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CHAPTER

General Powers of NCLT and NCLAT



4.1 Introduction

Under the *Companies Act, 2013*, NCLT has wide powers to deal with several matters. Powers from various authorities and judicial forums have been or are being transferred to NCLT (see Table “Power of NCLT: At a glance”). The basic intent is to create a single forum to deal with the entire gamut of corporate civil cases in an efficient and expeditious manner in accordance with the recommendations of Eradi Committee that were endorsed by several other committees, like JJ Irani Committee.

Amongst the powers that are conferred on NCLT, many powers were enjoyed by other erstwhile authorities. These powers have been removed from the purview of those authorities and brought into the purview of NCLT. However, the *Companies Act, 2013* has not merely transferred the powers, role and functions of these other authorities but has also modified the powers of NCLT and the nature and scope of these powers. For instance, the laws on compromise and arrangement and the scope of powers of Tribunal have undergone a change. This book deals in detail with various powers of NCLT with respect to different subject matters. This chapter is confined to the general powers that are conferred on the Tribunals.

4.2 General powers under the Act

The powers of NCLT are wider than that of the Company Law Board (CLB) and the Board of Industrial and Financial Reconstruction (BIFR). Only the broad overview of powers is discussed here. In every matter like class action, oppression and mismanagement, deregistration of incorporated company, NCLT has a unique set of powers for dealing with cases. These are discussed at relevant places wherein the particular remedy or issue is discussed. The general powers of NCLT and NLAT are mentioned below.

4.2.1 Power to determine procedure (Section 424)

The proceedings before NCLT shall be guided by the principles of natural justice. The Tribunal and the Appellate Tribunal shall have the power to regulate their own procedure. This power is however, subject to the *Companies Act, 2013* and the rules. Thus, they can determine their own procedure and manner of functioning, within the scope of the powers conferred by the Act. Under the *Companies Act, 1956*, the CLB had its own procedure that was

determined by the CLB Regulations. After the constitution of NCLT, these regulations will be notified.

4.2.2 Power to punish for contempt (Section 425)

Power to punish for contempt *inter alia* is the ability of the court to punish any person for wilful disobedience to any judgment, decree, direction, order or other process of a court or wilful breach of an undertaking given to the court. Even if a person breached a promise to the court, on the faith of which the court sanctions a course of action, it is construed as misconduct amounting to contempt of court.

The Tribunal and Appellate Tribunal have the power to punish for contempt, which is similar to the power of the high court. CLB under the old Act did not have these powers. The Madras Bar association has challenged the constitutionality of conferring this power on these Tribunals. However, the Supreme Court has held that this is constitutional under the 2015 NCLT judgment.

***Gireesh Kumar Sanghi v Ravi Sanghi*, [2019 SCC OnLine NCLAT 474]**

The NCLAT held that although the Tribunal and the Appellate Tribunal are empowered to punish a person for violation of their orders under the *Contempt of Courts Act, 1971* no appeal is maintainable under section 421 of the *Companies Act, 2013* once the Tribunal exercises its power under the 1971 Act read with section 425 of the *Companies Act, 2013*.

4.2.3 Powers of civil court (Section 424)

The Tribunal and the Appellate Tribunal have, for the purposes of discharging their functions under the *Companies Act, 2013* or under the *Insolvency and Bankruptcy Code, 2016*, the same powers as are vested in a civil court under the *Code of Civil Procedure, 1908*, while trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath. Thus, the Tribunal has been given necessary powers to summon witnesses and accused persons;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the *Indian Evidence Act, 1872* [corresponding to the provisions of erstwhile Act. Now refer sections 129 and 130 of *Bharatiya Sakshya Adhiniyam, 2023*], to requisition any public record or document or a copy of such record or document from any office. By this power, they can *inter alia* direct the ROC, RD, SEBI, etc. to provide documents pertaining to the companies or any person in connection with any matter;

- (e) issuing commissions for the examination of witnesses or documents. For instance, the Tribunal can direct a person chosen by him to examine documents that are situated at the registered office or branch office to ascertain truth in any matter;
- (f) dismissing a representation for default or deciding it *ex-parte*. For instance, the Tribunals can dismiss a petition, if the petitioner fails to appear and the Tribunal feels that he is delaying the matter. Again, the petitioner can be heard in matters and decision can be passed without hearing the respondent, if the respondent fails to cooperate and fails to appear before the Tribunal when directed. However, such steps can be taken only after reasonable opportunity is given to the applicant/petitioner/respondent, as the case may be. This power will ensure that Tribunal is able to hear matters expeditiously as per the mandate under the *Companies Act, 2013*;
- (g) setting aside any order of dismissal of any representation for default or any order passed *ex-parte*. If a decision is passed *ex-parte* as the petitioner or respondent was not present, the said matter can be reopened if the person against whom such order is passed, applies to the Tribunal and shows sufficient cause to justify the setting aside of such order;
- (h) any other matter which may be prescribed.

