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**WHITE PAPER ON  
NATIONAL COMPANY LAW TRIBUNAL (NCLT)  
AND  
NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT)**



**A PRODUCT OF RICKY CHOPRA INTERNATIONAL COUNSELS**

# NEW ERA OF CORPORATE LITIGATION- NCLT & NCLAT



# BACKGROUND

- ▶ It was started with the constitution of Eradi Committee , which was formed to review law relating to insolvency and winding up of companies and laws like The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA).
- ▶ The Committee made various recommendations, which were incorporated in the Companies (Amendment) Bill, 2001.
- ▶ The said Bill was subsequently passed and became the Companies (Amendment) Act, 2002.
- ▶ The Companies (Second Amendment) Act, 2002 paved way for setting up of the NCLT and NCALT.
- ▶ However, Madras High Court in R. Gandhi V. Union of India, held that NCLT is against the basic structure of the constitution as it has been awarded with all the powers which are conferred to the High Court except, Article 266.
- ▶ Subsequently, Hon'ble Supreme Court in Union of India Vs. R. Gandhi/ Madras Bar Association upheld the Constitutional validity of NCLT. Hence establishment of NCLT and NCLAT were considerably delayed.



# Notification: 01<sup>st</sup> June 2016

- ▶ The Central Government has constituted the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) on 1 June, 2016 and dissolve the Company Law Board (CLB) as constituted under the Companies Act, 1956 from the same day.
- ▶ The NCLT has started functioning with eleven Benches – two at New Delhi and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. The Principal Bench of the NCLT will be at New Delhi.



# Introduction

- ▶ NCLT is a quasi-judicial authority created under the Companies Act, 2013 to handle corporate civil disputes arising under the Act. It has powers and procedures like those vested in a court of law.
- ▶ NCLT is obliged to objectively determine facts, decide cases in accordance with the principles of natural justice and draw conclusions from them in the form of orders. Such orders can remedy a situation, correct a wrong or impose legal penalties/costs and may affect the legal rights, duties or privileges of the specific parties. The Tribunal is not bound by the strict judicial rules of evidence and procedure. It can decide cases by following the principles of natural justice.
- ▶ NCLAT or “Appellate Tribunal” is an authority provided for dealing with appeals arising out of the decisions of the Tribunal. It is formed for correcting the errors made by the Tribunal. It is an intermediate appellate forum where the appeals lie after order of the Tribunal. The decisions of Appellate Tribunal can further be challenged in the Supreme Court. Any party dissatisfied by any order of the Tribunal may bring an appeal to contest that decision. The Appellate Tribunal reviews the decisions of the Tribunal and has power to set aside, modify or confirm it.

