



Contents

PAGE

1

INTRODUCTION TO NCLT AND NCLAT

1.1	Background	<i>1</i>
1.2	Major Powers to be exercised by National Company Law Tribunal	<i>4</i>

2

CONSTITUTION OF NCLT AND NCLAT

2.1	Background	<i>8</i>
2.2	Constitution of Tribunal (NCLT)	<i>9</i>
2.3	Benches of Tribunal	<i>10</i>
2.4	Specific Powers of NCLT	<i>15</i>
2.5	Orders of Tribunal	<i>15</i>
2.6	National Company Law Appellate Tribunal	<i>15</i>
2.7	Provisions common to NCLT and NCLAT	<i>17</i>
2.8	Office Administration of NCLT and NCLAT	<i>20</i>

3

PROCEDURAL ASPECTS OF NCLT AND NCLAT

3.1	Background	<i>22</i>
3.2	Institution of proceedings, petition, appeals before NCLT and NCLAT	<i>25</i>

	PAGE
3.3 Presentation of petition or appeal	27
3.4 Procedure after filing of appeal in office of NCLT and NCLAT	31
3.5 Production of Evidence by Affidavit	34
3.6 Hearing of petition or applications	36
3.7 Party can appear before NCLT in person or through authorized representative	38
3.8 Consequence of non-appearance of applicant or respondent	41
3.9 Reference or complaint to NCLT in Form NCLT 9	45
3.10 Inspection of records by parties	45
3.11 Affidavits	47
3.12 Discovery, production and return of documents	48
3.13 Examination of witnesses and issue of commissions	49
3.14 Disposal of cases and pronouncement of orders	51
3.15 Rectification of Order by NCLT	55
3.16 NCLT and NCLAT can award cost and even exemplary cost on defaulting party	56
3.17 Forms in respect of NCLT	56

4

APPEALS AGAINST ORDER OF APPELLATE TRIBUNAL

4.1 Appeal to Supreme Court against order of NCLAT	58
4.2 What is question of law	58
4.3 No appeal against question of facts and Court cannot re-appreciate facts	63
4.4 Powers of Supreme Court under Constitution	63
4.5 Writ jurisdiction of High Court not affected	64

5

PROCEDURES BEFORE APPELLATE TRIBUNAL (NCLAT)

5.1 Procedures before NCLAT	67
------------------------------------	----

	PAGE
5.2 Service of process/appearance of respondents and objections	69
5.3 Inspection of the records by authorized representatives	71
5.4 Order of NCLAT	71
5.5 Removal of difficulties and issue of directions by Chairperson of NCLAT	72
5.6 Forms under NCLAT Rules	72

6

LAW OF LIMITATION

6.1 Background	73
6.2 Time limit for filing suit or appeals	76
6.3 Limitation is question of law	79
6.4 Position when law does not prescribe any limitation	79
6.5 Change in law does not revive dead issues	82
6.6 Limitation in criminal matters	82

7

POWERS AND LIMITATIONS OF NCLT AND NCLAT

7.1 Background	83
7.2 Inherent Powers of NCLT and NCLAT	85
7.3 Limitations on inherent powers of Tribunal	89
7.4 Recall of order by NCLT and NCLAT	89
7.5 Tribunal is final fact finding authority	94
7.6 Rectification of own mistakes (ROM) by NCLT	95
7.7 Mistakes that can be rectified	100
7.8 General Provisions in respect of ROM	103
7.9 Limitations of Tribunal (CESTAT)	104
7.10 NCLT is a quasi judicial authority under Statute	106

8

INCORPORATION RELATED ISSUES

8.1	Suitable order if it is found that false or incorrect information was supplied at the time of incorporation	<i>110</i>
8.2	Conversion of public into private company	<i>111</i>

9

SHARE CAPITAL RELATED ISSUES

9.1	Variation in rights of shareholders	<i>112</i>
9.2	Redemption of preference shares	<i>114</i>
9.3	Consolidation, division and cancellation of shares	<i>115</i>
9.4	Compulsory conversion of debentures and loans given by Central Government into equity shares of the company	<i>117</i>
9.5	Declaration and register of significant beneficial owners in a company - section 90	<i>119</i>

