

# COMPANY LAW

## UNIT 1 : INTRODUCTION

### TOPIC-ADMINISTRATION OF COMPANY LAW

# Administration of Company Law

The following authorities are entrusted with the task of administering and regulating the company law in India-

- **The Central Govt (CG), i.e. Ministry of Corporate Affairs**
- **The NCLT and NCLAT**
- **Special Courts**
- **Registrar of Companies**
- **Securities and Exchange Board of India**

## The Central Government

- **CG acts through MCA** and has **overall responsibility for administration** & enforcement of the Co. Act.
- Under the Companies Act, **extensive and wide powers** in several matters have been vested in the CG.
- **Sec.458** empowers the CG to delegate any of its powers and functions to such authority ,as may be specified. Many powers of CG have been transferred to NCLT and Regional Directors.
- **Sec.460** enables the CG to condone any delay in filing of applications required to be made to it or ROC.
- **Sec.462** grants powers to the CG to exempt class or classes of companies from the provisions of this Act
- Under **Sec.467** of Companies Act,2013, the CG ,may by notification , amend any of the rules, regulations, Tables ,Schedules etc.
- Under **Sec.469** of Companies Act, 2013, the Central Govt may , by notification, make rules for carrying out the provisions of this Act. Accordingly, many Rules have been framed by the CG .

# National Company Law Tribunal ( NCLT)

- **NCLT is a quasi-judicial body that adjudicates issues relating to company matters.. It shall act as a single window for settlement of all company related disputes.** The powers and jurisdiction being exercised earlier by various bodies under the earlier Companies Act, viz., Company Law Board (CLB), Board of Industrial and Financial Reconstruction ( BIFR) or High Courts have been consolidated and entrusted to the Tribunal. Thus multiplicity of litigation before various courts\ quasi judicial bodies will be avoided as all these matters will now be heard and decided by NCLT. The shareholders are allowed to file **class action suits before NCLT** against the directors or auditors of the company for their misconduct and unwarranted acts.
- **The CG constituted NCLT w.e.f. 1st June, 2016 consisting of a President and certain Judicial and Technical members .** The President shall be a person who is or has been a judge of High Court for 5 years. Judicial Member shall be a person who is \has been a judge of High Court, or is \ has been District Judge for at least 5 years or has been an advocate of a court for at least 10 years. Technical member must be an ILS officer with at least 15 years experience or a CA/ CS/ CWA in practice for at least 15 years or a person of proven ability , integrity and standing having special knowledge and professional experience of at least 15 years , in the fields of finance , management, accountancy,, law, investment etc or a presiding officer of a Labour Court for at least 5 years.
- **The powers of the Tribunal shall be exercisable by Benches presided by Judicial Member.** The Principal Bench is at Delhi and is presided over by the President of the Tribunal. There are 15 other Benches sitting at Delhi, Mumbai, Kolkata, Chennai, Bengaluru, Chandigarh etc. Ordinarily every Bench would consist of two members (one Judicial and one Technical). A single member ( comprising of a Judicial Member) may also function as a Bench in some cases. But, for disposal of cases relating to rehabilitation, restructuring or reviving of companies, Special Benches (consisting of 3 or more members) ,shall be constituted.
- **It shall function in a time bound manner** -The Tribunal ,after giving the parties , a reasonable opportunity of being heard, pass such orders as it thinks fit and send a copy of its order to all the parties concerned. NCLT shall try to dispose of the proceeding expeditiously within 3 months from the commencement of the proceeding.
- **Appeal against order of NCLT lies with NCLAT** - Any person aggrieved by the decision or order of the NCLT , may file an appeal before NCLAT within 45 days from the date on which a copy of the Tribunal's order is received by him.

# National Company Law Appellate Tribunal ( NCLAT)

- **NCLAT is an appellate authority to hear appeals against the orders of NCLT or NFRA( National Financial Reporting Authority) or CCI (Competition Commission Of India).** It has the same powers as a civil court for discharging its functions.
- **The Central Government has constituted NCLAT w.e.f 1st June, 2016 consisting a Chairperson and certain Judicial and Technical Members .** The Chairperson shall be a person who has been a judge of Supreme Court or the Chief Justice of a High Court. The Judicial Member shall be a person who is \ has been a Judge of a High Court or is a Judicial Member of NCLT for 5 years. The Technical member shall be a person of proven ability , integrity and standing having special knowledge and professional experience of at least **25** years, in the fields of finance , management, accountancy, law, investment etc.
- **Now, the NCLAT also functions through its benches.** A bench of NCLAT shall have atleast one Judicial and one Technical member. These benches ordinarily sit at New Delhi and at other notified places.
- **It shall function in a time bound manner-**NCLAT shall try to dispose of the appeal within 3 months from the date of receipt of the appeal. The NCLAT shall send a copy of every order made by it to the NCLT and parties to the appeal.
- **Appeal against order of NCLAT lies with Supreme Court-**Any person aggrieved by any decision or order of the NCLAT may file an appeal to the Supreme Court within a period of 60 days from the date of communication thereof, on **any question of law**. The decision or order of the Appellate Tribunal on any **question of fact will be final and will not be appealable.**

