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Safeguards and Limitations on Tribunal Discretion in Corporate Winding-up Proceedings under Indian Company Law: A Critical Analysis

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The winding -up process is the most critical phase in a company's lifecycle. Under the Companies Act 2013, the National Company Law Tribunal (NCLT) has the discretion to decide whether a company should be wound up. These discretions are given to the tribunal to promote fairness and flexibility, but it also raises concerns relating to consistency, predictability in outcomes and sometimes lead to legally flawed and delayed decisions. In this paper, the author identifies the discretionary powers that the tribunal has in winding-up proceedings and the statutory and judicial safeguards that exist to regulate the tribunal's discretionary powers. The author also examines the effectiveness of these safeguards. Through these analyses, the author suggests some reforms to make the winding-up process more effective. The author concludes that although tribunal discretion in winding-up proceedings is essential, the absence of sufficient safeguards leads to inconsistency, uncertainty and so on, and the structured reforms can improve transparency, efficiency and fairness in winding up proceeding.

Keywords: *NCLT, winding up, tribunal discretion, legal safeguards.*

INTRODUCTION

Winding up is the final stage in a company's existence. In this stage, the company stop the business and begins the process of closing its affairs. Assets are gathered and realised, and

liabilities are paid off. After this, anything that remains is distributed among the shareholders. Through this structured process, the law ensures that the company's obligations are settled fairly and brings its legal life to a formal and conclusive end.[1]

In India, a power to winding up the company is primarily rest with National Company Law Tribunal but for exercising this power the tribunal had wide discretion under the Companies Act 2013 which make the tribunal to analyse each case based on fact and to determine when the winding up is fair and also this discretion power makes the tribunal to balance the interest of creditors, shareholders and the public too.[2] At the same time, this broad power without adequate safeguards raises important concerns regarding uniformity in decisions, transparency in reasoning and the potential for misuse of power. The Companies Act 2013, the Insolvency and Bankruptcy Code 2016, the Companies (Winding up) Rules 2020, along with the principles developed through judicial interpretation, aim to ensure that the tribunal decisions must be fair and aligned with legal standards, but in practice, inconsistencies still arise in handling cases.[3] The major question raised is whether the existing safeguards are enough to ensure consistent and fair decisions.

RESEARCH METHODOLOGY

This paper adopts a doctrinal legal research methodology and primarily relies on the analysis of existing legal materials. This study is based on the primary sources such as the Companies Act 2013, the relevant rules and regulations, judicial decisions of the National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT) and the Supreme Court. In addition to these, this study is also based on secondary sources, such as scholarly articles.

The research involves an examination of statutory provisions to understand the discretionary power given to the tribunal in winding up proceedings. Judicial pronouncements are

[1] Nimisha Rastogi and Aastha Dixit, 'A Detailed Study of Winding Up of a Company' (2023) 11(4) International Journal of Research in Applied Science and Engineering Technology <https://www.ijraset.com/best-journal/a-detailed-study-of-winding-up-of-a-company> accessed 20 December 2025

[2] Sharlin Puppal, 'POWERS OF NATIONAL COMPANY LAW TRIBUNAL IN CASES OF OPPRESSION AND MISMANAGEMENT' (2023) 17 Supremo Amicus <https://supremoamicus.org/wp-content/uploads/2020/05/A54.v17.pdf> accessed 20 December 2025

[3] Ritima Singh, 'NCLT and NCLAT Under the Supreme Court's Microscope (*Daksh*, 13 February 2025) <https://www.dakshindia.org/year-in-review-nclt-and-nclat-under-the-supreme-courts-microscope/> accessed 20 December 2025

analysed to identify interpretative trends and inconsistencies in tribunal reasoning. Scholarly articles are reviewed to contextualise these findings and to evaluate existing critiques.

DISCRETIONARY POWER OF THE TRIBUNAL REGARDING WINDING-UP PROCEEDINGS.

Under Section 271 of the Companies Act 2013, the word 'may' indicates that the tribunal is not bound to order winding up even though the grounds are satisfied under this section, as it indicates discretionary authority rather than a mandatory obligation.[4] This discretion allows the tribunal to consider the facts of each case and decide whether to accept or refuse it. However, such wide discretion also carries an inherent risk, such as potential bias, judicial overreach, etc.

