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The constitutional validity of the Establishment of NCLT and Its Role in Dispute Resolution

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This research is an attempt to analyse the various events that have led to the formation of the National Company Law Tribunal (NCLT) and recognises the inadequate efforts undertaken by the NCLT. Furthermore, the paper proceeds to comprehensively analyse the case of the Madras Bar Association v Union of India, as this case played a pivotal role in the establishment of the NCLT. Furthermore, it understands the various issues and analyses that surfaced along the case. The author has then touched upon the role of NCLT in dispute resolution, as it is an adjudicating authority for the company and insolvency-related matters. Few determining powers of the NCLT are laid down, and a comparison of the powers under the Companies Act, 1956 and 2013 have been dwelled into. Lastly, it recognises the importance of mediation and the significant role that mediation plays in resolving corporate disputes.

Keywords: *nclt, dispute resolution, separation of powers, companies act.*

INTRODUCTION: EVENTS LEADING TO THE FORMATION OF NCLT

The Companies Act, 1913 was the first act introduced to govern companies in India. Under this act, company-related matters were under the jurisdiction of High Courts and District Courts. After India received independence, the legislature thought that the Companies Act, 1913

resembled the English Companies Act, and introduced the Companies Act, 1956 accordingly to suit the needs of Indian companies at that time. It is noteworthy to mention, that exclusive jurisdiction still lay with the High Courts and District Courts.

In 1988, another amendment took place which resulted in the formation of a Company Law Board to adjudicate on company-related issues, with High Courts being considered as the appellate authority. The Company Law Board proved to be unsuccessful, as civil courts were not specifically ousted jurisdiction, resulting in a multiplicity of the same cases. Thus, there was a need to introduce a “single window institution”, to adjudicate company matters efficiently.¹The concept of Tribunals and Appellate Tribunals for engaging in company law-related matters came into existence, based on a recommendation of a High-level committee, which was spearheaded by *Justice Balakrishna Eradi*.

RATIONALE FOR ESTABLISHMENT OF NCLT

Landmark case resulting in the formation of NCLT:

A pivotal case that was vital for the formation of NCLT (National Company Law Tribunal) and NCLAT (National Company Law Appellate Tribunal), is *S.V. Sampath Kumar v Union of India*. The Supreme Court emphasized the fact that ever since independence, there has been a “population explosion”, and surge in litigation cases which have overburdened High Courts. Keeping this in mind, there was a need to incorporate a single-window institution to aid in the speedy disposal of cases. Thus, the formation of exclusive tribunals- NCLT and NCLAT would aid in “negating the fatal delay involved in company law proceedings”.²

Moreover, the institution of these tribunals is by the legislative competence of the Parliament, and State Legislature, as mentioned in Article 245³ of the Constitution in List I in the Seventh Schedule. These two quasi-judicial bodies came into existence on 1st June 2016. This move

¹ Vyapak Desai et al., ‘Supreme Court upholds the constitutionality of National Company Law Tribunal’ (2007) 3(3) India Law Journal
<https://www.indialawjournal.org/archives/volume3/issue_3/article_by_vyapak_desai.html> accessed 11 January 2023

² *S.V. Sampath Kumar v Union of India* (1987) SCR (3) 233

³ Constitution of India 1950, art 245

resulted in the automatic dissolution of the five benches of the Company Law Boards across India and specifically *ousted the jurisdiction of civil courts* to avoid multiplicity of litigation.⁴

The NCLT has now taken over the powers, functions, and duties of the Company Law Board (CLB), Board for Industrial and Financial Reconstruction (BIFR), and Appellate Authority for Industrial and Financial Reconstruction (AAIFR) falling under the ambit of Sick Industrial Companies Act, 1985⁵. Based on the recommendations of the High-level committee, the Companies Act was introduced in 2002, which had an express mention of *Parts 1B and Parts 1C* for the establishment of NCLT and NCLAT.

