Applications, Petitions and Appeals under Companies Act, 2013

Lesson 12

KEY CONCEPTS

■ Caveat ■ Interlocutory application ■ Amicus Curiae ■ Appeal ■ Principle of Corporate democracy ■ Public Interest Litigation ■ Compounding ■ Sufficient Cause

Learning Objectives

To understand:

- Rules of NCLT and NCLAT applicable to proceedings
- Filling of Appeal to NCLT against notice of rejection to transfer shares
- Submitting application for calling the AGM and other meetings to NCLT for their direction
- Drafting of Petition for Compromise and Arrangements including mergers and amalgamations
- Drafting of Petition in case of Oppression and Mismanagement
- Drafting of Petition for class actions
- Preparing Compounding Application
- Adjudication and E-Adjudication before authorities under Companies Act, 2013
- Winding up Petition
- Filling Appeals before NCLAT

Lesson Outline

- Introduction
- NCLT Rules
- NCLAT Rules
- Appearances - some do's and don'ts
- Appeal to NCLT against notice of Refusal to Transfer Shares
- Application to NCLT for direction for calling the AGM and other meetings
- Application for Compromise and Arrangements including Mergers and Amalgamations
- Application in case Oppression and Mismanagement & Class Actions
- Application for Compounding
- Adjudication and E-adjudication
- Petition for Winding up
- Appeal before NCLAT
- Case Studies
- E-filing of documents before NCLT & NCLAT
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites/video links)

REGULATORY FRAMEWORK

- The Companies Act, 2013
- NCLT & NCLAT Rules
- Limitation Act, 1963.
- Companies Act, 1956
- Civil Procedure Code, 1908

INTRODUCTION

The Ministry of Corporate Affairs has notified the constitution of NCLT and NCLAT with effect from June 01, 2016. Consolidating the jurisdiction of Company Law Board, High Court and BIFR into a single forum i.e. NCLT, dedicated to Corporate matters, will remove the multi-fold governance. In the first phase, the Ministry of Corporate Affairs has notified the provisions of Companies Act, 2013 where the powers of Company Law Board stood transferred to NCLT and the Company Law Board is dissolved. Many provisions under which new powers are conferred on NCLT have also been notified. These include provisions relating to conversion of public company into private company, composition of offences, power of tribunal to call for an Annual General Meetings, provisions pertaining deposits, class action suits and so on.

The Eradi Committee recommended that the jurisdiction, power and authority relating to winding up of companies should be vested in a National Company Law Tribunal instead of the High Court as at present.

This Lesson covers Applications, Petitions and Appeals under the Companies Act, 2013 before NCLT and NCLAT and also to authority under the Companies Act, 2013 such as Regional Director and Registrar of Companies.

NCLT RULES

Important NCLT Rules are provided as follows:

Procedure before NCLT (Rule 20)

1. **Formats:** Every appeal or petition or application or caveat petition or objection or counter presented to the NCLT shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeter width on top and with a right margin of 2.5. cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form.

2. **Cause Title:** The cause title shall state “Before the National Company Law Tribunal” and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.

3. **Paragraphed:** Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.

4. **Date:** Where Saka or other dates are used, corresponding dates of Gregorian Calendar shall also be given.

5. **Description of Parties:** Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application.

6. **Numbering of Parties:** The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party.

These numbers shall not be changed and in the event of the death of a party during the pendency of the appeal or petition or matter, his Legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers.

Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.

7. **Mention of the provision of Law** Every proceeding shall state immediately after the cause title the provision of law under which it is preferred.

Particulars to be set out in the address for service(Rule 21)

The address for service of summons shall be filed with every appeal or petition or application or caveat on behalf of a party and shall as far as possible contain the following items namely:

(a) the name of the road, street, lane and Municipal Division or Ward, Municipal Door and other number of the house;

(b) the name of the town or village;

(c) the post office, postal district and PIN Code; and

(d) any other particulars necessary to locate and identify the addressee such as fax number, mobile number, valid e-mail address, if any.

Initialling alteration (Rule 22)

Every interlineations, eraser or correction or deletion in any appeal or petition or application or document shall be initialled by the party or his authorised representative presenting it.

Presentation of petition or appeal (Rule 23)

1. **Presentation in triplicate:** Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.
2. **Verification:** Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.
3. **Document with Index:** All the documents filed in NCLT shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.
4. **Copies for other parties:** Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed under these rules.
5. **Serving copies:** In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative.
6. **Processing Fee:** The processing fee prescribed by these rules, with required number of envelopes of sufficient size and notice forms shall be filled alongwith memorandum or appeal.

Presentation of joint petition (Rule 23A)

The NCLT Bench may permit more than one person to join together and present a single petition if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter.

Such permission shall be granted where the joining of the petitioners by a single petition is specifically permitted by the Act.

Number of copies to be filed(Rule 24)

The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or petition or application or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

Number of Copies	
3 Copies to the NCLT	1 Copy to each party

Lodging of Caveat (Rule 25)

Any person may lodge a caveat in triplicate in any appeal or petition or application that may be instituted before NCLT by paying the prescribed fee after forwarding a copy by registered post or serving the same on the expected petitioner or appellant and the caveat shall be in the "Form No. NCLT 3C" and contain such details and particulars or orders or directions, details of authority against whose orders or directions the appeal or petition or application is being instituted by the expected appellant or petitioner or applicant which full address for service on other side, so that the appeal or petition or application could be served before the appeal or petition or interim application is taken up.

Provided, that NCLT may pass interim orders in case of urgency.

The caveat shall remain valid for a period of ninety days from the date of its filing.

Endorsement and Verification (Rule 26)

1. At the foot of every petition or appeal or pleading there shall appear the name and signature of the authorised representative.
2. Every petition or appeal shall be signed and verified by the party concerned in the manner provided by these rules.

Translation of Document (Rule 27)

A document other than English language intended to be used in any proceeding before NCLT shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by authorised representative engaged on behalf of parties in the case or if the authorised representative engaged in the case authenticates such certificate or prepared by a translator approved for the purpose by the Registrar on payment of such charges as he may order.

Appeal or petition or other proceeding shall not be set down for hearing until and unless all parties confirm that all the documents filed on which they intend to rely are in English or have been translated into English and required number of copies are filed into NCLT.

Endorsement and scrutiny of petition or appeal or document (Rule 28)

The person in charge of the filing-counter shall immediately on receipt of petition or appeal or application or document affix the date stamp of NCLT thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

If, on scrutiny, the appeal or petition or application or document is found to be defective, such document shall, after notice to the party, to returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the pleading or document.

Registration of proceedings admitted (Rule 29)

On admission of appeal or petition or caveat or application, the same shall be numbered and registered in the appropriate register maintained in this behalf and its number shall be entered therein.

Calling for records (Rule 30)

On the admission of appeal or petition or application the Registrar shall, if so directed by NCLT, call for the records relating to the proceedings from any adjudicating authority and retransmit the same.

Production of authorisation for and on behalf of an association(Rule 31)

Where an appeal or application or petition or other proceeding purported to be instituted by or on behalf of an association, the person or persons who sign (s) or verify(ies) the same shall produce along with such application, for verification by the Registry, a true copy of the resolution of the association empowering such person(s) to do so.

Provided that the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorization.

Provided further that it shall set out the list of members for whose benefit the proceedings are instituted.

Interlocutory applications (Rule 32)

Every Interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in prescribed form and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.

General Procedure (Rule 34)

1. In a situation not provided for in these rules, NCLT may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice.
2. The general heading in all proceedings before NCLT, in all advertisements and notices shall be in Form No. NCLT. 4.
3. Every petition or application or reference shall be filed in form as provided in Form No. NCLT. 1 with attachments thereto accompanied by Form No NCLT.2 and in case of an interlocutory application, the same shall be filed in Form No. NCLT. 1 accompanied by such attachments thereto along with Form No NCLT. 3.
4. Every petition or application including interlocutory application shall be verified by an affidavit in Form No. NCLT.6. Notice to be issued by NCLT to the opposite party shall be in Form NCLT-5.

Advertisement detailing petition (Rule 35)

1. Where any application, petition or reference is required to be advertised, it shall, unless NCLT otherwise orders, or these rules otherwise provide, be advertised in Form NCLT-3A, not less than fourteen days before the date fixed for hearing, at least once in a vernacular newspaper in the principal vernacular

language of the district in which the registered office of the company is situate, and at least once in English language in an English newspaper circulating in that district.

2. Every such advertisement shall state;-

   (a) the date on which the application, petition or reference was presented;

   (b) the name and address of the applicant, petitioner and his authorised representative, if any;

   (c) the nature and substance of application, petition or reference;

   (d) the date fixed For hearing;

   (e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition or reference at the hearing shall send a notice of his intention to the concerned Bench and the petitioner or his authorised representative, if any, indicating the nature of interest and grounds of opposition so as to reach him not later than two days previous to the day fixed for hearing.

3. Where the advertisement is being given by the company, then the same may also be placed on the website of the company, if any.

4. An affidavit shall be filed to the Tribunal, not, less than three days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served.

   Provided that the affidavit shall be accompanied with such proof of advertisement or of the service, as may be available.

5. Where the requirements of this rule or the direction of NCLT, as regards the advertisement and service of petition, are not complied with, NCLT may either dismiss the petition or give such further directions as it thinks fit.

6. NCLT may, if it thinks tit, and upon an application being made by the party, may dispense with any advertisement required to be published under this rule.

Notice to Opposite Party (Rule 37)

1. NCLT shall issue notice to the respondent to show cause against the application or petition on a date of hearing to be specified in the Notice. Such notice in Form No NCLT.5 shall be accompanied by a copy of the application with supporting documents.

2. If the respondent does not appear on the date specified in the notice in Form No. NCLT.5, NCLT, after according reasonable opportunity to the respondent, shall forthwith proceed *ex-parte* to dispose of the application.

3. If the respondent contests to the notice received under sub-rule (1), it may. either in person or through an authorised representative, file a reply accompanied with an affidavit and along with copies of such documents on which it relies, with an advance service to the petitioner or applicant, to the Registry before the date of hearing and such reply and copies of documents shall form part of the record.

Service of Notices and processes (Rule 38)

1. Any notice or process to be issued by NCLT may be served by post or by courier or at the e-mail address as provided in the petition or application or in the reply.

2. The notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal:

(a) by hand delivery through a process server or respective authorised representative;

(b) by registered post or speed post with acknowledgment due or by courier; or

(c) service by the party himself.

Explanation.-For the purposes of sub-rules (l) and (2), the term "courier" means a person or agency which delivers the document and provides proof of its delivery.

3. Where a notice issued by NCLT is served by the party himself by hand delivery, he shall file with the Registrar or such other person duly authorised by the Registrar in this behalf, the acknowledgment together with an affidavit of service and in case of service by registered post or by speed post, file with the Registrar, or such other person duly authorised by the Registrar in this behalf, an affidavit of service of notice alongwith the proof of delivery.

4. Notwithstanding anything contained in sub-rules (1} and (2), NCLT may after taking into account the number of respondents and their place of residence or work or service could not be effected in any manner and other circumstances, direct that notice of the petition or application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears to the Tribunal just and convenient.

5. A notice or process may also be served on an authorised representative of the applicant or the respondent, as the case may be, in any proceeding or on any person authorised to accept a notice or a process, and such service on the authorised representative shall be deemed to be a proper service.

6. Where NCLT directs a service under sub-rule (4), such amount of charges, as may be determined by NCLT from time to time, but not exceeding the actual charges incurred in effecting the service, shall be deposited with the Registry of NCLT by the petitioner or applicant.

Multiple remedies (Rule 38A)

A petition shall be based upon a single cause of action and may seek one or more reliefs provided that the reliefs are consequential to one another.

Production of Evidence by Affidavit (Rule 39)

1. NCLT may direct the parties to give evidence, if any, by affidavit.

2. Notwithstanding anything contained in sub-rule (l), where NCLT considers it necessary in the interest of natural justice, it may order cross examination of any deponent on the points of conflict either through information and communication technology facilities such as video conferencing or otherwise as may be decided by NCLT, on an application moved by any party.

3. Every affidavit to be filed before the Tribunal shall be in Form No. NCLT.7.

Production of additional evidence before the Bench (Rule 40)

1. Notwithstanding anything contained in rule 39, the parties to the proceedings shall not be entitled to produce before the Bench additional evidence, either oral or documentary, which was in the possession or knowledge but was not produced before the Inspector, appointed by the Central Government for the purpose of investigating the affairs of the concerned company, during investigation under Chapter XIV of the Companies Act, 2013 but if the Bench requires any additional evidence or document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Inspector so appointed for the said purpose has not given sufficient opportunity to the party to adduce evidence, the Bench, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence in be produced.

2. Such document may be produced or such witness examined or such evidence adduced either before the Bench or before such authority as the Bench may direct.

3. If the document is directed to be produced or witness examined or evidence adduced before any authority, the party shall comply with the direction of the Bench and after compliance, send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Bench.

4. Additional evidence or document shall be made available by the Bench to the parties to the proceedings other than the party adducing the evidence and they shall be afforded an opportunity to rebut the contents of the said additional evidence.

Filing of Reply and other Documents by the Respondents (Rule 41)

1. Each respondent may file his reply to the petition or the application and copies of the documents, either in person or through an authorised representative, with the registry as specified by NCLT.

2. A copy of the reply or the application and the copies of other documents shall be forthwith served on the applicant by the respondent.

3. To the reply or documents filed under sub-rule (1), the respondent shall specifically admit, deny or rebut the facts stated by the applicant in his petition or application and state such additional facts as may be found necessary in his reply.

Filing of Rejoinder (Rule 42)

Where the respondent states such additional facts as may be necessary for the just decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent.

Power of the Bench to call for further information or evidence (Rule 43)

1. The Bench may before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary-

   (a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or

   (b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.

2. Without prejudice to sub-rule(1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.

3. Where any party preferring or contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it shall be at liberty to move an appropriate application for forensic examination and the Bench hearing the matter may, for reasons to be recorded, either allow the application and send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records, or dismiss such application.

Hearing of petition or applications (Rule 44)

1. NCLT shall notify to the parties the date and place of hearing of the petition or application in such manner as the President or a Member may, by general or special order, direct.

2. Where at any stage prior to the hearing of the petition or application, the applicant desires to withdraw his petition or application, he shall make an application to that effect to NCLT, and NCLT on hearing the applicant and if necessary, such other party arrayed as opposite parties in the petition or the application or otherwise, may permit such withdrawal upon imposing such costs as it may deem fit and proper for NCLT in the interests of the justice.

Rights of a party to appear before NCLT (Rule 45)

(1) Every party may appear before NCLT in person or through an authorised representative, duly authorised in writing in this behalf.

(2) The authorised representative shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in Form No. NCLT. 12 representing the respective parties to the proceedings.

(3) The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an advocate to represent in the proceedings before NCLT.

(4) The officer authorised by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor.

(5) During any proceedings before NCLT, it may for the purpose of its knowledge, call upon the Registrar of Companies to submit information on the affairs of the company on the basis of information available in the MCA21 portal, Reasons for such directions shall be recorded in writing.

(6) There shall be no audio or video recording of the Bench proceedings by the parties or their authorised representatives.

Consequence of non-appearance of applicant (Rule 48)

1. Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, NCLT may, in its discretion, either dismiss the application for default or hear and decide it on merit.

2. Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies NCLT that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, NCLT shall make an order restoring the same.

Provided that where the case was disposed of on merits the decision shall not be re-opened.

Ex-parte Hearing and disposal (Rule 49)

1. Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, NCLT may adjourn the hearing or hear and decide the petition or the application *ex-parte*.

2. Where a petition or an application has been heard *ex-parte* against a respondent or respondents, such respondent or respondents may apply to NCLT for an order to set it aside and if such respondent or respondents satisfies NCLT that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing when the petition or the application was called for hearing, NCLT may make an order setting aside the *ex-parte* hearing as against him or them upon such terms as it thinks fit.

Provided that where the *ex-parte* hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only it may be set aside as against all or any of the other respondents also.

Registry to send certified copy (Rule 50)

The Registry shall send a certified copy of final order passed to the parties concerned free of cost and the certified copies may be made available with cost as per Schedule of fees, in all other cases.

Power to regulate the procedure (Rule 51)

NCLT may regulate its own procedure in accordance with the rules of natural justice and equity, for the purpose of discharging its functions under the Companies Act, 2013.

Summoning of witnesses and recording Evidence (Rule 52)

1. If a petition or an application is presented by any party to the proceedings for summoning of witnesses, NCLT shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.

2. Where summons are issued by NCLT under sub-rule (1) to any witness to give evidence or to produce any document, the person so summoned shall be entitled to such travelling and daily allowance sufficient to defray the travelling and other expenses as may be determined by the Registrar which shall be deposited by the party as decided by the Registrar.

Substitution of legal representatives (Rule 53)

1. Where a party to a proceeding pending before a Bench dies or is adjudged insolvent or, in the case of a company, being wound up, the proceeding shall not abate and may be continued by or against the executor, administrator or other legal representative of the parties or by or against the assignee, receiver or liquidator, as the case may be.

2. In the case of death of a party during the pendency of the proceedings before NCLT, the legal representative of the deceased party may apply within ninety days of the date of such death for being brought on record.

3. Where no petition or application is received from the legal representatives within the period specified in sub-rule (2), the proceedings shall abate:

   Provided that for good and sufficient reasons shown, NCLT may allow substitution of the legal representatives of the deceased at any time before disposing the petition on merits.

Pleadings before NCLT (Rule 55)

No pleadings, subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal may think fit.

Application for execution (Rule 56)

For execution of order passed by NCLT, the holder of an order shall make an application to NCLT in Form NCLT.8.

Effect of non-compliance (Rule 58)

Failure to comply with any requirement of these rules shall not invalidate any proceeding, merely by reason of such failure, unless the Tribunal is of the view that such failure has resulted in miscarriage of justice

Amicus Curiae (Rule 61)

1. NCLT may, as its discretion, permit any person or persons, including the professionals and professional bodies to render or to communicate views to NCLT as amicus curiae on any point or points or legal issues as the case may be as assigned to such amicus curiae.
2. NCLT may permit amicus curiae to have access to the pleadings of the parties and NCLT shall enable the parties to submit timely observations on brief provided by the amicus curiae.
3. NCLT shall be at liberty to direct either of the parties or both the parties to the proceedings involving a point on which the opinion of the amicus curiae has been sought, to bear such expenses or fee as may be ordered by NCLT.
4. The judgment and any appended opinions shall be transmitted to the parties and to amicus curiae.

Presentation and scrutiny of petitions or applications (Rule 63)

In case of the scrutiny of the petitions or applications as provided in Part III and elsewhere in these rules, if any person is aggrieved of the decision of the Registrar or such other officer officiating as the Registrar of the Benches, an appeal against the order of the Registrar shall be made within fifteen days of the making of such order to the President of the Principal Bench and at other places to any Member of the Bench designated by the President, and whose decision thereon shall be final.

Application for calling or obtaining a direction to call annual general meeting (Rule 74)

1. An application under section 97 for calling or obtaining a direction to call the annual general meeting of the company shall be made by any member of the company in Form No. NCLT. 1 and shall be accompanied by the documents specified in Annexure B.
2. A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

Inspection of minute-books of general meeting (Rule 76)

Where any member has requested the company for inspection of minute-book of general meeting on payment of requisite fee and the company refused to give such inspection, he may apply to NCLT in Form No NCLT-9 for direction to the company for inspection of minute-book of general meeting.

Application under section 230 (Rule 80A)

An application under sub-section (12) of section 230 may be made in Form NCLT-1 and shall be - accompanied with such documents as are mentioned in Annexure B.

The following documents are mentioned in annexure B for above purpose:

1. Affidavit verifying the petition
2. Memorandum of appearance with copy of the Board's Resolution or the executed vakalatnama, as the case may be.
3. Documents in support of the grievance against the takeover.
4. Any other relevant document."

Application under section 241 (Rule 81)

1. An Application under clause (a). or clause (b) of sub-section (1) of section 241 of the Act, shall be filed in the Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.
2. Where an application is presented under section 241 on behalf of any members of a company entitled to apply under sub-section (1) of the said section, by any one or more of them, the letter of consent signed by the rest of the members so entitled authorising the applicant or the applicants to present the petition on their behalf, shall be annexed to the application, and the names and addresses of all the members on whose behalf the application is presented shall be set out in a schedule to the application, and where the company has a share capital, the application shall state whether the applicants have paid all calls and other sums due on their respective shares.
3. A copy of every application made under this rule shall be served on the company, other respondents and all such persons as NCLT may direct.

Withdrawal of Application filed under section 241 (Rule 82)

1. An application under clause (a) or clause (b) of sub-section (1) of section 241 of the Companies Act, 2013 shall not be withdrawn without the leave of NCLT.
2. An application for withdrawal under sub-rule (1) shall be filed in the Form NCLT-9.

Application under section 243 (Rule 83)

1. An application under clause (b) of sub-section (1) of section 243 of the Companies Act, 2013 for leave to any of the persons mentioned therein to be appointed or to act as the managing director or other director or manager of the company, shall be filed as per the appropriate Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.
2. An application under sub - rule (1) shall state whether a notice of intention to apply for such leave, as required under the proviso to sub-section (1) of section 243 of the Act, has been given to the Central Government and such application shall also be accompanied by a copy of such notice.
3. The notice of the date of hearing of the application together with a copy of the application shall be served on the Central Government not less than fifteen days before the date fixed for the hearing.

