After reading this chapter, you will be able to:

- Understand the importance and need of NCLT
- Know the formation, constitution, working and power of NCLT and NCLAT
- Know what orders can be passed by the NCLT and NCLAT timelines for appeal against the order and provisions related to transfer of pending proceedings.
1. INTRODUCTION

In the past there were number of quasi-judicial forums and tribunals to provide specialized judicial settlement in a wide range of business issues for dispensation of justice to companies.

The Companies Act, 2013 provides for the constitution of National Company Law Tribunal (NCLT) & National Company Law Tribunal and Appellate Tribunal (NCLAT). NCLT is set up to bring all lawsuits pertaining to companies under one body. It has replaced the Company Law Board (CLB), the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction and will have judicial and technical members. Initially, NCLT will have eleven branches, four at New Delhi (including the Principal Bench) and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai.

Vide Ministry of Corporate Affairs Notification S.O.1936 (E) dated 1st June 2016 read with section 434(1) (a) of the Companies Act, 2013, the Central Government hereby appoints the 01st day of June, 2016, on which all matters or proceedings or cases pending before the Board of Company Law Administration (Company Law Board) shall stand transferred to the National Company Law Tribunal and it shall dispose of such matters or proceedings or cases in accordance with the provisions of the Companies Act, 2013 or the Companies Act, 1956.

The provisions dealing with the various parts of NCLT and NCLAT are covered under the Chapter XXVII of the Companies Act, 2013.

NCLT AND NCLAT

NCLT is a quasi-judicial body that adjudicats matters pertaining to companies in India. Any person aggrieved by the decision of NCLT may prefer an appeal to NCLAT. NCLT and NCLAT has provided a single window for settlement of all disputes relating to companies. Further, the provisions of the Insolvency and Bankruptcy Code, 2016 have already been incorporated in the Companies Act, thereby providing a complete harmony in working of NCLT in line with the Insolvency and Bankruptcy Code, 2016. Thus, NCLT and NCLAT is providing a one stop solution to almost all the disputes of the companies under the Companies Act, 2013.

2. DEFINITIONS [SECTION 407]

Section 407 of the Companies Act, 2013 provides the definitions of chairperson, judicial members, member, president and technical member. The section defines the following key members constituting the NCLT & NCLAT:
### Members

<table>
<thead>
<tr>
<th>Members</th>
<th>Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairperson</td>
<td>Means the Chairperson of the Appellate Tribunal</td>
</tr>
<tr>
<td>Judicial Member</td>
<td>a member of the Tribunal or the Appellate Tribunal appointed as such and includes the President or the Chairperson, as the case may be.</td>
</tr>
<tr>
<td>Member</td>
<td>a member, whether Judicial or Technical of the Tribunal or the Appellate Tribunal and includes the President or the Chairperson, as the case may be.</td>
</tr>
<tr>
<td>President</td>
<td>the President of the Tribunal</td>
</tr>
<tr>
<td>Technical Member</td>
<td>a member of the Tribunal or the Appellate Tribunal appointed as such</td>
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### 3. CONSTITUTION OF NATIONAL COMPANY LAW TRIBUNAL [SECTION 408]

According to section 408 of the Companies Act, 2013, the Central Government shall, by notification¹, constitute with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of (Judicial and Technical) members, as the Central Government may deem necessary, to be appointed by notification, to exercise and discharge such powers and functions as conferred on it by or under this Act or any other law for the time being in force.

### 4. QUALIFICATION OF PRESIDENT AND MEMBERS OF TRIBUNAL [SECTION 409]

Section 409 of the Companies Act, 2013, deals with qualifications of the President and members of Tribunal.

(i) **Qualification for the President:** He shall be a person who is or has been a Judge of a High Court for five years.

(ii) **Qualification for the Judicial member:** A person shall not be qualified for appointment as a Judicial Member unless he is or has been—

¹ The Ministry of Corporate Affairs Vide notification S.O.1932 (E) dated 1st June 2016, hereby constitutes the NCLT to exercise and discharge the powers and functions as are or may be conferred on it by or under the said Act with effect from 1st June 2016.
(1) a judge of a High Court; or
(2) a District Judge for at least five years; or
(3) an advocate of a court for at least ten years.

For the purposes of clause (3) above, in computing the period for which a person has been an advocate of a court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he become an advocate.

(iii) Qualification for Technical member: A person shall not be qualified for appointment as a Technical Member unless he—

(1) has been a member of the Indian Corporate Law Service or Indian Legal Service for at least fifteen years out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service; or

(2) is or has been in practice as a chartered accountant, or a cost accountant, or as a company secretary for at least fifteen years

(3) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in industrial finance, management or administration, reconstruction, investment, accountancy, labour matters or such other disciplines which are related to the management of the affairs including reconstruction, rehabilitation and winding up of companies,

(4) is or has been a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 for at least five years.