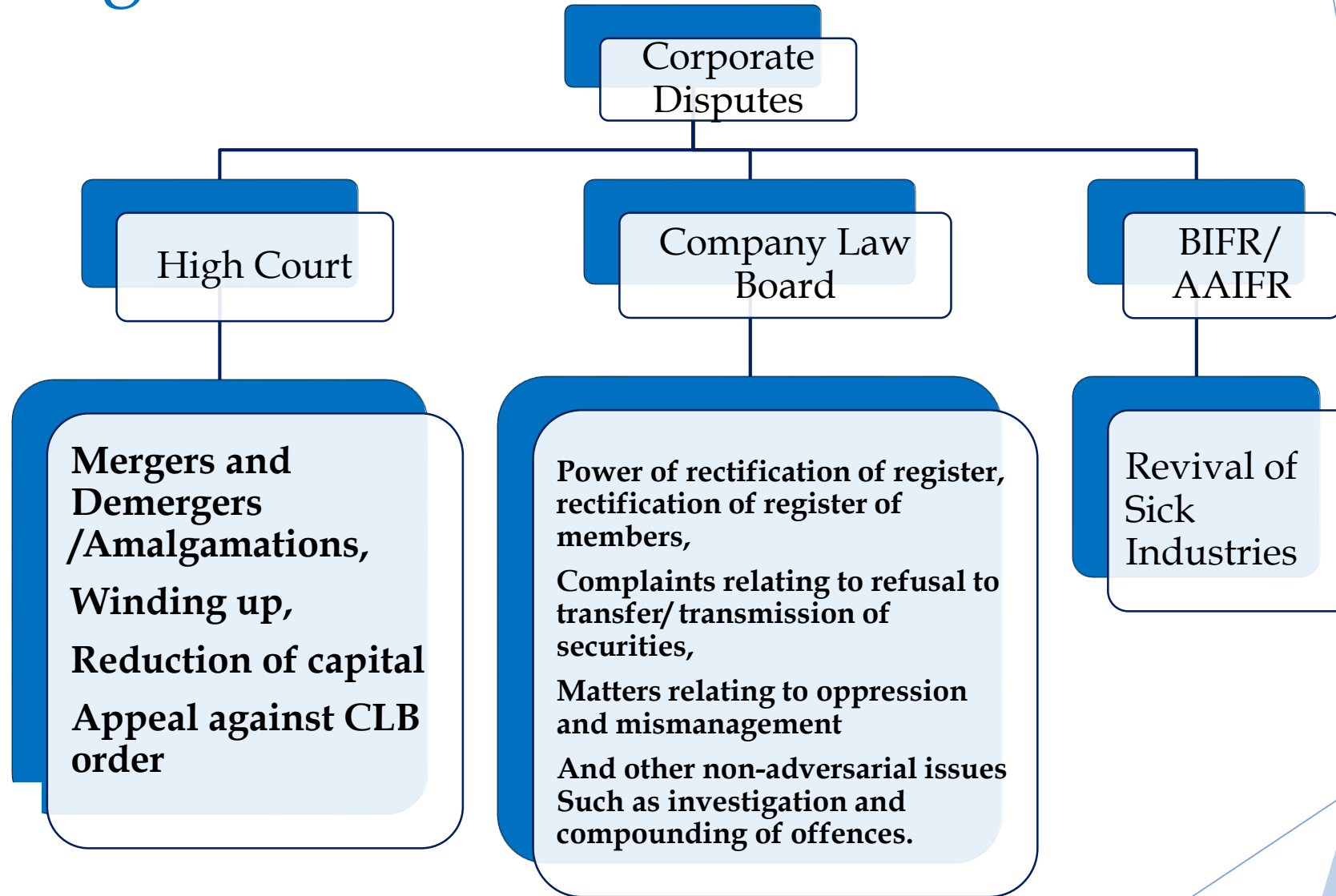


# Procedure, Power and Natural Justice

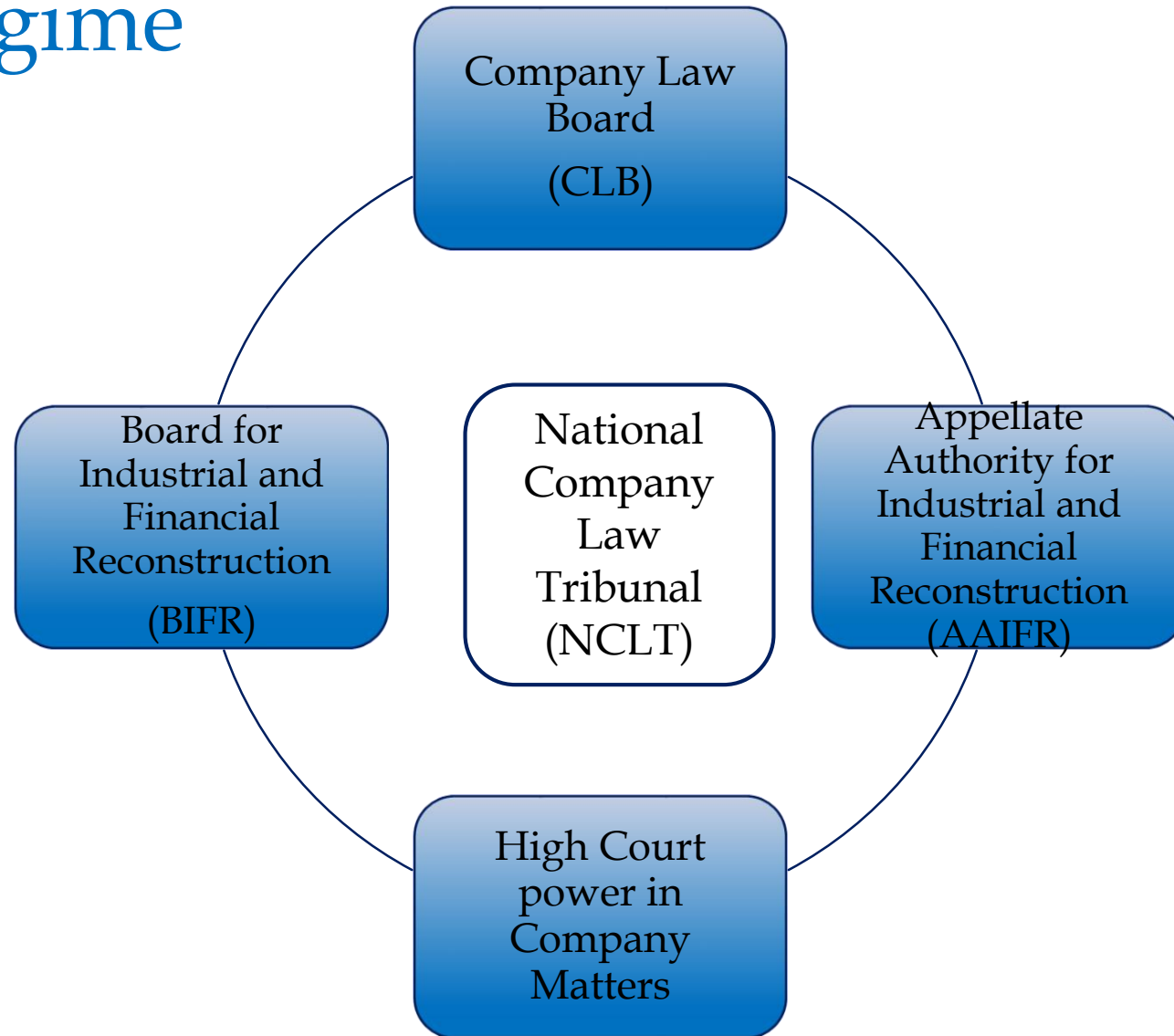
- ▶ The tribunal and appellate tribunal shall not be bound by the CPC but shall be guided by the principles of natural justice
- ▶ It shall have the powers to regulate its own procedure.
- ▶ All proceeding before the tribunal and the appellate tribunal shall be deemed to be judicial proceedings within the meaning of section 193 and 228of Cr.P.c. However the tribunal and appellate tribunal will have the power of the civil courts under CPC regarding summoning and evidence etc. (Section 424)