10

REFUSAL OF TRANSFER/TRANSMISSION AND RECTIFICATION OF REGISTER

10.1	Declining of transfer of security	<i>122</i>
10.2	Instrument of transfer of security	<i>124</i>
10.3	Right of transferee if transfer not effected by company	<i>128</i>
10.4	When share transfer cannot be refused by a company	<i>132</i>
10.5	Restrictions on transfer of shares in a Private limited company	<i>135</i>
10.6	Procedure to be followed if company decides to declines transfer/transmission	<i>137</i>
10.7	Appeal if company refuses to transfer shares	<i>138</i>
10.8	Rectification of register of members	<i>140</i>
10.9	Civil suit not available when NCLT has jurisdiction	<i>148</i>

11**REDUCTION OF SHARE CAPITAL**

11.1	Capital Reduction	<i>149</i>
11.2	Procedure for reduction of capital of a company	<i>152</i>
11.3	Other powers of NCLT to order reduction of capital	<i>157</i>
11.4	Diminution of capital does not constitute reduction of capital	<i>159</i>

12**DEBENTURE RELATED ISSUES**

12.1	Debenture trustees duty to protect interest of debenture holders	<i>161</i>
12.2	Remedies if company fails to redeem debentures	<i>164</i>
12.3	Protection of interest of debenture holders	<i>165</i>

13**PUBLIC DEPOSITS RELATED ISSUES**

13.1	Apply to NCLT if deposit not repaid in time	<i>166</i>
13.2	Repayment of deposits accepted other than deposits accepted under section 76 from public	<i>167</i>
13.3	Damages for fraud in respect of deposits accepted prior to 1-4-2014	<i>168</i>
13.4	Default in repayment of deposits from public by specified public companies after 1-4-2014	<i>169</i>

14**GENERAL MEETING RELATED ISSUES**

14.1	NCLT can order holding of AGM	<i>171</i>
14.2	Powers of NCLT to order Calling and holding EOGM	<i>174</i>
14.3	Ordering Inspection of Minute Books of General Meeting	<i>176</i>

15**ISSUES RELATING TO ACCOUNTS AND REMOVAL
OF AUDITOR AND DIRECTOR**

15.1	Change in Financial Year if holding or subsidiary outside India	<i>178</i>
15.2	Re-opening of accounts and financial statement	<i>178</i>
15.3	Appointing another auditor in place of existing auditors	<i>181</i>
15.4	Removal of Auditors before expiry of his term	<i>182</i>
15.5	Professional precautions by new proposed auditor	<i>185</i>
15.6	Resignation of director	<i>186</i>
15.7	Removal of a director	<i>186</i>
15.8	Removal of director by NCLT	<i>188</i>
15.9	Disqualification of a director	<i>189</i>

16**ISSUES RELATING TO INSPECTION AND
INVESTIGATION OF COMPANIES**

16.1	Investigation	<i>191</i>
16.2	Investigation of ownership of a company	<i>197</i>
16.3	Protection of employees during investigation	<i>199</i>
16.4	Freezing of assets of company on inquiry and investigation	<i>199</i>
16.5	Application to NCLT for disgorgement of assets and personal penalty	<i>200</i>

17**COMPROMISE AND ARRANGEMENTS**

17.1	Background	<i>201</i>
17.2	Procedures for compromise mandatory	<i>203</i>
17.3	Order by NCLT for class meeting on application for scheme of compromise/arrangement	<i>207</i>
17.4	Notice and conduct of meeting of creditors/members	<i>217</i>
17.5	Hearing of the scheme and its approval	<i>221</i>

	PAGE
17.6 Burden on party opposing the scheme	225
17.7 Modifying scheme while sanctioning	226
17.8 DRT Act and Securitisation Act overrides provisions of Companies Act relating to scheme and arrangement	228
17.9 Reduction of capital as part of scheme of compromise	228
17.10 Powers pending decision on sanction of scheme	229
17.11 NCLT exercises only supervisory jurisdiction while sanctioning scheme	230
17.12 Scheme becomes binding after approval	236
17.13 Transferee company should also follow statutory provisions	238
17.14 Wide Power to enforce compromise and arrangement	238

