



Regulatory Alert Tracking change

NCLT and NCLAT made operational

Issue no: RA/8/2016

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Background

Companies Act, 2013 (2013 Act) provides for constitution of National Company Law Tribunal (NCLT) by Central Government to exercise the powers conferred on it under 2013 Act and also for National Company Law Appellate Tribunal (NCLAT) to hear appeals against the orders of NCLT.

Constitutional Bench of the Supreme Court had, in May 2015, in case of Madras Bar Association vs Union of India had upheld the constitutional validity of NCLT and NCLAT.

In this regard, Ministry of Corporate Affairs (MCA) has, on 1 June 2016, notified following:

- Constitution of NCLT and NCLAT;
- Various sections of 2013 Act conferring the powers to be exercised by NCLT; and
- Constitution of 11 benches of NCLT, which will have jurisdiction over various States / Union Territories.

Highlights of the notifications

- With the constitution of the NCLT, the Company Law Board (CLB) constituted under the Companies Act, 1956 (1956 Act) stands dissolved.
- As per the draft notification issued by MCA dated 1 June 2016, all the matters / proceedings / cases pending 1 June 2016, before the CLB shall stand transferred to NCLT and NCLT shall dispose of such matters / proceedings / cases in accordance with the provisions of 2013 Act or 1956 Act
- MCA has also notified several sections of 2013 Act which confer powers on the NCLT in respect of various matters. Sections / Provisions under 2013 Act that are now notified w.e.f. 1 June 2016, are as under:

Sr. No.	Section no.	Particulars
1.	7(7) [except clause (c) and (d)]	Application to NCLT for passing necessary orders where company has been incorporated by furnishing false or incorrect information etc. for passing necessary orders
2.	2 nd proviso to 14(1) and 14(2)	<ul style="list-style-type: none"> • Conversion of public company into private company • Filing of altered AOA and Order of NCLT for conversion of public company into private company with Registrar of Companies (ROC)
3.	55(3)	Application to NCLT where company is unable to redeem preference shares or pay dividend on such shares in accordance with terms of issue
4.	<i>Proviso to 61(1)(b)</i>	Application to NCLT for consolidation or division of share capital which results in change in voting percentage of shareholders
5.	62(4) to (6)	Approval of NCLT for conversion of debentures / loan obtained from Government into shares
6.	71(9) to (11)	Application to NCLT by debenture trustee / debenture holders in case of assets are insufficient for redemption of debentures or if a company fails to redeem its debentures on due date or pay interest on debentures
7.	75	Damages for fraud in case of acceptance of deposits with the intent to defraud the depositors or for any fraudulent purpose
8.	97, 98, 99	<ul style="list-style-type: none"> • Power of NCLT to call Annual General Meeting (AGM) if default is made in holding the AGM • Power of NCLT to call General Meeting other than AGM on the application of Director or Member • Punishment for default in holding AGM and General Meeting

9.	119(4)	Order of NCLT for directing immediate inspection of minutes book of general meeting or direction to forward copy of the same to the concerned member
10.	130, 131	<ul style="list-style-type: none"> • Re-opening of books of account and recasting of financial statements • Voluntary revision of financial statements or Board's Report
11.	2 nd proviso to 140(4), 140(5)	<ul style="list-style-type: none"> • Appeal to NCLT by company or aggrieved person against circulation to members of the representation and reading out of the representation at the meeting, made by auditor who is proposed to be removed • Power of NCLT to change auditor <i>suo motu</i> or on application by Central Government (CG) or any concerned person
12.	169(4)	<ul style="list-style-type: none"> • Appeal to NCLT by company or aggrieved person against circulation to members of the representation and reading out of the representation at the meeting, made by director proposed to be removed
13.	213	Investigation into a company's affairs on application by members or other persons
14.	216(2)	Investigation of ownership of a company and other matters by inspectors
15.	218	Protection of employees during investigation
16.	221	Freezing of assets of a company on inquiry and investigation
17.	222	Imposition of restrictions on issue / transfer etc. of securities in connection with any investigation or on a complaint made by any person in this behalf
18.	224(5)	Application to NCLT by CG for disgorgement of asset / property / cash, and holding director, Key Managerial Personnel (KMP) or officer or other person personally liable in case any fraud has taken place in a company as

		per report of inspector conducting investigation into company's affairs
19.	241 to 245 (Except section 242(1)(b), 242(2)(c) and 242(2)(g))	<ul style="list-style-type: none"> • Oppression and Mismanagement • Class Action Suit
20.	Reference of NCLT in Section 399(2)	Process for compelling production of document kept by the ROC
21.	415 to 433	Procedural aspects of NCLT and NCLAT
22.	434(1)(a) and (b), 434(2)	<ul style="list-style-type: none"> • Transition provisions for transfer of proceedings from CLB to NCLT • Appeal against the order of CLB to High Court within 60 days of receipt of CLB order • Power of CG to make rules for transfer of such pending matters
23.	441	Compounding of offences
24.	466	Dissolution of CLB and consequential provisions

- **Constitution of NCLT:** Government has constituted 11 Benches of NCLT, out of which 1 will be the Principal Bench, which shall preside at New Delhi. Benches constituted and their respective territorial jurisdiction is as under:-

Sr. No.	Location	Jurisdictional State / Union Territory
1.	New Delhi	Haryana, Rajasthan and Delhi
2.	Ahmedabad	Gujarat, Madhya Pradesh, Dadra and Nagar Haveli, Daman & Diu
3.	Allahabad	Uttar Pradesh and Uttarakhand
4.	Bengaluru	Karnataka
5.	Chandigarh	Himachal Pradesh, Jammu and Kashmir, Punjab and Chandigarh

6.	Chennai	Kerala, Tamil Nadu, Lakshadweep and Puducherry
7.	Guwahati	Arunachal Pradesh, Assam, Manipur, Mizoram, Meghalaya, Nagaland, Sikkim and Tripura
8.	Hyderabad	Andhra Pradesh and Telangana
9.	Kolkata	Bihar, Jharkhand, Odisha, West Bengal, Andaman and Nicobar Islands
10.	Mumbai	Chhattisgarh, Goa and Maharashtra

Conclusion

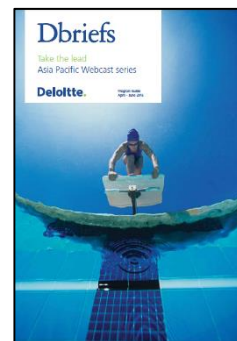
- MCA notification has paved the way for functioning of the NCLT in relation to various matters under 2013 Act. This is expected to speed up the disposal of applications / petitions on various matters which were hitherto handled by CLB.
- While the provisions of NCLT and NCLAT are notified, the rules relating to operative procedure to be followed in NCLT and NCLAT are yet to be notified by MCA.
- Provisions of 2013 Act relating to compromise, arrangement, amalgamation (Sections 230 -240), Capital reduction (section 66) etc. are yet to be notified by MCA and till such time as they are notified, these matters would continue to be governed by the jurisdictional High Court under the 1956 Act.
- With the constitution of NCLT, insolvency cases of bodies corporate such as companies and LLPs, will be governed by the NCLT, once the relevant provisions of the Insolvency and Bankruptcy Code, 2016 are notified.

Source: Gazette notifications S.O. 1932(E), S.O. 1933(E), S.O. 1934(E), S.O. 1935(E) – dated 1 June 2016 and draft notification dated 1 June 2016 issued by MCA, GOI

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