# Old Regime



# New Regime





# Consolidation of Corporate Jurisdiction

NCLT has replaced CLB, BIFR, and Company Court in the Hon'ble High Courts, and consolidate the jurisdiction of Judicial Courts and Quasi judicial tribunals.

Now NCLT has :

- ▶ All the powers of BIFR for revival and rehabilitation of sick industrial companies.
- ▶ Power of High Court in the matters of mergers, demergers, amalgamations, winding up, Reduction of capital.
- ▶ Most of the powers of the Company Law Board under the Companies Act, 1956.
- ▶ Power to order repayment of deposits accepted by Non- Banking Financial Companies as provided in section 45QA of the Reserve Bank of India Act, 1934.
- ▶ Power to Review its own orders.



# Opportunity under NCLT Regime

## Inherit from High Court & BIFR

- Merger & Amalgamation
- De-Merger
- Reduction of Share Capital
- Winding up
- BIFR

## Inherit from CLB

- Mismanagement and Oppression
- Rectification of register
- Compounding
- To call AGM/EOGM
- Removal of Directors and Auditors
- Others

## New Concepts

- Class Action Suit
- Financial Year Changing
- Cross Border Merger
- Issue and redemption of Preference Shares
- Re-opening of accounts



# Transition from CLB to NCLT

- ▶ Section 434 of The Act has set out in detail the procedure to deal with cases which are pending in various forums .
- ▶ The Government has notified 1st June 2016 for transfer of matters from CLB to NCLT.
- ▶ On that date, all the pending proceedings before CLB will be transferred to NCLT and Tribunal will dispose of such matters in accordance with the provisions of law. Tribunal has discretion to take up the pending CLB proceeding from any stage. At its discretion, it can take up the matter at stage where it was left by CLB or start the proceedings afresh or from any stage it deems fit.



# Advantage of Consolidation of Corporate Jurisdiction

## ▶ Appeals will be streamlined

Appeals against the order of the NCLT will go to NCLAT, exclusively dedicated for this purpose.

Further appeal to the Hon'ble Supreme Court will only be on any question of law, thereby reducing the delay in appeals (Section 423).

Earlier, the decisions of the Company Law Board were challenged before the High Court and then in the Supreme Court.