Application under sub-section (1) of section 244 (Rule 83A)

An application in Form No. NCLT. 9 may be filed before the Tribunal for waiver of requirement of clause (a) or (b) of Section 244 of the Act which shall be accompanied by such documents as mentioned in Annexure-B.".

Right to apply under section 245 (Rule 84)

1. An application under sub-section(1) of section 245, read with sub-section (3) of section 245 of the Act, shall be filled in Form NCLT-9.
2. A copy of every application under sub-rule (1) shall be served on the company, other respondents and all such persons as NCLT may direct.
3. In case of a company having a share capital, the requisite number of member or members to file an application under section 245(1) shall be -

   (i) (a) at least five per cent. of the total number of members of the company; or

   (b) one hundred members of the company,

   whichever is less; or

(ii) (a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company;

(b) member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.

(4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -

(i) (a) at least five per cent. of the total number of depositors of the company; or

(b) one hundred depositors of the company,

whichever is less; or;

(ii) depositor or depositors to whom the company owes five per cent. of total deposits of the company.

Conducting a class action suit (Rule 85)

1. Without prejudice to the generality of the provisions of sub-section (4) of section 245 of the Companies Act, 2013 NCLT may while considering the admissibility of an application under the said section, in addition to the grounds specified therein, take into account the following:

   (a) whether the class has so many members that joining them individually would be impractical, making a class action desirable;

   (b) whether there are questions of law or fact common to the class;

   (c) whether the claims or defences of the representative parties are typical of the claims or defences of the class;

   (d) whether the representative parties will fairly and adequately protect the interests of the class.

2. For the purposes of clause(c) of sub-section (4) of section 245, while considering the desirability of an individual or separate action as opposed to a class action, NCLT may take into account, in particular, whether admitting separate actions by member or members or depositor or depositors would create a risk of:-

   (a) inconsistent or varying adjudications in such separate actions; or

   (b) adjudications that, as a practical matter, would be dispositive of the interests of the other members;

   (c) adjudications which would substantially impair or impede the ability of other members of the class to protect their interests.

Rule of opt-out (Rule 86)

1. A member of a class action under section 245 of the Companies Act, 2013 is entitled to opt-out of the proceedings at any time after the institution of the class action, with the permission of NCLT, as per Form No. NCLT - 1.

2. For the purposes of this rule, a class member who receives a notice under clause (a) of sub section (5) of section 245 of the Companies Act, 2013 shall be deemed to be the member of a class, unless he expressly opts out of the proceedings, as per the requirements of the notice issued by NCLT in accordance with rule 38.

3. A class member opting out shall not be precluded from pursuing a claim against the company on an individual basis under any other law, where a remedy may be available, subject to any conditions imposed by NCLT.

Publication of notice (Rule 87)

1. For the purposes of section 245(5)(a) of the Companies Act, 2013 on the admission of an application filed under section 245(1) of the Companies Act, 2013 a public notice shall be issued by NCLT as per Form No NCLT-13 to all the members of the class by-

   (a) publishing the same within seven days of admission of the application by NCLT at least once in a vernacular newspaper in the principal vernacular language of the State in which the registered office of the company is situated and at least once in English in an English newspaper that is in circulation in that State;

   (b) requiring the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper under sub-clause (a):

   Provided that such notice shall also be placed on the websites of NCLT and the Ministry of Corporate Affairs, the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange where the company has any of its securities listed, until the application is disposed of by NCLT.

2. The date of issue of the newspaper in which such notice appears shall be considered as the date of serving the public notice to all the members of the class.

3. The public notice shall, *inter alia*, contain the following-

   (a) name of the lead applicant;

   (b) brief particulars of the grounds of application;

   (c) relief sought by such application;

   (d) statement to the effect that application has been made by the requisite number of members/ depositors;

   (e) statement to the effect that the application has been admitted by the Tribunal after considering the matters stated under sub-section (4) of section 245 and these rules and it is satisfied that the application may be admitted;

   (f) date and time of the hearing of the said application;

   (g) time within which any representation may be filed with the Tribunal on the application;

   (h) the details of the admission of the application and the date by which the form of opt out has to be completed and sent as per Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure ‘B’, and such other particulars as the Tribunal thinks fit.

4. The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant.

Inspection of the records (Rule 114)

1. The parties to any case or their authorised representative may be allowed to inspect the record of the case by making an application in writing to the Registrar and by paying the fee prescribed thereof.

2. Subject to such terms and conditions as may be directed by the President by a general or special order, a person who is not a party to the proceeding, may also be allowed to inspect the proceedings after obtaining the permission of the Registrar in writing.

Inherent Powers (Rule 11)

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the NCLT to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

Power to exempt (Rule 14)

NCLT may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice.

Power to extend time (Rule 15)

NCLT may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.

NCLAT RULES

Many rules provided under NCLT rules are *mutatis mutandis* similar to the rules made under NCLAT Rules. However, other different rules of NCLAT are discussed hereunder:

Sitting of Appellate Tribunal (Rule 8)

NCLAT shall hold its sitting at its headquarters in New Delhi.

Presentation of appeal (Rule 22)

(1) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every appeal shall be accompanied by a certified copy of the impugned order.

(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.

Title of affidavits (Rule 67)

Every affidavit shall be titled as “Before the National Company Law Appellate Tribunal.” followed by the cause title of the application or other proceeding in which the affidavit is sought to be used.

Suo motu summoning of documents (Rule 74)

Notwithstanding anything contained in these rules, the NCLAT may, *suo motu*, issue summons for production of public document or other documents in the custody of a public officer in Form NCLAT-6.

Marking of documents (Rule 75)

1. The documents when produced shall be marked as follows:

   (a) if relied upon by the appellant's or petitioner's side, they shall be numbered as'A' series.

   (b) if relied upon by the respondent's side, they shall be marked as 'B' series.

   (c) The Appellate Tribunal exhibits shall be marked as 'C' series,

2. NCLAT may direct the applicant to deposit with NCLAT by way of Demand Draft or Indian Postal Order drawn in favour of the pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi, a sum sufficient to defray the expenses for transmission of the records before the summons is issued.

Order (Rule 88)

The final decision of NCLAT on an appeal or proceedings before NCLAT shall be delivered by way of Judgment.

Operative portion of the order (Rule 89)

All orders or directions of the Bench shall be stated in clear and precise terms in the last paragraph of the order.

Placing of Supreme Court orders before NCLAT (Rule 101)

Whenever an interim or final order passed by the Supreme Court of India in an appeal or other proceeding preferred against a decision of NCLAT is received, the same shall forthwith be placed before the Chairperson or Members for information and kept in the relevant case file and immediate attention of the Registrar shall be drawn to the directions requiring compliance.

Filling through electronic media (Rule 103)

NCLAT may allow filing of appeal or proceedings through electronic mode such as online filing and provide for rectification of defects by e-mail or internet and in such filing, these rules shall be adopted as nearly as possible on and form a date to be notified separately and the Central Government may issue instructions in this behalf from time to time.

APPEARANCES – SOME DO'S AND DON'TS

Do's

- Ensure that the dress code is properly followed not only for company secretary in practice who is going to appear before NCLT but also, by a person accompanying him as an assistant.
- Carry all papers, documents, reference materials etc. If, possible carry extra copies of material, for submission to NCLT and the opponent. Reach at the place of hearing before time.
- Study the case thoroughly. Know the weak and strong points of the case.
- Prepare a list of points on which arguments would be addressed to the Court.
- Study the decided case laws.
- Wherever possible, study the cases decided by the member of NCLT in similar matters earlier. This will facilitate to know the mind of member of NCLT, how he decides or interprets situation, whether he is strict etc.
- Note down important dates, case citation and important event. If possible memorize the same. Even if everything is memorised keep one printed copy of summary. Always make photocopies of judgment relied upon by you. Also prepare paper book of those judgment and should be page numbered.

- Decide what you are going to speak before NCLT and what points to be covered and emphasized.
- One must be able to counter any matters or points raised by the members of the NCLT or opposite party. Since this situation will have to be dealt extempore for which you must be thorough about your client's case. If you are not well prepared for case, request for time to submit your representation in a short time.
- Prepare for eventualities like if judgment comes against your client, opposite party asking for adjournment etc.
- Maintain the decorum of the office of NCLT.
- Maintain your independent view.
- During the hearing, wherever possible make the atmosphere humorous & to appreciate the Court on any given opportunity for its dexterity.
- Please supply photocopies of extracts of sections of various acts on which reliance has been placed during arguments for convenience of the court while the Court is writing the judgment.
- While addressing the arguments to the NCLT, be polite and soft and at the same time firm and confident. While arguments, please do not leave an impression that you are unsure" on law and /or facts.

Don'ts

- If you are not aware of any matter, do not speak lie or imaging anything. Rather inform
- NCLT clearly and seek time to clarify the point from your client.
- Do not forget to carry relevant papers, materials and documents.
- Do not forget to be in dress code.
- Do not speak in language other than official language of NCLT.
- Do not speak in between while member of NCLT or other party is speaking.
- Never use words or language derogatory or insulting to others.
- Even if you know things better, do not impress upon NCLT that you are superior.
- Do not look at pocket of client or benefits to client.
- Never promise to client on outcome of the case before NCLT.

Appeal to NCLT against notice of refusal to transfer shares

Section 58 deals with the Appeals against the refusal for registration of transfer or transmission of securities

If a **private company** refuses the registration of securities the transferee may appeal to NCLT against the refusal in **Form NCLT-1** within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

If a **public company without sufficient cause** refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to NCLT in **Form NCLT-1.**

Refusal to transfer shares- whether permissible?

The grounds/reasons on which a Public Company can refuse to register transfer of shares have not been specifically enumerated under the Companies Act. However, the provision of 111A (2) of the Companies Act, 1956 allowed the Board of Directors to refuse to register transfer of shares "***for sufficient cause" Gujarat Machinery Manufactures Ltd. v. Nile Ltd.(2001) 105 Com Cas 817 (CLB).*** It is now well-settled that the words "***sufficient cause***" should not be given a restricted meaning. The Company is fully entitled to examine as to whether formalities required, such as signatures, stamp etc., have been fulfilled and that ***transfer would not involve violation of any other provision of the Companies Act, SEBI Act, or Regulations issued by SEBI, SICA or any other law for the time being in force.*** The Company, however, cannot act arbitrarily and will have to justify its action if questioned by the Company Law Board. It may be noted that under the scheme of Sec 108A to 108D of Companies Act, 1956,the Central Government while granting or declining to grant the approval for acquisition of shares, required to examine various factors such as :

- the impact of the acquisition on the management of the company,
- whether such an impact is desirable, the existing legal obligation of the company,
- whether such transfer itself would place the company in a situation to make a breach of certain existing contractual obligations of the company, thereby exposing the company to an action in law etc.

The company can thus also refuse to register transfer of shares on these grounds.

Refusal to register transfer of shares under Section 58 of Companies Act, 2013

The provisions of Section 58 of Companies Act, 2013, are as under:

(1) If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of **thirty days** from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) Without prejudice to sub-section (*1*), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

(3) The transferee may **appeal to the Tribunal** against the refusal within a period of **thirty days** from the date of receipt of the notice or in case no notice has been sent by the company, within a period of **sixty days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

(4) If a **public company** without sufficient cause **refuses to register** the transfer of securities within a period of **thirty days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of **sixty days** of such refusal or where no intimation has been received from the company, within **ninety days** of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(5) The Tribunal, while dealing with an appeal made under sub-section (3) or sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order –

(a) **direct that the transfer or transmission shall be registered** by the company and the company shall comply with such order within a period of **ten days** of the receipt of the order; or

(b) **direct rectification of the register under Section 59 of Companies Act,2013** and also **direct the company to pay damages**, if any, sustained by any party aggrieved.

(6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Proforma of Appeal

Rule 70 of NCLT Rules, 2016 provides for the appeals against refusal for registration of transfer or transmission of securities under Section 58 or for rectification of register of members under Section 59 shall be made to the Tribunal by way of a petition in Form NCLT- 1. The petition/appeal shall be on legal size either white or green paper. The margin on the left hand side shall be one and half inch and on right hand side only half inch. On the top, margin be one and half inch and on the both bottom, half inch. The petition shall be accompanied by the following documents :-

Each page of the petition be signed by the petitioner/ appellant (without rubber stamp) and last page of the petition be also signed with rubber stamp, if any. All Annexures to be filed shall have to be certified as true copy.

Supporting Documents-Where the company is the petitioner:

- Copy of the memorandum and articles of association
- Latest audited balance sheet and profit and loss account, auditor's report and director's report
- Authenticated copy of the extract of the Register of Members
- Copy of the resolution of the Board or Committee of Directors (where applicable)
- Any other relevant documents
- Affidavit verifying the petition. (Format as given in **Form NCLT-6**), The affidavit shall have to be attested either by the Notary Public or by Oath Commissioner.

Bank draft evidencing payment of application fee. Bank Draft to be in the name of Accounts Officer, NCLT.

- Memorandum of appearance with copy of the Board Resolution or the executed Vakalatnama, as the case may be. (Format as given in Form **NCLT-12**). The Vakalatnama to be affixed with Stamp of Rs.5/- and must be signed by the person in whose favour it is given. If the Vakalatnama has been given for the petition to be filed in Delhi in any Court, Tribunal or Quasi-Judicial Authority, as per judgment of the Delhi High Court, the Advocate must certify that the persons signing the Vakalatnama has signed in his presence.

Two extra copies of the petition. The supporting affidavit to be notorized only on the original of the petition.

IMPORTANT POINTS:

a) The petition to be filed must also always be page numbered and proper Index be also prepared.

b) The Memo of Parties be also prepared – Proforma is given in Form **NCLT-12.**

c) In Delhi, the Registry of NCLT insist List of Dates and List of Events comprising of ¾ pages to be kept at the top of the petition.

Where the petition is made by any other person:

- Documentary evidence in support of the statements made in the petition including the copy of the letter written by the petitioner to the company for purpose of registering the transfer of, or the transmission of the right to, any share, or interest in, or debentures as also a copy of the letter of refusal of the company.
- Copies of the documents returned by the company.
- Any other relevant document.
- Affidavit verifying the petition. (Format as given in **Form NCLT-6**)
- Bank draft evidencing payment of application fee.
- Memorandum of appearance with copy of the Board's Resolution or the executed Vakalatnama, as the case may be. (Format as given in **Form NCLT-12**)
- Two extra copies of the petition.

A copy of such appeal shall be served on the concerned company at its registered office immediately after filing of the petition with the Tribunal.

Advertisement detailing petition

As per **Rule 35(1) of Companies NCLT Rules, 2016** the petitioner shall advertise the petition in **Form NCLT-3A** at least 14 days before the date fixed for hearing at least oncein a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

Rule 35(2) of Companies NCLT Rules, 2016: Every such advertisement shall state:

(a) the date on which the application, petition/ reference was presented;

(b) the name and address of the applicant petitioner and his authorized representative, if any;

(c) the nature and substance of application, petition/ reference;

(d) the date fixed for hearing;

(e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition/ reference at the hearing shall send a notice of his intention to the petitioner or his authorized representative so as to reach him not later than two days previous to the day fixed for hearing.

Rule 35(3) of Companies NCLT Rules, 2016: Where the advertisement is being given by the company, then the same shall also be placed on the website of the company, if any.

Rule 35(4) of Companies NCLT Rules, 2016: An affidavit shall be filed to the Tribunal with such proof of advertisement or of the service, as may be available in, not less than 3 days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served.

Rule 35(5) of Companies NCLT Rules, 2016: Where the requirements of this rule or the direction of the Tribunal, as regards the advertisement and service of petition, are not complied with, the Tribunal may either dismiss the petition or give such further directions as it thinks fit.

Rule 35(6) of Companies NCLT Rules, 2016: The Tribunal may, if it thinks fit, and upon an application being made by the party, may dispense with any advertisement required to be published under this rule.

Notice to Opposite Party

Rule 37(1) of NCLT Rules, 2016 states that the Tribunal shall issue notice in **Form NCLT-5** to the respondent to show cause against the application or petition on a date of hearing specified in the notice. Such notice in **Form No. NCLT.5** shall be accompanied by a copy of the application with supporting documents.

Rule 37(2) of NCLT Rules, 2016: If the respondent does not appear on the date specified in the notice in **Form NCLT-5**, the Tribunal, after according reasonable opportunity to the Respondent, shall forthwith proceed ex-parte to dispose of the application.

Rule 37(3) of NCLT Rules, 2016: Where any objection of any person whose interest is likely to be affected by the proposed petition, he may either in person or through authorized representative file a reply accompanied with an affidavit along with copies of such documents on which it relies, with an advance service to the petitioner or applicant to the Registrar of Companies and Regional Director on or before the date of hearing and such reply and copies of documents shall form part of the record.

Filing of Affidavit under Rule 39 of NCLT Rules, 2016

The Tribunal may direct the parties to give evidence, if any, by affidavit. Every affidavit as to evidence to be filed before the Tribunal shall be in **Form NCLT-7.**

NCLT to dismiss Appeal or Direct Rectification

Rule 70(4) of the NCLT Rules, 2016 provides that the Tribunal may, while dealing with a petition under Section 58 or 59, at its discretion, make-

(a) order or any interim order, including any orders as to injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit; and

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

Appeal against the Rectification of Register of Members

Section 59 deals with Appeal against the Rectification of Register of Members.

If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal to NCLT in **Form NCLT-1** or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

As per **Rule 70(5) of NCLT Rules, 2016** on any petition under section 59, the Tribunal may-

(a) decide any question relating to the title of any person who is a party to the petition to have his name entered in, or omitted from, the register;

(b) generally decide any question which is necessary or expedient to decide in connection with the application for rectification.

Who can file an Appeal?

Unlike an appeal under Section 58 on refusal to register the transfer/ transmission of Securities, wherein only transferee can appeal to Tribunal, an appeal under section 59 for rectification of Register of members can be made by a member of the company or any aggrieved person or by the Company itself.

Further in case of foreign members or debenture holders residing outside India, the appeal can be preferred at competent court outside India. In this regard, Central Government will specifically notify competent courts outside India which could hear matters for rectification.

Time Limit for filing of Appeal

It is important to note for seeking rectification under this Section there is no time limit provided. As per the decided case laws under section 111A of 1956 Act, courts have held though there is no time limit, the aggrieved person should approach court within reasonable time. Section 137 of Limitation Act also may come into play wherein limitation of three years may start from date of knowledge of cause of action.

Rest procedure for appeal against the Rectification of Register of Members is same as mentioned for appeal against refusal or register of transfer or transmission of securities by the company to the Tribunal as mentioned above.

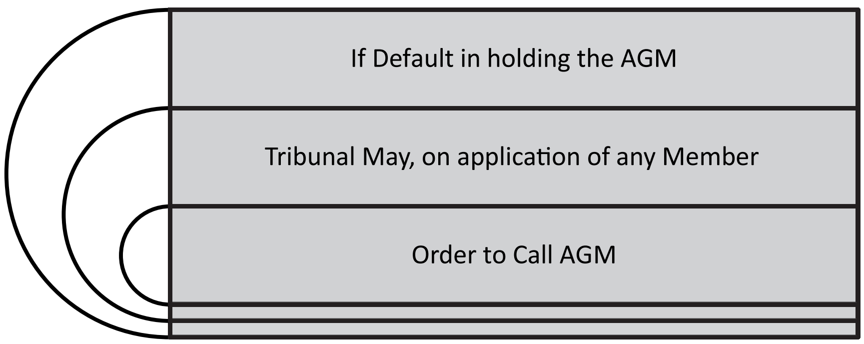
APPLICATION TO NCLT FOR DIRECTION FOR CALLING THE AGM AND OTHER MEETINGS

Section 97: Power of Tribunal to Call Annual General Meeting

(1) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.



Section 98: Power of Tribunal to Call Meeting of Members, etc.

(1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either suo motu or on the application of any director or member of the company who would be entitled to vote at the meeting,—

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

It's pertinent to note here that while Section 97 talks about Direction by NCLT for holding the AGM on the application of a member on the other hand Section 98 talks about Direction by NCLT for holding any of the members meeting other then AGM.

Can a Company may apply for Calling AGM?

CLB in its decision in *Cannanore Whole Body CT Scan and Research Centre P. Ltd. Vs Saibunnisa S.V. (1998) 93 Com cases 99: (1998) 3 Comp LJ 518: (1998) 29 CLA 446 (CLB- SB)* stated as "It is clear that a member and not the company is empowered to invoke the provisions of Sec 167. Any application, if filed by the Company will be bad in law and will be treated *ab initio* defective as Company can't seek direction against itself." Also an applicant, whose membership has been disputed by the company by showing that he has transferred his entire shareholding, has no Locus standi to make an application under the Section. *M. Sampath* vs. *AKMN Cylinders (P.) Ltd. (1998) 29 CLA 455 (CLB – SB)*

Procedural of Application

As per NCLT Rules, 2016 (Applicable to all kind of Application to be filed before NCLT):

1. **Preparation of Application/Petition to be filed:**

   a. Every petition or application shall be filed before the Bench having territorial jurisdiction.

   b. Every application/petition before the tribunal shall be filed in **NCLT form No.1 [Rule 34(3)]** with attachment thereto accompanied by FORM NO. NCLT 2**.**

   c. Every application/petition to be filed with the tribunal shall be prepared in triplicate.

   d. The applicant may, by way of a separate application, apply to the President and the President may thereupon for the reasons to be recorded, direct a Bench other than the Bench which has territorial jurisdiction to adjudicate upon it. [Rule 16(d)].

