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National Company Law Tribunals: Status of constitutional validity and role in dispute resolution in the light of decided cases

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The idea of forming a quasi-judicial body exclusively for settling corporate disputes lingered around for many years. The Sachar Committee in 1979 proposed a quasi-judicial Company Law Tribunal along the lines of the Income Tax tribunal. However, the proceedings were stagnated until the Eradi Committee proposed to establish a single tribunal that would be in charge of the powers of CLB¹, AAIFR², BIFR³. Thus, the National Company Law Tribunal was born through the Companies Amendment Act 2002. But, the birth of NCLT gave rise to numerous confusions because of which it could not be established until 2016. The Constitutional validity of the Tribunal was challenged in a sequel of cases. This paper aims to determine the powers that still vest with the High Courts over company matters and whether, NCLTs, being a combination of technical and judicial members, is efficient in their role as a dispute resolution mechanism over the last five years.

Keywords: *tribunals, dispute resolution, constitutional validity.*

¹ Company Law Board

² Appellate Authority for Industrial and Financial Reconstruction

³ Board for Industrial and Financial Reconstruction

INTRODUCTION

Indian judiciary functions in a paradoxical world where it is preached that justice delayed is justice denied. But in practice, the most trivial litigation requires more than a decade to be resolved. To tackle this, discussions about the methods to relieve the judicial burden without compromising on the basic structure doctrine were initiated. The 42nd amendment⁴ to the constitution in 1976 acted as a catalyst in the process of relieving the courts of excessive and unnecessary litigation by establishing Tribunals. In 1979, the *Sachar Committee*⁵ proposed a Company Law Tribunal on the similar lines of the Income Tax Tribunal. However, the further proceedings to materialize the idea of the tribunal was stagnated. Later, NCLT was incorporated into the Companies Act 1956⁶ through the Companies (Amendment) Act, 2002⁷, as an outcome of *Eradi Committee*.

LEGAL TUSSLE ON CONSTITUTIONAL VALIDITY

The idea of independent tribunals parallel to High courts was challenged in many cases.⁸ Tribunals have often been at the hot seat and the center of the Executive-Judiciary tug-of-war.⁹ In *Union of India v R Gandhi, President, Madras Bar Association (2010)*¹⁰, NCLT was challenged on two counts. *Firstly*, the parliament lacks the competence to vest the intrinsic powers of the High Court to the Tribunals. The constitution has vested the High Courts with inherent powers under Articles 226 and 227¹¹ with the object of ensuring justice and equality. *Secondly*, transfer of powers judicial powers to a tribunal that is not under the control of Courts would offend the *Doctrine of Separation of Powers and Independent judiciary*. The Supreme Court, by referring to cases like *State of Karnataka v Union of India*,¹² stated that the test of basic structure doctrine is applicable only to constitutional amendments. It was also observed that,

⁴ Constitution of India, 1976.

⁵ V.Gopalan, 'Birth of National Company Law Tribunal After Decades of Journey from Sachar Committee to Eradi Committee' (*All India Reporter*), CLC 2001

⁶ Companies Act, 1956

⁷ Companies (Amendment) Act, 2002

⁸ Sheela Rai, 'India's Tryst with Independent Tribunals and Regulatory Bodies and Role of the Judiciary, Journal of the Indian Law Institute' (*JSTOR*, 2013) <www.jstor.org/stable/43953642> accessed 10 November 2021

⁹ Subha Shree Pani, 'NCLT and NCLAT: The Victim of Judiciary-Executive Tug-of-War' (*Taxmann*)

¹⁰ *Union of India v R Gandhi, President, Madras Bar Association* [2010] 11 SCC 1

¹¹ Constitution of India, 1976, art 226, 227

¹² *State of Karnataka v Union of India* [1977] 4 SCC 608

by virtue of articles 343A and 343B¹³, Parliament has the competence to constitute tribunals in the matters they are competent to legislate. Therefore, the establishment of NCLT is constitutional. However, it was found that some provisions of the act were inconsistent with the constitution and hence were directed to make appropriate amendments.¹⁴

The legal battle did not subside here. In 2013, the new Companies Act was introduced. It was a replicate of the 1956 act but contained all the later amendments including NCLT. In *R Gandhi, President, Madras Bar Association v. Union of India (2015)*¹⁵, the constitutional validity of certain provisions¹⁶ was challenged. It was contended that the 2013 act did not comply with the Supreme Court's guidelines in the 2010 judgment. The provisions were held invalid for not adhering to the previous judgment. After necessary amendments were made, the NCLT was finally established in 2016.

