3. A resolution for winding up has been passed by Board and Jh.

### Relief sought:

- a. order for voluntary winding up of co.
- b. apptn of official liquidator
- c. Direction for settlement of debts.
- d. Any other necessary relief.

Declaration: The petitioner undertakes to comply with all legal requirements during winding up process.

Place:

Date:

For petitioner

(Name & signature)

(Designation)

Enclosures:

- BR and S/s resolution for winding up
- B of liabilities
- Declaration of solvency
- Any other required docs..