2. **Sequence in which details to be mentioned in every application/ petition:-** Every application/petition the following sequence while mentioning the facts in the application/petition namely;

   a. General heading of all proceedings before the Tribunal shall be as per **NCLT Form No.4 [Rule 34(2)].**

   b. Then details of Applicants/Petitioners to be mentioned.

   c. To mention the jurisdiction of the Bench–The jurisdiction of the bench is to be mentioned.

   d. **Limitation period to be mentioned** i.e. whether the present application/petition is within the limitation period or not.

   e. **Facts of the case to be mentioned:** It is required to mention the reasons for not holding the AGM in Detail.

   f. **Relief sought from the tribunal to be mentioned:** In the Prayer for relief the direction of the tribunal can be sought to call or direct the calling of AGM of the Company and such other direction as the Hon'ble Tribunal may deems fit.

g. **Details of Bank Draft evidencing the payment of prescribed fees:** Appropriate amount is required to be paid as fees for filing the application in the form of Bank draft. The details of the same are also to be mentioned by giving following details i.e. (a) Bank Draft No, (b) Branch on which it is drawn, (c) Name of the Issuing branch, (d) Date and (e) Amount.

3. **Affidavit accompanying the petition:** Every Application/Petition filed before the Tribunal shall be accompanied by a duly notarized affidavit of the authorized representative/s of the applicant/ petitioner in the Form No.NCLT 6 [Rule 34(4)].

4. **Filing of Vakalatnama:** Every application/Petition should also be accompanied by the Vakalatnama of the Advocate/Legal practitioner representing the client in the Form NCLT 12.

5. **Memo of Appearance:** A memo of appearance is required to be filed in the form NCLT 12 by the practicing Company Secretary or Chartered Accountant or Cost Accountant appearing before the tribunal for representing their client.

6. **An Interlocutory Application** shall be filed in FORM No. NCLT 1 accompanied by such attachment thereto along with FORM No. NCLT 3.

8. Where on date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

9. Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the petition or application was called for hearing, the Tribunal shall make an order restoring the same.

   Provided that where the case was disposed of on merits the decision shall not be re-opened.

10. Application, petition or reference, if required, shall be advertised in Form No. NCLT 3A at least 14 days before the date fixed for hearing the application/petition in at least 2 newspaper one in English and another in the vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated.

Rule 74 of NCLT Rules : Application for calling or obtaining a Direction to Call Annual General Meeting under Section 97 of CA 2013

1. Every Application under Section 97 for calling or obtaining a direction to call the Annual General Meeting of the company shall be made by any member of the Company in **Form No. NCLT 1** and shall be accompanied by the following documents.

2. **DOCUMENTS TO BE FILED ALONG WITH APLICATION/PETITION U/S97**

   Following documents to be annexed with the application to be filed u/s 97

   a. Affidavit verifying the application/petition – Form No. NCLT 6 [Rule 34(4)].

   b. Bank Draft evidencing the payment of application fee. – The Present fee is Rs. 1000/-

   c. Any other Relevant Documents – Which may include the following

      - Copy of Board Resolution to Appoint Authorized representative.
      - Copy of the last Audited Financial statements.
      - Copy of Memorandum and Articles of association of the company.

A Copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

APPLICATION FOR COMPROMISE AND ARRANGEMENTS INCLUDING MERGERS AND AMALGAMATIONS

The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 deals with the procedure Mergers and Amalgamations. The relevant rules and related provisions are discussed as under:

Application for order of meeting (Rule 3)

(1) An application of section 230(1) of the Companies Act, 2013 may be submitted in Form No. NCLT-1 (appended in the National Company Law Tribunal Rules, 2016) along with:-

(i) a notice of admission in Form No. NCLT-2 (appended in the National Company Law Tribunal Rules; 2016);

(ii) an affidavit in Form No. NCLT -6 (appended in the National Company Law Tribunal Rules, 2016);

(iii) a copy of scheme of compromise or arrangement, which should include disclosures as per section 230(2) of the Companies Act, 2013; and

(iv) fee as prescribed in the Schedule of Fees.

(2) Where more than one company is involved in a scheme in relation to which an application under sub-rule (1) is being filed, such application may, at the discretion of such companies, be filed as joint-application.

(3) Where the company is not the applicant, a copy of the notice of admission and of the affidavit shall be served on the company, or, where the company is being wound up, on its liquidator, not less than fourteen days before the date fixed for the hearing of the notice of admission.

(4) The applicant shall also disclose to the Tribunal in the application under sub-rule (1), the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme.

(5) A member of the company shall make an application for arrangement, for the purpose of takeover offer in terms of section 230(11), when such member along with any other member holds not less than three-fourths of the shares in the company, and such application has been filed for acquiring any part of the remaining shares of the company.

Explanation I.- "shares" means the equity shares of the company carrying voting rights, and includes any securities, such as depository receipts, which entitles the holder thereof to exercise voting rights.

Explanation II.- Nothing in this sub-rule shall apply to any transfer or transmission of shares through a contract, arrangement or succession, as the case may be, or any transfer made in pursuance of any statutory or regulatory requirement.

(6) An application of arrangement for takeover offer shall contain:

(a) the report of a registered valuer disclosing the details of the valuation of the shares proposed to be acquired by the member after taking into account the following factors: -

(i) the highest price paid by any person or group of persons for acquisition of shares during last twelve months;

(ii) the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple *vis-a-vis* the industry average, and such other parameters as are customary for valuation of shares of such companies.

(b) details of a bank account, to be opened separately, by the member wherein a sum of amount not less than one-half of total consideration of the takeover offer is deposited.

Section 230(1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Companies Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Rule 5 deals with the provisions relating to Directions at hearing of the application. It provides:

Upon hearing the application under section 230(1) of the Companies Act, 2013 NCLT shall, unless it thinks fit for any reason to dismiss the application, give such directions as it may think necessary in respect of the following matters:

(a) determining the class or classes of creditor or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement; or dispensing with the meeting or meeting for any class or classes or creditors in terms of section 230(9);

(b) fixing the time and place of the meeting or meetings;

(c) appointing a Chairperson and scrutinizer for the meeting or meetings to be held, as the case may be and fixing the terms of his appointment including remuneration;

(d) fixing the quorum and the procedure to be followed at the meeting or meetings, including voting in person or by proxy or by postal ballot or by voting through electronics means;

Explanation.- For the purpose of these rules, "voting through electronics means" shall take place, mutatis mutandis, in accordance with the procedure as specified in rule 20 of Companies (Management and Administration) Rules, 2014.

(e) determining the values of the creditors or the members, or the creditors or member of any class, as the case may be, whose meetings have to be held;

(f) notice to be given of the meeting or meetings and the advertisement of such notice;

(g) notice to be given to sectoral regulators or authorities as required under section 230(5);

(h) the time within which the chairperson of the meeting of the meeting is required to report the result of the meeting to the tribunal; and

(i) such other matters as the Tribunal may deem necessary.

Rule 6. Notice of meeting

Where a meeting of any class or classes of creditors or members has been directed or to be convened, the notice of the meeting pursuant to the order of the Tribunal to be given in the manner provided in sub-section (3) of section 230 of the Companies Act shall be in Form No. CAA.2 and shall be sent individually to each of the creditors or members.

Section 230(3)

Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company *which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:*

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

Rule 7: Advertisement of the notice of the meeting

The notice of the meeting under section 230(3) of the Companies Act, 2013 shall be advertised in Form No. CAA.2 in at least one English newspaper and in at least one vernacular newspaper having wide circulation in the state in which the registered office of the company is situated, or such newspaper as may be directed by the Tribunal and shall also be placed, not less than thirty days before the date fixed for the meeting, on the website of the company of the SEBI and the recognized stock exchange where the securities of the company are listed:

Provide that where separate meetings of classes of creditors or members are to be held, a joint advertisement for such meetings may be given.

Rule 8: Notice to statutory authorities

(1) For the purpose of section 230(5) of the Companies Act, 2013 the notice shall be in Form No. CAA.3, and shall be accompanied with a copy of the scheme of compromise or arrangement, the explanatory statement and the disclosures mentioned under rule 6, and shall be sent to.-

  (i) the Central Government, the Registrar of Companies, the Income-tax authorities, in all cases;

  (ii) the Reserve Bank of India, the Securities and Exchange Board of India, the competition commission of India, and the stock exchanges, as may be applicable;

  (iii) other sectoral regulators or authorities, as required by Tribunal.

(2) The notice of the authorities mentioned in sub-rule (1) shall be sent forthwith, after the notice is sent to the members or creditors of the company, by registered post or by speed post or by courier or by hand delivery at the office of the authority.

(3) It the authorities referred to under sub-rule (1) desire to make any representation under section 230(5), the same shall be sent to the Tribunal within a period of thirty days from the date of receipt of such notice and copy of such representation shall simultaneously be sent to the concerned companies and in case of representation is received within the stated period of thirty days by the Tribunal, it shall be presumed that the authorities have no representation to make on the proposed scheme of compromise or arrangement.

Section 230(5)

A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India *established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.*

Rule 14: Report of the result of the meeting by chairperson

The chairperson of the meeting (or where there are separate meetings , the chairperson of each meeting) shall, within the time fixed by the tribunal, or where no time has been fixed ,within three days after the conclusion of the meeting submit a report to the Tribunal on the result of the meeting in Form No. CAA.4.

Rule 15: Petition for confirming compromise or arrangement

Where the proposed compromise or arrangement is agreed to by the members or creditors or both as the case maybe with or without modification, the company (or its liquidator),shall , within seven days of the filing of the report by the chairperson , present a petition to the tribunal in Form No.CAA.5 for sanction of the scheme of compromise or arrangement.

Rule 21: Statement of compliance in mergers and amalgamations

For the purpose of section 232(7) of Companies Act, 2013 every company in relation to which an order is made under section 232(3) of the Companies Act, 2013 shall until the scheme is fully implemented, file with the registrar of companies, the statement in Form No.CAA.8 within two hundred and ten days from the end of each financial year.

Section 232(3)

The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2)has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(d) dissolution, without winding-up, of any transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

(f) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;

(g) the transfer of the employees of the transferor company to the transferee company;

(h) where the transferor company is a listed company and the transferee company is an unlisted company,—

(A) the transferee company shall remain an unlisted company until it becomes a listed company;

(B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

(i) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and

(j) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

Section 232(7)

Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

Rule 25: Merger or Amalgamation of certain companies:-

(1) The notice of the proposed scheme, under clause (a) of section 233 of the Companies Act, to invite objections or suggestions from the Registrar and official liquidator or persons affected by the scheme shall be in **Form No.CAA.9.**

(1A) A scheme of merger or amalgamation under section 233 of the Companies Act may be entered into between any of the following class of companies, namely:-

(i) two or more start-up companies; or

(ii) one or more start-up company with one or more small company.

Explanation.- For the purposes of this sub-rule, "start-up company" means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade.

(2) For the purposes of of section 233(1)(c) of the Companies act the declaration of solvency shall be filed by each of the companies involved in the scheme of merger or amalgamation in **Form No.CAA.10** along with the fee as provided in the companies (Registration offices and fees) Rules, 2014, before convening the meeting of members and creditors for approval of the scheme.

(3) For the purpose of clause (b) and (d) of sub-section (1) of section 233 of the Act, the notice of the meeting to the members and creditors shall be accompanied by-

(a) a statement , as far as applicable, referred to in sub section (3) of section 230 of the act read with sub rule (3) of rule 6 hereof ;

(b) The declaration of solvency made in pursuance of clause (c) of sub-section (1) of section 233 of the Act in **Form No.CAA.10;**

(c) A copy of the scheme.

(4) (a) For the purposes of sub-section (2) of section 233 of the Act, the transferee company shall, within seven days after the conclusion of the meeting of members or class of members or creditors, file a copy of the scheme as agreed to by the members and creditors, along with a report of the result of each of the meetings in **Form no. CAA.11** with the central government.

(b) Copy of the scheme shall also be filed , along with **Form No. CAA.11** with-

(i) the registrar of companies in **form no. GNL-1**; and

(ii) the official liquidator through hand delivery or by registered post or speed post.

(5) Where no objection or suggestion is received within a period of thirty days of receipt of copy of scheme under sub-section (2) of section 233, from the Registrar of Companies and Official Liquidator by the Central Government and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may, within a period of fifteen days after the expiry of said thirty days, issue a confirmation order of such scheme of merger or amalgamation in **Form No. CAA.12**:

Provided that if the Central Government does not issue the confirmation order within a period of sixty days of the receipt of the scheme under sub-section (2) of section 233, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

(6) Where objections or suggestions are received within a period of thirty days of receipt of copy of scheme under sub-section (2) of section 233 from the Registrar of Companies or Official Liquidator or both by the Central Government and –

(a) such objections or suggestions of Registrar of Companies or Official Liquidator, are not sustainable and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may within a period of thirty days after expiry of thirty days referred to above, issue a confirmation order of such scheme of merger or amalgamation in **Form No. CAA.12**

(b) the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in the interest of creditors, it may within sixty days of the receipt of the scheme file an application before the Tribunal in **Form No. CAA.13** stating the objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act:

Provided that if the Central Government does not issue a confirmation order under clause (a) or does not file any application under clause (b) within a period of sixty days of the receipt of the scheme under subsection (2) of section 233 of the Act, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

(7) The confirmation order of the scheme issued by the central government or tribunal under sub section (7) of section 233 of the Act, shall be filed, within thirty days of the receipt of the order of confirmation, in **Form INC-28**.

(8) For the purpose of this rule, it is clarified that with respect to schemes of arrangement or compromise falling within the purview of section 233 of the act, the concerned companies may , at their discretion, opt to undertake such schemes under sections 230 to 232 of the Act, including where the condition prescribed in clause (d) of sub-section (1) of section 233 of the act has not been met.

Section 233

233. (1) Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:—

(a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;

(b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;

(c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and

(d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

(2) The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.

(3) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.

(4) A copy of the order under sub-section (6) confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.

Merger or amalgamation of a foreign company with a Company and vice versa (Rule 25A)

(1) A foreign company incorporated outside India may merge with an Indian company after obtaining prior approval of Reserve Bank of India and after complying with the provisions of sections 230 to 232 of the Act and these rules.

(2) (a) A company may merge with a foreign company incorporated in any of the jurisdictions specified in Annexure B after obtaining prior approval of the Reserve Bank of India and after complying with provisions of sections 230 to 232 of the Act and these rules.

(b) The transferee company shall ensure that valuation is conducted by valuers who are members of a recognised professional body in the jurisdiction of the transferee company and further that such valuation is in accordance with internationally accepted principles on accounting and valuation. A declaration to this effect shall be attached with the application made to Reserve Bank of India for obtaining its approval under clause (a) of this sub-rule.

(3) The concerned company shall file an application before the Tribunal as per provisions of section 230 to section 232 of the Act and these rules after obtaining approvals specified in sub-rule (1) and sub-rule (2), as the case may be.

(4) Notwithstanding anything contained in sub-rule (3), in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate which has been incorporated in a country which shares land border with India, a declaration in Form No. CAA-16 shall be required at the stage of submission of application under section 230 of the Act.

Explanation 1. For the purposes of this rule the term "company" means a company as defined in clause (20) of section 2 of the Act and the term "foreign company" means a company or body corporate incorporated outside India whether having a place of business in India or not:

Explanation 2. For the purposes of this rule, it is clarified that no amendment shall be made in this rule without consultation of the Reserve Bank of India."

(5) Where the transferor foreign company incorporated outside India being a holding company and the transferee Indian company being a wholly owned subsidiary company incorporated in India , enter into merger or amalgamation, –

(i) both the companies shall obtain the prior approval of the Reserve Bank of India;

(ii) the transferee Indian company shall comply with the provisions of section 233;

(iii) the application shall be made by the transferee Indian company to the Central Government under section 233 of the Act and provisions of rule 25 shall apply to such application; and

(iv) the declaration referred to in sub-rule (4) shall be made at the stage of ma king application under section 233 of the Act.".

Rule: 26 Notice to dissenting shareholders for acquiring the shares

For the purposes of sub-section (1) of section 235 of the Act, the transferee company shall send a notice to the dissenting shareholder(s) of the transferor company , in Form No.CAA.14 at the last intimated address of such shareholder for acquiring the shares of such dissenting shareholders.

Section 235(1)

Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

Rule 28: Circular containing scheme of amalgamation or merger

(1) For the purposes of section 238(1)(a) of the Companies Act, every circular containing the offer of scheme or contract involving transfer of shares or any class of shares and recommendation to the members of the transferor company by its directors to accept such offer, shall be accompanied by such information as set out in Form No. CAA.15.

(2) The circular shall be presented to the Registrar for registration.

Section 235(1)

Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

FORM NO. CAA.1

[Pursuant to section 230(2)(c)(i) and rule 4]

Creditor's Responsibility Statement

I/ We, _________________, the creditors of M/s_______________ for an amount of Rs. __________________ as on __________________________ do hereby declare that I / we have read and understood the proposed corporate debt restructuring scheme and am / are of the view that it is in my/our best interest to concur with the scheme.

I/ We further declare that the debt is owed to me / us by the company or the liability was created by the company in my/ our favor in good faith and in the ordinary course of business of the company;

I/We believe that the scheme does not give me/us any fraudulent preference at the cost of any secured/ unsecured Creditors.

Signature of creditor/s

Date:

Place:

FORM NO. CAA. 2

[Pursuant to Section 230 (3) and rule 6 and 7)]

Company Petition No _______of 20_____

____________________Applicant(s)

Notice and Advertisement of notice of the meeting of creditors or members

Notice is hereby given that by an order dated the ______ 20 _____ the ______ Bench of the National Company Law Tribunal has directed a meeting (or separate meetings) to be held of [here mention 'debenture holders' or 'first debenture holders' or' second debenture holders' or 'unsecured creditors' or 'secured creditors' or 'preference shareholders' or 'equity shareholders' as the case may be whose meeting or meetings have to be held] of the said company for the purpose of considering, and if thought fit, approving with or without modification, the compromise or arrangement proposed to be made between the said company and [here mention the class of creditors or members with whom the compromise or arrangement or amalgamation is to be made] of the company aforesaid.

In pursuance of the said order and as directed therein further notice is hereby given that a meeting of [here set out the class of creditors or members whose meeting has to be held] of the said company will be held at _______ on _____day of ______________ 20____ at__________ o'clock in the noon at which time and place the said [here mention the class of creditors or members] are requested to attend [Where separate meetings of classes of creditors or members are to be held, set them out separately with the place, date and time of the meeting in each case.]

Copies of the said compromise or arrangement or amalgamation, and of the statement under section 230 can be obtained free of charge at the registered office of the company or at the office of its authorized representative Shri____________ at______ Persons entitled to attend and vote at the meeting (or respective meetings), may vote in person or by proxy, provided that all proxies in the prescribed form are deposited at the registered office of the company at ____________ not later than 48 hours before the meeting.

Forms of proxy can be had at the registered office of the Company.

The Tribunal has appointed Shri _________________ and failing him, Shr i________________ as chairperson of the said meeting (or several meetings). The abovementioned compromise or arrangement or amalgamation, if approved by the meeting, will be subject to the subsequent approval of the tribunal.

Dated this _____day of ________20_____

Chairperson appointed for the meeting

(or as the case may be)

FORM NO. CAA.3

[Pursuant to section 230(5) and rule 8]

In the Matter of compromise and / or arrangement of __________________

NOTICE TO CENTRAL GOVERNMENT, REGULATORY AUTHORITIES

To,

The Central Government/
The Registrar of Companies/
The Income-Tax Authorities/
[in all cases]
The Reserve Bank of India/
The Securities and Exchange Board of India/
The Stock Exchanges of ..../
The Competition Commission of India/
[as may be applicable]
Other sectoral regulator or authorities
[As required by Tribunal]

Notice is hereby given in pursuance of sub-section (5) of section 230 of the Companies Act, 2013, that as directed by the ______ Bench of the National Company Law Tribunal at ______ by an order dated _________ under sub-section (1) of section 230 of the Act, a meeting of the members and / or creditors of (Company's name)__________ shall be held on ____________ to consider the scheme of compromise and / or arrangement of ______________ with ____________ at _______________-

A copy of the notice and scheme of the compromise or arrangement are enclosed.

You are hereby informed that representations, if any, in connection with the proposed compromise and / or arrangement may be made to the Tribunal within thirty days from the date of receipt of this notice. Copy of the representation may simultaneously be sent to the concerned company(ies).

In case no representation is received within the stated period of thirty days, it shall be presumed that you have no representation to make on the proposed scheme of compromise or arrangement.