STATUS OF HIGH COURTS POST-NCLT

Post establishment of NCLT, civil courts have no jurisdiction to try cases relating to companies. They are barred from granting an injunction on any action of NCLT.¹⁷ In *Re: PSL Limited*¹⁸, the Bombay High Court held that injunction cannot be granted to prevent initiation of proceedings before the NCLT. The courts are prohibited to invoke the inherent powers to grant such injunction. In *Jotun India Private Limited, Mumbai v PSL Limited, Daman and Diu*,¹⁹ it was expressly stated that civil courts will not have jurisdiction over company matters. This was confirmed in *Dinesh Kumar v Sinecure Technology Pvt. Ltd. CS(COMM)*²⁰, where the court held that civil courts have no jurisdiction to entertain suits falling under the Companies Act. It is barred by section 430 of the Companies Act 2013²¹. In *Jaiveer Singh Virk v. Sir Sobha*

¹³ Constitution of India, 1976, art 343A, 343B

¹⁴ Gautam Swarup, 'Indiscriminate Tribunalisation and the Exclusive Judicial Domain: An Analysis of the 42nd Amendment in the Light of the Decisions of the Supreme Court' (*Manupatra*) <<http://docs.manupatra.in/newsline/articles/Upload/F432C15A-234E-4B92-BC0B-4F479B00598A.pdf>> accessed 10 November 2021

¹⁵ *R Gandhi, President, Madras Bar Association v Union of India* [2015] SCC Online SC 1094

¹⁶ Companies Act, 2013, s 408, 409, 411(3), 412, 413, 425, 431, 434

¹⁷ *Bharat Parmar, Ruling of the Supreme Court in Madras Bar Association v Union of India* [2015] 128 CLA [Mag.]15 (2018) 1 BOM CR 524

¹⁸ *Jotun India Private Limited, Mumbai v PSL Limited, Daman and Diu* AIR 2018, BOM 434

²⁰ *Dinesh Kumar v. Sinecure Technology Pvt. Ltd. CS(COMM)* AIR 2019, DEL 2395

²¹ Companies Act, 2013, s 430

Singh & Sons,²² High Court rejected applications for enforcing the right of the shareholder under board resolution as it is to be made before NCLT and not before Civil Courts. In *Mackintosh Burn Limited v Sarkar and Chowdhury Enterprises P Limited*²³, the original petition was filed under the 1956 Act. The appeal was presented before the SC against an order of Calcutta High Court under 10F. But Supreme Court relegated the matter back to NCLT.

The tribunals are not a substitute to High Courts, but rather a supplement.²⁴ Although the NCLT has been vested with the wide powers transferred from the High Courts, this does leave the High Court's having no say in company legal matters. The civil courts may step in if NCLT is exercising powers beyond its jurisdiction, or if the matter in question is in the interest of the general public, or national security. In *Embassy Property Development Pvt. Ltd. v the State of Karnataka*²⁵, courts can invoke their powers under articles 226 and 227 to interfere with an order passed by the NCLT in a proceeding under the Insolvency and Bankruptcy Code 2016, if such order falls under the realm of public law. In such cases, it does not matter whether a statutory remedy of appeal exists before the appellate tribunal, NCLAT. In *Karan Singh Grewal v Secretary, Calcutta Cricket and Football Club*²⁶ held that the jurisdiction of civil courts cannot be barred completely. If an action done by the NCLT is beyond its jurisdiction, the High Courts may step.

ROLE OF NCLT IN DISPUTE RESOLUTION

Since judicial powers are transferred to NCLT, it became essential that the decisions taken by the tribunal should be precise and just. Therefore, unlike civil courts, the National Company Law Tribunal was composed of a president²⁷, judicial members²⁸, and technical members^{29,30}. The involvement of technical members was provided to assist the judicial members in

²² *Jaiveer Singh Virk v Sir Sobha Singh & Sons* [2021]

²³ *Mackintosh Burn Limited v Sarkar and Chowdhury Enterprises P Limited* [2018] 208 Com Cas 209 [SC]

²⁴ K. C. Joshi, 'Constitutional Status of Tribunals' (*JSTOR*, March 1999) <www.jstor.org/stable/43951702> accessed 10 November 2021

²⁵ *Embassy Property Development Pvt. Ltd. v State of Karnataka* AIR 2019

²⁶ *Karan Singh Grewal v Secretary, Calcutta Cricket and Football Club* AIR 2020, CAL 604

²⁷ Companies Act, 2013, s 407(d)

²⁸ Companies Act, 2013, s 407(b)

²⁹ Companies Act, 2013, s 407(e)

³⁰ Companies Act, 2013, s 408

deciding cases. The qualifications for the posts are elaborated under section 409. The members shall hold office for five years and shall be eligible for re-appointment.³¹ Further, it is essential to note that NCLT is **not bound by Civil Procedure Code**³². It strictly adheres to the guidelines given under the Companies Act, Insolvency, and Bankruptcy code along with the principles of natural justice.³³ However, NCLT has been entrusted with all the powers of a civil court as in the CPC, such as the power to issue a summons, issue commissions, receive evidence on affidavits, etc.³⁴ On the other hand, the tribunal is bound by the Limitation Act of 1963³⁵. In *Sagufa Ahmed v Upper Assam Plywood Products Pvt Ltd*,³⁶ the Supreme Court held that appeals against the orders of NCLAT were hit by the provisions of the Limitation Act.