18

MERGER AND AMALGAMATION

18.1 Background	241
18.2 Objectives of amalgamation	243
18.3 Amalgamation is voluntary transfer - All rights do not automatically get transferred	245
18.4 Power to amalgamate is statutory power, need not be mentioned in memorandum	249
18.5 Scheme may involve transfer of partial or whole undertaking or division of undertaking	249
18.6 Valuation of shares and exchange ratio	261
18.7 Wide flexibility in designing scheme of amalgamation	266
18.8 Procedure when Companies in two different States	269
18.9 Duties of NCLT in sanctioning a scheme	270
18.10 Scheme once sanctioned cannot be set-aside on entirely new ground	276
18.11 'Appointed date' (Effective date) of scheme	277
18.12 Stamp duty on mergers and amalgamations	280
18.13 No registration fee and stamp duty for increase in authorized capital	283
18.14 Filing of copy of order	284

	PAGE
18.15 Secretarial Practice in Amalgamation	284
18.16 Preservation of books and papers of amalgamated company	286
18.17 Liability of officers of transferor company continues even after merger, amalgamation or acquisition	287
18.18 Income Tax and Sales Tax aspects of merger and amalgamation	288
18.19 Amalgamation/merger and Indirect Taxes	293
18.20 Commercial aspects of merger and amalgamation	294

19

MERGERS AND AMALGAMATIONS - OTHER PROVISIONS

19.1 Simplified procedure in case of small companies or holding/subsidiary companies	296
19.2 Cross border mergers	296
19.3 Takeover of another company by purchasing 100% of shares	297
19.4 Compulsory purchase of minority shareholding if acquirer already holds 90% or more equity shares	300
19.5 Power to Central Government to order compulsory amalgamation	300

20

OPPRESSION AND MISMANAGEMENT

20.1 Background	302
20.2 When minority can intervene	304
20.3 Statutory protection to minority	307
20.4 Right of members to apply to NCLT	308
20.5 Rights as a member alone can be agitated and not other rights	312
20.6 Relief under section 241 of Companies Act, 2013 is based on equity - Party must approach in good faith with clean hands	315
20.7 Meaning of 'Oppression'	317
20.8 Oppression can be of majority also	322

	PAGE
20.9 Acts held as oppressive	323
20.10 Principle of quasi partnership in complaints of oppression	329
20.11 Acts not held as oppressive	335
20.12 Meaning of Mismanagement	339
20.13 Acts held as mismanagement	340

21

COMPLAINT OF OPPRESSION AND MISMANAGEMENT

21.1 Who can file complaint with NCLT in respect of oppression/ mismanagement	341
21.2 Who cannot apply under provisions relating to oppression and mismanagement	348
21.3 Application by member representing others	349
21.4 Consent of required members is prerequisite	353
21.5 Application by Central Government to NCLT to decide whether a person is fit and proper person as director or officer	354A

22

RELIEFS IN CASE OF OPPRESSION AND MISMANAGEMENT

22.1 Application to NCLT in respect of oppression and mismanagement	355
22.2 Procedure for application before NCLT	355
22.3 No parallel proceedings with civil court	358
22.4 NCLT can pass interim orders	360
22.5 Limitation applies in the proceedings under section 241 of Companies Act, 2013	361
22.6 Powers of NCLT in oppression and mismanagement cases	362
22.7 Orders that can be passed based on the facts of the case	366
22.8 Appointment of directors/additional directors by NCLT	375
22.9 Order preventing change to Board of Directors	378
22.10 Ordering investigation by NCLT	379
22.11 NCLT can pass order even if oppression/mismanagement not established	379

	PAGE
22.12 Valuation for parting ways	381
22.13 Penalty during proceedings under class action	382
22.14 Arbitration Act overrides provisions of oppression and mismanagement	383
22.15 Powers of Civil Court/High Court in matters relating to oppression/mismanagement	386
22.16 Consequences if termination or modification of any agreement is ordered by NCLT	387

23

PENALTY PROVISIONS RELATING TO OPPRESSION AND MISMANAGEMENT

23.1 Penalty provisions applicable in relation of proceedings relating to oppression and mismanagement	389
23.2 Penalty only if there is specific finding	391