5. CONSTITUTION OF APPELLATE TRIBUNAL [SECTION 410]

National Company Law Appellate Tribunal (NCLAT) has been constituted for hearing appeals against the orders of the NCLT.

As per section 410 of the Companies Act, 2013,

(i) the Central Government shall, by notification constitute with effect from such date as may be specified therein, an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of judicial and technical members, not exceeding 11, as the Central Government may deem fit.

(ii) NCLAT when constituted will be for hearing appeals against the orders of the Tribunal.
6. QUALIFICATIONS OF CHAIRPERSON AND MEMBERS OF APPELLATE TRIBUNAL [SECTION 411]

Section 411 of the Companies Act, 2013 prescribes the qualifications of the chairperson and the members of the Appellate Tribunal.

(i) Qualification of Chairperson: The chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

(ii) Qualification of members:

(1) Judicial Member: A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for 5 years.

(2) Technical Member: A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience, of not less than 25 years in various specified disciplines related to the management, conduct of affairs, revival, rehabilitation and winding up of companies.

7. SELECTION OF MEMBERS OF TRIBUNAL AND APPELLATE TRIBUNAL [SECTION 412]

(i) The President of the Tribunal and the chairperson and Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India.

(ii) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee.

(iii) Selection Committee

(a) Constitution of selection Committee: The selection committee shall consist of—

(1) Chief Justice of India or his nominee—Chairperson;

(2) a senior Judge of the Supreme Court or a Chief Justice of High Court — Member;

(3) Secretary in the Ministry of Corporate Affairs—Member;

(4) Secretary in the Ministry of Law and Justice—Member; and

(5) Secretary in the Department of Financial Services in the Ministry of Finance—Member.

The Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee.
(b) **Functioning of the Selection committee:** The Selection Committee shall determine its procedure for recommending persons for the appointment of the members of the Tribunal and the technical members of the Appellate Tribunal.

(c) **No appointment of members shall be invalid:** No appointment of the Members of the Tribunal or the Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

**8. TERM OF OFFICE OF PRESIDENT, CHAIRPERSON AND OTHER MEMBERS [SECTION 413]**

The section provides the term for the holding of office for the members constituting Tribunal and Appellate Tribunal along with the age bar on the holding of the same.

(i) **Term of holding office in the case of Tribunal:** The President and every other Member of the Tribunal shall hold office for a term of 5 years from the date on which he enters upon his office and shall be eligible for re appointment for another term of 5 years. [Section 413 (1)].

(ii) **Age bar on holding of office:** Under section 413 (2), a Member of the Tribunal shall hold office as such until he attains,—

(a) in the case of the President, the age of 67 years;

(b) in the case of any other Member, the age of 65 years.

Provided that a person who has not completed 50 years of age shall not be eligible for appointment as Member.

Provided further that the Member may retain his lien with his parent cadre or Ministry or Department, while holding office for a period not exceeding one year.

(iii) **Term of holding office in the case of Appellate Tribunal:** The chairperson or a Member of the Appellate Tribunal shall hold office for a term of 5 years from the date on which he enters
upon his office, and shall be eligible for re-appointment for another term of 5 years. [Section 413(3)]

(iv) Restriction on holding of office: Under section 413(4), a member of the Appellate Tribunal shall hold office as such until he attains,—

(a) in the case of the Chairperson, the age of 70 years;
(b) in the case of any other Member, the age of 67 years.

Provided that a person who has not completed 50 years of age shall not be eligible for appointment as Member.

Provided further that a member may retain his lien with his parent cadre or Ministry or Department, while holding office for a period not exceeding one year.

9. SALARY, ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF MEMBERS [SECTION 414]

The salary, allowances and other terms and conditions of service of the Members of the Tribunal and the Appellate Tribunal shall be such as may be prescribed.

Provided that, neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to their disadvantage after their appointment.

10. ACTING PRESIDENT AND CHAIRPERSON OF TRIBUNAL OR APPELLATE TRIBUNAL [SECTION 415]

(1) In the event of the occurrence of any vacancy in the office of the President or the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the President or the Chairperson, as the case may be, until the date on which a new President or
Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the President or the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the President or the Chairperson, as the case may be, until the date on which the President or the Chairperson resumes his duties.

11. RESIGNATION OF MEMBERS [SECTION 416]

The President, the Chairperson or any Member may, by notice in writing under his hand addressed to the Central Government, resign from his office.

Provided that the President, the Chairperson, or the Member shall continue to hold office until the expiry of 3 months from the date of receipt of such notice by the Central Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

12. REMOVAL OF MEMBERS [SECTION 417]

(1) **Grounds for removal:** The Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who—

   (a) has been adjudged an insolvent; or

   (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

   (c) has become physically or mentally incapable of acting as such President, the Chairperson, or Member; or

   (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson, or Member; or

   (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (b) to (e) without giving him a reasonable opportunity of being heard.