Speculations regarding the quality of decisions taken by NCLT have been doing rounds for since long. In *Lanka Venkata Naga Muralidhar v Vestal Educational Services Private limited and Ors*³⁷, NCLT rightly held the allotment of shares null and void. It further directed the company to return the loan plus interest and rectify its register of members. In *S Ramesh v. South Travancore Hindu College Association*,³⁸– rightly found that the alleged transfer of shares was null and void. *Vikram Jairath and Another v. Middleton Hotels P. Ltd and Others*³⁹ held that all matters related to the companies shall be handled by NCLT except those mentioned under section 434⁴⁰. In *Transmission Corporation of Andhra Pradesh Limited v Equipment Conductors and Cables Limited*,⁴¹ the Supreme Court upheld the NCLT order which turned down the request for initiation of resolution proceedings. There have been many instances where the Supreme court has rejected the Appellate Tribunals’ decision and upheld

³¹ Companies Act, 2013, s 413

³² Civil Procedure Code, 1908

³³ Companies Act, 2013, s 424(1)

³⁴ Companies Act, 2013, s 424(2)

³⁵ Limitation Act, 1963

³⁶ *Sagufa Ahmed v Upper Assam Plywood Products Pvt Ltd*. AIR 2020, SC 731

³⁷ *Lanka Venkata Naga Muralidhar v Vestal Educational Services Private limited and Ors* [2018] 2016 Com 370 [NCLT] HYD

³⁸ *S Ramesh v South Travancore Hindu College Association* [2018] 206 Com 415 [NCLT] Chennai

³⁹ *Vikram Jairath and Another v Middleton Hotels P. Ltd and Others* [2019] 216 Comp 235

⁴⁰ Companies Act, 2013, s 434

⁴¹ *Transmission Corporation of Andhra Pradesh Limited v Equipment Conductors and Cables Limited* AIR 2018, SC [SUPP.]1530

the NCLT order. In *ColorhomeDevelopers Pvt. Ltd. v Vinayaka Exports*,⁴² the supreme court rejected the order of NCLAT and restored NCLT's order as it was legally justified in not proceeding with the application filed under section 7 of Insolvency and Bankruptcy code 2016⁴³. Further, in *Adesh Kaur v. Eicher Motors Ltd. and Others*,⁴⁴ the SC upheld the order of NCLT by rejecting the stand taken by NCLAT. In the recent *Tata Consultancy Services Limited v. Cyrus Investment Pvt Ltd.*⁴⁵, the SC set aside the order of NCLAT. However, in some cases, like *Jai Balaji Industries Limited v State Bank of India*⁴⁶, the Supreme Court ordered the tribunal to ensure that the decision is taken only after both parties have been given adequate opportunity of being heard. In *Phoenix Arc Pvt Ltd. v Lalan Kumar Singh*.⁴⁷ The Supreme Court held that the tribunals must not reopen matters that have already been adjudicated by civil courts in earlier proceedings.

CONCLUDING REMARKS AND THE WAY FORWARD

Wrapping up, high courts have lost most of their powers over company matters to the NCLTs. Neither are these courts entitled to entertain any matters relating to companies nor can they pass an injunction in matters before NCLT. However, in exceptional circumstances like the exercise of powers beyond the limit by NCLTs, the matter involves a substantial question of law relating to peace, national security, or the public interest, then the High courts can invoke their inherent powers under Article 226⁴⁸. Further, the Company law tribunals have been proved to be as effective as the civil courts. Multiple decisions of the tribunal have been affirmed by the Appellate Tribunal and Supreme Court. Thus, although tribunals are supplemental and not substitutes to high courts, the quality and efficacy of decision-making are at par with civil courts. This is indeed a positive sign. Tribunals are the only way out to deal with increasing litigation. Developed countries like the United Kingdom have the Tribunals, Courts, and Enforcement Act 2007 in place. It has established several Tribunals such

⁴² *ColorhomeDevelopers Pvt. Ltd. v Vinayaka Exports* AIR 2019, SC 1691

⁴³ Insolvency Bankruptcy Code, 2016, s 7

⁴⁴ *Adesh Kaur v Eicher Motors Ltd. and Others* [2018] 210 Comp 719 SC

⁴⁵ *Tata Consultancy Services Limited v Cyrus Investment Pvt Ltd.* [2021] SC 272

⁴⁶ *Jai Balaji Industries Limited v State Bank of India* [2019] 1 WLC [SC] CVL 781

⁴⁷ *Phoenix Arc Pvt Ltd. v Lalan Kumar Singh* AIR 2021, SC 369

⁴⁸ Constitution of India, 1950, art 226

as the Company Names Tribunals, Employment Tribunals, Immigration Services Tribunal, Lands Tribunal, etc. Tribunals have been set up to deal with cases of a particular nature. The benefit of setting tribunals for every category of cases is twofold. Firstly, speedy disposal of cases is achieved. Secondly, it helps in identifying the area where the number of litigations is high. With such information in hand, the legislators may look into the loopholes or confusion (if any) in the words of the law. Thus, with the success of tribunals like NCLT, India can confidently move forward to establish more of the like kind and reduce the litigation time frame at least by a couple of years.