24

CLASS ACTION UNDER COMPANY LAW

24.1 Application by some on behalf of all	392
24.2 Who can apply to NCLT	393
24.3 When class action can be initiated	394
24.4 Matters to be considered by NCLT in class action	395
24.5 Procedure to be followed by NCLT	396
24.6 What reliefs can be claimed	399
24.7 Binding nature of order of NCLT	400
24.8 Damages or compensation	401
24.9 Principles on which damages are assessed for breach of contract under Contract Act	402
24.10 'Liquidated Damages' under Contract Act	407
24.11 Vindictive or nominal damages	409

25**REMOVAL OF NAME OF COMPANIES FROM
REGISTER OF MEMBERS**

25.1	Removal of name - Short cut to winding up	<i>410</i>
25.2	Striking off name of a company	<i>410</i>
25.3	Company may itself request for removal of its name from register of companies	<i>412</i>
25.4	NCLT can issue winding up order even if name of struck off the register	<i>414</i>
25.5	Restrictions in applying for removal of name	<i>414</i>
25.6	Effect if company is dissolved by removing name from register	<i>415</i>
25.7	Effect if company carries on business even after name is struck off the register	<i>416</i>
25.8	Fraudulent application for removal of name	<i>416</i>
25.9	Appeal before NCLT against removal of name of company	<i>416</i>
25.10	When NCLT can restore name of company	<i>418</i>
25.11	Restoration of name of company if application made within 20 years	<i>421</i>

26**WINDING UP OF COMPANY UNDER
COMPANY LAW**

26.1	Winding up of company	<i>423</i>
26.2	Mode of ending existence of company	<i>425</i>
26.3	Circumstances when NCLT can order winding up	<i>426</i>
26.4	Just and equitable to order winding up	<i>426</i>
26.5	No winding up under 'just and equitable' clause if alternate remedy is available	<i>433</i>
26.6	Winding up application can be made even if there is provision for arbitration	<i>435</i>
26.7	No winding up if company declared a 'relief undertaking'	<i>436</i>
26.8	Winding up order cannot be refused only because assets are mortgaged or company has no assets	<i>437</i>

	PAGE
26.9 Winding up petition can be filed even if proceedings under RDDBFI are pending	437

27

APPLICATION FOR WINDING UP

27.1 Persons who can apply for winding up	438
27.2 Winding up petition by Contributory	440
27.3 Procedure after filing of application	446
27.4 Admission of winding up petition and issue of advertisement	450
27.5 Power of NCLT to pass interim orders	452

28

WINDING UP ORDER AND ITS EFFECTS

28.1 Orders that can be passed by NCLT after receiving petition for winding up	456
28.2 Winding up order is notice of discharge of officers and employees	458
28.3 Winding Up Committee	458
28.4 Winding up order operates in favour of all creditors and contributories	459
28.5 Suits and legal proceedings are stayed	460
28.6 Criminal proceedings by or against company can continue	464
28.7 Extending period of limitation when company is petitioner, when stay is operative	465
28.8 Custody of property with NCLT after winding up order	466
28.9 Continuance of certain liabilities/rights after winding up	468
28.10 When NCLT may grant leave to continue with proceedings in other Court	468
28.11 Which proceedings can continue without leave of NCLT	469
28.12 Criminal proceedings against directors, officers and employees can continue	473

29**COMPANY LIQUIDATOR, THEIR
APPOINTMENTS AND DUTIES**

29.1	Appointment of company liquidator	476
29.2	Official Liquidators	478
29.3	Duties and liabilities of Company Liquidator	479
29.4	Working of Company Liquidator under supervision of NCLT	480
29.5	Removal and replacement of Company Liquidator	481
29.6	Procedure after appointment of Company Liquidator	481
29.7	Powers and duties of Company Liquidator	481
29.8	Company Liquidator to exercise certain powers subject to sanction	485
29.9	Accounts by Company liquidator and its audit	486
29.10	Person aggrieved by decision of Company Liquidator can apply to NCLT	488