Madras Bar Association v Union of India: In 2004 there was a challenge in the Madras High Court on the establishment of NCLT and NCLAT and whether the vesting of powers which was initially bestowed with CLB, BIFR, and AAIFR was justified to lie with these two quasi-judicial bodies. The Madras High Court upheld the challenge and declared that Parts 1B and Parts 1C were subjected to constitutional infirmities.⁶

ISSUES IN THE ESTABLISHMENT OF NCLT

An appeal was eventually made to the Supreme Court based on the judgement rendered by the Madras High Court, and the following issues were framed:

- Does the Parliament have legislative competence to entrust judicial functions to a Tribunal when the High Courts have dealt with company-related issues for almost a century?
- Does the establishment of the NCLT violate the Rule of Law, and Separation of Powers and infringe on the Independence of the Judiciary?

Are the provisions of Parts 1B and Parts 1C of the Companies Act violative of the Constitution, Rule of Law, and Separation of Powers and infringe on the Independence of the Judiciary?

⁴ Companies Act 2013, s 430

⁵ The Sick Industrial Companies (Special Provisions) Act 1985

⁶ *Madras Bar Association v Union of India* (2004) 2 CTC 561

ANALYSIS OF THE CONSTITUTIONAL VALIDITY OF THE ESTABLISHMENT OF NCLT

I. Parliament has the legislative competence to constitute NCLT

The Parliament possesses the power to establish tribunals, which is reflected under “Articles 245⁷, 246⁸ and 247⁹ of the Constitution”, which is not barred by *Articles 323A and 323B* of the Constitution. Articles 323A¹⁰ and 323B¹¹ enlist different provisions where the Parliament can set up tribunals. However, these two articles cannot be interpreted to signify that the Parliament is forbidden from instituting tribunals on those matters which are not specifically mentioned in the Parliament. Thus, even though company-related aspects such as revival, rehabilitation, or winding up of companies are not expressly mentioned in Articles 323A and 323B, the Parliament still possesses the legislative competence to establish NCLT.

II. NCLT does not violate the Rule of Law, Separation of Powers, and Independence of the Judiciary

The mere act of establishing tribunals and entrusting judicial functions to a Tribunal does not violate the Rule of Law, Separation of Powers, or an Independent Judiciary. What is truly a determining factor is to ascertain whether these very tribunals adhere to and respect the constituents and ingredients of the Rule of Law and Separation of Powers. The composition of the NCLT is subject to different levels of eligibility and varied stages of judicial review. In the future, the Supreme Court can exercise any checks and balances to oversee, monitor and ensure that the NCLT does not interfere with the principles enshrined in our Constitution.

III. Parts 1B and Parts 1C of the Companies Act are subject to constitutional defects

Judicial Members: The Legislature cannot transfer judicial functions to a Tribunal when the very independence of this Tribunal is questioned. The members of the NCLT cannot comprise those individuals who simultaneously maintain posts in government departments or different

⁷ Constitution of India 1950, art 245

⁸ Constitution of India 1950, art 246

⁹ Constitution of India 1950, art 247

¹⁰ Constitution of India 1950, art 323A

¹¹ Constitution of India 1950, art 323B

Ministries. If this takes place, then there would essentially be a transfer of judicial functions to the Executive, which violates the Separation of Powers. Because the authority exercised by the NCLT, was that which was vested with the High court previously, the Judges in the NCLT must adhere to the qualifications of Judges in a High Court.

Technical Members: NCLT is a judicial tribunal, and just like it has been previously established, it must be weighed on the same pedestal as High Court Judges. It is not a mandate for a Tribunal to have technical members. The Supreme Court held that there is a wide misconception to appoint members of the General Civil Services, as they possess specialised technical skills which are absent in Judges. ¹²This indiscriminate appointment of technical members will result in a dilution of independence in the Judiciary. Thus, only those officers who possess the ranks of “Secretaries or Additional Secretaries” can be eligible as Technical members of the NCLT.¹³