The widest discretionary power under this section mostly arises under the just and equitable ground because it is not defined.[5] This leads to various judicial interpretations and subjective application, which creates uncertainty and also affects investor confidence. In Hind Overseas Pvt. Ltd. v Raghunath Prasad Jhunjhunwalla (1976), the Supreme Court stated that the expression just and equitable confers equitable discretion upon the court; such power must be exercised judiciously and not arbitrarily.[6] Similarly, in Madhusudan Gordhandas & Co. v Madhu Woollen Industries Pvt. Ltd. (1971), the Court stated that disputes between shareholders or creditors alone do not justify winding up unless the company's substratum has been lost.[7]

Section 273 of the Companies Act 2013; the tribunal is empowered to issue any of the orders specified under clauses (a) to (d) when winding up petition is filed, but it does not explain when and why one option should be chosen over another.[8] This discretionary power is viewed as advantageous because it allows the tribunal to decide the case based on the facts of each case. The discretionary power of this section doesn't end here. Section 273(e) goes a step further by allowing the tribunal to pass any other order as it thinks fit**.** This clause enables the tribunal to make any decision beyond the expressly listed option. At the same

[4] Companies Act 2013, s 271
[5] Companies Act 2013, s 271(e)
[6] *Hind Overseas (P) Ltd v Raghunath Prasad Jhunjhunwalla & Anr* (1976) 3 SCC 259
[7] *Madhusudan Gordhan Das & Co v Madhu Woollen Industries Pvt Ltd* AIR 1971 SC 2600
[8] Companies Act 2013, s 273

time, the absence of structured guidelines opens the door to inconsistency, unpredictability and the perception of judicial overreach.

The Companies Act, 2013 gives a power to the National Company Law Tribunal to appoint an official Liquidator or a company liquidator.[9] This power gives the tribunal the power to choose a liquidator suited to the nature and complexity of the case. This power helps to enhance the efficiency and professionalism of winding-up proceedings. However, the absence of clear statutory criteria for when to appoint which liquidator raises concerns about transparency and uniformity, and may give rise to perceptions of arbitrariness.

Under the NCLT rules 2016, Rule 11 states that nothing in this rule can restrict or curtail the inherent power of the tribunal, but under the same rule, they stated the purpose of this. This power is exercised only to secure the end of justice or to prevent the abuse of the tribunal process.[10] Courts have repeatedly clarified that the inherent powers of the NCLT under Rule 11 cannot be used freely or without limits because it creates the risk of crossing the statutory boundaries, blur the line between procedural flexibility and substantive decision making, and this also weakens the certainty of the legal process. In 63 Moons Technologies Ltd. v DHFL, the NCLAT held that such powers must follow the structure and timelines of the IBC. Similarly, in Uttar Pradesh State Power Sector Employees Trust v DHFL, it was warned that reliefs granted under Rule 11 should not defeat the objectives of the Code. The Tribunal has also made it clear that Rule 11 cannot be used to review earlier findings or condone delay where the law clearly prohibits it.[11] These decisions show that misuse of inherent powers can disturb the discipline of the insolvency process.

The tribunal has the power to exempt the parties from following this rule. While reading this provision, this rule looks like a balanced rule because it has a safeguard, which is a sufficient cause, which means the tribunal has exercised this power only when sufficient cause has been shown. But it does not define what constitutes sufficient cause.[12] It creates a chance to undermine the principle of equality before the law, and it makes the parties doubt the

[9] Companies Act 2013, s 275
[10] National Company Law Tribunal Rules 2016, r 11
[11] Muneeb Rashid Malik, 'Important judgments on the inherent powers of NCLAT/NCLT' (*IBC Law*, 29 January 2024) <https://ibclaw.in/important-judgments-on-the-inherent-powers-of-nclat-nclt-by-adv-muneeb-rashid-malik/> accessed 20 December 2025
[12] National Company Law Tribunal Rules 2016, r 14

tribunal will give preferential treatment or show any arbitrariness. Even though the tribunal functions well, these undefined discretionary powers make the parties doubt the tribunal.