4.2.4 Powers of courts (Section 424)

All proceedings before the tribunal or the appellate tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 228 and 196 of the Indian Penal Code **[corresponding to erstwhile Act. Now refer sections 229, 267 and 233 of Bharatiya Sakshya Adhiniyam, 2023]** and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. **[Now refer sections 215 and chapter XXVIII of Bharatiya Nagarik Suraksha Sanhita, 2023]**

4.2.5 Execution of orders (Section 424)

Any order made by the tribunal or the appellate tribunal may be enforced by the Tribunal in the same manner as if it were a decree made by the court. It shall be lawful for the tribunal or the appellate tribunal to send its order for execution to the court within the local limits of whose jurisdiction,—

- (a) in the case of an order against a company, the registered office of the company is situated; or
- (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

4.2.6 Assistance of courts/authorities (Section 429)

Both the Tribunals can take assistance of the chief metropolitan magistrate, chief judicial magistrate or the district collector. The said request has to be

made to the chief metropolitan magistrate, chief judicial magistrate or the district collector within whose jurisdiction any such property, books of account or other documents of such sick or other company, are situated or found.

They can seek assistance for taking into custody or under its control all property, books of account or other documents of the company.

Assistance can be sought only in the proceedings relating to a sick company or winding up of any company.

4.2.7 Delegation of powers (Section 426)

The tribunal or the appellate tribunal may either by general or by special order direct, subject to certain conditions, if any, as may be specified in the order, any of its officers or employees or, any other person authorised by it to inquire into any matter connected with any proceeding or as the case may be, appeal before it and to report to it in such manner as may be specified in the order.

Only the power of inquiry can be delegated. The decision making power of both the Tribunals cannot be delegated. They can require an inquiry to be made. The *Companies Act, 2013* has not limited the instances in which it can order an inquiry. Thus, for any matter that is before the Tribunal, an inquiry can be ordered. Further, the Tribunal can delegate this authority to any person including a chartered accountant, forensic auditor, chartered secretary, handwriting experts. For instance, if the matter is related to falsification of books of accounts, then in that event the Tribunal, to ascertain the truth may require an inquiry to be conducted by a forensic auditor.

Thus, this power is a very wide one and the Tribunals have been given the freedom to exercise it in any matter before them.

4.3 General powers under the Rules

The draft rules have granted the following additional powers on the Tribunals

4.3.1 Adjournment of hearing

The Tribunals have to follow the principles of natural justice and Tribunal may grant adjournment(s) if it deems fit in the interest of justice. However, as the new Act has outlined time-lines (which are directory and not mandatory in nature) the Tribunal may, in its wisdom restrict the number of adjournments it is willing to give.

4.3.2 General power to amend (Rule 155 of the NCLT Rules)

The Tribunal may, within a period of 30 days from the date of completion of pleadings, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or dependent on such proceeding. Thus, if there are any defects

in a petition or application, an application for rectification of the same may be filed. However, the opposite party may oppose the amendment and then the said application can be considered after hearing both the parties. Recourse can be taken to the principles/tests that were laid down under various cases for allowing amendments of pleadings under Code of Civil Procedure¹. Under the draft NCLT rules that were issued in January 2016 it was envisaged that Tribunal could allow the amendment at any stage of the proceedings, if it is satisfied that there are good grounds for amendment. However, the notified NCLT rules provide a timeline for making amendments.

4.3.3 Tribunal to be deemed to be a court

The Tribunal shall be deemed to be a court for limited purposes as set out in section 424, namely for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 [**corresponding to erstwhile Act. Now refer section 215 and chapter XXVIII of Bharatiya Nagarik Suraksha Sanhita, 2023**].