(2) **Reasonable opportunity of being heard:** Without prejudice to the provisions of sub-section (1), the President, the Chairperson or the Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief
Justice of India on a reference made to him by the Central Government in which such President, the Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard.

(3) **Suspension by Central Government in concurrence with CJI:*** The Central Government may, with the concurrence of the Chief Justice of India (CJI), suspend from office, the President, the Chairperson or Member in respect of whom reference has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) **Central Government to make regulation for inquiry procedure:** The Central Government shall, after consultation with the Supreme Court, make rules to regulate the procedure for the inquiry on the ground of proved misbehaviour or incapacity referred to in sub-section (2).

### 13. STAFF OF TRIBUNAL AND APPELLATE TRIBUNAL [SECTION 418]

(1) **Providing of staff to discharge the function:** The Central Government shall, in consultation with the Tribunal and the Appellate Tribunal, provide the Tribunal and the Appellate Tribunal, as the case may be, with such officers and other employees as may be necessary for the exercise of the powers and discharge of the functions of the Tribunal and the Appellate Tribunal.

(2) **Supervision of the President on the discharge of function:** The officers and other employees of the Tribunal and the Appellate Tribunal shall discharge their functions under the general superintendence and control of the President, or as the case may be, the Chairperson, or any other Member to whom powers for exercising such superintendence and control are delegated by him.

(3) **Terms of services to be regulated by respective rules:** The salaries and allowances and other conditions of service of the officers and other employees of the Tribunal and the Appellate Tribunal shall be such as may be prescribed.

### 14. BENCHES OF TRIBUNAL [SECTION 419]

(1) **Number of benches:** There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.

(2) **Presiding of the Principal Bench:** The Principal Bench of the Tribunal shall be at New Delhi which shall be presided over by the President of the Tribunal.
(3) **Power exercisable by benches:** The powers of the Tribunal shall be exercisable by Benches consisting of 2 Members out of whom one shall be a Judicial Member and the other shall be a Technical Member:

Provided that it shall be competent for the Members of the Tribunal authorised in this behalf to function as a Bench consisting of a single Judicial Member and exercise the powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order, specify:

Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit.

(4) **Constitution of special benches:** The Central Government shall, by notification, establish such number of benches of the Tribunal, as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under Part II of the Insolvency and Bankruptcy Code, 2016.

(5) **Decision where members differ in opinion:** If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

### 15. ORDER OF TRIBUNAL [SECTION 420]

(1) **Reasonable opportunity of being heard:** The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

(2) **Amendment in order:** The Tribunal may, at any time within 2 years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.

(3) **Send the copy of order to parties concerned:** The Tribunal shall send a copy of every order passed under this section to all the parties concerned.
16. APPEAL FROM ORDERS OF TRIBUNAL [SECTION 421]

(1) **Appeal to AT**: Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal (AT).

(2) **When order made by consent of parties**: No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) **Period for filing of appeal**: Every appeal under sub-section (1) (i.e. appeal to AT against order of Tribunal) shall be filed within a period of 45 days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding 45, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4) **Pass order after giving of reasonable opportunity of being heard**: On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) **Copy of order to tribunal and parties to appeal**: The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

17. EXPEDITIOUS DISPOSAL BY TRIBUNAL AND APPELLATE TRIBUNAL [SECTION 422]

(1) **Speedy disposal**: Every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal within
3 months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

(2) **Reasons to be recorded for delay:** Where any application or petition or appeal is not disposed of within the period specified in sub-section (1), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period not exceeding ninety days as he may consider necessary.

18. **APPEAL TO SUPREME COURT [SECTION 423]**

Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.
19. PROCEDURE BEFORE TRIBUNAL AND APPELLATE TRIBUNAL

[SECTION 424]

(1) **Tribunal regulate their own procedure based on natural justice:** The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principals of natural justice, and, subject to the other provisions of this Act or the Insolvency and Bankruptcy Code, 2016 and of any rules made there under, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

(2) **Vested with same power as that of a civil court:** The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act 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;
(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, requisitioning any public record or document or a copy of such record or document from any office;
(e) issuing commissions for the examination of witnesses or documents;
(f) dismissing a representation for default or deciding it *ex parte*;
(g) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
(h) any other matter which may be prescribed.

(3) **Nature of decree and its execution:** Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders 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 situate; 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.
12.14 CORPORATE AND ECONOMIC LAWS

(4) Nature of proceedings: All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, 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.

20. POWER TO PUNISH FOR CONTEMPT [SECTION 425]

The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that—

(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and

(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.