30**PROCEDURE AFTER WINDING UP ORDER**

30.1	Jurisdiction of NCLT after passing of winding up order	490
30.2	Submission of report by Company Liquidator	493
30.3	Directions by NCLT after receiving report of Company Liquidator	494
30.4	Custody of company's properties after order of winding up	496
30.5	Help of Magistrate in taking possession	500
30.6	Promoters, directors, officers to cooperate with Company Liquidator	501
30.7	Settlement of list of contributory and application of assets	501
30.8	Liabilities of directors and managers of company in winding up	501
30.9	Advisory Committee to advise company liquidator	503
30.10	Meeting of creditors or contributories or advisory committee	504
30.11	Powers of NCLT during winding up	506

	PAGE
30.12 Power of NCLT to order examination of persons, in case of fraud	509
30.13 Arrest of person trying to leave India or abscond	511
30.14 Dissolution of company after completion of winding up	511

31

SALE OF ASSETS AFTER ORDER OF WINDING UP

31.1 Powers and duties of NCLT while selling assets	515
31.2 Liability of dues connected with property is of the buyer	520
31.3 Pre-existing agreement not binding	522

32

LIABILITIES OF CONTRIBUTORY IN WINDING UP

32.1 Who is 'Contributory'	523
32.2 Liability of Present Members	524
32.3 Other provisions relating to contributory	526
32.4 Payment of debt by contributory and set off	526
32.5 NCLT can make calls on contributories	527

33

CLAIMS SETTLEMENT IN WINDING UP

33.1 Proof and ranking of claims	529
33.2 Money held in trust has priority over all dues	530
33.3 Expenses of winding up	531
33.4 Workmen's portion of Workmen's dues previous for two years have overriding priority	533
33.5 Provisions relating to secured creditors	538
33.6 Priority of tax dues in winding up over secured creditors	549
33.7 Special provisions under State Financial Corporation Act	555

	PAGE
33.8 Preferential Payments	558
33.9 Residual amount goes to equity shareholders	563

34

OTHER PROVISIONS RELATING TO WINDING UP

34.1 Inspection of books and papers by creditors and contributors	565
34.2 Books and papers of company to be evidence	565
34.3 Money received to be deposited with RBI by Official Liquidator	565
34.4 Separate bank account if money payable to creditor or contributor remains unpaid for six months	566
34.5 Where affidavit can be sworn	568
34.6 Date of commencement of winding up	568
34.7 Period of limitation remains suspended from date of commencement of winding up in favour of company	573
34.8 Winding of unregistered and foreign companies	574

35

SUMMARY PROCEDURE FOR WINDING UP

35.1 Simplified procedure for small companies	577
35.2 Report by Official Liquidator	578
35.3 Sale of assets and recovery of debts due to company	578
35.4 Appeal by creditor to Central Government against decision of Official Liquidator	579

36

PENAL PROVISIONS IN WINDING UP

36.1 Preferential payments	581
36.2 Transfers not made in good faith are void against liquidator	584
36.3 Transfer of property to trust for benefit of creditors void	585
36.4 Liabilities and rights of fraudulently preferred person	585

	PAGE
36.5 Floating charge on assets created within 12 months prior to commencement of winding up	587
36.6 Disclaimer of onerous property	588
36.7 Transfer of shares, property, actionable claim etc. after winding up is void	590
36.8 Attachments or execution and sale of property without leave of NCLT void	595
36.9 Offences by officers of the company in liquidation	597
36.10 Penalty for fraud by officers	599
36.11 Liability for not maintaining proper accounts	599
36.12 Fraudulent conduct of business	600
36.13 Damages against delinquent directors etc.	602
36.14 Time limit for making application for damages	607
36.15 Liability of partners or directors when offender under section 339 or 340 is company or firm	608
36.16 Prosecution of delinquent persons	609

37

OTHER ISSUES RELATING TO NCLT

37.1 Ordering production of documents kept by Registrar	610
37.2 Composition of offences	611
37.3 Hearing cases transferred from CLB	616

38

INSOLVENCY CODE - OVERVIEW

38.1 Background	617
38.2 Overall scheme of the Code	620
38.3 Insolvency and Bankruptcy Board of India	623
38.4 Adjudicating and appellate authorities	624
38.5 Information Utility	625
38.6 Insolvency and Bankruptcy Fund	625