Authorized Signatory

Dated this ______ day of_______ 20___

Place:

Enclosures :

i) Copy of notice with statement as required under section 230(3);

ii) Copy of scheme of compromise or arrangement

FORM NO. CAA.5

[Pursuant to section 230 and rule 15(1)]

[HEADING AS IN FORM NCLT. 4]

Petition to sanction compromise or arrangement

The petition of _______Ltd, (*in liquidation by its liquidator) the petitioner above named is as follows:-

1. The object of this petition is to obtain sanction of Tribunal to a compromise or arrangement whereby (here set out the nature of the compromise or arrangement).
2. The company was incorporated under the ________________ Act _________ with a nominal capital of Rs _____________ divided into shares of Rs _____ each of which ______ shares were issued and Rs_____ was paid up on each share issued.
3. The objects for which the company was formed are as set forth in the company's Memorandum of Association. They are: (Set out the principal objects).
4. [Here set out the nature of the business carried on by the company, its financial position and the circumstances that necessitated the compromise or arrangement and the benefits sought to be achieved by the compromise or arrangement and its effect].
5. The compromise or arrangement was in the following terms:-[Here set out the terms of the compromise or arrangement].
6. By an order made in the above matter on ______________ the petitioner was directed to convene a meeting of [here set out the class of creditors or members of whom the meeting was to be held] of the company for the purpose of considering and, if thought fit approving with or without modifications. The said compromise or arrangement and the said order directed that [...] or failing him [...] should act as chairperson of the said meeting and should report the result thereof to this Tribunal.
7. Notice of the meeting was sent individually to the [here mention the class of creditors or members to whom the notice was sent] as required by the order together with a copy of the compromise or arrangement and of the statement required by section 231, 232 read with section 230 of the Act and a form of proxy. The notice of the meeting was also advertised as directed by the said order in (here set out the newspapers).
8. On the ____, a meeting of (here mention the class of creditors or members whose meeting was convened) of the company duly convened in accordance with the said order, was held at _____and the said ______, acted as the chairperson of the meeting.
9. The said _____, has reported the result of the meeting to this Hon'ble Tribunal.
10. The said meeting was attended by (here set out the number of the class of creditors or members, as the case may be, who attended the meeting either in person or by proxy), and the total value of their [here mention debts, debentures or shares, as the case may be] is Rs_______ [in the case of shares, the total

number and value of the shares should be mentioned] representing [_____ percentage] of the total value of debts or debentures or shares _________ of the company. The said compromise or arrangement was read and explained by the said _____, to the meeting and it was resolved unanimously [or by a majority of _____ votes against _______ votes] as follows:-[Here set out the resolution as passed].

11. The sanctioning of the compromise or arrangement will be for the benefit of the company.

12. Notice of this petition need not be served on any person. The petitioner therefore prays:

    (1) That the said compromise or arrangement may be sanctioned by the Tribunal as to be binding on all the [here set out the class of creditors or members of the company on whom the compromise or arrangement is to be binding] of the said company and on the said company.

    (2) Or such other order may be made in the premises as to the Tribunal shall deem fit.

Verification etc. Petitioner

[*Note: (1) The affidavit in support should verify the petition and prove any matters not proved in any prior affidavit, such as advertisement, holding of meetings, posting of notices, copies of compromise or arrangement and proxies etc., and should exhibit the report of the chairperson and verify the same.]*

Note: (2) If the company is being wound-up, say so.

Note: (3) If any modifications were made in the compromise or arrangement, at the meeting, they should be set out in separate paragraph.

** To be inserted where the company is being wound-up.*

FORM NO. CAA.8

[Pursuant to section 232(7) and rule 21]

In the Matter of compromise and / or arrangement of ___________________

Statement to be filed with Registrar of Companies

1. (a) Corporate identity number (CIN) of company:

   (b) Global location number (GLN) of company:

2. (a) Name of the company:

   (b) Address of the registered office of the company:

   (c) E-mail ID of the company:

3. Date of Board of Directors' resolution approving the scheme

4. Date of Order of Tribunal approving the Scheme under Section 232(3)

5. Details regarding:-

   a) Completed actions under the Order

   b) Pending actions under the Order with status

Declaration of compliance of scheme as per the Order of the Tribunal

I, the Director / Company Secretary of ____________ do solemnly affirm and declare that we are in compliance with the Order of the Tribunal dated _________.

A copy of the scheme of the compromise or arrangement is enclosed.

____

Director / Company Secretary

____

Chartered Accountant in practice / Cost Accountant in practice / Company Secretary in practice

Date:

Place:

Attachments:-

1) **Scheme of Compromise or Arrangement**
2) **Details of Compliance of the Scheme**
3) **Other Attachments, if any**

FORM NO. CAA.9

[Pursuant to section 233(1)(a) and rule 25(1)]

Notice of the scheme inviting objections or suggestions

Notice is hereby given by M/s ___________ (transferor / transferee company) that a scheme of merger or amalgamation is proposed to be entered with M/s _______________ (transferor / transferee company) and in pursuance of sub-section (1)(a) of Section 233 of the Companies Act, 2013, objections or suggestions are invited in respect of the scheme.

A copy of the scheme of merger or amalgamation is enclosed.

Objections or suggestions are invited from –

(i) the Registrar (mention the details of the Registrar of the area where the registered office of the transferor/ transferee company is situated);

(ii) Official Liquidator (mention the details of the Official Liquidator of the area where the registered office of the transferor company is situated); and

(iii) Any person whose interest is likely to be affected by the proposed scheme.

Any person mentioned in (i) , (ii) or (iii) above, desirous of providing objections or suggestions in respect of the scheme should send their objections or suggestions within thirty days from the date of this notice to _______________(the Central Government at _____________________________________ (address) and to Shri ________ (address) being authorised representative of the transferor company).

Date :

Place :

Sd/- (mention the details of the authorised representative of the transferor company).

Enclosure: A copy of the scheme of merger or amalgamation

FORM NO.CAA.11

[Pursuant to section 233(2) and rule 25(4)]

Notice of approval of the scheme of merger

(To be filed by the transferee company to the Central Government, Registrar and the Official Liquidator)

1. (a) Corporate Identity Number (CIN) :

   (b) Global Location Number GLN) :

2. (a) Name of the transferee company:

   (b) Registered office address:

   (c) E-mail id:

3. Whether the transferor and transferee are:

   - Small companies
   - Holding and wholly owned subsidiaries

4. Details of transferor

   (a) Corporate Identity Number (CIN) :

   (b) Global Location Number GLN) :

   Name of the company:

   Registered office address:

   E-mail id:

5. Brief particulars of compromise or arrangement involving merger:

6. Details of approval of the scheme of merger by the transferee company:

   (a) Approval by members

   (i) Date of dispatch of notice to members:

   (ii) Date of the General meeting:

   (iii) Date of approval of scheme in the General meeting:

   (iv) Approved by majority of: (members or class of members holding atleast ninety percent of the total number of shares)

   (b) Approval by creditors

   (i) Date of dispatch of notice to creditors:

   (ii) Date of the meeting of creditors:

   (iii) Date of approval of scheme in creditors meeting:

   (iv) Approved by majority of: (at least nine tenth in value of creditors)

7. Details of approval of the scheme of merger by the transferor company:

   (a) Approval by members

   (i) Date of dispatch of notice to members:

   (ii) Date of the General meeting:

(iii) Date of approval of scheme in the General meeting:

(iv) Approved by majority of: (members or class of members holding atleast ninety percent of the total number of shares)

(b) Approval by creditors

(i) Date of dispatch of notice to creditors:

(ii) Date of the meeting of creditors:

(iii) Date of approval of scheme in such meeting:

(iv) Approved by majority of: (at least nine tenths in value of creditor)

Declaration

I ____________ the director of the transferee company hereby declares that-

(i) Notice of the scheme as required under section 233(1)(a) was duly sent to the Registrars and Official Liquidators of the place where the registered office of the transferor and transferee companies are situated and to all other persons who are likely to be affected by the scheme and a copy of the same has been attached herewith;

(ii) the objections to the scheme have been duly taken care of to the satisfaction of the respective persons;

(iii) the scheme has been approved by the members and creditors of the transferee and transferor company by the requisite majority in accordance with section 233(1)(b) and (d) respectively;

(iv) all the requirements under section 233 of the Act and the rules made there have been complied with; and

(v) to the best of my knowledge and belief the information given in this application and its attachments is correct and complete;

Date:

Place:

Signature

Attachments:

1. Copy of the scheme approved by both creditors and members;
2. Notice sent in accordance with section 233(1)(a);
3. Optional attachments, if any.

FORM NO. CAA.14

[Pursuant to section 235(1) and rule 26]

Notice to dissenting shareholders

To

____

____

Notice for acquiring ________shares held by you in M/s_______(hereinafter called 'the transferor company')

Notice is hereby given by M/s___________ (hereinafter called 'the transferee company') that an offer made by the transferee company on ______________ to all the shareholders of the transferor company for acquisition of the shares or class of shares at the price of ________ has been approved by the holders of __________ in value of the shares, being not less than nine-tenth in value of the said shares (other than shares already held at the date of the offer by the transferee company either by itself or by its nominees or subsidiaries).

In pursuance of the provisions of sub-section (1) of section 235 of the Companies Act 2013, notice is further given that the transferee company is desirous of acquiring __________ shares held by you in the transferor company at a price of Rs ____________, being the price paid to the approving shareholders.

Take further note that if you are not in favour of such acquisition of your shares by the transferee company, then you may apply to the Tribunal within one month hereof. Unless an application is made by you as aforesaid or unless on such application the Tribunal orders otherwise, the transferee company will be entitled and bound to acquire the aforesaid shares held by you in the transferor company on the terms of the above mentioned offer.

Date:

Place:

Signature

(On behalf of transferee company)

APPLICATION IN CASE OPPRESSION AND MISMANAGEMENT & CLASS ACTIONS

Application to Tribunal for relief in cases of oppression, etc.

"241. (1) Any member of a company who complains that –

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter."

(3) Where in the opinion of the Central Government there exist circumstances suggesting that—

(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.

(5) Every application under sub-section (3)—

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.

It may be relevant to note that under the 1956 Act, oppression was defined under section 397 & mismanagement was under section 398, however now in the 2013 Act, both now stands merged in a single section under section 241 as far as the meaning of oppression & mismanagement, whereas the powers are defined under section 242.

However in order to understand the meaning of oppression & mismanagement, following judgments are relevant to understand:

"In Re.:V.S Krishnan vs. *Westfort Hi-Tech Hospital Ltd. [2008] 142 Comp. Cas. 235 (SC).* The apex court after considering various judgments passed over the years and after considering the facts of the case has held that following *conditions are required to be satisfied for invoking section 397.*

Oppression would be made out:

(a) Where the conduct is harsh, burdensome and wrong.

(b) Where the conduct is *mala fide* and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders *vis-a-vis* the others.

(c) The action is against probity and good conduct.

(d) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression under Sections 397 and 398.

(e) Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board under Section 402 to set right, remedy or put an end to such oppression is very wide.

(f) As to what are facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact."

Further the judgment of *Bengal Luxmi Cotton Mills Ltd. [1965] 35 Comp Cas. 187 (Cal.) has held:*

"If an applicant before the court wants the court to rely upon charges of fraud and other misconduct and investigate them, he must give particulars. Mere vague allegations of fraud and other misconduct would not be enough, and the court should decline to embark upon an enquiry into such charges of fraud and misconduct. If a minority group of shareholders has not in its possession all the particulars of fraud or other misconduct, it should not expect the court to make any order in its favour after making a rambling enquiry into vague and indefinite charges of fraud made in the petition.

It may be that in some cases the petitioner has not in his possession all the particulars of fraud, but in such a case he would be entitled to discovery, in order to obtain materials for giving the particulars. But, nevertheless, the particulars must be given. If the applicant, in the instant case, did not have the particulars, he could have, and he should have, applied for particulars, if he wanted to rely on the charge of fraud. But merely because the minority group of shareholders generally has not got in its possession all the particulars of fraud or other misconduct, it is not excused or exonerated from giving particulars of fraud or other alleged acts of misappropriation or other misconduct.

The apex court *In Re. Shanti Prasad Jain v. Kalinga Tubes Ltd. [1965] 35 Comp Cas 351 (SC)* has also held that

"The appellant and his group would not get any relief by calling a general meeting of the company, and the facts and circumstances aforesaid would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. Therefore the appellant prayed for directions under Section 397 of the Act, as the winding up of the company which was in a prosperous condition would unfairly prejudice the appellant and other members of the minority group and redress against such oppression could be given by the High Court by making suitable directions in that behalf. The affairs of the company were being conducted in a manner prejudicial to the interest of the company for reasons already stated and there had been a material change in the management or control of the company by alteration in its board of directors and by fraudulent changes introduced in the ownership of the company's shares and by reason of the wrongful act and conduct of the Patnaik and Loganathan groups.

In Harmer's case, it was held that "the word 'oppressive' meant burdensome, harsh and wrongful". It was also held that " the section does not purport to apply to every case in which the facts would justify the making of a winding up order under the ' just and equitable' rule, but only to those cases of that character which have in them the requisite element of oppression."

The phrase "oppressive to some part of the members" suggests that the conduct complained of " should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fairplay on which every share holder who entrusts his money to a company is entitled to rely..... But, apart from this, the question of absence of mutual confidence per se between partners, or between two sets of shareholders, however relevant to a winding up, seems to me to have no direct relevance to the remedy granted by Section 210. It is oppression of some part of the shareholders by the manner in which the affairs of the company are being conducted that must be averred and proved. Mere loss of confidence or pure deadlock does not come within Section 210. It is not lack of confidence between share holders per se that brings Section 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs and oppression involves ... at least an element of lack of probity or fair dealing to a member in the matter of his proprietary right as a shareholder."

As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of Section 397, It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to Section 397."

Thus the meaning of words oppression & mismanagement has to be considered & understood in light of the above judgments. Of course every case depends upon on its own fact, however the above broadly spells out the scope of oppression and mismanagement.

242 - POWERS OF TRIBUNAL

"242. (1) If, on any application made under section 241, the Tribunal is of the opinion –

(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of,

make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1) an order under that sub-section may provide for –

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

The earlier provision under 1956 Act had provided powers to grant final relief under section 402 & interim relief's under section 403. The present Act now provides for all the powers to grant relief's under section 242. The present section provides extensive specific powers to tribunal to grant relief's by tribunal, though some of the sub section have not been notified as highlighted above.

However in order to understand the powers of tribunal, the following issues & judgments will highlight the powers and relief's which could be granted by the tribunal :

In Re. Dale & Carrinton Investment (P.) Ltd. v. *P. K. Prathapan* [2004] 122 Comp Cas. 161 (SC), it was held –

In the present the court was concerned with the propriety of issue of additional share capital by the Managing Director in his own favour. The facts of the case do not pose any difficulty particularly for the reason that the Managing Director has neither placed on record anything to justify issue of further share capital nor it has been shown that proper procedure was followed in allotting the additional share capital. Conclusion is inevitable that neither the allotment of additional shares in favour of Ramanujam was bonafide nor it was in the interest of the company nor a proper and legal procedure was followed to make the allotment. The motive for the allotment was malafide, the only motive being to gain control of the company. Therefore, in our view, the entire allotment of shares to Ramanujam has to be set aside.

Principle of Corporate democracy

On Removal of director without special notice

– *Manmohan Singh Kohli (Capt.)* v. *Venture India Properties P. Ltd.*, (2005) 123 Com cases 198 : 2005 CLC 1311 : (2004) 6 Comp LJ 452 (CLB)

The dispatch of notice is not bad in law because it is sent from some other post office which is not situated near to the company's registered or working office.

The removal of director without serving the notice u/s 284 is invalid and is an act of oppression & mismanagement. Consequently, the director shall be restored to his original position as director and all subsequent actions taken by the company in this regard would also be null and void.

– *B.V. Thirumalai* v. *Best Vestures Trading P. Ltd.*, (2004) 4 Comp LJ 519 (CLB)

It is settled proposition of law that further shares could be issued only for the benefit of the company and not with a view to create a new majority, *even if the powers to issue shares is vested in the Board. If the purpose of allotment of shares is for upsetting the existing shareholding to the detriment of one group, then such an allotment of shares is to be held an act of oppression.*

The procedure u/s 284 for the removal of director shall be followed:

An extraordinary general meeting being conducted without a board meeting is invalid & the director removed at such meeting is invalid and he is entitled to receive the pending remuneration.

If it is proved that a director is fooled by the other for resigning from the post of directorship shall be considered an act of oppression more so, when the company is a family company.

– *Naginder Singh Shiena* v. *R.S. Infrastructures Ltd.*, (2007) 139 Com Cases 246 : (2008) 86 SCL 90 (CLB)

If it is established that the resolutions in the EOGM were passed with a view to oust the directors from the management of the company and take control of the affairs of the company, then, the same could be agitated in a petition under Sections 397/398 of the Act.

In case of closely held companies, the removal of any shareholder from the board who has been associated with the company for long, could be considered to be an act of oppression and could be agitated in a petition under Sections397/398 of the Act.

On Removal of director without valid meeting

– *Badri Nath Galhotra* v. *Aanaam P. Ltd.*, (2007) 135 Com Cases (2007) 76 SCL 241 (CLB)

If a director in a company in the nature of a quasi Partnership, is removed, it would amount to oppression Board meeting without the quorum is invalid.

Removal of Managing Director

– *SVT Spg. Mills P. Ltd.* v. *M. Palanisami*, (2009) 95 SCL 112 (Mad)

Whether qualification shares are held by the director or not could be decided on evidence but right of the director could not be decided in maintainability of application.

– *Pooja Joshi* v. *Century gases & Petro Chemicals Ltd.*, (2004) 50 SCL 556 (CLB)

Where a suit has been filed against the MD and in the meanwhile a compromise is arrived between the company and the MD and MD neither honors the terms of the compromise nor appears at the hearings, in such a situation the director remaining is entitled to manage and control the affairs of the company.

– *Mahendra Sahai v. Dhruv Theatres and Productions P. Ltd.,* (2004) 56 SCL 339 : (2005) 126 Com Cases 164 (CLB)

If it is proved that the shareholding of the MD is fraudulently reduced then he shall be re-instated with his original shareholding, or if he is willing to part with shares, then the company should purchase the shares on valuation to be made by an independent valuer.

Removal of Promoter Director

– *Scholastica Antorny v. Azhimala Beach Resorts P. Ltd.*, (2007) 78 CLA 224 : (2007) 139 Com Cases 618 (CLB)

The principle of legitimate expectation shall be applied for a promoter- director that it must form part of the board of directors of the Company and can't be removed merely because of not attending an AGM.

Legitimate expectation in joining company

– *Synchron Machine Tools P. Ltd. v. U.M. Suresh Rao*, (1994) 79 Com Cases 868 (Kar)

If the affairs of the company are left to be controlled only by only two rival directors, deadlock in its affairs is bound to result so the aggrieved director shall part way with the shares of the company.

Direction for parting of ways on valuation

– *Surendra Goyal v. Nile Aqua faucets P. Ltd.*, (2008) 142 Com Cases 634 : (2008) 88 SCL 224 (CLB)

In a situation where there are counter allegations by one against the other of causing loss to the company and of the other of sale of properties of the company inspite of the CLB restraining it by interim order. The aggrieved shareholder/director shall be directed to part way the shares of the company. The valuer for the purpose is to be appointed with the consensus of the parties or in the alternative a lumpsum amount acceptable to the petitioner may be paid by the respondents to the petitioner with the direction to the petitioner to go out of the company.

Allotment in violation of statutory provisions

– *BNS Steel Trading P. Ltd. v. Orissa Sponge Iron to Steel Ltd.*, (2010) 154 Com Cases 357 : (2010) 2 Comp LJ 425 : (2010) 96 CLA 199 (CLB)

An allotment of shares in violation of sec.77(2) is not a ground of oppression and such allotment shall not be cancelled even if the shareholders of the company feel oppressed.

Issue of further capital and impropriety in rights issues

– *PIK Securities P. Ltd. v. United Western bank P. Ltd.*, (2001) 4 Comp LJ 81 : (2001) 44 CLA 184 : (2001) 33 SCL 671 (CLB-Del)

As far as the need for additional capital is concerned, it is a managerial decision and a judicial forum, should not interfere with the decision of the Board except when the increase in the share capital is with an ulterior motive and not for the bonafide needs of the company, but, in the garb of raising capital, shares are issued either to consolidate one's position or with a view to create a new majority or to convert a majority into a minority. In such cases, a petition under section 397/398 can be maintained.

– *Satish Chandra Sanwalka v. Tinplate dealers Assn. P. Ltd.*, (2001) 3 Comp LJ 284 : (2001) 107 Com Cases 98 : (2001) 32 SCL 338 :(2001) 43 CLA 97 (CLB - Del)

  If an existing group of shareholders are not allotted any share in new allotment then such act is an oppressive one and the company shall be directed to transfer suitable number of shares in order to maintain their previous shareholding ratio.

– *Hardeep Kaur Thinlac Enterprises P. Ltd.*, (2004) 122 Com cases 944 : (2005) 57 SCL 459 (CLB)

  There is no illegality in making further issue of shares where the company needed money for cash payments. Also, the aggrieved shareholders whose shareholding has been reduced or disturbed by such allotment shall be given an option to part with their shares.

– *Ashok Kumar Oswal v. Panchsheel Textile Mfg. & Trading Co. P. Ltd.*, (2002) 110 Com Cases 800 : 2001 CLC 1236 : (2002) 38 SCL 252 : (2002) 48 CLA 274 : (2002) 3 Comp LJ 224 (CLB)

  Once it is proved that the additional issue of shares is done to gain control, then deemed knowledge and consent of the aggrieved shareholders taken earlier shall be immaterial and such a case is an oppressive one.

– *Dileep Makhija v. Arun Mittal*, (2003) 47 SCL 241: (2004) CLC 209 : (2004) 118 Com Cases 694 : (2004) 59 CLA 177 (Delhi)

  No petition a director shall be entertained to whom notice of meeting was not given, if he didn't object to the meetings held earlier.