ROLE OF NCLT IN DISPUTE RESOLUTION

NCLT is a quasi-judicial authority that has been created under the Companies Act, 2013. NCLT adjudicates matters relating to arbitration, reconstruction, and winding up under the Companies Act. Moreover, the NCLT is also responsible for adjudicating the Corporate Insolvency Resolution Process (CIRP). The nature of disputes which are handled by the NCLT is corporate civil in nature. The NCLT is responsible to exercise authority for the following aspects:

Class Action: A crucial ingredient around which company law revolves is to safeguard the interests of shareholders and depositors, as their interests were adversely affected during instances of fraud and improprieties. Section 245 ‘provides a remedy to investors against a large set of wrongful actions committed by the company management or other consultants and

¹² Stuti Srivastava, ‘The Constitutionality of NCLT and NCLAT: Madras Bar Association Case’ (2021) Manupatra < <https://articles.manupatra.com/article-details/The-Constitutional-Validity-of-NCLT-and-NCLAT-Madras-Bar-Association-Cases>> accessed 11 January 2023

¹³ Arvind P. Datar, ‘The Tribunalisation of Justice in India’ (2006) 26 Acta Juridica

advisors who are associated with the company'.¹⁴ The introduction of this section guarantees reimbursement to all shareholders and depositors in a class action suit.

De-registration of Companies: If there are procedural errors during the registration of the company, the reasons for such errors can be investigated by the Tribunal. The Tribunal can even proceed to take measures by cancelling the registration or even dissolving the company if registration has been obtained illegally or fraudulently.¹⁵

Refusal to transfer shares: The NCLT has the power to adjudicate grievances by companies who refuse to transfer "securities and rectification or register of members".¹⁶ This matter was formerly taken up by the CLB and now falls within the purview of the NCLT. Previously, the remedy for refusal to transfer shares was limited to shares and debentures in the Companies Act, 1956 but now this remedy extends to all securities under the Companies Act, 2013.

Deposits: Chapter V of the Companies Act, 2013 was first assigned to the CLB and is now under the authority of the NCLT. Here, distressed depositors can utilise the remedy of class action suits to claim their deposits.

Reopen Accounts and Revise Financial Statements: To cater to the malpractice of falsification of books of accounts, Section 130 of the Companies Act, 2013 was introduced. This "prohibits the company from suo motu opening its accounts or revising its financial statements".¹⁷ Such reopening or revision can be done only according to the different circumstances laid down in the act.¹⁸

Corporate Debt Restructuring (CDR): Secured Creditors required an adjudicating authority that they could approach when CDR was at stake. This was provisioned for in the Companies Act,

¹⁴ Indian Companies Act 2013, s 245

¹⁵ Companies Act, 2013, s 7(7)

¹⁶ Companies Act, 2013, s 58

¹⁷ Companies Act, 2013, s 130

¹⁸ Vijay Sambamurthi, 'Recent Developments in Indian Law: Impact on Private Equity Transactions' (2016) 28(1) National Law School of India Review

2013, unlike previous acts in place. Moreover, NCLT oversees the applicant's documents such as auditor's reports, liquidity test after CDR, and valuation report of assets of the company.¹⁹

CONCLUSION

The formation of NCLT is a step in the forward direction enabling quick and more efficient resolution of disputes. The NCLT is the adjudicating authority for insolvency and company-related matters. Being the only forum dealing with such matters, it automatically reduces any conflicting delays or multiplicity in disputes. The form of dispute resolution that has been adopted is mediation and has been recognised for its advantages in creating an inclusive space. When there is the collective settlement of multiple claims, any multi-party negotiations which take place must be through mediation.²⁰ Mediation creates an amicable environment to acknowledge every different party's needs and provide differently. Because there is sensitivity in dealing with a corporate-debtor relationship, such relations are preserved.

¹⁹ Kristin Van Zwieten, 'Corporate Rescue in India: The Influence of the Courts' (2015) 15(1) Journal of Corporate Law Studies

²⁰ Chitra Narayan, 'The best way to settle Corporate Disputes' (*The Hindu BusinessLine*, 8 January 2018) <<https://www.thehindubusinessline.com/opinion/the-best-way-to-settle-corporate-disputes/article10010263.ece>> accessed 11 January 2023