## ▶ Uniformity of Judgements

Instead of getting different decisions on the same matter by different High Courts, consolidation of jurisdiction will help the Tribunal Members and Judges in delivering uniform decisions and thereby removing any ambiguity and friction.



# Advantage of Consolidation of Corporate Jurisdiction

- ▶ Reduces the burden on the Hon'ble High Courts

Avoid multiplicity of litigation before various Forums (High Courts, CLB, BIFR, AAIFR).

- ▶ Focused attention to company matters

Advantage of having a single body dealing in company matters is that attention is focused to such matters only. High Court which was dealing in other matters took a long time to dispose off Company related matters. This will Reduce time for adjudication process.

At present, at the CLB, a matter takes six months to two years, while at the BIFR, it takes five-six years. But at the NCLT, it may take just three to nine months.



# NOTIFIED SECTIONS



# Incorporation Of A Company

## ▶ Section 7(7)

NCLT to pass orders such as--for regulation of management of the company, direct that the liability of the members be unlimited or pass an order for winding up in cases where a company has been incorporated by furnishing any false or incorrect information or suppressing any material fact or information or by any fraudulent action.

*Sections 7(7)(c) and (d) of the 2013 Act which provide powers to NCLT to remove the name of the company from the Register of Companies and order for winding up have still not been notified.*

Provided that before making any order under this sub-section, –

- ▶ (i) the company shall be given a reasonable opportunity of being heard in the matter; and
- ▶ (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.



# Alteration Of Articles

- ▶ **Second proviso to Section 14(1) and Section 14(2)**

If a company passes a special resolution to alter the articles that has the effect of converting a public company into a private company, this would require approval of the NCLT. A copy of the order approving the change shall be filed together with a printed copy of the altered articles within a period of 15 days in the manner prescribed.





# Issue and redemption of preference shares

## ▶ Section 55(3)

Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal, on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.



# Power of limited company to alter its share capital

## ▶ **Proviso to Section 61(1)(b)**

A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to –

(a) increase its authorised share capital by such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:

▶ Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;



# Further issue of share capital

- ▶ **Section 62(4) to(6)**

Company to appeal to the NCLT in case of conversion of debentures issued or loan obtained, from any government by a company, into shares of the company where the terms and conditions of such conversion are not acceptable to the company.



# Debentures

## ▶ Section 71(9) to (11)

Debenture holders/trustees to file a petition to the NCLT in case a company fails to redeem debentures or pay interest thereon, or in cases where the trustees feel the company has insufficient funds and it is unlikely that the company would be able to discharge the principal amount, when due. Further it grants power to the NCLT to order the company to redeem the debentures forthwith on payment of principal and interest due thereon or impose restrictions on the incurring of further liability. If any default is made in complying with the order of the NCLT, then the 2013 Act specifies penalties including imprisonment of officers of the company.



# Damages for fraud

## ▶ Section 75

In case the company fails to repay the deposit or part thereof of any interest within the specified time as per Section 74\* of the 2013 Act (extension if any granted by the NCLT) and it is proved that the deposit had been accepted to defraud the depositor or for fraudulent purposes, Section 75 of the 2013 Act provides that every officer of the company who was responsible for acceptance of such deposits will be personally responsible without any limitation of liability for the losses/damages incurred by the depositors.

▶ *\*Section 74 of the 2013 Act is not yet notified.*



# Power of Tribunal to call annual general meeting and meeting of members

- ▶ **Section 97, 98 and 99**
- ▶ NCLT has the Power to call Annual General Meeting (AGM) if default is made in holding the AGM.
- ▶ NCLT has the Power to call General Meeting other than AGM on the application of Director or Member.
- ▶ NCLT has the Power to provide Punishment for default in holding AGM and General Meeting.



# Inspection of minute-books of general meeting

## ▶ Section 119(4)

Under the 2013 Act, any member is entitled to request a copy of any minutes of general meeting of a company. If any such request is refused by the company, NCLT can, by order direct an immediate inspection of the minute-books of general meeting or direct that the copy required should be sent to the person requiring it.



# Re-opening of accounts or voluntary revision of financial statements or Board's report

## ► Section 130 and 131

Re-opening of accounts can be done based on order of court of competitive jurisdiction or the NCLT on request of the statutory regulatory body or any person in case the earlier accounts were prepared in a fraudulent manner or affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

Section 131 of the 2013 Act allows voluntary revision of financial statements or Board's report based on the NCLT order if directors of the company are of the view that financial statements/Board's report does not comply with the requirements of the 2013 Act.





