

Newsletter for July, 2016
By Amita Desai & Co.



We love to serve and add value to business of our clients



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Greetings and a warm welcome to our July Month's edition of Newsletter!

We are pleased to share our Newsletter for the month of July 2016. The newsletter covers the updates / amendments of [Ministry of Corporate Affairs \(MCA\)](#), [Securities and Exchange Board of India \(SEBI\)](#) and [Reserve Bank of India \(RBI\)](#).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circular issued by regulatory authorities during the month in concise and in simplified manner. We have tried to touch geneses of National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) in the [Article of the Month](#) section to cover the most recent development in the Companies Act, 2013.

Please feel free to leave comments, thoughts or suggestions.

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,

Amita Desai & Team



MCA UPDATES:

A. COMPANIES (COST RECORDS AND AUDIT) AMENDMENTS RULES,2016:

Ministry of Corporate Affairs (MCA) vide its notification dated July 14, 2016 has issued Companies (Cost Record and Audit) Amendment Rules, 2016 (“Rule 2016”).

1. Rule 3 of Companies (cost records and audit) Rules, 2014 provides for the applicability of cost records where in Table (A) covers the Regulated sector and Table (B) covers the Non-regulated sector.

As per notification following Industry /Services / Product / Services are added:

➤ In Table (A) i.e., Regulated Sectors

- I. Activities that requires authorization or license issued by the Department of Telecommunications, Government of India.
- II. Activities regulated by Petroleum and Natural Gas Regulatory Board under Petroleum and Natural Gas Regulatory Board Act, 2016

➤ In Table (B) i.e. Non-regulatory Sectors

1. Explosives
 2. Iron
 3. Mechanical Appliances
2. With the aforementioned notification exemption is given to industry engage in generation of electricity for captive consumption through Captive Generating Plant for cost audit under Rule 4 of Companies (cost records and audit) Rules, 2016
 3. As the notification henceforth prior consent of Cost Auditor will be required to obtain by the Company for which cost audit is mandatory under Rule 3. For the purpose

necessary proviso is added in Rule 6 of Rule 2016.

Further the cost auditor appointed shall submit a certificate that-

- a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment.
- b) the individual or the firm, as the case may be, satisfies the criteria provided in section 141 of the Companies Act, 2013 which provides for eligibility and qualification for auditor.
- c) The proposed appointment is within the limits laid down by or under the authority of the Act; and
- d) the list of proceedings against the cost auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.;

In Rule 6 of Rule 2016 a proviso is added after sub-rule 3 with respect to removal of cost auditor. The Cost auditor appointed may be removed from his office before the expiry of his term, through a board resolution after giving a reasonable opportunity of being heard to the Cost Auditor and recording the reasons for such removal in writing; further it provides Form CRA-2 to be filed with the Central Government for intimating appointment of another cost auditor shall enclose the relevant Board Resolution to the effect.

Also, the Cost Statement are now required to be approved by the Board of Directors before they are signed by any director on behalf of the board and submitted to cost auditor for cost audit report. For this purpose sub-rule (3A) is added in Rule 6 of Rules 2016.

Further cost auditor shall forward his duly signed report to the Board of Directors of the company within a period of 180 days from the closure of the financial year to which the report relates and the Board of Directors shall consider and examine such report, particularly any reservation or qualification.

It is also mandated with the aforementioned notification for every Company covered under rules to file CRA-4 in XBRL format, within a period of 30 days from the date of receipt of a copy of the cost audit report along with the information and explanation on every reservation or qualification

The link of the above Notification is as under:
http://www.mca.gov.in/Ministry/pdf/Rules_15_072016.pdf

B. COMPANIES (SHARE CAPITAL AND DEBENTURES) THIRD AMENDMENT RULES, 2016:

Ministry of Corporate Affairs (“MCA”) vide notification dated July 19, 2016 has issued Companies (Share Capital and Debentures) Third Amendment Rules, 2016 which shall come into effect from the date of its publication in the official gazette.

In the Companies (Share Capital and Debentures) Third Amendment Rules, 2016 following major amendments are introduced:

1. Sub Rule (1) of Rule (4) of Companies (Share Capital and Debentures) Rules, 2014 lays down various conditions to be complied with by the Company in order to issue equity shares with differential rights as to dividend, voting or otherwise. One of such condition is that there should be no default made by the Company in respect of the following:
 - a. payment of the dividend on preference shares or;
 - b. repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or; dues with respect to statutory payments relating to its employees to any authority or;

- c. default in crediting the amount in Investor Education and Protection Fund to the Central Government;

With the aforesaid amendment notification, a proviso has been inserted allowing Companies who have defaulted any of the aforesaid conditions, to issue equity shares with differential rights after expiry of 5 years from the end of financial year in which default was made good.

2. As per the Companies (Share Capital and Debentures) Rules, 2014, Companies are permitted to issue sweat equity shares, higher of the following:
 - (i) 15% of the existing paid up equity capital in a year **or**
 - (ii) shares of issue value of Rs. 5 crores;

Now, a startup Company, as defined by Department of Industrial Policy and Promotion, can issue sweat equity shares upto maximum 50% of paid up capital, till 5 years from the date of its incorporation or registration.