Similarly, rule 35(6) says that an advertisement may be dispensed, but it does not clearly say when it can be dispensed. This creates the risk of violating the principle of natural justice by excluding the interested parties from the proceedings. This Rule allows the NCLT to admit additional evidence with some safeguards, like recording evidence and allowing the other party to rebut the contents.[13] These are not sufficient because the rule does not define what constitutes substantial cause and doesn't speak about the procedural limits or specific criteria for admitting evidence.

Rule 51 gives the Tribunal freedom to decide how to run its own proceedings, which is useful, but it also has some drawbacks. The rules don't really say exactly how this discretion should be used, so parties might feel unsure about what to expect. Even when the Tribunal is fair, this freedom can make people worry that some decisions might be subjective or biased. Also, because there aren't fixed limits or timelines, things can drag on or become a bit messy. So, the issue isn't that the Tribunal is doing anything wrong; it's just that the rule leaves a lot open, which can make parties feel uncertain.

Rule 58 helps the Tribunal to ignore small procedural mistakes so that cases are not decided only on technical grounds. But the problem is, the rule does not really explain what exactly counts as a 'miscarriage of justice.' Because of this, parties may feel confused about when a mistake will be taken seriously and when it will be ignored. Even if the Tribunal is fair in its approach, this open wording can make people doubt how the rule will be applied. Sometimes a procedural lapse may be overlooked, and sometimes it may become an issue, which creates uncertainty. The issue is more with the way the rule is framed, not with the Tribunal itself.

SAFEGUARDS RELATING TO TRIBUNAL DISCRETION IN WINDING UP PROCEEDINGS

The author in this paper analyses various discretionary powers given to the tribunal regarding winding up proceedings, but on the other hand, the author also analyses what are the procedural and judicial safeguards that are in existence to enable the tribunal to exercise

[13] National Company Law Tribunal Rules 2016, r 40

its judicial power fairly, judiciously and consistently with the principle of natural justice. While discussing discretionary power, the author discusses some of the safeguards. The others are discussed as follows:

Statutory Safeguards: Section 271 of the Companies Act gives more discretionary power; on the other hand, it gives some well-defined circumstances for winding up proceedings. Even though the legislation did not define what just and equitable ground, the judiciary, through cases like Ebrahimi v Westbourne Galleries Ltd, N.R. Murty v Industrial Development Corpn. of Orissa Ltd., Hanuman Prasad Bagri v Bagress Maharashtra Power Development Corpn. Ltd. v Dabhol Power Co., etc., said what just and equitable grounds are. [14]

Under section 276(1), the tribunal has the power to appoint and remove a liquidator, but unlike other provision it has a strong safeguard of recording the reason for it in writing and at the same time, while making any order under this section reasonable opportunity of being heard must be given to the liquidator.[15] Similarly, section 420 also stressed that before passing any order, the tribunal must give a reasonable opportunity of being heard to the parties.

The major statutory safeguard is the appellate mechanism. The act gives the parties a right to appeal to the national company law appellate tribunal.[16] It is also said that it must be disposed of within 3 months.[17] Further, if any of the parties are not satisfied, they have the right to go to a further appeal to the Supreme Court.[18] This appellate hierarchy ensures judicial oversight of discretionary decisions and safeguards against potential misuse of error by the tribunal.

The rule gives the general principle that the tribunal has the power to handle unusual situations in its own way, but with the strong safeguard that the reasons must be recorded in writing, and while handling the case, they must follow the principle of natural justice.[19]

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[14] Saloni Bung, 'Just and Equitable Clause for Winding Up of the Companies in Matters of Oppression and Mismanagement' (*SCC Online*, 23 June 2022) <https://www.scconline.com/blog/post/2022/06/23/just-and-equitable-clause-for-winding-up-of-the-companies-in-matters-of-oppression-and-mismanagement/> accessed 20 December 2025
[15] Companies Act 2013, s 276(4)
[16] Companies Act 2013, s 421
[17] Companies Act 2013, s 422(1)
[18] Companies Act 2013, s 423
[19] National Company Law Tribunal Rules 2016, r 34

Judicial Safeguard: In K.K. Velusamy v N. Palanisamy, the Supreme Court says that tribunals use the inherent power for two purposes only: one to prevent the abuse of court process and then to meet the ends of justice.[20] Similarly, in Swiss Ribbon Pvt. Ltd v Union of India, it was stated that the inherent powers are exercised only to prevent the misuse of process and to secure the ends of justice.