4.3.4 Power to dispense with the requirements of the rules

The Act and the rules provide exhaustive norms and procedure for all the matters that are dealt with. Rule 14 of the NCLT Rules provides that the Tribunal may on sufficient cause being shown, exempt the parties from compliance of any requirement of these rules and may give such directions in matter of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice. Thus, the Tribunal shall have power for reasons to be recorded in writing, to dispense with the requirements of any rules.

The Tribunal can, in certain cases depending on the fact and circumstance of the case, dispense with certain requirements of the Act where the power to dispense is given by the NCLT rules. For instance, the power to dispense is envisaged with respect to the Act and rules pertaining to reduction of capital in the draft NCLT rules that were issued in January 2016. Thus, the reduction of capital which is a long procedure where the list of creditors has to be prepared and they have to be notified. If the company is able to provide consent of all creditors of the company, the Tribunal may consider dispensing with the requirements.

4.3.5 Saving of inherent powers of the Tribunal (Rule 11 of the NCLT Rules)

Rule 11 of the NCLT Rules provide that the Tribunal has inherent powers:

“Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”

¹ While strict procedures of CPC are not applicable, the principles laid down can be used in certain cases.

The power that is conferred by this Rule, is similar to the powers that were conferred under regulation 44 of the CLB Regulations, 1991. Regulation 44 reads as under:

“44. Saving of inherent power of the Bench - Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.”

What are the inherent powers of the CLB and to what extent these powers extend can be a subject-matter of many cases? Whether inherent powers can be invoked for passing interim order, if the Act does not give the said power expressly for the subject-matter? Whether CLB has the power to recall the order? Whether it has power to vacate? Whether CLB has power to transfer the matter from one bench to another?

The provision of dealing with inherent power of Tribunal also needs to be explored and old cases of CLB may prove to be useful in this regard. However, the powers will have to be read in a new light in view of the difference in the nature and power of NCLT.

In *Shaw Wallace and Co. Ltd. v Union of India (UOI)* [MANU/WB/0376/1998 : 2CWN11 : (1999)ILR 2Cal429], the nature of this inherent power was discussed:

“59.Since Section 408 vests the Central Government and not the Company Law Board with power to appoint additional Directors to the Board of the Company on the order of the Company Law Board to that effect, we are unable to accept Mr. Mitra’s submissions that the Company Law Board was entitled to pass the impugned order in exercise of inherent powers. Even if, having regard to regulation 44 of the Company Law Board Regulations, 1991, the Company Law Board is vested with inherent powers to make such orders as may be required for the ends of justice or to prevent abuse of the process of the Board, such power cannot be exercised in excess of the powers flowing from the statute itself. Such power has to be exercised by the Board in aid of and not de hors the provisions of the Statute and, in any event, such exercise of power conferred by regulation 44 cannot override the provisions of the Statute.”

Some of the case laws where the nature and scope of inherent powers were discussed are set out below.

- (a) *Ram Chandra Singh v Savitri Devi* - 2004-2-L. W. 70 - to show it is a fraud in law if a party makes representations, which he knows to be false. An act of fraud on court is always viewed seriously and vitiates all solemn acts. Any collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void *ab initio*.
- (b) *Indian Bank v Satyam Fibres (India) Pvt. Ltd.* - (1996) 5 Supreme Court Cases 550 - to show that the courts possess inherent power under section 151 of Civil Procedure Code, 1908 to recall its judgment or

order, if it is obtained by fraud on them or where the courts are misled by a party.