This amendment is a stepping stone towards facilitating the startup Companies to attract and retain the best of the human resources available in the industry.

The amendment rules now permits the startup companies as defined by Department of Industrial Policy and Promotion to issue shares under a scheme of Employees’ Stock Option (“ESOP”) for a period of 5 years from the date of its incorporation or registration to the following:

- (i) an employee who is a promoter or a person belonging to the promoter group; or
- (ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than 10% of the outstanding equity shares of the startup company.

The same was not permitted earlier as aforesaid employees / director were not included in the definition of the employee for the purpose of issuing shares under the scheme of ESOP.

3. Companies can now allot partly paid securities on preferential basis as the mandatory requirement of issuing fully paid-up securities has been done away with this amendment rules.
4. Companies issuing convertible securities on a preferential basis, now have the following two option to determine the price of the equity shares, to be issued upon conversion of the securities;

Provided that the Company shall take a decision on sub-clauses (i) or (ii) at the time of offer of convertible security itself and make such disclosure in the explanatory statement annexed to the notice of general meeting for issuing such convertible securities on preferential basis.
5. Company not having a share capital and proposing to increase its number of members will now have to file Form SH-7 with the Office of Registrar of Companies for intimating such increase in number of members.
6. Companies can now create a security by creating charge or mortgage on the properties / assets of its subsidiaries or its holding company or its associates company for securing the issue of secured Debentures. Prior to this amendment, the charge was allowed to be created only on the properties/assets of the Company issuing such secured Debentures.
7. Now, for the NBFC's registered with RBI, Housing Finance Companies registered with National Housing Bank, Manufacturing and Infrastructure Companies, Debenture Redemption Reserve ("DRR") will be required to be created for an amount of 25% of the value of outstanding debentures as against the total value of the debentures. Also a proviso has been inserted which states that higher amount may be transferred to DRR as may be necessary in case of premature redemption of debentures even if it exceeds the limits prescribed i.e. 25%.

The link of the above Notification is as under;

http://www.mca.gov.in/Ministry/pdf/Rules_19072016.pdf

C. ACCOUNTS OF FOREIGN AIRLINE COMPANIES

Ministry of Corporate Affairs (MCA) vide notification dated July 19, 2016 has provided that Foreign Airline Companies having share capital are required to comply with the provisions of clause (a) of sub-section (1) of section 381 of the Companies Act, 2013 for Accounts of the Foreign Companies if the same are submitted to Registrar of Companies for the period ending on or after the 31st March, 2016:

(i) Latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation. Provided that where such documents are not in English language, there shall be annexed to it a certified translation thereof in the English language.

(ii) A statement of receipts and payments for the financial year, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India in case of its Indian Business operations.

The link of the above Notification is as under:

http://www.mca.gov.in/Ministry/pdf/Notification_19072016.pdf

D. NATIONAL COMPANY LAW TRIBUNAL RULES 2016 AND NATIONAL COMPANIES LAW APPELLATE TRIBUNAL RULES 2016:

Ministry of Corporate Affairs (MCA) vide notification dated July 21, 2016 has notified rules with respect to National Company Law Tribunal ("NCLT") and National Company Law Appellate Tribunal ("NCLAT"). The NCLT rules consists of a set of 165 Rules divided in 20 parts and NCLAT rules consists of set of 104 Rules divided in 16 parts along with applicable forms for applications/ petitions, schedule of fees and

list of documents to be attached with various applications/ petitions, etc

Earlier MCA vide notification dated June 1, 2016 notified sections relating to NCLT and NCLAT.

The link of the above Notification is as under:
NCLT

http://www.mca.gov.in/Ministry/pdf/Rules_22072016_1.pdf

NCLAT

http://www.mca.gov.in/Ministry/pdf/Rules_22072016.pdf

E. ADDITIONAL SESSION JUDGE-03, SOUTH WEST DISTRICT, DWARKA TO EXERCISE JURISDICTION OF SPECIAL COURT

MCA vide its notification dated July 27, 2016 has notified that Additional Session Judge-03, South West District, Dwarka will exercise jurisdiction as Special Court for providing speedy trial of offences punishable under the Companies Act, 2013 with imprisonment of two years or more.

The link of the above Notification is as under:

http://www.mca.gov.in/Ministry/pdf/designation_ofSpecialCourt_28072016.pdf

F. COMPANIES (INCORPORATION) THIRD AMENDMENT RULES, 2016

Ministry of Corporate Affairs (MCA) vide its notification dated July 27, 2016 has issued Companies (Incorporation) Third Amendment Rules, 2016.

Following are the major changes notified by the aforesaid notification:

1. Now a Natural person cannot be **member and nominee in more than a One Person Company (“OPC”)**. Earlier as per Rule 3 (2) person could be either member or nominee in not more than one OPC.
2. In Rule 8 (2) (ii), with respect to filing of application for availability of name, the name of the Company is undesirable, if it includes the name which is subject of an

application for registration under **Trade Mark Act, 1999** and rules made thereunder.