In the case of Hatkesh Co-op Housing Society v ACIT (Bom.), it was clarified that one bench of the tribunal cannot differ from the view of another coordinate bench when there is the same issue or the same facts.[21] If there is a different view on the issue is referred to the larger bench through the president. Even though the legislation gives some discretionary power to the tribunal, the judiciary, through its judgements give safeguards like this, which help to prevent arbitrariness, enhance transparency, reduce inconsistency and protect the confidence of the parties.

Similarly, in the case of the State of U.P. v Ajay Kumar Sharma, the Supreme Court states that one bench is expected to follow what another bench has already decided on the same issue.[22] If the bench feels that the earlier view is incorrect, it should not simply take a different stand on its own. Instead, the matter should be referred to the larger bench for clarity.

Judiciary in the case of Ebrahimi v Westbourne Galleries Ltd. For winding up the company on the just and equitable grounds, they state three instances. The first one is when the company's main objective fails, and its achievement becomes impossible, next is when the deadlock situation arises due to shareholders dispute and the final one is when there is a complete loss of confidence among shareholders.[23]

Further, the Supreme Court in the case of Tata Consultancy Services Ltd v Cyrus Investments (P) Ltd…the just and equitable doctrine can be invoked when there is a functional deadlock and quasi-partnership among members.[24] In addition to that, the just and equitable doctrine can be invoked when there is a misappropriation of funds and ultra vires the articles of

[20] *K K Velusamy v N Palanisamy* (2011) 11 SCC 275
[21] *Hatkesh Co-operative Housing Society Ltd v Asstt CIT* (2016) 243 Taxman 213
[22] *State of Punjab & Anr v Devans Modern Breweries Ltd & Anr (*2004) 11 SCC 26
[23] Bung (n 14)
[24] *Tata Consultancy Services Ltd v Cyrus Investments (P) Ltd* AIRONLINE 2021 SC 179

association of a company.[25] Collectively, these decisions ensure that tribunal discretion remains guided, reviewable and consistent with principles of fairness and proportionality.

EFFECTIVENESS OF SAFEGUARDS IN PRACTICE

In practice, the available safeguards provide an important contribution in guiding the discretionary powers of the NCLT in winding-up matters. Appellate oversight and the requirement of reasoned orders have helped to reduce arbitrary decision-making to some extent. However, the effectiveness of these safeguards is not always sufficient. The Supreme Court has repeatedly cautioned tribunals against exercising discretion in an unstructured manner. Supreme courts, through their judgements, repeatedly point out that where tribunals made mistakes, where they exceeded their discretion, where they misused their discretion, where legal reasoning and procedures were flawed.[26]

In the Finolex cable case, the supreme court question the NCLAT members about the deficiencies in their order by issuing notice and said that they are watching tribunals.[27] After that supreme court in the case of jet airways case supreme court speak about the quality of adjudication. The court said that there is a lack of domain expertise in the tribunal and they are not sitting for full working hours, and criticised the tribunal for neglecting the timelines and suggested that the tribunal enhance their approach and domain knowledge, and at the same time, ask the tribunal to uphold judicial discipline and adopt technology-enabled systems to enhance efficiency in case management.[28]

In the case of Deccan Value Investors L.P. v Dinkar Venkatasubramanian, the Supreme Court bench said that the judgment given by the tribunals was legally infirm and unsustainable.[29] In Biju's insolvency proceedings case, the apex court strongly criticised the NCLAT for overstepping its jurisdiction. Similarly, in Chalasani Udaya Shankar and Ors v Lexus Technologies Pvt Ltd and Ors, the Supreme Court criticised the NCLAT for overstepping its jurisdiction, and it is also observed that NCLT and NCLAT do not examine the facts of the