39**INSOLVENCY RESOLUTION CORPORATE PERSONS**

39.1	Background	627
39.2	Initiation of corporate insolvency resolution process	627
39.3	Who can initiate insolvency resolution process	630
39.4	Initiation of proceedings by financial creditor	631
39.5	Initiation of Insolvency resolution by operational creditor	634
39.6	Initiation of insolvency resolution process by corporate applicant himself	635
39.7	Appointment of Interim Resolution Professional	636

40**CONDUCTING CORPORATE INSOLVENCY RESOLUTION PROCESS**

40.1	Background	637
40.2	Moratorium and public announcement	637
40.3	Committee of creditors	642
40.4	Appointment of resolution professional	643
40.5	Duties of resolution professional	645
40.6	Preparation of information memorandum	647
40.7	Submission and approval of resolution plan by resolution applicant	648
40.8	Appeal against order of adjudicating authority	651
40.9	Fast track corporation insolvency resolution process	651

41**LIQUIDATION OF CORPORATE PERSON**

41.1	Initiation of Liquidation	653
41.2	Powers and duties of Liquidator	656
41.3	Ascertaining claims against corporate debtor	659
41.4	Avoidance of preferential transactions by liquidator	661

	PAGE
41.5 Avoidance of undervalued transactions	663
41.6 Action if corporate debtor had defraud creditors	665
41.7 Protection to corporate debtor against extortionate credit transactions	666
41.8 Position of secured creditor in liquidation proceedings	666
41.9 Distribution of assets	668
41.10 Dissolution of corporate debtor	670

42

VOLUNTARY LIQUIDATION OF COMPANIES

42.1 Voluntary liquidation by corporates with no default	671
42.2 Procedure for Voluntary Liquidation	671
42.3 Notification to Registrar after resolution	672
42.4 Application to NCLT after assets wound up	672

43

ADJUDICATION AND APPEALS FOR CORPORATE PERSONS

43.1 Adjudicating Authority in relation to insolvency resolution and liquidation for corporate persons	673
43.2 Appeals and Appellate Authority	674
43.3 Appeal to Supreme Court on question of law	675
43.4 Civil court not to have jurisdiction	675
43.5 Expeditious disposal of applications	675
43.6 Penalty for Fraudulent or malicious initiation of proceedings	676
43.7 Penalty of carrying on business fraudulently to defraud traders	676

44

CROSS BORDER INSOLVENCY AND BANKRUPTCY

44.1 Enabling provisions for cross border transactions	678
---	-----

	PAGE
44.2 Agreements with foreign countries.	678
44.3 Letter of request to a country outside India in respect of assets	679

45

OFFENCES AND PENALTIES IN RELATION TO CORPORATE INSOLVENCY

45.1 Punishments for offences	680
45.2 Punishment for concealment or property	680
45.3 Punishment for transactions defrauding creditors	682
45.4 Punishment for misconduct in course of corporate insolvency resolution process	682
45.5 Offences by insolvency professional	683
45.6 Punishment for falsification of books of corporate debtor	683
45.7 Punishment for wilful and material omissions from statements relating to affairs of corporate debtor	684
45.8 Punishment for false representations to creditors	684
45.9 Punishment for contravention of moratorium or the resolution plan	684
45.10 Punishment for false information furnished in application	685
45.11 Punishment for non-disclosure of dispute or repayment of debt by operational creditor	685
45.12 Punishment for providing false information in application made by corporate debtor	686

APPENDICES

APPENDIX 1 : RELEVANT SECTIONS OF COMPANIES ACT, 2013	689
APPENDIX 2 : NATIONAL COMPANY LAW TRIBUNAL RULES, 2016	838
APPENDIX 3 : NATIONAL COMPANY LAW APPELLATE TRIBUNAL RULES, 2016	885
APPENDIX 4 : NATIONAL COMPANY LAW TRIBUNAL (SALARY, ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF PRESIDENT AND OTHER MEMBERS) RULES, 2015	903

	PAGE
APPENDIX 5 : NATIONAL COMPANY LAW APPELLATE TRIBUNAL (SALARIES AND ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF THE CHAIRPERSON AND OTHER MEMBERS) RULES, 2015	907
APPENDIX 6 : RELEVANT NOTIFICATIONS	911
SUBJECT INDEX	917