# Removal, resignation of auditor and giving of special notice

## ▶ **Second proviso to Section 140(4) and Section 140(5)**

NCLT to order removal of an auditor of a company either through suo moto or an application made by central government or any other person concerned, if he/she had committed any fraud.

Such an auditor would not be eligible for appointment as an auditor of any company for a period of five years against whom order has been passed by NCLT for his/her removal from any company and he/she would also be liable for action under Section 447.



# Removal of Directors

## ▶ Section 169(4)

A director who is removed from a company may make representation to the company in the manner prescribed in this Section. The NCLT has been granted powers to restrict such representations in cases where this option has been abused by the director or for needless publicity for defamatory matters, etc.



# Investigation into company's affairs in other cases

- ▶ **Section 213**

NCLT can order an investigation into the affairs of company based on request by shareholders or any other person in specified circumstances.



# Investigation of ownership of company

## ▶ **Section 216(2)**

NCLT to order investigation into the affairs of the company with regards to the membership of the company and any other matters relating to the company.



# Protection of employees during investigation

## ▶ Section 218

An approval of the NCLT is required by the company for any action proposed against an employee during the course of any investigation of the affairs/other matters or during any proceedings under Section 210, 212, 213, 216, 219 and Chapter XVI of the 2013 Act.



# Freezing of assets of company on inquiry and investigation and imposition of restriction upon securities

- ▶ **Section 221 and 222**

NCLT to pass orders for freezing of assets of a company or to order investigation and imposition of restriction upon certain securities.



# Actions to be taken in pursuance of inspector's report

## ▶ Section 224 (5)

In case a fraud has taken place in the company and any director, key managerial personnel, other officer of the company or any other person of the company or entity has taken advantage due to such fraud, then the central government may file an application to the NCLT for passing appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be.



# Prevention of oppression and mismanagement

- ▶ **Section 241 to 244 [except Section 242(1)(b) and 242(2)(c) and (g)]**

NCLT to pass orders for prevention of oppression and mismanagement by a company.





# Conducting a class action suit

## ▶ Section 245

The 2013 Act has introduced the concept of class action to be instituted against the company through which shareholders and depositors can seek to restrain the company from committing an act which is ultra vires the articles or memorandum.

The NCLT Rules provide that while considering the admissibility of an application made under this provision, the Tribunal can take into account additional grounds such as:

- ▶ Whether the class has so many members that joining them individually would be impractical, making a class action desirable
- ▶ Whether there are questions of law or fact common to the class
- ▶ Whether the claims or defences of the representative parties are typical of the claims or defences of the class
- ▶ Whether the representative parties will fairly and adequately protect the interests of the class.



# NCLT and NCLAT

- ▶ **Section 415 to 433**

These sections contains :

Provisions relating to operations, functioning and constitution of members of the NCLT/NCLAT.



# Transfer of certain pending proceedings

- ▶ **Section 434(1)(a) and (b) and 434(2)**

Transition provisions for transfer of proceedings from CLB to NCLT.

Appeal against the order of CLB to High Court within 60 days of receipt of CLB order.

Power of CG to make rules for transfer of such pending matters.

The CLB stands dissolved and proceedings/cases pending before the CLB will stand transferred to the NCLT from the appointed date (1 June 2016).



# Compounding of Offences

## ▶ Section 441

The Companies 2013 Act provides powers to the NCLT relating to compounding of various offences.



# Dissolution of CLB and consequential provisions

## ► Section 466

Constitution of National Company Law Tribunal (NCLT)/National Company Law Appellate Tribunal (NCLAT).

Transfer of employees of Company Law Board (CLB) to the National Company Law Tribunal (NCLT)/National Company Law Appellate Tribunal (NCLAT).