Allotment of shares in family company

– *Navin Ramji Shah v. Simplex Engineering & Foundry Co. P. Ltd.*, (2007) 76 CLA 1 : (2007) 136 Com Cases 770 (CLB)

  In a family company, mere disturbance in the shareholding of existing shareholders is a valid ground of oppression and the Board may order for winding up of the company after considering the interests of the shareholders and the aggrieved shareholders shall be directed to part way the shares of the company and the valuation of shares to be made by an independent valuer.

– *Ashok K Jain v. Naprod Life Sciences P. Ltd.*, (2009) 151 Com Cases 212 : (2009) 92 CLA 148 (CLB)

  Even if the company is a family company, the rival shareholders shall not be allowed to enter into any settlement during the pendency of the civil suit and the Board appoints an administrator to safeguard the interest of the company and make the Board run the company effectively.

– *Amrit lal Seth v. Seth hotels P. ltd.*, (2009) 95 SCL 161 : (2010) 95 CLA 489 : (2009) 148 Comp Cas 651 (CLB)

  In a family company of only 4 directors, it is assumed that every director shall be knowing about new allotments and in case it is proved that the director remains unknown about the new allotments then laches shall be applied for filing of petition against the other directors.

Arbitration and relief

– *Das Lagerway Wind Turbines P. Ltd. v. Cynosure Investments P. Ltd.*, (2007) 80 CLA 211 (Mad)

  Arbitrator cannot grant relief claimed by person in company petition. The scope of the petition filed under Sections 397 and 398 is quite distinct from the scope of the arbitration clause contained in an agreement and reliefs claimed in the company petition cannot be granted by arbitrator and it can be granted by Company Law Board alone by virtue of Sections 397, 398, 402 and 403 of the Companies Act.

– *Sudershan Chopra (Smt.) v. Company Law Board*, (2004) 58 CLA 362 : (2004) 52 SCL 429 [P & H]

Even if arbitration clause is provided in the articles of the company for any dispute among the shareholders, the Court's jurisdiction under Ss. 397 and 398 cannot stand fettered. The shareholder can file suit against the company in case of oppression. The statutory jurisdiction of the Company Law Board and the right of appeal against its orders cannot be ousted even by the consent of parties.

– *Airtouch International (Mauritius) ltd., v. RPG Cellular Investments and Holdings P. Ltd.*, (2004) 121 Com Cases 647 : 2004 CLC 987 : (2004) 53 SCL 1 (CLB)

If there is dispute arose out of the shareholders agreement and such agreement provides for the arbitrator to handle the dispute , in such a case CLB shall not entertain the petition.

– *Premier Automobiles Ltd., v. Fiat India P. Ltd.*, (2007) 137 Com Cases 737 : (2006) 6 Comp LJ 595 : (2007) 77 SCL 38 (CLB)

If in the shareholders' agreement that of joint venture, company is not a party, the company is only a party of the escrow agreement i.e. agreement related only to the safe custody of the share certificates and has nothing to do with the affairs of the company, the shareholders are allowed to file petition u/s 397.

– *Rajendra Kumar Tekriwal v. Unique Construction P. Ltd.* (2009) 147 Com Cases 737: (2008) 82 CLA 274 (CLB)

The action of the Company and its Board of Directors in removing the shareholders of the company is illegal and is a matter covered under section 397 and can't be referred to arbitration.

S. 243 - CONSEQUENCE OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS

(1) Where an order made under section 242 terminates, sets aside or modifies an agreement such as is referred to in sub-section (2) of that section, –

(a) such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;

(b) no managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company.

(1A) The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

(1B) Notwithstanding anything contained in any other provision of Companies Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.]

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

(2) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) or sub-section (1A), and every other director of the company who is knowingly a party to such contravention, shall be punishable with fine which may extend to five lakh rupees.

RIGHT TO APPLY UNDER SECTION 241

244. (1) The following members of a company shall have the right to apply under section 241, namely: –

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause or clause (b) so as to enable the members to apply under section 241.

Explanation. – For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

APPLICATION OF CERTAIN PROVISIONS TO PROCEEDINGS UNDER SECTION 241 OR SECTION 245

246. The provisions of sections 337 to 341 (both inclusive) shall apply mutatis mutandis, in relation to an application made to the Tribunal under section 241 or section 245.

Rules : NCLT Rules, 2016

Some of the important rules w.r.t. above provisions are relevant to quote:

Rule 34. General Procedure. –

(1) In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice.

(2) The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in Form No. NCLT. 4.

(3) Every petition or application or reference shall be filed in form as provided in Form No. NCLT. 1 with attachments thereto accompanied by Form No. NCLT.2 and in case of an interlocutory application, the same shall be filed in Form No. NCLT. 1 accompanied by such attachments thereto along with Form No. NCLT. 3.

(4) Every petition or application including interlocutory application shall be verified by an affidavit in Form No. NCLT.6. Notice to be issued by the Tribunal to the opposite party shall be in Form NCLT-5.

Rule 64. Matter earlier dealt by Company Law Board.-

Notwithstanding anything contained in any other law for the time being in force, an original civil action or case arising out of the Act, or any other corresponding provision of the Companies Act, 1956 or Reserve Bank of India

Act, 1934 is filed or pending before the Company Law Board on the date on which the Tribunal is constituted, and the relevant provisions of the Act dealing with the Tribunal have been given effect, or the Company Law Board has been dissolved in pursuance of the provisions of the Act, then all the cases on such date pending with the Company Law Board or such Benches shall stand transferred to the respective Benches of the Tribunal exercising corresponding territorial jurisdiction as if the case had been originally filed in the Tribunal or its Bench to which it is transferred on the date upon which it was actually filed in the Company Law Board or its Bench from which it was transferred: Provided that the Tribunal shall consider any action taken under the regulations of the Company Law Board as deemed to have been taken or done under the corresponding provisions of these rules and the provisions of the Act, and shall thereupon continue the proceedings, except in a case where the order is reserved by the Company Law Board or its Bench and in such a case, the Tribunal shall reopen the matter and rehear the case as if the hearing had not taken place:

Provided further that the Tribunal is at liberty to call upon the parties in a case to produce further evidence or such other information or document or paper or adduce or record further depositions or evidence as may deem fit and proper in the interest of justice.

(1) It shall be lawful for the President or such Member to whom the powers are so delegated, to provide that matters falling under all other sections of the Act, shall be dealt with by such Benches consisting of one or more members as may be constituted in exercising of such power as enshrined in the Act: Provided that matters pending before the Principal Bench of the Company Law Board as on the date of constitution of Tribunal shall continue and be disposed of by a bench consisting of not less than two Members of the Tribunal having territorial jurisdiction.

(2) It shall be lawful for the Tribunal to dispose of any case transferred to it wherever the Tribunal decides that further continuance of such application or petition transferred before the Tribunal shall be an unnecessary proceeding on account of changes which have taken place in the Act either upon an application filed by either of the parties to the proceedings or *suo motu*.

A fresh petition or an application may also be filed in Form NCLT 1 corresponding to those provisions of the Act, if both the parties thereto so consent with the approval of the Tribunal while withdrawing the proceedings as already continued before the Company Law Board and serve a copy of the petition on the parties thereto including the Central Government, Regional Director, Registrar of Companies, Official Liquidator or Serious Fraud Investigation Office, as the case may be, as provided in the Act, in the manner as provided under Part III.

(3) Upon an application to the Tribunal if the permission is granted to file a petition or an application in physical form, then the same shall be filed accompanied with the documents or papers to be attached thereto as required to prove the case subject to the provisions of the Act, and rules hereto.

(4) The same procedure shall also apply to other parties to application or petition for filing reply or counter thereto.

(5) Notwithstanding the above and subject to section 434 of the Act, the Tribunal may prescribe the rules relating to numbering of cases and other procedures to be followed in the case of transfer of such matters, proceedings or cases. 65. Petition or Application under

Rule 81. Application under section 241. –

(1) An Application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act, shall be filed in the Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.

(2) Where an application is presented under section 241 on behalf of any members of a company entitled to apply under sub-section (1) of the said section, by any one or more of them, the letter of consent

signed by the rest of the members so entitled authorising the applicant or the applicants to present the petition on their behalf, shall be annexed to the application, and the names and addresses of all the members on whose behalf the application is presented shall be set out in a schedule to the application, and where the company has a share capital, the application shall state whether the applicants have paid all calls and other sums due on their respective shares.

(3) A copy of every application made under this rule shall be served on the company, other respondents and all such persons as the Tribunal may direct.

Rule 82. Withdrawal of Application filed under section 241.

(1) An application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act, shall not be withdrawn without the leave of the Tribunal.

(2) An Application for withdrawal under sub-rule (1) shall be filed in the Form NCLT-9.

FORM NO. NCLT. 1

[see rules 34, 64, 66, 67, 68, 69, 70, 71, 73, 74, 75, 77, 78, 79, 80, 80A, 81, 83, 86 and 87]

Columns required for filing of Original Application / Reply / Rejoinder / Interlocutory Application or filing of additional documents under directions of the Bench

i. Details of Original Application / Reply / Rejoinder / Interlocutory Application

Particulars of the Petitioner / Applicant / Respondent and state whether company, whether petitioner or not.

(Name, description, father's / husband's name, occupation, capacity, i.e. qua shareholder, qua depositor and address)

ii. Jurisdiction of the Bench:

The petitioner declares that the subject-matter of the petition is within the jurisdiction of the Bench.

iii. Limitation:

(If applicable) The petitioner / applicant further declares that the petition is within the limitation laid down in section .... of the Companies Act, 2013 (where applicable)

iv. Facts of the case are given below:

(Give here a concise statement of facts in a chronological order, each paragraph containing as nearly as possible a separate issue, fact or otherwise.)

v. Relief(s) sought.

In view of the facts mentioned above, the petitioner/applicant / respondent prays for the following relief(s):

(Specify below the relief(s) sought explaining the ground for relief(s) and the legal provisions (if any) relied upon)

vi. Particulars of Bank draft evidencing payment of fee for the petition or application made:

Branch of the Bank on which drawn:

Name of the issuing branch:

Demand Draft No______________

Date_______________

Amount Rs_____________

(Signature/Signature of Authorised signatory)

Date:

Place:

FORM NO. NCLT. 9

[see rule 72, 76, 82, 84, 88 and 154 and also General Form for all purposes if no specific form is prescribed under these rules and Forms]

[HEADING AS IN FORM NCLT. 4]

Company Petition No ___ of 20 ___

Details of Application/ Petition:

Particulars of the applicant/ petitioner/appellant:

i. Name of the applicant/ petitioner/ appellant

ii. Address of registered office of the applicant/ petitioner/ appellant

iii. Address of service of all notices

iv. Telephone/Fax Number and e-mail address, if any Particulars of the respondent(s)

v. Name of the respondent(s)

vi. Office address of the respondent(s)

vii. Address of respondent(s) for service of all notices

viii. Telephone/Fax Number and e-mail address, if any.

Application /Petition/ Appeal in the form of affidavit under Section of the Act for..................

I, ...solemnly affirm and say as follows:

1. **I am the Managing Director or Chairman of the Board of Directors/a director/ .... Of the above named company, and I have been a of the company since......... 201...... [the capacity in which the deponent swears to the affidavit should be set out.]**

2. **I have read the petition now shown to me and state that the statements made in paragraph1 to thereof are correct and true to my knowledge.**

4. **Facts of the order against which appeal or review is filed.**

5. **The facts of the case are given below: (give here a concise statement of facts and other grounds in a chronological order, each paragraph containing as neatly as possible as separate issue, fact or otherwise).**

6. **Jurisdiction of the Tribunal: The applicant/ petitioner/ appellant declares that the matter of application/petition/ appeal falls within the jurisdiction of the Tribunal.**

7. **Limitation.- The applicant/ petitioner/ appellant further declares that the application/petition/ appeal is within the limitation as prescribed in the provision of section read with section 433 of the Act.**

8. **Matter not pending with any other Tribunal etc. - The applicant/ petitioner/ appellant further declares that the matter regarding with this application/ petition/ appeal has been made is not pending before any Tribunal of law or any other authority or any other Tribunal.**

9. Particulars in respect of the fee paid in terms of the Schedule of Fees of these rules.-

1. Amount of fees
2. Name of the Bank on which Demand Draft is drawn or Online Payment is made
3. Demand draft number.

10. Details of Index.- An index containing the details of the documents to be relied upon is enclosed.

11. List of enclosures.-

12. It is therefore prayed that directions may please be given:

1. Relief(s) sought.- In view of the facts mentioned in paragraph 5 above, the applicant/ petitioner/ appellant prays for the following relief(s) (Specify below the relief(s) sought explained the grounds for relief(s) and the legal provisions, if any, relied upon).
2. Interim order, if prayed for.- Pending final decision of application/ petition/ appeal, the applicant/ petitioner/ appellant prays for the following interim relief: (Give here the nature of the interim relief prayed for with reasons)

Dated this ____day of _________ 20____

(Signature of the applicant/ petitioner/ appellant)

Solemnly affirmed before me at on this (month) ____day of _______20____

(signature)

Application for Class Actions

Shareholders activism which means an active participation of shareholders in all the aspects of good corporate governance and fighting against the deceitful and incorrect acts of a company is an evolving term in India. As a part of the overhaul of the corporate governance norms, the Government of India enacted the Companies Act 2013 ("2013 Act") which brought in a slew of changes. The concept of Class Action Suits is one of the many improvement introduced by the 2013 Act vide Section 245.

Individual shareholders generally do not take legal action against a company, either on account of lack of enough motivation or finding it economically unaffordable, or because the law requires a certain percentage of shareholding for proceeding against a company. Thus, small and retail investors generally find it difficult to be heard and instead their grievances are redressed either from the company or courts in general. Class action suits seem to provide an answer to this problem by bringing together similar individuals under a single lawsuit, thereby supporting the cost of litigation and inspiring the required confidence. Thus, Class action is simply filing a law suit in a larger group instead of individual suits where there are numerous persons having the same interest in that suit.

Types of Class Action Suits

Broadly in the global context, there are four kinds of class action suits that can be brought against a company:

a. **Product liability/Personal Injury Class Actions:** Such law- suits are brought when a defective product or deficient service harms many people, for example, a drug with harmful side effects, or causing "mass accident".

b. **Consumer Class Actions:** Most common type of class action suits, these class actions suits are generally brought when a company's systematic and illegal practices harm a group of consumer, such as violation of consumer protection laws, illegal charges and penalties etc.

c. **Employment Class Actions**: Brought on behalf of employees of a company for contravention of the Labor laws, such as unpaid overtime, safety violations, workplace discrimination among others.

d. **Securities Class Actions**: Securities class actions are lawsuits brought on behalf of a group of investors who have been injured as a result of a improper conduct, corporate or otherwise by the management of a company. It includes all illegal practices ranging from misstating earnings to concealing or misrepresenting risks and all unethical practices.

Two factors are always present in every class action suit (pre- requisites) are:

1. The issues in dispute are common to all the members of the class (group), and

2. The persons affected are so large in number that it is impracticable to bring them all before the court.

Collective actions recognized under Indian Laws other than the Companies Act, 2013

Provisions such as class action suits allowing parties to represent other aggrieved persons in a representative capacity are set out in the following Indian Laws:

(a) Civil Procedure Code, 1908 ("CPC")

(b) Consumer Protection Act 1986 ("CPA")

(c) Industrial Disputes Act 1947 ("IDA")

(d) Competition Act 2002 ("Competition Act")

(e) Public Interest Litigation.

Actions under the CPC

Actions provided for under Order 1, Rule 8 of the CPC can be filed by the concerned persons before a court by seeking the permission of the court or by the direction of the court. The action must be filed before the appropriate court with requisite territorial and pecuniary jurisdiction. While territorial jurisdiction is determined based on (among others) cause of action and/or locations of defendants, pecuniary jurisdiction is based on the valuation of the lawsuit, and differs across different states in India.

The provisions regarding the filing of representative actions are set out under Order 1, Rule 8 of the CPC. Under this rule, an individual or group of individuals can file an action for the benefit of all persons interested in the subject matter of the litigation. However, to bring an action the following conditions must be met:

(a) Numerous parties must be present in the representative action.

(b) All parties must share the same interest (commonality of interest).

(c) The action is maintainable only upon seeking prior permission of the court.

(d) On permission being given by court, the court must issue notice to all the interested parties.

(e) No part of the action can be withdrawn or a compromise recorded unless notice is given to all interested persons.

(f) If the person suing or defending in representative capacity is not acting with due diligence, the court can substitute in his place any other person with the same interest in the representative action.

Consequently, a decree passed by the court in a representative action will be binding on all persons on whose behalf, or for whose benefit, the suit was instituted, or defended (as the case may be) (*Order 1 Rule 8(6), CPC*).

In addition to Order 1 Rule 8, the CPC has another provision relating to collective action. Section 91 empowers two or more persons to file a suit with the permission of the court to seek a declaration and injunction or any such other relief against public nuisance or other wrongful act affecting, or likely to affect the public. Such an action can be brought even if no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

In a representative suit there are numerous plaintiffs with different complaints and claims represented by one. In this one case is not taken as a base whereas each and every case or claim is discussed while deciding this particular representative suit. However the Scope of Order 1 Rule 8 of CPC is much wider than the one specified u/s. 245 of the 2013 Act.

Actions under the CPA

The CPA seeks to provide simple and speedy redressal to consumer disputes by establishing quasi-judicial machinery at district, state and national levels. Depending on the value of the claim, a complaint under the CPA can be filed before the:

(a) District Forum (for claims of up to INR 20 lakhs). This is a consumer dispute redressal forum established by the State Government in each district of the State by notification.

(b) State Commission (for claims of between INR 20 lakhs and INR 1 crore). This is a Consumer Disputes Redressal Commission established by the State Government in the State by notification.

(c) National Commission (for claims of more than INR 1 crore). This is the Consumer Disputes Redressal Commission established by the Central Government by notification.

Under section 12(1)(c) of the CPA, one or more consumers with the same interest (as well as consumers acting on behalf of, or for the benefit of all consumers) can file a complaint with the District Forum in relation to:

(a) Any goods sold or delivered, or agreed to be sold or delivered.

(b) Any service provided, or agreed to be provided.

(c) Such a complaint can only be filed with the permission of a District Forum.

Actions under the Competition Act

Applications made under section 53(N)(1) of the Competition Act must be filed before the Competition Appellate Tribunal (COMPAT). The Competition Act recognises the need to compensate parties for loss or damage caused as a result of anti-competitive conduct. The Competition Act also recognises that the conduct of parties may affect numerous parties for whom an individual claim may not be viable, accordingly, it provides for class actions as a form of redressal for numerous parties affected by anti-competitive conduct. Where numerous persons with the same interest have suffered loss or damage caused by the anti-competitive conduct of an enterprise (upheld by a decision of the Competition Commission of India (CCI) or the COMPAT) one or more such persons as well as persons acting for and on behalf of all persons can make an application to the COMPAT for the recovery of compensation for any loss or damage suffered (section 53N(4), Competition Act).

However, an application for compensation can only be made to the COMPAT either:

(a) When the CCI or the COMPAT has determined in the prior proceedings that there has been a violation of the provisions of the Competition Act.

(b) Where section 42A or section 53Q(2) of the Competition Act apply. These provisions provide a right to make an application for compensation when parties have suffered damage as a result of an enterprise contravening directions from the CCI or COMPAT.

In such cases, the provisions of Order 1, Rule 8 of the CPC apply subject to the following modifications:

(a) Every reference therein to a lawsuit must be construed as a reference to the aforementioned application to the COMPAT.

(b) Every reference to a decree must be construed as a reference to the order of the COMPAT.

Public Interest Litigation

Public Interest Litigation ("PILs") in common parlance means a legal action filed for the interest of general public. It is a tool for safeguarding the socio economic rights and Judiciary has used it as a weapon against the wrongdoers. Class Action has been brought up on the same lines but there are some key differences between the two of them. Class Action can be filed against any entity including private entities whereas PILs can only be filed against State or Public Authorities in High Court or Supreme Court. Representative in the Class Action Suit must suffer an injury or have interest in the claim whereas there is no such requirement in PIL for the plaintiff.

Industrial disputes/collective bargaining under the IDA

Representative actions through collective bargaining can be said to be permitted under the IDA, as industrial jurisprudence is based on class- action or representative litigation. The IDA permits collective bargaining by employees/workers as represented by their unions (which to some extent is an embodiment of the common law principles of representative litigation). The concept was evolved to enable poor workmen to unite together and press their demand collectively in order to confront a powerful employer.

Class action suits under the Companies Act, 2013 and NCLT Rules

Section 37 of the 2013 Act also provides for a "securities class action". This provision provides that a lawsuit can be filed, or any other action may be taken by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus under the following provisions of 2013 Act:

- Section 34 (criminal liability for misstatements in a prospectus).
- Section 35 (civil liability for misstatements in a prospectus).
- Section 36 (punishment for fraudulently inducing persons to invest money).

A minimum number of members required to file such a suit/alternative action has not yet been prescribed.

Persons eligible to launch class action suits

Only members and depositors can bring class action suits.

Section 2(55) of the Companies Act defines "member", in relation to a company, as any of the following:

- a subscriber to the memorandum of the company who is deemed to have agreed to become member of the company, and on its registration was entered as member in its register of members;
- a person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
- a person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.