[25] Bung (n 14)
[26] Singh (n 3)
[27] *Finolex Industries Ltd v Anil Ramchand Chhabria* (2003) 3 BomCR 644
[28] *State Bank of India & Ors v The Consortium of Mr Murari Lal Jalan & Florian Fritsch & Anr* (2024) INSC 852
[29] *Deccan Value Investors L P & Anr v Dinkar Venkatasubramanian & Anr* (2024) SCC Online SC 804

case with seriousness and also do not examine the materials and evidence produced by the parties.[30]

In actual practice, safeguards like appellate review and the requirement of reasoned orders guide the discretionary power of the tribunal in winding-up cases. These mechanisms have reduced arbitrary decisions to some extent. However, they do not always work effectively. In many situations, the Supreme Court had to step in only after mistakes were already made. The Court repeatedly pointed out problems like a lack of subject-matter knowledge, delays, poor reasoning, and even tribunals going beyond their legal limits. Since winding-up is a very serious remedy that can permanently end a company's existence, such errors can cause real harm to creditors, employees and other stakeholders. Although statutory and judicial safeguards exist to regulate tribunal discretion, they are not consistently effective in ensuring uniformity, fairness, and predictability in winding-up decisions. So, there is a need for practical reforms and policy recommendations for better checks and balances on tribunal discretion, ensuring fair, consistent, and time-efficient winding-up proceedings.

RECOMMENDATION FOR REFORMS: ENHANCING CHECKS AND BALANCES ON TRIBUNAL DISCRETION

Based on the analysis and persistent challenges identified through supreme court scrutiny, here are comprehensive legal reforms and policy recommendations.

Statutory Clarification: While judicial precedents have provided some clarity, the legislature should codify specific criteria for just and equitable grounds to avoid unwanted delay and confusion.[31] The residuary clause allowing the tribunal to pass any order under section 273(e) should be accompanied by legislative guidelines indicating the scope of this power. Likewise, section 275 should be amended to specify the objective criteria for choosing between an official liquidator and a company liquidator.

Procedural and Regulatory Reforms: Specify the exhaustive purpose for which inherent power may be invoked, and the prohibition of using inherent powers to avoid mandatory timelines and provisions and define the sufficient cause through illustrative categories. Specify the specific timelines for admission of additional evidence and stricter standards of

[30] *Chalasani Udaya Shankar & Ors v M/s Lexus Technologies Pvt Ltd & Ors* (2024) INSC 671
[31] Bung (n 14)

proof for substantial cause. For rule 51, developing standard operating procedures for common procedural situations may be helpful.

Institutional and Capacity Building Reforms: As highlighted in the Jet Airways case criticism mandatory training program is necessary for tribunal members in corporate practices and providing periodical legal education on emerging jurisprudence. Recruitment of members with proven expertise in corporate restructuring and mentorship programs for newly appointed members. At the same time, it is very important to have a case management system with automated timeline tracking to avoid delays.

Consistency and Accountability: To maintain consistency, create a dedicated legal research cell to maintain an updated precedent database. Monthly circulation of significant decisions across all benches. To maintain accountability, mandate detailed reasoning for all discretionary orders and maintain strict timelines for each stage of winding up proceedings, the periodic review of tribunal orders by NCLAT or designated authority and feedback to members for improvement.

Stakeholder Protection Measures: Mandatory notice must be given to all creditors and contributories before exercising a major discretionary order, and must give reasonable opportunity must be given to all to object. Compensatory costs must be given for arbitrary and delayed decisions, and fast track compensation mechanism for stakeholders affected by erroneous orders.

Legislative Oversight and Review: Regular annual reviews of the functioning of the NCLT and NCLAT by a Parliamentary Standing Committee should be introduced. Such reviews would examine how discretionary powers are exercised in winding-up cases and help in identifying gaps, thereby enabling timely and effective legislative amendments.

CONCLUSION

The discretionary powers given to tribunals are very important and unavoidable in winding up proceedings. However, the absence of adequate safeguards has, in practice, created scope for inconsistent decisions, procedural delays, and legal uncertainty. This study confirms that the existing safeguards are insufficient to effectively regulate the exercise of such discretion. The reforms proposed in this paper do not seek to eliminate tribunal discretion, but rather to

guide and structure it. Strengthening safeguards would promote greater transparency and consistency in decision-making, thereby improving the overall effectiveness of winding-up proceedings and providing clearer outcomes for all stakeholders.