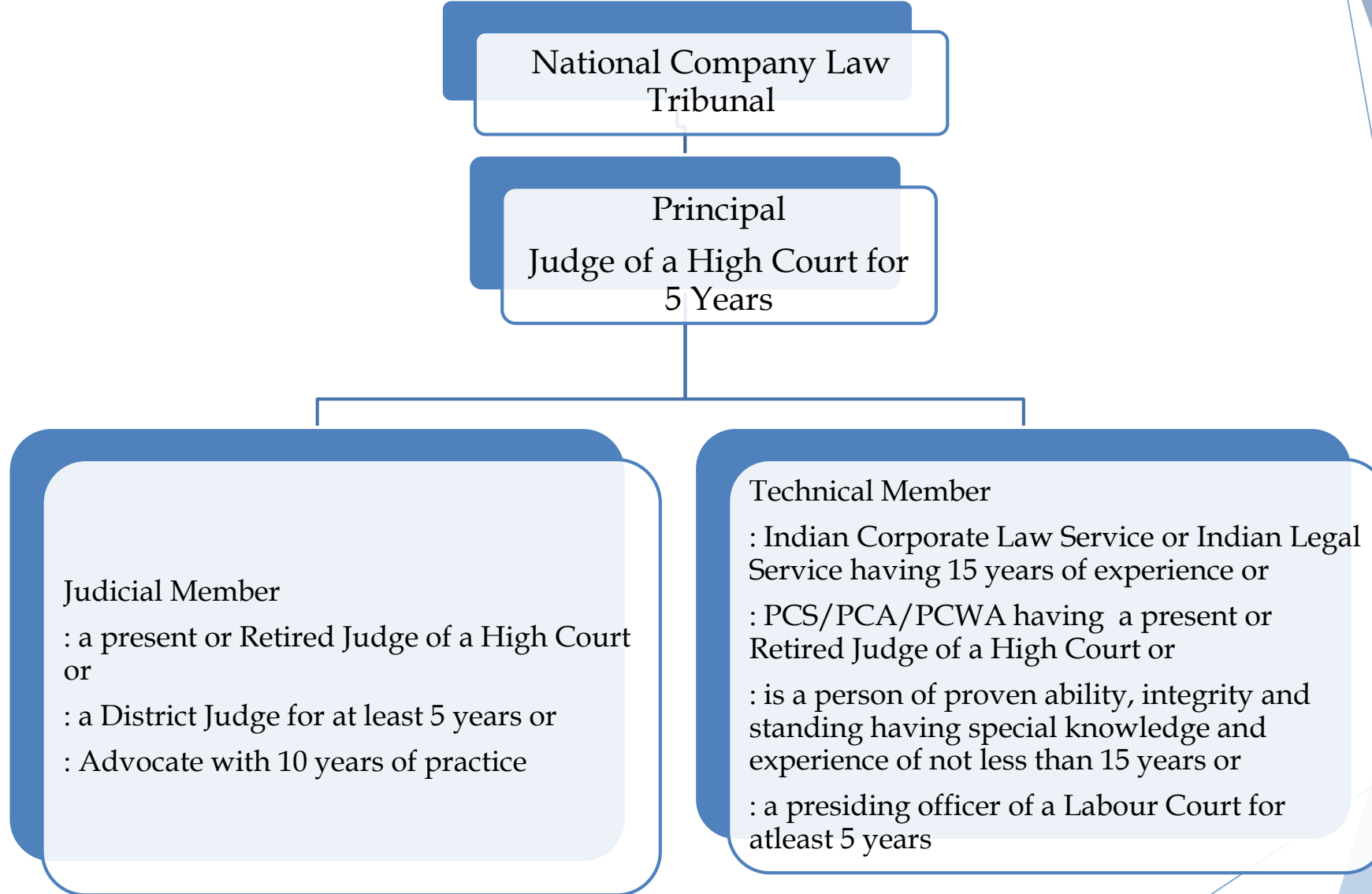
# Constitution of NCLT

Government has constituted 11 Benches of NCLT, out of which 1 will be the Principal Bench, which shall preside at New Delhi. Benches constituted and their respective territorial jurisdiction is as under:-