Rule 2(d) of Companies (Acceptance of Deposits) Rules 2014 defines a depositor to mean either:

- a member of the company who has made a deposit with the company in accordance with section 73(2) of the 2013 Act;

- a person who has made a deposit with a public company in accordance with section 76 of the 2013 Act.

As per Section 245(3)(i), the requisite numbers of members who can maintain a Class Action are specified as under:

(a) In the case of a company having a share capital, more than one hundred members of the company or such percentage of the total number of its members as may be prescribed, whichever is less; or any member or members holding more than such percentage of the issued share capital of the company as may be prescribed.

(b) In case of a company not having share capital more than one- fifth of the total number of its members.

As per Section 245(3)(ii),the number of depositors required to file class action are more than 100 in number or more than such percentage of the total number of depositors as may (be prescribed, whichever is less, or (any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

Orders that may be sought from the Tribunal

Section 245(1) stipulates that the following orders may be sought from the Tribunal in a class action suit:

(a) To restrain the company from committing an act which is ultra vires the articles or memorandum of the company.

(b) To restrain the company from committing breach of any provision of the company's memorandum or articles.

(c) To declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by misstatement to the members or depositors.

(d) To restrain the company and its directors from acting on such resolution.

(e) To restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force.

(f) To restrain the company from taking action contrary to any resolution passed by the members.

(g) To claim damages or compensation or demand any other suitable action.

(h) To seek any other remedy as the Tribunal may deem fit.

Persons against which action class actions can be filed

Class actions may be filed against:

(i) The company or its directors;

(ii) The auditor;

(iii) Any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful actor conduct or any likely act or conduct on his part.

Factors taken into account by NCLT

According to Section 245(4), while considering the application, the NCLT shall take into account:

(1) whether the applicants are acting in good faith;

(2) evidence as to the involvement of any person other than the directors or officers of the company;

(3) whether the applicants could have pursued the action in their own and individual rights;

(4) evidence as to the views of the members or depositors who have no personal interest, direct or indirect in the matter in question;

(5) whether the cause of action is an act or omission that is yet to occur can be authorized by the company before it occurs or ratified by the company before it occurs;

(6) whether the cause action is an act or omission that has already occurred can be ratified by the company.

Further the National Company Law Tribunal Rules, 2016 notified on July 21, 2016 (**"NCLT Rules"**) stipulates that, in addition to the provisions of sub-section (4) of section 245 of the 2013 Act, the Tribunal may, while considering the admissibility of an application for class action take into account the following:

(a) whether the class has so many members that joining them individually would be impractical, making a class action desirable;

(b) whether there are questions of law or fact common to the class;

(c) whether the claims or defences of the representative parties are typical of the claims or defences of the class;

(d) whether the representative parties will fairly and adequately protect the interests of the class.

Place of Institution

Section 245(1) provides that all class action suits shall be instituted in the Tribunal.

Section 245(1) of the Companies Act provides that class action lawsuits initiated under the Companies Act must be initiated before the National Company Law Tribunal (NCLT). The Ministry of Corporate Affairs (MCA) *vide* a notification dated 1 June 2016 has constituted the National Company Law Tribunal (NCLT) and its appellate authority, the National Company Law Appellate Tribunal (NCLAT) with effect from such date.

Costs and Expenses

Costs and expenses with regard to class action suits shall be borne by the company and the person responsible for the "onerous act". It is pertinent to note here that the section casts the liability to bear costs of application upon the person who does or is responsible for such act.

Section 245(5) of the Companies Act, 2013, states that if the application filed is admitted, the Tribunal shall issue a public notice to all the members of the class by publishing the same and shall consolidate all similar applications prevalent into a single application. This section states that two class action applications for the same cause of action shall not be allowed and that the cost for derivative suit shall be borne by the company or the person responsible for the oppressive act.

Section 245(6) of the Companies Act, 2013 makes the decision of the NCLT binding on the company and all its members, depositors, auditors, consultant, advisor or any person associated with the company.

Consequences of non-compliance with the orders of the Tribunal

In the event of non-compliance of the order passed by the Tribunal under Section 245(7):

(a) A company shall be punishable- with fine which shall not be less than 5 lakh rupees but which may extend to 25 lakh rupees; and

(b) every officer of the company who is in default can be punished with imprisonment for a term upto 3 years and imposed a fine of not less than Rs.25,000 extendable upto Rs.1 lakh.

PROCEDURAL ASPECTS RELATING TO CLASS ACTION SUIT (AS PER NCLT RULES, 2016)

Right to apply under section 245

Rule 84 of the NCLT Rules,2016 deals with right to apply under section 245. As per this rule:

(1) An application under sub-section (1) of section 245, read with sub-section (3) of section 245 of the Act, shall be filled in Form NCLT-9.

(2) A copy of every application under sub-rule (1) shall be served on the company, other respondents and all such persons as the Tribunal may direct.

(3) In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be -

(i) (a) at least five per cent. of the total number of members of the company; or

(b) one hundred members of the company,

whichever is less; or

(ii) (a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company;

(b) member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.

(4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -

(i) (a) at least five per cent. of the total number of depositors of the company; or

(b) one hundred depositors of the company,

whichever is less; or;

(ii) depositor or depositors to whom the company owes five per cent. of total deposits of the company.

Rule 85 of NCLT Rules deals with conducting a class action suit. While considering the admissibility of an application under Section 245 of the 2013 Act, NCLT may take into account certain factors which are explained earlier.

Rule of opt-out

Rule 86 of NCLT Rules deals with opting out of class action suit and stipulates that:

(1) A member of a class action under section 245 of the Act is entitled to opt-out of the proceedings at any time after the institution of the class action, with the permission of the Tribunal, as per **Form No. NCLT-1.** A copy of Form NCLT-1.

(2) A class member who receives a notice under Section 245(5)(a) of the 2013 Act shall be deemed to be the member of a class, unless he expressly opts out of the proceedings, as per the requirements of the notice issued by the Tribunal.

(3) A class member opting out shall not be precluded from pursuing a claim against the company on an individual basis under any other law, where a remedy may be available, subject to any conditions imposed by the Tribunal.

Publication of notice

Rule 87 of NCLT Rules deals with publication of Notice and stipulates that:

(1) For the purposes of Section 245(5)(a) of the 2013 Act, on the admission of an application filed under Section 245(1), a public notice shall be issued by the Tribunal as per **Form No. NCLT-13** to all the members of the class by-

(a) publishing the same within seven days of admission of the application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the State in which the registered office of the company is situated and at least once in English in an English newspaper that is in circulation in that State;

(b) requiring the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper.

The Rules also prescribe that the aforesaid notice is also required to be placed on the websites of NCLT and the Ministry of Corporate Affairs, the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange where the company has any of its securities listed, until the application is disposed of by the NCLT.

(2) The date of issue of the newspaper in which such notice appears shall be considered as the date of serving the public notice to all the members of the class.

(3) The public notice shall, *inter alia*, contain the following-

(a) name of the lead applicant;

(b) brief particulars of the grounds of application;

(c) relief sought by such application;

(d) statement to the effect that application has been made by the requisite number of members/ depositors;

(e) statement to the effect that the application has been admitted by the Tribunal after considering the matters stated under sub-section (4) of section 245 and these rules and it is satisfied that the application may be admitted;

(f) date and time of the hearing of the said application;

(g) time within which any representation may be filed with the Tribunal on the application;

(h) the details of the admission of the application and the date by which the form of opt out has to be completed and sent as per Form NCLT-1 and shall be accompanied with such documents as are prescribed and such other particulars as the Tribunal thinks fit.

(4) The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant.

Limitation

Unless otherwise provided for by specific statutes, the limitation periods in India are governed by the Limitation Act 1963. While different causes of actions under the Code of Civil Procedure have different limitation periods, in most cases the limitation period is three years. The provisions of the Limitation Act apply to proceedings or appeals under the 2013 Act made to the NCLT or Appellate Tribunal.

The 2013 Act and the Limitation Act do not provide for a specific period within which a specialised class action for securities litigation under section 245 must be made. However, Article 137 of the schedule to the Limitation Act prescribes a maximum period of three years for a cause of action for which no specific period is prescribed. Accordingly, the limitation period for such actions will be deemed to be three years (however, this remains untested).

APPLICATION FOR COMPOUNDING

Meaning of Compounding

Compounding of Offence is not defined under Companies Act, 1956/ Companies Act, 2013, but as per **Black's Law Dictionary,** "Compound" means "to settle a matter by a money payment, in lieu of other liability".

Hence, taking a cue from the above definition, compounding of offence may be sum up as a judicial settlement mechanism whereby the default is made good by paying the penalty in lieu of undergoing consequences of lengthy prosecution for the offence committed.

Therefore, compounding crime consists of receipt of some consideration (termed as a compounding fee) in return for an agreement not to prosecute one who has committed an offence/default of technical in nature which enables the defaulters to avail peace and honorable discharge and avoid cumbersome trial.

Hence, when compounding is done, the prosecution is converted into fine i.e. condonation of prosecution by imposing penalty.

Nature of Offences which can be Compounded

Section 441 of the Companies Act 2013 classifies Offences/ defaults which are punishable with fine only or with imprisonment or fine or both, can be compounded either by the National Company Law Tribunal, Regional Director or any other officer authorised by the Central Government.

In other words, the offences, which are punishable with imprisonment only or imprisonment and fine, cannot be compounded.

The Power of compounding has been mentioned under section 441 of Companies Act, 2013

The provision of Section 441 of Companies Act, 2013 as are relevant for our purpose, are reproduced below:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under Companies Act, 2013 (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by—

   (a) the Tribunal; or

   (b) where the maximum amount of fine which may be imposed for such offence does not exceed twenty-five lakh rupees, by the Regional Director or any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify:

   Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

   Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account:

Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under Companies Act, 2013.

(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation.– For the purposes of this section,–

(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;

(b) "Regional Director" means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

(3) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.

(b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(4) The Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order.

Jurisdiction for Compounding of Offences

The power of compounding which is vested with National Company Law Tribunal/Regional Director/ Person authorized by Central Government is categorized in a following arrangement:

- If the **fine does not exceed Rs. 25 lakhs,** the offence can be compounded by the Regional Director or any other officer as may be authorized by the Central Government;
- If the **offence is punishable with fine exceeding Rs 25 lakhs**, the same can be compounded by the National Company Law Tribunal; and,

Application for Compounding can be filled in e-form **GNL-1.**

Procedure for Compounding Of Offence

- Prepare the compounding application alongwith the following documents:
- Affidavit verifying the application
- Memorandum of appearance or Power of Attorney
- Copy of notice from RoC if any
- Other necessary documents
- File e-form GNL-1
- Joint application by the Company and Officer in default can be made
- Based on the quatum of penalty, ROC will forward the application to RD or NCLT
- Passing of order by RD or NCLT
- File e-form INC 28 for intimation of Order.

Specimen of Application/Petition for Compounding of Offence under Companies Act, 2013

APPLICATION/PETITION

BEFORE THE ....

COMPANY PETITION NUMBER...........2023

IN THE MATTER OF SECTION 441 OF THE COMPANIES ACT, 2013

(For the offence committed under Section _______ of the Companies Act, 2013)

AND

IN THE MATTER OF:

COMPANY NAME, HAVING ITS REGISTERED OFFICE AT ADDRESS

.........PETITIONER No. 1

AND

.........................., DIRECTOR, S/O MR. ...., **R/O** ....

.........PETITIONER No. 2

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2.	Affidavits verifying Petition	Annexure	
3.	Relevant annexures as per the circumstances of the case.	Annexure	

FOR COMPANY	**PETITIONER NO. 2**
(NAME)	____________________
DIRECTOR	**(NAME)**
DIN:	**(DESIGNATION)**
(EMAIL ID)	**(RESIDENTIAL ADDRESS)**
(CONTACT NO)	**(EMAIL ID)**
	(CONTACT NO)

BEFORE THE ....

COMPANY PETITION NUMBER...........2023

IN THE MATTER OF SECTION 441 OF THE COMPANIES ACT, 2013

(For the offence committed under Section .... of the Companies Act, 2013)

AND

IN THE MATTER OF:

COMPANY NAME, HAVING ITS REGISTERED OFFICE AT ADDRESS

.........PETITIONER No. 1

AND

............................, **DIRECTOR, S/O MR.** ...., **R/O** ....

.........PETITIONER No. 2

PETITION UNDER SECTION 441 OF THE COMPANIES ACT, 2013 FOR COMPOUNDING OF OFFENCE UNDER SECTION .... OF THE COMPANIES ACT, 2013 ("ACT")

The Humble Petition of the petitioners above named most respectfully showeth:

I. PARTICULARS OF THE COMPANY:

1. **Company** (hereinafter referred to as the "**COMPANY**") was incorporated as an .... vide certificate of incorporation issued by the Registrar of Companies.
2. The registered office of the Company, at present, is situated ....
3. The present Authorized Share, Issued, Subscribed and Paid-up Capital of the Company is Rs. .... (Rupees ....) only divided into .... Shares of Rs. .... (Rupees ....) each.
4. The Company is carrying on the following business-

   "............................"

Certified true copy of Certificate of Incorporation, Memorandum and Articles of Association of the Company is annexed herewith and Marked as **ANNEXURE-1.**

II. PARTICULARS OF THE PETITIONER(S):

The Petitioner No. 1 is the Company and its particular are mentioned in ***Para 1*** above. Petitioner No. 2 is the Director of the Company. The detailed particulars of the above said Petitioner(s) are mentioned in the affidavit(s) verifying this Petition, which are placed as **ANNEXURE-2.**

III. JURISDICTION:

The petitioner(s) declares that the subject matter of the petition is within the jurisdiction of the ROC, ... and RD (region) NCLT .... (bench), ... The jurisdiction has been determined on the basis of the Registered office of the Company and provisions of Section 441 of the Companies Act, 2013, reference to which, the Registrar has to forward the Application for compounding before the appropriate forum, as he deems fit.

IV. LIMITATION:

The Petitioner(s) are filing this petition within the limitation period prescribed under the provisions of the Companies Act, 2013 for compounding of offence under section 441 of the Companies Act, 2013.

V. FACTS OF THE CASE ARE:

1. The Petitioners submits that ....(hereinafter referred to as "Company") i.e. the petitioner no. 1 was incorporated on .... under the provisions of the Companies Act, 2013 under the jurisdiction of Registrar of Companies, ..., and the other petitioners i.e. Petitioner No. 2 is the Director of Company, it has duly complied with all compliances applicable on it under various provisions of the Companies Act, 2013 and rules made there-under, in timely manner.

2. The Petitioners further submits before the Hon'ble Adjudicating Authority that they have .... has mentioned and alleged the company and its all directors and manager for the non-compliance of .... of the Companies Act, 2013 read with ....

3. The Petitioners further submits that in the said ....

4. The petitioners further submit before the Hon'ble Adjudicating Authority that said non-compliance has happened inadvertently ....

5. The petitioners further submit before the Hon'ble Adjudicating Authority that the Company **HAS MADE GOOD OF THE DEFAULT** so happened by ....

6. The Petitioners further submits that the company and its board has already identified Mr. ...., i.e. the petitioner no. 2 as the authorized person for the adherence of all the compliances under prescribed laws including the Companies Act, 2013 and therefore onl petitioner no. 2 has to be considered as the **'Officer in default'.** The List of officers in default and list of Signatories of the Company has been attached herewith and marked as **Annexure-.........**

7. The Petitioners further submits before this Hon'ble Authority that ....

8. Since the above contravention of Section .... of the Companies Act, 2013 is compoundable in terms of Section 441 of the Companies Act, 2013, and is a onetime offence, the Petitioner(s) hereby are making a Suo Motto petition for compounding the above contravention.

9. The Petitioner No. 1 has taken–up the matter relating to default of the provisions of Section .... of the Companies Act, 2013 for moving the petition under Section 441 of the Companies Act, 2013 at the Board Meeting held on ...., and has also authorized .... as its authorized representative.

10. The Petitioner No. 2 has also executed the power of attorney in favor of ...., to act as their legal representative and to take necessary action in respect to present matter.

    (A Copy of said Board Resolution dated ...., power of attorney(ies) alongwith Memorandum of Appearance of .... showing his acceptance has been annexed herewith and marked as **Annexure-.......**)

11. The petitioner(s) hereby declare that the officer(s) in default in respect of above said non-compliance is the petitioner no. 2 only.

VI. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY COURT:

The Petitioner(s) further declares that they had not filed any application, writ petition or suit regarding the matter in respect of which this petition has been made, before any court of law or any other authority or any other bench of the Board / NCLT and no such application, writ petition or suit is pending before any of them. The Petitioners further submit(s) that prosecution may/may not have been launched in the court in respect of the subject matter of this Application against the Company and its officers in default as on the date of filing of this application, but there is no such communication made to company and its any officer in this regard and it is not there in their knowledge if any such prosecution has been filed. The Petitioners are moving this application in good faith and wishes to get the offence compounded.

VII. GROUND OF RELIEF AND RELIEF (S) SOUGHT:

GROUNDS OF RELIEF:

1. As mentioned ***in the para V of the*** petition, the Company was not able to comply with the provisions of section .... of the Companies Act, 2013 due to ...., and inadvertently.

2. In subsequent years, the Company has taken all reasonable steps to ensure that the provisions contained in section .... of the Companies Act, 2013 and have duly complied.

3. That the default occurred is due to inadvertence which has ultimately been regularized and made good and, therefore, the offence under section .... of the Companies Act, 2013 deserves to be compounded.

4. That the Petition has been made bona-fide and in the interest of justice and, therefore, this is a fit case for Hon'ble Regional Director/NCLT to exercise its discretionary power in granting relief to the Company and other Petitioner(s) by compounding the Offence.

5. That the Petitioner(s) have already, on their part, taken all reasonable steps in order to ensure that the default is not committed in future.

6. The Petition is made bona-fide and in the interest of the Law and no body shall be prejudiced by the compounding of the offences under section .... of the Companies Act, 2013. This may be taken as just and equitable ground for taking a lenient view and compounding of the offence.

7. The Company is suo-moto filing an application under section 441 for compounding of an offence committed section .... of the Companies Act, 2013.

8. The Petitioners state that the tentative fee payable from the date of ocurrence of violation/ offense till the date of making the offense/violation good (.................. days) is INR ....

RELIEF (S) SOUGHT:

In view of the facts mentioned above in above paragraph, the Petitioner(s) respectfully prays your Honor that:

(a) Offence committed by the Petitioner(s) on account of violation of section .... of the Companies Act, 2013 be compounded.

(b) Such further order or orders be made, as the Hon'ble Board may deem fit and proper.

VIII. INTERIM ORDER, IF ANY PRAYED FOR: None

IX. PARTICULARS OF THE BANK DRAFT: **N.A.**

FOR PETITIONER NO.1

....

(NAME)

DIRECTOR

DIN:

(EMAIL ID)

(CONTACT NO)

PETITIONER NO. 2

....

(NAME)

(DESIGNATION)

(RESIDENTIAL ADDRESS)

(EMAIL ID)

(CONTACT NO)

X. LIST OF ANNEXURES(S):

S. No.	PARTICULARS	ANNEXURE NO.	PAGE NO.
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FOR COMPANY

(NAME)

DIRECTOR

DIN:

(EMAIL ID)

(CONTACT NO)

PETITIONER NO. 2

____

(NAME)

(DESIGNATION)

(RESIDENTIAL ADDRESS)

(EMAIL ID)

(CONTACT NO)

ANNEXURE

BEFORE THE ....

COMPANY PETITION NUMBER 2023

IN THE MATTER OF SECTION 441 OF THE COMPANIES ACT, 2013

(For the offence committed under Section .... **of the Companies Act, 2013)**

AND

IN THE MATTER OF:

COMPANY NAME, HAVING ITS REGISTERED OFFICE AT ADDRESS

.........PETITIONER No. 1

AND

........................**, DIRECTOR, S/O MR.** ....**, R/O** ....

.........PETITIONER No. 2

AFFIDAVIT VERIFYING PETITION

I, ..., Director of ...., do hereby solemnly affirm and state as under: -

1. That I am the Director and Authorized Representative of the Petitioner No. 1 Company.
2. That I have read the petition now shown to me, and state that the statements made in paragraph I to VI thereof are correct and true to my knowledge.
3. That the contents made in paragraphs VII are in the form of Prayer, and the contents made in paragraphs X contains list of enclosures.

DEPONENT

VERIFICATION

I, the above named deponent, do hereby verify that the contents of Para 1, 2, and 3 of the above affidavit are true and 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 .... day ...., 2023.

DEPONENT

BEFORE THE ……………………………………………

COMPANY PETITION NUMBER………..2023

IN THE MATTER OF SECTION 441 OF THE COMPANIES ACT, 2013

(For the offence committed under Section ……………………… of the Companies Act, 2013)

AND

IN THE MATTER OF:

COMPANY NAME, HAVING ITS REGISTERED OFFICE AT ADDRESS

………PETITIONER No. 1

AND

………………………, **DIRECTOR, S/O MR.** ………………………, **R/O** ……………………… …………………………………………………… ……………….

………PETITIONER No. 2

AFFIDAVIT VERIFYING PETITION

I, ………………………, S/o Mr. ………………………, aged about ……………. years R/o ……………………… do hereby solemnly affirm and state as under: -

1. That I am the Director of the Petitioner No. 1 Company and Petitioner No. 2 in the present petition.
2. That I have read the petition now shown to me, and state that the statements made in paragraph I to VI thereof are correct and true to my knowledge.
3. That the contents made in paragraphs VII are in the form of Prayer, and the contents made in paragraphs X contains list of enclosures.