- (c) *Smt. Pushpa Katoch v Manu Maharani Hotels Ltd.* - (2001) 34 SCL 298 - to show that the CLB would have the powers to review its own order in case the finding and the relief granted are based on fabricated or forged documents.
- (d) *Smt. Gangabai v Ratankumar* - AIR 1983 (Bombay) 291 - to show that apart from the provisions of section 151 of CPC, every court has got inherent powers to correct its own mistakes.
- (e) *The South India Insurance Co., Ltd. v Lakshmi* - AIR 1967 (MDS) 464 - to show that the principle of section 151 of CPC has an intrinsic application to all judicial or quasi-judicial tribunals. Therefore, all Tribunals have inherent power to apply the principles of natural justice.
- (f) *Manohar Lal Chopra v Bahadur Rao Raja Seth Hiralal* -MANU/SC/0056/1961 : AIR 1962 (SC) 527 to show that the inherent power has not been conferred upon the court; it is a power inherent in the court by virtue of its duty to do justice between the parties before it.
- (g) *Dadu Dayal Mahasabha v Sukhdev Arya* - (1990) 1 Supreme Court Cases 189 - to show that the court by virtue of section 151 of CPC, has inherent power to correct its own proceedings when it is satisfied that while passing a particular order, it was misled by one of the parties or fraud was practiced upon the court.
- (h) *Konathala Sriramulu v Board of Revenue (C.T.)* - AIR 1965 (Andhra Pradesh) 395 - to show that the court in exercise of its inherent jurisdiction derived from section 151 of CPC, can set aside an order made by it contrary to the terms of a statute and judicial precedents.
- (i) *United India Insurance Co. Ltd. v Rajendra Singh* - AIR 2000 Supreme Court 1165 - to show that fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court. Hence, every court or tribunal has the power under section 151 of CPC to recall its own order, if obtained by practicing fraud on the court or tribunal.
- (j) *Budhia Swain v Gopinath Deb* - (1999) 4 Supreme Court Cases 396 - to show that section 151 of CPC envisages the inherent power of the Tribunals or courts to recall and set aside an order, if among other things, fraud or collusion has been used to obtain the judgment.

RECENT CASE LAWS UNDER IBC AND COMPANIES ACT, 2013

- (a) *Swiss Ribbons Pvt. Ltd. v Union of India*, 2019 SCC OnLine SC 73

In this matter, Supreme Court made it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly for withdrawal of insolvency petition post admission. Tribunal, in exercise of its inherent powers under rule 11 of the NCLT

Rules, 2016, may allow or disallow an application for withdrawal of a insolvency petition after its admission (before constitution of COC) if settlement has taken place between parties. It is the inherent power of NCLT to allow withdrawal of an application made by the Applicant after hearing all the concerned parties and considering all relevant factors on the facts of each case.

- (b) *NUI Pulp and Paper Industries Pvt. Ltd. v Ms. Roxcel Trading GMBH* [Company Appeal (AT) (Insolvency) No. 664 of 2019].

NCLAT, Delhi vide its judgment dated July 17,2019 held that NCLT is empowered to pass the *ad-interim* order under rule 11 of the NCLT Rules, 2016 before admitting any application filed under sections 7, 9 or 10 of the Insolvency and Bankruptcy Code, 2016. Rule 11 of the NCLT Rules, 2016, authorizes an NCLT to pass any such orders as may be necessary. Rule 11 of the National Company Law Tribunal Rules, 2016 is concerned with the ‘inherent powers’ of the NCLT.

4.3.6 *Enlargement of time (Rules 15 and 153 of the NCLT Rules)*

Where any period is fixed under these rules, or granted by Tribunal for doing any act, or filing of any document or representation, the Tribunal may, in its discretion from time to time, in the interest of justice and for reasons to be recorded, enlarge such period, even though the period fixed by or under these rules or granted by the Tribunal may have expired.

Rules 15 and 153 of the NCLT Rules reads as under:

“15. Power to extend time

The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefor is not made until after the expiration of time appointed or allowed.”

“153. Enlargement of Time

Where any period is fixed by or under these rules, or granted by Tribunal for doing any act, or filing of any document or representation, the Tribunal may, in its discretion from time to time, in the interest of justice and for reasons to be recorded, enlarge such period, even though the period fixed by or under these rules or granted by the Tribunal may have expired.”

However, this power cannot be construed as granting powers to Tribunals to extend time when matter is time barred. This will apply for extending time for granting replies and rejoinder and other timelines for submitting documents. For instance, certain documents like petition under compromise and arrangement for approval of a scheme must be filed within 7 days from the date of filing chairman’s report. The Tribunal can extend this time.

Mr. Raj Narain Singh and Another v The Registrar of Companies and Others [Company Appeal (AT) No. 373 of 2018, May 31, 2019; 2019 SCC OnLine NCLAT 312]

The NCLT declined to extend period for compliance of filing returns given under section 252(3) that was mentioned while passing an order for restoration of the name of the Company. NCLAT held that under rule 153 of the NCLT Rules read with rule 11, NCLT is empowered to pass such orders as are required to meet the ends of justice. Time was extended and liberty was given to the Appellants to further request NCLT for time for the purposes of filing Returns in view of facts of that case.