# Procedure and Powers of the NCLT and NCLAT

- **NCLT and NCLAT are quasi judicial bodies.** So all proceedings before the NCLT and NCLAT shall be **deemed to be judicial proceedings** and they shall be deemed to be civil courts.
- The NCLT and NCLAT shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice in the conduct of their business. They shall have **power to regulate their own procedure.**
- They shall enjoy **same powers as are vested in a civil court** eg.
  - ✓ summoning and enforcing attendance of any person
  - ✓ examining the witnesses on oath
  - ✓ discovery and production of documents
  - ✓ receiving evidences on affidavits
  - ✓ issuing commissions for examination of witnesses or documents
- Any order made by them may be enforced in the same manner as **if it were a decree** made by a Court and be sent for execution to the court under whose jurisdiction the company or person has registered office or resides respectively.
- **No civil court shall have jurisdiction** to entertain any suit or proceeding in respect of any matter which the NCLT and NCLAT are empowered to determine.

# Special Courts(Sec.435)

- The Companies Act,2013 for the first time, introduces the concept of setting of sufficient number of Special Courts to provide speedy trial of **offences punishable under this Act i.e.to** deal with corporate criminal offences or white collar crimes.
- A Special Court shall consist of
  - a) **a single judge holding office as Sessions Judge or Additional Sessions Judge, incase of offences punishable with imprisonment of 2 years or more and**
  - b) **a Metropolitan Magistrate (MM) or Judicial Magistrate incase of other offences ( i.e minor violations)** who shall be appointed by CG with the concurrence of the Chief Justice of the concerned High Court.
- Unless otherwise provided in the Companies Act, the provisions of the Criminal Procedure Code,1973 shall apply to the proceedings of the Special Court. The High Courts shall have the power of appeal or revision as if Special Court were a Court of Sessions under their jurisdiction.
- While trying an offence under this Act, a Special Court may also try, any other criminal offence with which the accused may be charged with , at the same time.
- Special Court also has the power to try in a summary way ( instead of a regular trial) any offence committed under this Act which is punishable with imprisonment of up to 3 years. However, in a summary trial, sentence of imprisonment for a term > 1 year , cannot be passed.

# Registrar of Companies (RoC)

- Registrar means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar having the duty of registering companies and discharging various functions under this Act. He is appointed by the Central Govt.
- Presently there are 25 RoCs operating in all major states and UTs. Maharashtra and Tamil Nadu have two RoCs each ( Maharashtra- at Mumbai and Pune and Tamil Nadu- at Chennai and Coimbatore) . To coordinate , supervise and direct the work of Registrars, offices of Regional Directors have been set up , in seven regions , each region comprising of a number of States and Union Territories.
- The office of RoC is a public office where companies are required to file returns and documents and the public is authorised to inspect the same as per the provisions of law.
- Duties of Registrar include
  - ✓ examination of documents to ensure that they are complete
  - ✓ acknowledgement of receipt of documents filed with him for registration
  - ✓ maintainance of Register of Companies
  - ✓ permitting public to inspect documents\ records \ returns, during business hours
- Powers of Registrar include
  - ✓ to extend the time for holding AGM up to 3 months
  - ✓ to inspect , during business hours, the books\records\papers etc.of a company
  - ✓ to apply to Special Court for an order for search & seizure of a co.'s books\papers
  - ✓ to remove the name of the company from the Register of Companies
  - ✓ to impose penalties for certain procedural lapses such as failure by companies to file Annual return or financial statements on time etc. .

# Securities and Exchange Board of India (SEBI)

- SEBI was set up under Securities and Exchange Board of India Act, 1992 for protecting the interests of investors in securities and regulating the securities market by appropriate measures.
- SEBI issues ' Investors Guidance Series ' to clarify and educate the investor community and has also issued various Rules and Regulations for market intermediaries like stock brokers, merchant bankers, underwriters etc.
- Under Sec.24, the CG has conferred exclusive power on SEBI to administer by Rules , the matters such as issue of securities, transfer of securities and non -payment of dividend.
- SEBI has the power to administer companies in respect of provisions contained in
  - ✓ Sec.24 to 42: Prospectus and Allotment of Securities
  - ✓ Sec.43 to 72: Share Capital and Debentures
  - ✓ Sec.127: Punishment for failure to distribute Dividends
- The powers to enforce the provisions relating to forward trading(Sec.194) and insider trading(Sec.195) have also been delegated to SEBI for listed companies or the companies which intend to get listed.