DEPONENT

VERIFICATION

I, the above-named deponent, do hereby verify that the contents of Para 1, 2, and 3 of the above affidavit are true and 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 ………. day …………., 2023.

DEPONENT

ADJUDICATION AND E-ADJUDICATION

Section 454 of the Companies Act, 2013 provides the substantive law relating to Adjudication of penalties for companies.

It inter alia provides that:

The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of Companies Act in the manner as may be prescribed.

The Central Government shall while appointing adjudicating officers, specify their jurisdiction.

The adjudicating officer may, by an order-

(a) impose the penalty on the company, the officer who is in default, or any other person, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, to rectify the default, wherever he considers fit.

However, in case the default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub-section (2) of section 137 and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.

The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company, the officer who is in default or any other person.

Any person aggrieved by an order made by the adjudicating officer under sub-section (3) may prefer an appeal to the Regional Director having jurisdiction in the matter.

Every appeal as mentioned above shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person.

The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

THE COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014

Adjudication of Penalties (Rule 3)

The central government can appoint any officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Companies Act(the Act).

Before adjudging penalty, the adjudging officer shall issue a written notice in the specified manner, to the company, the officer who is in default or any other person, as the case may be, to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than thirty days from the date of service thereon), why the penalty should not be imposed on it or him.

Every notice issued as mentioned above, shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default, or any other person, and also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed.

The reply to such notice shall be filed in **electronic mode only** within the period as specified in the notice:

Provided that the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding fifteen days, if the company or officer in default or any person, satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice within the stipulated period or the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.

If, after considering the reply submitted, the adjudicating officer is of the opinion that physical appearance is required, he shall issue a notice, within a period of ten working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative:

However, if any person, to whom a notice is issued, desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance.

On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including as order for adjournment:

However, after hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice, relevant for determination of the default.

The adjudicating officer shall pass an order,-

(a) within thirty days of the expiry of the period in sub-rule (2),or of such extended period as reffered therein, where physical appearance was not required;

(b) within ninety days of the date of issue of notice under rule (2),where any person appeared before the adjudicating officer.

However, in case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the adjudicating officer and no such order shall be invalid merely because of its passing after the expiry of such thirty days or ninety days.

Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance under sub-rule (5).

The adjudicating officer shall send a copy of the order passed by him to the concerned company, officer who is in default or any other person or all of them and to the Central Government and a copy of the order shall also be uploaded on the website.

For the purposes of this rule, the adjudicating officer shall exercise the following powers, namely:

(a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;

(b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.

If any person fails to reply or neglects or refuses to appear as required under sub-rule (5) or sub-rule (10) before the adjudicating officer, the adjudicating officer may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so.

While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-

(a) size of the company;

(b) nature of business carried on by the company;

(c) injury to public interest;

(d) nature of the default;

(e) repetition of the default;

(f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and

(g) the amount of loss caused to an investor or group of investors or creditors as a result of the default.

However, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Companies Act.

In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.

Adjudication Platform (Rule 3A)

(1) On the commencement of the Companies (Adjudication of Penalties) Amendment Rules, 2024, all proceedings (including issue of notices, filing replies or documents, evidences, holding of hearing, attendance of witnesses, passing of orders and payment of penalty) of adjudicating officer and Regional Director under these rules shall take place in electronic mode only through the e-adjudication platform developed by the Central Government for this purpose.

(2) In case the e-mail address of any person to whom a notice or summons is required to be issued under these rules is not available, the adjudicating officer shall send the notice by post at the last intimated address or address available in the records and the officer shall preserve a copy of such notice in the electronic record in the e-adjudication platform referred to in sub-rule (1):

Provided that in case no address of the person concerned is available, the notice shall be placed on the e-adjudication platform.

Provided that the proceedings pending before the Adjudicating Officer or Regional Director on the date of such commencement shall continue as per provisions of these rules existing prior to such commencement.

Appeal Against the Order of Adjudicating Officer (Rule 4)

Every appeal against the order of the adjudicating officer shall be filed in writing with the Regional Director having jurisdiction in the matter within a period of sixty days from the date of receipt of the order of adjudicating officer by the aggrieved party, in Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought:

However, where the party is represented by an authorised representative, a copy of such authorisation in favour of the representative and the written consent thereto by such authorised representative shall also be appended to the appeal.

Further, an appeal in Form ADJ shall not seek relief(s) therein against more than one order unless the reliefs prayed for are consequential.

Registration of Appeal (Rule 5)

On the receipt of an appeal, office of the Regional Director shall endorse the date on such appeal and shall sign such endorsement.

If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number. Further, where the appeal is found to be defective, the Regional Director may allow the appellant such time, not being less than fourteen days following the date of receipt of intimation by the appellant from the Regional

Director about the nature of the defects, to rectify the defects and if the appellant fails to rectify such defects within the time period allowed as above, the Regional Director may by order and for reasons to be recorded in writing, decline to register such appeal and communicate such refusal to the appellant within a period of seven days thereof.

The Regional Director may, for reasons to be recorded in writing, may further extend the period referred to in above by a further period of fourteen days if an appellant satisfies the Regional Director that the appellant had sufficient cause for not rectifying the defects within the period of fourteen days referred to in the first proviso.

Disposal of Appeal by Regional Director (Rule 6)

On the admission of the appeal, the Regional Director shall serve a copy of appeal upon the adjudicating officer against whose order the appeal is sought along-with a notice requiring such adjudicating officer to file his reply thereto within such period, not exceeding twenty-one days, as may be stipulated by the Regional Director in the said notice.

However, the Regional Director may, for reasons to be recorded in writing, extend the period referred above for a further period of twenty-one days, if the adjudicating officer satisfies that he had sufficient cause for not being able to file his reply to the appeal within the above-said period.

A copy of every reply, application or written representation filed by the adjudicating officer before the Regional Director shall be forthwith served on the appellant by the adjudicating officer.

The Regional Director shall notify the parties, the date of hearing of the appeal which shall not be a date earlier than thirty days following the date of such notification for hearing of the appeal.

On the date fixed for hearing the Regional Director may, subject to the reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.

In case the appellant or the adjudicating officer does not appear on the date fixed for hearing, the Regional Director may dispose of the appeal *ex-parte:*

However, where the appellant appears afterwards and satisfies the Regional Director that there was sufficient cause for his nonappearance, the Regional Director may make an order setting aside the *ex-parte* order and restore the appeal.

Every order passed under this rule shall be dated and signed by the Regional Director.

A certified copy of every order passed by the Regional Director shall be communicated to the adjudicating officer and to the appellant forthwith and to the Central Government.

PETITION FOR WINDING UP

According to section 272(1), subject to the provisions of this section, a petition to NCLT for the winding up of a company shall be presented by—

(a) the company;

(b) any contributory or contributories;

(c) all or any of the persons specified in clauses (a) and (b);

(d) the Registrar;

(e) any person authorised by the Central Government in that behalf; or

(f) in a case falling under clause (c) of sub-section (1) of section 271, by the Central Government or a State Government.

Section 272(*2*) provides that a contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

Section 272(*3*) provides that the Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (*a*) of that section:

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

Section 272(*4*) provides that a petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

Section 272(*5*) provides that a copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.".

THE COMPANIES (WINDING UP) RULES, 2020

Petition for winding up (Rule 3)

(1) For the purposes of sub-section (1) of section 272, a petition for winding up of a company shall be presented in Form WIN 1 or Form WIN 2, as the case may be, with such variations as the circumstances may require, and shall be presented in triplicate.

(2) Every petition shall be verified by an affidavit made by the petitioner or by the petitioners, where there are more than one petitioners, and in case the petition is presented by a body corporate, by the Director, Secretary or any other authorised person thereof, and such affidavit shall be in Form WIN 3.

FORM WIN 1

[See rule 3(1)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT _______________

IN THE MATTER OF ______________LTD (give the name of the company) (Company incorporated under Companies Act, ________)

Petition No_____ of 20______

____________Petitioner

Petition of winding-up

The petition of (full name, description, occupation and address of petitioner) showeth:

1. The address of the petitioner above named for the service of all notices, processes, etc., is that of his representative Shri at ___________________.

2. The company above named, viz., (hereinafter referred to as 'the company') was incorporated in the month of____________19_____ /20_____ , under the (Companies Act,_______) as a public (private) company limited by shares/limited by guarantee/as an unlimited company.

3. The registered office of the company is situated at_________________.

4. The nominal capital of the company is Rs__________ divided into ______shares of Rs ________ each. The amount of capital paid up or credited as paid-up is Rs _______(or as the case may be.

5. The objects for which the company was incorporated are (herein set out the main objects) and any matter considered necessary for furtherance thereof set forth in the memorandum of association thereof.

6,7,8 etc. [Here set out in numbered paragraphs, as may be necessary, the facts on which the petitioner relies in support of the petition. Where the petitioner is a contributory, the petition should state whether the conditions of sub-section (2) of section 272 are satisfied. Where the petition is presented by the Registrar of Companies or by a person authorised by the Central Government, the order' of sanction or authorisation of the Central Government should be annexed to the petition. After setting out the facts conclude as follows:

PRAYER

The petitioner, therefore, prays as follows:-

(1) That the ________________Co., Ltd. be wound up by the Tribunal under the provisions of the Companies Act, ___ , and

(2) Such other order may be made in the premises as shall be just.

Representative of Petitioner

Petitioner

Note: It is intended to serve this petition on ___________

ENCLOSURES

1. Where the petition is presented by the Registrar of Companies or a person authorized by the Central Government, the order of sanction or authorisation of the Central Government.
2. Statement of affairs in FORM WIN4 ________ in case winding up petition is being filed by the company.

FORM WIN 2

[See rule 3(1)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT _______________

IN THE MATTER OF ______________LTD (give the name of the company) (Company incorporated under Companies Act, ________)

Petition No_____ of 20______

___________ Company Limited – Petitioner

Petition by company

The petition of____________ Co. Ltd., the petitioner herein, showeth as follows:-

1. The address of the petitioner above named for the service of all notices, processes, etc., is that of his representative Shri at __________________.

2. The company above named, viz., (hereinafter referred to as 'the company') was incorporated in the month of____________19_____ /20_____ , under the (Companies Act,_______) as a public (private) company limited by shares/limited by guarantee/as an unlimited company.

3. The registered office of the company is situated at_________________.

4. The nominal capital of the company is Rs__________ divided into ______shares of Rs ________ each. The amount of capital paid up or credited as paid-up is Rs _______(or as the case may be.

5. The objects for which the company was incorporated are (herein set out the main objects) and any matter considered necessary for furtherance thereof set forth in the memorandum of association thereof.

6. Where the company is already being wound-up voluntarily or by the Tribunal, the facts showing that the voluntary winding-up or winding-up by the Tribunal, as the case may be, cannot be continued with due regard to the interests of the creditors or contributories or both, should be set out.

7. By a special resolution of the company duly passed in accordance with section 271 of the Companies Act, 2013, at a general meeting thereof, held on the _____ day of ______ 20____, after due notice as provided in the Act, it was resolved unanimously (or, by a majority of. votes against votes) as follows:-

   (Here set out the resolution)

   [Here set out in paragraphs the facts relating to the financial position of the company and the circumstances that have led to the passing of the special resolution.]

8. The petitioner therefore prays as follows:-

   (1) That the _____________Co., Ltd., may be wound-Up by the Tribunal under the provisions of the Companies Act, ___ , and

   (2) Such other order may be made in the premises as shall be just.

Representative for the Petitioner

Petitioner

APPEALS BEFORE NCLAT

Section 420 of the Companies Act, 2013 states that the National Company Law Tribunal may pass any orders it thinks fit, as long as it gives the parties before it, an opportunity of being heard. The powers of the Tribunal are, therefore, extremely wide and there are no restrictions on the kind of relief that it can grant in a particular case.

The Tribunal may also rectify any mistake that is apparent on the face of the record within two years from the date of the order.

In view of the enormous powers of the Tribunal, an attempt is being made to highlight the provisions for making appeals from the orders of the Tribunal.

Appeal from the Orders of NCLT – Section 421

(1) any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(2) no appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees as may be prescribed:

   Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of

forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

Section 421 of Companies Act 2013 seeks to provide appeal against the order of the Tribunal in the Appellate Tribunal. It provides that appeal may be filed within ***45 days*** from the date of order and in case Appellate Tribunal is satisfied that delay is justified then further period of 45 days is allowed. The Appellate Tribunal after according an opportunity of hearing may confirm, modify or set aside order of the Tribunal and provide copy of order to the Tribunal and parties to appeal.

At this point our enlightened reader's mind may be interrupted with many questions as to: who is a person aggrieved? What is the interpretation of limitation period in this clause? What all will be construed as sufficient cause? etc.

"Any person aggrieved"

In common judicial parlance the term person aggrieved by a decision includes :

(a) a person whose interests are adversely affected by the decision; or

(b) in the case of a decision by way of the making of a report or recommendation – a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation.

A party or a person is aggrieved by a decision only when it operates directly and injuriously upon his personal, pecuniary or proprietary rights. A person who feels disappointed with the result of a case is not a person aggrieved. The order must cause him a legal grievance by wrongfully depriving him of something.

Who is a '**person aggrieved**' also was debated and decided in catena of judicial pronouncements. In FERTILIZER COOPERATION KAMGAR UNION v. UNION OF INDIA, AIR 1981 SC 344 and BANGALORE MEDICAL TRUST VS. MUDDAPPA, AIR 1991 SC 1902 the Court found that question of 'person aggrieved' is different from the question whether the petitioner is entitled to relief as prayed by him. The expression 'person aggrieved' denotes an elastic and to some extent an elusive concept. According to traditional theory, only a person whose right has been infringed can apply to the court but the later view as referred to above has liberalised the concept of aggrieved person and the right duty pattern commonly found in adversarial litigation has been given up. The only limitation is that such a person should not be a total stranger known as meddlesome interloper.

In the case of *Ayaaub Khan Noor Khan Pathan* v. *State of Maharashtra [(2013) 4 SCC 465*], the Hon'ble

Supreme Court has held that only a person who has suffered a legal injury can challenge an act/action/order etc. in a court of law by way of a writ under Article 226 of the Constitution of India. Writs under Article 226 of the Constitution of India are maintainable either for the purpose of enforcing a legal or fundamental right or when there is a sustainable complaint by the petitioner that there has been a breach of statutory duty on part of the authority qua him and to his prejudice thus making out a judicially enforceable right of his for enforcement. It has been held in the aforesaid case by the Hon'ble Supreme Court that it is implicit in the exercise of the extraordinary equitable jurisdiction of the High Courts that the relief prayed for must be for the enforcement of a legal right. A "legal right" has been held to mean entitlement arising out of legal rules. Concluding in para

17 of the aforesaid report on the question as to **who is a ”person aggrieved**”, the Hon’ble Supreme Court has held that “in view of the above, law on the said point can be summarised to the effect that a person who raises a grievance must show how he has suffered a legal injury”.

LIMITATION PERIOD FOR FILLING APPEAL

Section 421(3) of Companies Act, 2013

The appeal lies to the Appellate Tribunal within 45 days from the date of communication of the order of the Tribunal. The limitation period can be further extended by 45 days if the Appellate Tribunal is satisfied that the appellant was prevented by sufficient cause from filling the appeal.

The Supreme Court in the case of *N. Balakrishnan* v. *M. Krishnamurthy AIR 1998 SC 3222* has held that unless there is a deliberate, malafide or gross negligence, reasonable delay should be condoned in as much as a person does not benefit by filing a petition with delay. Once no malafides or illegal motive can be imputed to a person to file a petition with delay, delay should ordinarily be condoned.

A question arises, Whether provisions of Section 5 of Limitation Act, 1963, are applicable to an appeal filed under Section 421 of Companies Act 2013 (corresponding to Section 10F of Act, 1956) ?

Words used in (3) proviso to Section 421 of 2013 Act are “not exceeding 45 days” thereby clearly prescribing time limit of only 45 days, in addition to initial period of 45 days allowed under Section 421(3), to enable a party to file an appeal against the orders of Tribunal. The said proviso clearly shows that power vested in Appellant Tribunal to condone delay on sufficient cause being shown is directory and subject to discretion vested in the Appellant Tribunal. However, maximum period to extent of which such delay is capable of being condoned is mandatorily prescribed and not open to exercise of any discretion. Therefore, words “not exceeding 45 days” would amount to an express exclusion within meaning of Section 29(2) of the Limitation Act, 1963 and would therefore bar application of Section 5 of Act, 1963 to Section 421 of Companies Act 2013. In view thereof, scheme of Act, 2013, surely supports curtailment of Appellant Tribunal’s powers by exclusion of operation of Section 5 of Act, 1963.

The legislative intent as reflected from the Companies Act, 2013, resulting in the constitution of the NCLAT and the Section 421 providing for a limited appeal make it abundantly clear that the Legislature intended to restrict the power of the Appellant Tribunal to condone the delay beyond the period exceeding 45 days and thus prescribed in a mandatory language as under:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

The hon’ble Supreme Court in *Union of India* v. *Popular Construction Co. [2001] 8 SCC 470*, if there were any residual doubt on the interpretation of the language used in Section 10F, the legislative intent behind the constitution of the Company Law Board and the object of insertion of Section 10F would resolve the issue involved of curtailment of the court’s power with the exclusion of the operation of Section 5 of the Limitation Act, 1963.

”Delay shall be condoned when special statute itself expressly provides for it.”

Manohar Lal Sharma v. *Union Of India (UOI) and ANR. 2009 (6) ALD 315, [2009] 152 Comp Cas 412 (AP), (2010) 1 Comp LJ 19 (AP)*

As to the applicability of Section 5 of the Limitation Act, the learned judge considered the question in the light of the law laid down by the apex court in *Union of India* v. *Popular Construction Co. [2001] 8 SCC 470 : AIR 2001 SC 4010 and Gopal Sardar* v. *Karuna Sardar [2004] 4 SCC 252,* and laid down as follows):

"There is no dispute that the Companies Act, 1956, is a special law. Under the normal circumstances, the provisions of the Limitation Act will have application to all appeals and applications under the Companies Act, unless a different period of limitation is prescribed. As noticed herein above, the company law itself has prescribed a period of limitation for filing the appeal and also for condonation of delay. Hence, condonation of delay for filing the appeal beyond the prescribed period of limitation is by virtue of the proviso to Section 10F. This proviso can be considered to be akin to Section 5 of the Limitation Act. However, the proviso imposes limitation for extension of time in filing the appeal beyond the prescribed period of limitation, the expression used in Section 10F being 'further period not exceeding, sixty days'... The proviso to Section 10F has created an absolute bar for extension of period of limitation beyond sixty days apart from the period of limitation of sixty days prescribed under Section 10F. The expression 'not exceeding' does not permit any further extension and it seems that the true import, purport and construction of the proviso is to restrict the total period of limitation to 120 days, i.e., sixty days principal and sixty days by extension subject to existence of sufficient cause in a given case. Any other interpretation would amount to committing violence to the statute itself which is impermissible under law.

13. Yet again, the court ruled

...it is abundantly clear that where particular statute does not apply to Section 5 of the Limitation Act expressly or even impliedly in a special or local law itself, it shall be presumed that the exclusion is express. Section 29(2) of the Act not only excludes the application of Section 5 of the Limitation Act but also other sections from Sections 4 - 24 (inclusive). Thus, Section 14 also stands excluded from its application for purposes of either condoning the delay or exclusion of the period on the ground envisaged therein notwithstanding existence of sufficient cause. Thus, even if the period spent before the Hon'ble Delhi High Court constitutes sufficient cause for extension of period under Section 5 read with Section 14 of the Limitation Act, these sections cannot be applied de hors proviso to Section 10F to extend the limitation beyond sixty days in addition to the original period of sixty days (total 120 days) for filing an appeal as proviso to Section 10F does not permit such extension."

Any appeal filed beyond the maximum period prescribed in the special statutes will be barred by limitation. *Kabul Chawla* v. *CPI India Real Estate Ventures Limited and Ors*. Therefore no appeal will be entertained by the Appellate Tribunal after the expiry of 45+45=90 days.

In *'Union of India* vs. *M/s. Popular Construction Co.', AIR 2001 SC 4010* the Supreme Court has held that the provisions of Section 5 cannot be invoked since in Section 34(3) of Arbitration Act, 1996, while fixing the time period for filing objections challenging the Award of the Arbitral Tribunal, the words used "but not thereafter" – meaning thereby the legislature intended that no further time can be granted to the petitioner for filing objections under Section 34(3) of Arbitration Act, 1996 by invoking the provisions of Section 5 of Limitation Act. Therefore, to sum up, if the words used in any particular legislation convey legislative intent that the petitioner shall not be entitled to further time by invoking the principle of Section 5 of Limitation Act, then the provisions Limitation Act, 1963 shall not apply.

"Sufficient Cause"

A litigant who failed to file an Appeal before the appellant Tribunal within the permissible time period as fixed then he can file it after the expiry of the prescribed time period provided he has "sufficient cause" for non- filing the Appeal within the time period. In *Dinabandhu Sahu* v. *Jadumoni, Mangaraj, AIR 1954 SC 411*, the Supreme Court approve of the dicta in *Krishna* v. *Chathappan*, that 'sufficient cause' should receive a liberal construction so as to advance substantial justice, when no negligence, nor inaction, nor want of bonfide is imputablle to the appellant. If sufficient cause is shown, the court has to exerciseits discretion in favour of the appellant. The true guide for the court in its exercise of such discretion is wether the appellant had acted with reasonable diligence in prosecuting his appeal. But the circumstances of each case must be examined to see whether they fall within or without the terms of this general rule.