21. DELEGATION OF POWERS [SECTION 426]

The Tribunal or the Appellate Tribunal may, by general or special order, direct, subject to such 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.

22. PRESIDENT, MEMBERS, OFFICERS, ETC., TO BE PUBLIC SERVANTS [SECTION 427]

The President, Members, officers and other employees of the Tribunal and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

23. PROTECTION OF ACTION TAKEN IN GOOD FAITH [SECTION 428]

No suit, prosecution or other legal proceeding shall lie against the Tribunal, the President, Member, officer or other employee, or against the Appellate Tribunal, the Chairperson, Member, officer or other employees thereof or liquidator or any other person authorised by the Tribunal or the Appellate Tribunal for the discharge of any function under this Act in respect of any loss or
damage caused or likely to be caused by any act which is in good faith done or intended to be done in pursuance of this Act.

24. POWER TO SEEK ASSISTANCE OF CHIEF METROPOLITAN MAGISTRATE [SECTION 429]

According to section 429,

(1) The Tribunal may, in any proceedings for winding up of a company under this Act or in any proceedings under the Insolvency and Bankruptcy Code, 2016, in order to take into custody or under its control all property, books of account or other documents, request, in writing, 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 company under this Act or of corporate persons under the said Code, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,—

(a) take possession of such property, books of account or other documents; and

(b) cause the same to be entrusted to the Tribunal or other persons authorised by it.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

25. CIVIL COURT NOT TO HAVE JURISDICTION [SECTION 430]

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.
26. VACANCY IN TRIBUNAL OR APPELLATE TRIBUNAL NOT TO INVALIDATE ACTS OR PROCEEDINGS [SECTION 431]

No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be.

27. RIGHT TO LEGAL REPRESENTATION [SECTION 432]

A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

28. LIMITATION [SECTION 433]

The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be.

29. TRANSFER OF CERTAIN PENDING PROCEEDINGS. [SECTION 434]

(1) On such date as may be notified by the Central Government in this behalf,—

(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;

(b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding 60 days; and

(c) all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall
stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:

Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government.

Provided also that only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal:

Provided further that –

(i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or

(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts;

shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.

(2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.
Question 1

Mr. D was appointed as a Technical Member of the National Company Law Tribunal (NCLT) on 1st July, 2012 for a period of 5 years. He will be completing 62 years on 30th June, 2017.

Whether he can be re-appointed on the NCLT on completion of his tenure in 2017?

Answer

1. **Term of holding office in the case of Tribunal**: According to section 413 (1), the President and every other Member of the Tribunal shall hold office for a term of 5 years from the date on which he enters upon his office and shall be eligible for reappointment for another term of 5 years.

2. **Age bar on holding of office**: Under section 413 (2), a Member of the Tribunal shall hold office as such until he attains,—
   
   (a) in the case of the President, the age of 67 years;
   
   (b) in the case of any other Member, the age of 65 years.

In the instant case, Mr. D was appointed as a technical Member of the NCLT on 1st July, 2012 for a period of 5 years. He will be completing 62 years on 30th June, 2017. He can also be re-appointed after his initial term of five years is over. But since he shall be attaining the age of 65 years as on 30th June, 2020, he will have to step down from the post on his attaining the age of 65 years i.e. on 30th June, 2020.

Question 2

As per the Companies Act, 2013, what are the required qualifications for appointment as President and Judicial members of the National Company Law Tribunal.

Answer

Section 409 of the Companies Act, 2013, deals with qualifications of the President and members of Tribunal.

(i) **Qualification for the President**: He shall be a person who is or has been a Judge of a High Court for five years.

(ii) **Qualification for the Judicial member**: A person shall not be qualified for appointment as a Judicial Member unless he is or has been—

   (1) a judge of a High Court; or

   (2) a District Judge for at least five years; or
(3) an advocate of a court for at least ten years.

For the purposes of clause (3) above, in computing the period for which a person has been an advocate of a court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he become an advocate.

Question 3

Mr. Ram was appointed as the member of the National Company Law Tribunal. He (at the age of 63 years) has now resigned from his office by giving a notice to the Central Government, by stating that he will stop acting as a member to NCLT with immediate effect.

The Central Government tells him that you have to continue in office for 3 more months. Is the contention of Central Government correct?

Answer

According section 416, the President, the Chairperson or any Member may, by notice in writing under his hand addressed to the Central Government, resign from his office.

Provided that the President, the Chairperson, or the Member shall continue to hold office until the expiry of 3 months from the date of receipt of such notice by the Central Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

Thus, Mr. Ram shall continue to hold office until the expiry of 3 months from the date of receipt of such notice by the Central Government or until a person duly appointed as his successor enters upon his office, whichever is earliest.

Hence, the contention of Central Government is correct.