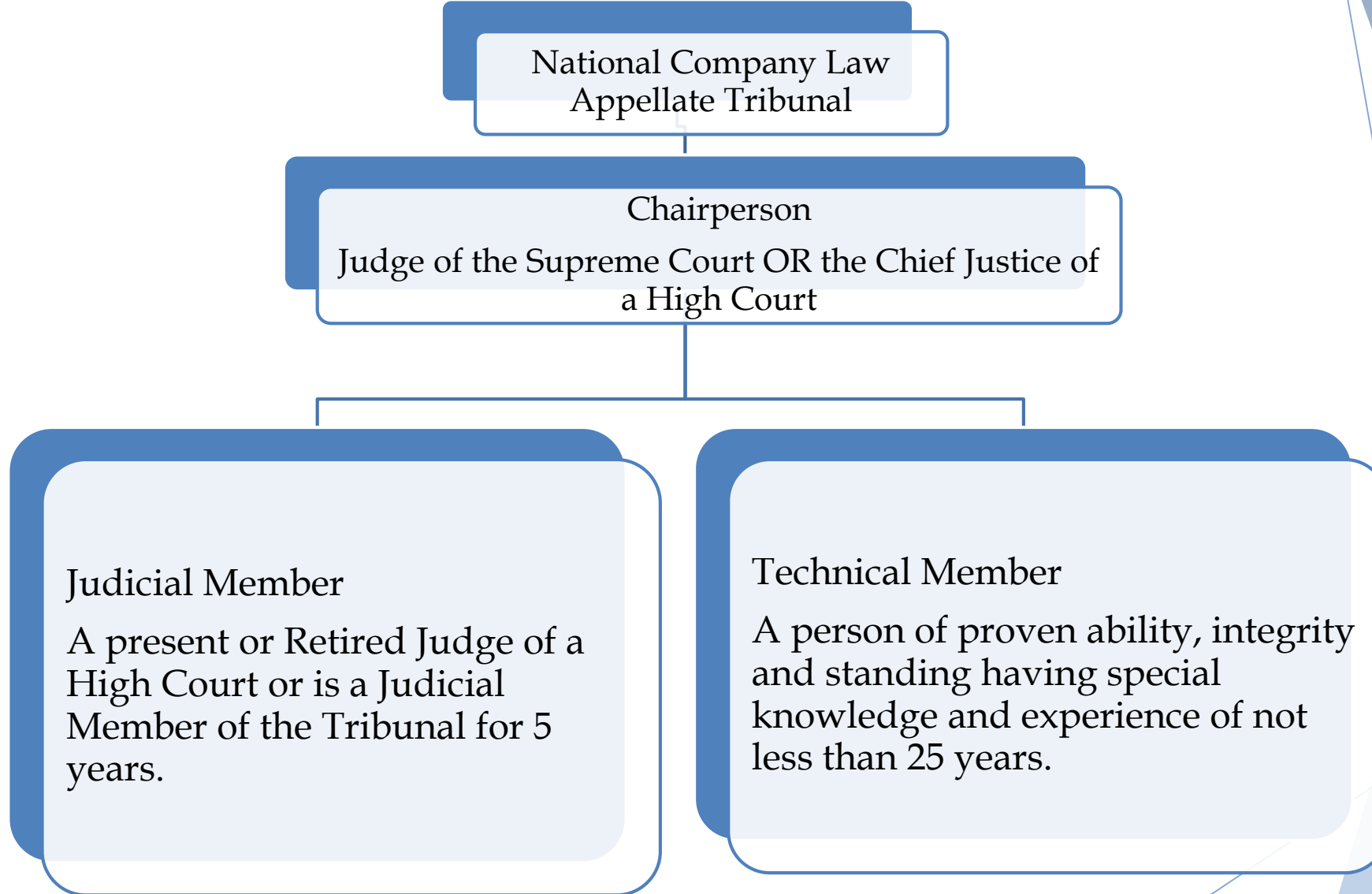
S.No	Location	Jurisdictional State / Union Territory
1.	New Delhi	Haryana, Rajasthan and Delhi
2.	Ahmedabad	Gujarat, Madhya Pradesh, Dadra and Nagar Haveli, Daman & Diu
3.	Allahabad	Uttar Pradesh and Uttarakhand
4.	Bengaluru	Karnataka
5.	Chandigarh	Himachal Pradesh, Jammu and Kashmir, Punjab and Chandigarh
6.	Chennai	Kerala, Tamil Nadu, Lakshadweep and Puducherry
7.	Guwahati	Arunachal Pradesh, Assam, Manipur, Mizoram, Meghalaya, Nagaland, Sikkim and Tripura
8.	Hyderabad	Andhra Pradesh and Telangana
9.	Kolkata	Bihar, Jharkhand, Odisha, West Bengal, Andaman and Nicobar Islands
10.	Mumbai	Chhattisgarh, Goa and Maharashtra

# CONSTITUTION OF NCLT





# CONSTITUTION OF NCLAT



# Conclusion

The constitution of NCLT/NCLAT is a stair in the right direction and signifies the inauguration of a new phase for corporate litigation in the country.

This step towards streamlining the corporate litigation reduced the burden of courts and simplify efforts for a faster resolution of corporate disputes. This can help improve the ease of doing business in India.



# THANK YOU

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