In *Maniben Devraj Shah* v. *Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157*, the Supreme Court has ruled thus:

23. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.

"Appeal from an Order or Decision"

A similar phrase has been used in several statutes. The expression "any decision or order", is of wide amplitude and would include all orders or decisions passed by the Board. *Cf. Kantilal Shah* v. *CC 1982 ELT 902(CAL).* The expression is wide enough to include interlocutory orders passed by the board. An appeal against an order which did not decide the rights of the parties is maintainable. *Gharib Ram Sharma* v. *Daulat Ram Kashyab, (1994) 80 Com Cases*.

Where in a case before the Bombay High Court, during the pendency of an appeal against dismissal of a winding up petition, an application was made to CLB [now Tribunal under the 2013 Act] for appointment of an administrator for prevention of mismangement under scetopn 398 of 1956 Act[corresponding to section 241 of the 2013 Act] and the same was admitted under an order that the matters of mismanagement would not be raised in the winding up petition and an appeal was made to the same High Court against this order also. The court refused to dismiss it summarily but ordered that if an adminsitrator was appointed by the CLB, 14 days' time should be given to any aggrieved party to prefer an appeal against an order. *Thakur Savadikar & Co. (P.) Ltd.* v. *S.S. Thakur*, *(1996) 23, CORPT LA 170(BOM)*.

An order of the CLB in a matter for reference to arbitration under section 8 of the Arbitration and Conciliation Act,1996 is not appealable in view of the fact that scetion 5 of that Act permits appeals to judicial authorities only in the matters specified in that section and the order of reference is not one of those matters. *Hind Samachar Ltd.* v.. *Union of India (UOI) and Ors.*

"OPPORTUNITY OF BEING HEARD"

SECTION 421(4) OF COMPANIES ACT 2013

Opportunity to be heard means the chance to appear before a court or Tribunal to present evidence and argument before being punished by governmental authority. An opportunity to be heard before penalty or punishment is imposed for contempt is an indispensable essential to the administration of due process of law as contemplated by the constitutional inhibition. Notice and an opportunity to be heard are the hallmarks of due process. However, due process does not always require an adversarial hearing. The violation of a state statute outlining procedure does not necessarily equate to a due process violation under the federal constitution. An opportunity to be heard ordinarily includes the following three rights:

- the right to receive fair notice of the hearing;
- the right to secure the assistance of counsel; and
- the right to cross examine adverse witnesses.

What is "opportunity of being heard"? The Karnataka High Court in *Karibasappa Kuravateppa Maradibankar* vs. *Assistant Commissioner, ILR 1997 Karnataka 2236* held:

It is well settled that the right of oral or personal hearing is not an essential element of natural justice. No doubt, a person sought to be proceeded against is entitled to a right of defence, but that does not necessarily imply a personal hearing. Even an opportunity to file a written representation complies with the principles based on the requirement of natural justice... It is well settled that whether oral hearing should be given or written representation will meet the ends of justice depends on the facts of each case. It is only in such cases which require determination of disputed question of fact, where personal hearing becomes incumbent. If not otherwise provided in the statute itself, 'hearing' does not mean grant of a personal hearing as mandatory. In the present case, the facts were not at all in dispute. The decision of the Assistant Commissioner is based on clear and unambiguous provisions of law. Therefore, non- grant of personal hearing cannot be said to be fatal.

The requirement of the rule of natural justice is that the parties whose civil rights are to be affected by a quasi judicial authority must have a reasonable opportunity of being heard in their defence. "stating it broadly and without intending it to be exhaustive.....rules of natural justice require that a party should have the opportunity of addcuing all relevant evidence on which it relies, that the evidence of opponent should be taken in his presence and he should be given the opportunity of cross examining the witness examined by the party, and that no materials should be relied on against him without his being given an opportunity of explaining them."

Expeditious disposal by Tribunal and Appellate Tribunal

Section 422 of the Companies Act 2013 provides for expeditious disposal of applications and petitions filed before the Tribunal and Appellate Tribunal. Where the Tribunal or the Appeallate Tribunal does not dispose of the matter before it within three months of its presentation, the Tribunal or the Appellate Tribunal is required to record to record the reasons for such delay. And after considering the reasons so recorded the President or the Chairperson, as the case may be, has the discretion to extend the period for disposal of the matter, not exceeding ninety days.

Appeal to Supreme Court (Section 423)

Any person aggrieved by an order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the Appellate Tribunal to him on any question of law arising out of such order.

The Supreme Court may allow it to be filed within a further period not exceeding sixty days, if it is satisfied, that the appellant was prevented by sufficient cause from filing the appeal with this period.

Power under Article 226 and 227 not taken away

It was held in *L. Chandra Kumar V. Union of India* and *Satyanarayan* v. *Atmaram* that the High Court's power under Articles 226 & 227, being a part of the basic structure of the Constitution, can never be taken away. Practically, however, since a direct appeal has been provided to the Supreme Court under section 423 of the Companies Act, 2013, the High Court will not interfere in a writ petition from the order of the Tribunal or the Appellate Tribunal unless there is a violation of the principles of natural justice or a lack of jurisdiction.

PROCEDURE FOR FILING AN APPEAL BEFORE NCLAT AGAINST THE ORDERS OF NCLT

Rule 22 of NCLAT Rules, 2016- Presentation of appeal

(1) Every appeal shall be presented in Form **NCLAT-1** in triplicate by the appellant or petitioner or applicant, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every appeal shall be accompanied by a certified copy of the impugned order of NCLT.

(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.

Rule 23 of NCLAT Rules, 2016- Number of copies to be filed

The appellant or petitioner or applicant shall file three authenticated copies of appeal or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

Rule 24 of NCLAT Rules, 2016- Endorsement and verification

At the foot of every appeal or pleading there shall appear the name and signature of the authorised representative and every appeal or pleadings shall be signed and verified by the party concerned in the manner provided by these rules.

Rule 25 of NCLAT Rules, 2016- Translation of document

(1) A document other than English language intended to be used in any proceeding before the Appellate Tribunal shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by the authorised representative engaged on behalf of parties in the case.

Fee for filing an Application

Rule 55 of NCLAT Rules, 2016 (1) Fee for filing appeal or interlocutory application, and process fee shall be Rs. 5000/-.

(2) The fee and process fee shall be deposited by separate demand draft or Indian Postal Order favouring the Pay and Accounts Officer, Ministry of Corporate Affairs, payable at New Delhi.

The Appellate Tribunal may, to advance the cause of justice and in suitable cases, waive payment of such fee or portion thereof, taking into consideration the economic condition or indigent circumstances of the petitioner or appellant or applicant or such other reason, as the case may be.

AFFIDAVITS

Rule 67 of NCLAT Rules, 2016- Title of affidavits.-

Every affidavit shall be titled as “Before the National Company Law Appellate Tribunal.” followed by the cause title of the application or other proceeding in which the affidavit is sought to be used.

Rule 68 of NCLAT Rules, 2016. Form and contents of the affidavit.-

The affidavit as per **Form NCLAT-4** shall conform to the requirements of order XIX, rule 3 of Civil Procedure Code, 1908 (5 of 1908).

Rule 69 of NCLAT Rules, 2016. Persons authorised to attest.-

Affidavits shall be sworn or attested by a Notary Public or Oath Commissioner who shall affix his official seal.

Rule 70 of NCLAT Rules, 2016. Affidavits of illiterate, visually challenged persons.-

Where an affidavit is sworn or affirmed by any person who appears to be illiterate, visually challenged or unacquainted with the language in which the affidavit is written shall be in **Form NCLAT-5**, the attestor shall certify that the affidavit was read, explained or translated by him or in his presence to the deponent and that he seemed to understand it, and made his signature or mark in the presence of the attestor.

Rule 71 of NCLAT Rules, 2016. Identification of deponent.-

If the deponent is not known to the attestor, his identity shall be testified by a person known to him and the person identifying shall affix his signature in token thereof.

Rule 72 of NCLAT Rules, 2016-. Annexures to the affidavit.-

(1) Document accompanying an affidavit shall be referred to therein as Annexure number and the attestor shall make the endorsement thereon that this is the document marked putting the Annexure number in the affidavit.

(2) The attestor shall sign therein and shall mention the name and his designation.

FILING OF INTERLOCUTORY APPLICATION

Rule 31 of NCLAT Rules, 2016-

Every interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in Form **NCLAT-2** and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing a affidavit supporting the application.

IMPORTANT POINTS TO BE KEPT IN MIND

Rule 19 of NCLAT Rules, 2016- Procedure for proceedings. –

(1) Every appeal to the Appellate Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type- written or printed in double spacing on one side of standard paper with an inner margin of about four centimeters width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form.

(2) The cause title shall state "In the National Company Law Appellate Tribunal" and also set out the proceedings or order of the authority against which it is preferred.

(3) Appeal shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.

(4) Where Saka or other dates are used, corresponding dates of Gregorian calendar shall also be given.

(5) Full name, parentage, description of each party and address and in case a party sue or being sued in a representative character, shall also be set out at the beginning of the appeal and need not be repeated in the subsequent proceedings in the same appeal.

(6) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party and these numbers shall not be changed and in the event of the death of a party during the pendency of the appeal, his legal heirs or representative, as the case may be, if more than one shall be shown by subnumbers.

(7) Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.

(8) Every proceeding shall state immediately after the cause title and the provision of law under which it is preferred.

CASE STUDIES

CASE STUDY ON MERGERS & AMALGAMATIONS

HIJ Infocom Ltd is a listed company at NSE and BSE with market capitalization of Rs. 21.3 cr. The Authorised Share Capital of the Company is Rs. 15 cr divided into 1,50,00,000 Equity shares of Rs. 10 each and the paid up share capital is Rs. 7.5 cr. It began its operations in 1992 as a hardware items provider, before growing to include software services, IT training, consulting, and, eventually, Total IT Solutions that include LPO, BPO, and KPO services and now has five manufacturing sites in Jammu, Noida, and Jharkhand that produce a wide range of goods. It has installed over 50,000 PCs and servers around the country, and the company now employs over 450 employees. It has fought through adversity and remains committed to its goal of being one of the world's top IT solutions providers. Revenue of the company has been increased to Rs. 70 cr from Rs. 42 cr in the last quarter of 2022-23. Promoters hold 58.33% stake in the company. Company has taken the consent of the Shareholders of the company via Extra ordinary general meeting held on 22nd April, 2021 for the amalgamation with the I Kall Ltd. I Kall ltd, a listed company at NSE and BSE with market capitalization of Rs. 15.91 cr. The Authorised Share Capital of the Company is Rs. 11 cr divided into 1,10,00,000 Equity shares of Rs. 10 each and the paid up share capital is Rs. 9 cr. I Kall is a global pioneer in networking and connection devices for consumers, small companies, medium to big corporations, and service providers, and is amongst the best hardware companies in India. Since 1976, the firm has developed from humble beginnings in Maldives to an award-winning worldwide brand with over 1500 workers in 40 countries. I Kall is establishing the groundwork for a more connected, intelligent, and easy society today. The I Kall style of doing business has been defined by an unwavering dedication to client satisfaction, an unfettered desire to succeed, seamless teamwork, and strong business ethics. The Growth of the company has seen from its Profit which has been significantly raises from Rs. 82.5 cr in the last quarter to Rs. 155.78 cr in this period.

In this regard, draft a Specimen Petition between two Companies to Amalgamate by Sale of I Kall ltd to HIJ Infocom Ltd to be filed before NCLT. Assume necessary facts.

CASE STUDY ON OPPRESSION AND MISMANAGEMENT

Bell Cements Ltd., a public ltd company which is among the Top 50 Companies in Cement in terms of sales. Incorporated in 1989 by renowned family based out of Kolkata. The company set-up the first Cement Plant in 1995 with an installed capacity of 0.6 Mtpa. Today, the total Cement production capacity of the Company is 29.30 Million tons. Current Revenue of the company is Rs. 9,455 cr and market capitalization of Rs. 45,411 cr. Around 1700 employees are working in the organization. Also, the total market share of the company is 6%. The main product of the company is Portland cement, manufactured in eight state-of-the-art production facilities that include Integrated Cement plants and Grinding units. However, the directors are managing the affairs of the company in a manner prejudicial to the interests of the company. Mostly, decisions w.r.t investing funds of the company, borrowing monies, giving loans or giving guarantee or provide security in respect of loan have been taken without conducting the physical meeting. No notice of the meeting has been sent and no resolutions has been filed with the Registrar of Companies. As this shows the clear violation of Section 179 of the Companies Act, 2013.

As a Shareholder, draft a specimen application to be filed with National Company Law Tribunal for prevention of Oppression and Mismanagement. Assume necessary facts.

CASE STUDY ON CLASS ACTION

EBC JCK ltd., a listed company at NSE and BSE with market capitalization of Rs. 36.3 cr. In the last three decades, it has developed from a single production unit to become India's major integrated steel corporation, with a capacity of 25 MTPA in India and the Japan. Since its inception, the company has always been on the cutting edge of research and development. In addition to construction and infrastructure, the products are used in several other industries including automobile, electrical applications, appliances, etc. The company also uses the latent heat generated inside its furnaces to generate electricity, which is mostly used for internal consumption. According to reports, its revenue increased from Rs 71.3 crore in the fiscal year 20-21 to Rs 139.11 crore in the fiscal year 21-22. The company's PBT margin increased from 6.42 in the previous year to 13.71 in fiscal year 21–22, resulting in an increase in PAT from Rs. 2.46 crore to Rs. 7.07 crore. However, it is being noticed by the employees that board of directors of the company are not working for the benefit of the company. Funds of the company have been rotated to the personal accounts of the directors. Also, they have been fraudulently using the properties of the company for their own personal use. Directors are not following the rules and regulation of the organization. 65 Shareholders holding 15% of equity shareholding of the Company joined together to file a class action suit.

Can they take action under section 245 of the Companies Act, 2013? If yes, Draft a specimen application to be filed with National Company Law Tribunal on behalf of members for restraining its directors from committing an act which is ultra vires the articles or memorandum of the company. Assume necessary facts.

CASE STUDY ON COMPOUNDING

Timber Industries Pvt. Ltd., incorporated in the year 1981 has grown over the last two decades as one of India's leading aluminium extrusion profile manufacturing companies. In the last three years, its production has increased manifold reaching nearly 8000 tonnes. Today Timber has more than 8,000 special aluminium extruded shapes, tools, dies, cuts and profiles that are consistently used for domestic and export purposes.

Headquartered in Banglore, Timber Industries is a manufacturer of all-alloy aluminium rods, floors, grills, railings, aluminium scrap, aluminium/aluminium wire, and EC grade wire rods used for redrawing into Wires / Strips for the manufacture of Cables, Conductors, Transformer Wires / Strips and various hardware / General Engineering Components. For the year ended March 2021, Timber Industries total income from operations stood at INR 71.20 crores, and EBITDA was INR 0.75 crore. With the global fluctuation in commodity markets, the financials of the company have been impacted badly. Yet, the management seems to be very positive about the future outlook. However, the company has failed to file its Financial Statements to the Registrar of Companies of the last three financial years and there was a non-compliance with CSR related provisions.

This default has been noticed by the new director of the company and all the previous forms have been duly filed with the Registrar.

In this regard, draft an application for compounding to be filed for making the default good before NCLT. Assume necessary facts.

CASE STUDY ON WINDING UP

DVR Ltd is a listed company at NSE and BSE with market capitalization of Rs. 111.78 cr. Company came out with IPO in the year 2012 and they have been in the industry for several years and have established themselves as a pioneer in developing innovative drone solutions for various industries. They specialize in providing drone solutions for agriculture, surveying, mapping, and infrastructure development. Their drones are designed to be efficient, cost-effective, and reliable, making them a top choice for many businesses. Their drones are equipped with advanced imaging solutions that enable businesses to gather accurate data and make informed decisions. However, from the past few years company is struggling in its business. Losses of the company has been rapidly increased to Rs. 115 cr from Rs. 75 cr in the last year. All the directors have been resigned from their post and new directors were appointed. Due to this financial crunch, company is unable to pay salary to its employees. Also, the company has taken huge amounts of Secured loans from Banks and various financial institution which they are unable to pay. Promoters have pledged their entire shareholding of 26% in order to pay their debts.

In this regard, draft a petition for Voluntary wind up by the Company to National Company Law Tribunal. Assume necessary facts.

E-FILING OF DOCUMENTS BEFORE NCLT & NCLAT

In the era of technological advancement, it is necessary for all the institutions and bodies to upgrade them according to the need of contemporaneous business and regulatory environment. Technology is required not only because of the contemporaneous business and regulatory environment but it also ease the processes.

In this direction, NCLT and NCLAT have also taken necessary steps to update themselves and make the system of access to justice for corporates and individuals convenient.

NCLAT vide order dated 15th May, 2023 has instructed that the Appeals / Interlocutory Applications / Reply/ Rejoinder etc. should be e-filed through e-filing portal. Further, the Competent Authority directed that the filing of hard copies of Appeals/ Interlocutory Applications/ Reply / Rejoinder etc. shall not be mandatory. The Standard Operating Procedures (SOPs)/ Orders/ Circulars/ Notices issued by the NCLAT from time to time regarding filing of Appeals/ Interlocutory Applications / Reply / Rejoinder etc. are also required to be read accordingly.

Both, NCLT and NCLAT have devised the systems to provide various services such as Daily Cause List, Case Status, Judgments, Daily orders etc, electronically through their respective websites. Further, NCLT and NCLAT are maintaining their e-filing portal at the link https://efiling.nclt.gov.in/mainPage.drt and https://efiling.nclat.gov.in/mainPage.drt respectively. This has made the work of professionals and Corporate much easier, faster and convenient.

LESSON ROUND-UP

- The Ministry of Corporate Affairs has notified the constitution of NCLT and NCLAT with effect from June 01, 2016. Consolidating the jurisdiction of Company Law Board, High Court and BIFR into a single forum i.e. NCLT, dedicated to Corporate matters, will remove the multi-fold governance.
- A document other than English language intended to be used in any proceeding before NCLT shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by authorised representative engaged on behalf of parties in the case or if the authorised representative engaged in the case authenticates such certificate or prepared by a translator approved for the purpose by the Registrar on payment of such charges as he may order.
- Where an appeal or application or petition or other proceeding purported to be instituted by or on behalf of an association, the person or persons who sign (s) or verify(ies) the same shall produce along with such application, for verification by the Registry, a true copy of the resolution of the association empowering such person(s) to do so.
- A petition shall be based upon a single cause of action and may seek one or more reliefs provided that the reliefs are consequential to one another.

- Where the respondent states such additional facts as may be necessary for the just decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent.
- In case of the scrutiny of the petitions or applications as provided in Part III and elsewhere in these rules, if any person is aggrieved of the decision of the Registrar or such other officer officiating as the Registrar of the Benches, an appeal against the order of the Registrar shall be made within fifteen days of the making of such order to the President of the Principal Bench and at other places to any Member of the Bench designated by the President, and whose decision thereon shall be final.
- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the NCLT to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.
- The offences, which are punishable with imprisonment only or imprisonment and fine, cannot be compounded.
- Every appeal against the order of the adjudicating officer shall be filed in writing with the Regional Director having jurisdiction in the matter within a period of sixty days from the date of receipt of the order of adjudicating officer by the aggrieved party, in Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought.
- Section 420 of the Companies Act, 2013 states that the National Company Law Tribunal may pass any orders it thinks fit, as long as it gives the parties before it, an opportunity of being heard. The powers of the Tribunal are, therefore, extremely wide and there are no restrictions on the kind of relief that it can grant in a particular case.
- Every interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in Form NCLAT-2 and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing a affidavit supporting the application.

GLOSSARY

Interlocutory application: Every Interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in prescribed form and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.

Public Interest Litigation: It means a legal action filed for the interest of general public. It is a tool for safeguarding the socio economic rights and Judiciary has used it as a weapon against the wrongdoers.

Compounding: It may be sum up as a judicial settlement mechanism whereby the default is made good by paying the penalty in lieu of undergoing consequences of lengthy prosecution for the offence committed.

Opportunity to be heard: It means the chance to appear before a court or Tribunal to present evidence and argument before being punished by governmental authority.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Explain NCLT Rules in detail.
2. Describe Presentation of petition or appeal (Rule 23).
3. Explain Rule 35 of NCLT Rules regarding Advertisement detailing petition.
4. What are the Rights of a party to appear before NCLT and Consequence of non-appearance of applicant?
5. What are the some DO's and Don'ts for appearance before the Courts?
6. Explain the grounds/reasons on which a Public Company can refuse to register transfer of shares along with case law.
7. Explain Oppression And Mismanagement & Class Actions.
8. Define compounding of offences. Which types of offence can be Compounded?
9. Draft the petition of Mergers & Amalgamations? Assume necessary facts.

LIST OF FURTHER READINGS

- Chartered Secretary, The ICSI
- Articles written by professionals
- NCLT AND NCLAT – MANUAL, ICSI Publication

OTHER REFERENCES (Including Websites/Video Links)

- https://www.icsi.edu/home/cs/
- https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/rules.html
- https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/rules.html
- https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==