4.3.7 Rectification of order (Rule 154 of the NCLT Rules)

Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification. An application for the said rectification may be made in Form No. NCLT 9 of the NCLT Rules within 2 years from the date of the final order for rectification of the final order not being an interlocutory order.

***APC Credit Rating P. Ltd v Registrar of Companies, NCT of Delhi and Haryana* [2017 SCC OnLines NCLAT 370]**

The NCLAT held that the *Companies Act, 2013*, does not empower the Tribunal to review its own order and judgement. Under section 420(2), the Tribunal has been empowered to act at any time within two years from the date of the order, with a view to rectify any mistake apparent from the record, amend any order passed by it and to make such amendment, if a mistake is brought to its notice by the parties. Rule 154 of the NCLT Rules, 2016 empowers the Tribunal to rectify its order if there is any clerical or arithmetical mistake in the order of the Tribunal or error therein arises from any accidental slip or omission of its own motion or on application of any party by way of rectification.

4.3.8 Power to impose costs (Rule 149 of the NCLT Rules)

The Tribunal, after hearing the applicant and respondent, shall make and pronounce an order in respect of imposing costs on the defaulting party as it may deem fit.

4.3.9 Amicus curiae

Rule 61 of the NCLT Rules allows the Tribunal to appoint an *amicus curiae*. It may, at its discretion, permit any person or persons including the professionals and professional bodies to render or to communicate view to the Tribunal as *amicus curiae* on any point or points or legal issues, as the case may be, as assigned to such *amicus curiae*.

4.3.10 Assessors or valuers (Rule 54 of the NCLT Rules)

In any enquiry into a claim, the Tribunal may call in the aid of assessor or valuer, not exceeding two in number, who possess any technical or special knowledge with respect to any matter before the Tribunal for the purpose of assisting the Tribunal. An assessor or valuer shall perform such functions as the Tribunal may direct. The remuneration, if any, to be paid to an assessor or valuer shall in every case be determined by the Tribunal and be paid by it in the manner as may be specified by the Tribunal.

4.4 General provisions for exercise of powers**4.4.1 Production of documents**

No process for compelling the production of any document kept by the registrar shall be issued from any court or the Tribunal except with the leave of that court or the Tribunal and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court or the Tribunal.

4.4.2 Nature of exercise of powers

Section 459 deals with the manner in which the Tribunals may exercise the powers that are granted to it. As per this section, if the Tribunal is required or authorised by any provision of this Act—

- (a) to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter; or
- (b) to give any direction in relation to any matter; or
- (c) to grant any exemption in relation to any matter,

then, the Central Government or the Tribunal may in the absence of anything to the contrary contained in that provision or any other provision of this Act, accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of a contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

4.5 Comparison between powers of different tribunals

In the last two decades, numerous Tribunals have been created under several Acts and powers conferred on them. The nature of those powers, the manner of their functioning and their scope and their status has been a subject-matter of number of cases. A brief chart showing the comparison between the Tribunals that are established is given below to appreciate the similarities and differences. It can be a useful guide for understanding the scope and extent of powers of Tribunals.

General powers of different tribunals

Power	NCLT 2013 Act	SAT (SEBI Act 1992)	DRAT (RDDB Act, 1993)	BIFR (SICA 1985)
Summoning and enforcing	SEC. 424(2) (a)	sec. 15U (2)(a)	sec. 22(2)(a)	sec. 13(3) (a)
Examining on oath	sec. 424(2) (a)	sec. 15U(2)(a)	sec. 22(2)(a)	sec. 13(3) (a)
Receiving evidence on affidavits	sec. 424(2) (c)	sec. 15U(2)(c)	sec. 22(2)(c)	sec. 13(3) (b)
Requisitioning record	sec. 424(2) (d)	Not specified	Not mentioned	sec. 13(3) (d)
Issuing commissions for examination of witness or documents	sec. 424(2) (e)	sec. 15U(2)(d)	sec. 22(2)(d)	sec. 13(3) (e)
Dismissing a representation for default	sec. 424(2) (f)	sec. 15U(2)(f)	sec. 22(2)(f)	Not mentioned
Setting aside any order of dismissal	sec. 424(2) (g)	sec. 15U(2)(g)	sec. 22(2)(g)	Not mentioned

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