3. In Rule 8 (6) (n), For availing name **“Financial Corporation”**- prior approval of Central Government (CG) is required once and not separately for word **“Financial” and “Corporation”**.
4. In Rule 8 (6) (n) relating to the words and combinations requiring the prior approval of Central Government (CG) for name availability, comma (,) between the words Financial Corporation is removed. Now for availing name **“Financial Corporation”** CG approval is required. Prior to this notification CG approval was required for both the word in the proposed name **“Financial” and “Corporation”**.

In Explanation after Rules 13(2), Now the **“Type Written” or “Printed” particulars of the subscriber and witness shall be allowed** on Memorandum and Article of Association provided subscriber or the witness appends his or her signature or thumb impression and **requirement of subscriber page to be hand written is removed.**

5. In Explanation after Rule 16 (1) (m), Now **if the person is already holding Director Identification Number (DIN)**, and the particulars provided therein are updated as on the date of application and declaration in this regard is given in the application, **proof of identity and residence need not be attached.**

Also, Rule 16 (1) (q) for filing specimen **signature and latest photograph in form INC-10 is omitted.**

Now partnership firms cannot subscribe the MOA as the word “Partnership Firm” is omitted from Rule 16 (2) (g).

6. Rule 26 has been amended for mandating every **Company which has a website for conducting online business or otherwise,** shall disclose/publish following information:

- a) **Name**
 - b) **Address** of its registered office,
 - c) **Corporate Identity No. (CIN)**,
 - d) **Telephone number, fax** no if any,
 - e) **Email and name of the person who may be contacted in the case of any queries or grievances** on the landline/home page of the said website.
7. In proviso after Rule No. 28 (2), Shifting of registered office within state shall be allowed only on the completion of any inquiry, inspection or investigation.
 8. In Rule no. 29 (1) relating to alteration of Memorandum by change of name, a proviso is added with the aforesaid notification. **Change of name** of the Company which has made default with respect to filing of Annual Return or financial statements or any documents due for filing with the registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures **will be allowed once the pending filing is completed and repayment of deposits and debenture has been made.**
 9. Following changes have been notified in **Rule 30 pertaining to shifting of registered office from one state to another state**
 - a) In sub-rule 1 sub-clause (j) is added requiring the Non Banking Financial Companies (NBFC) to obtain no objection certificate (NOC) from RBI.
 - b) From sub-rule 6 in clause (c) requirement of filing of notice published in newspaper for application of shifting of registered office to Securities Exchange Board of India in case of listed companies is omitted.
 - c) In proviso after Rule No. 30 (10), Shifting of registered office from one state to another shall be allowed only on the completion of any inquiry, inspection or investigation.

10. With the above mentioned notification a new Rule 37 is inserted for conversion of unlimited liability Company into limited liability Company by shares or guarantee. Detailed procedure and conditions to be complied with are prescribed.

The link of the above Notification is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesThridAmendmentRules_28072016.pdf

G. COMPANIES (ACCOUNT) AMENDMENT RULES, 2016

MCA vide its notification dated July 27, 2016 has issued the Companies (Accounts) Amendment Rules, 2016.

Following are the amendment introduced with the above mentioned notification:

1. In Rule 6 relating to manner of consolidation of accounts, second proviso has been substituted providing exemption in respect of preparation of consolidated financial statement by a Company if it meets all the following conditions:
 - a) it is a **wholly-owned subsidiary**, or is a partially-owned subsidiary of another company **and all its other members**, including members not entitled to vote, **intimated in writing and for which the proof of delivery of such intimation is available** with the company, and they have not objected to company not presenting consolidated financial statements;
 - b) it is a **company whose securities are not listed** or are not in the process of listing on any stock exchange, whether in India or outside India and
 - c) **its ultimate or any intermediate holding company files consolidated financial statements with the Registrar** which are in compliance with the applicable Accounting Standards.

2. In Rule 8 (1) **highlights of performance of subsidiaries**, associates and joint venture companies and their **contribution to the overall performance of the company** during the period is required to be included in Board Report.

3. **In Rule 13, relating to appointment of Internal Auditor, Now individual or a partnership firm or a body corporate** can be appointed as internal Auditor of the Company, which includes **Cost Accountant whether engaged in practice or not.**

4. Now in Form AOC- 1, Companies having subsidiaries/ joint ventures/ associates required to disclose the **date of acquisition of such subsidiaries/ joint ventures/ associates.**

The link of the above Notification is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesAccountsAmendmentRules_28072016.pdf

A. REVISED FORMATS FOR FINANCIAL RESULTS AND IMPLEMENTATION OF IND-AS BY LISTED ENTITIES:

SEBI vide its Circular dated July 05, 2016 has drawn attention of all listed entities and all recognized Stock Exchanges pertaining to existing formats for Unaudited/Audited quarterly financial results i.e. Statement of Profit and Loss and the Unaudited/Audited Half-Yearly Balance Sheet to be submitted by the listed entities, with the stock exchanges. Earlier, SEBI vide its Circular No.15/2015 dated November 30, 2015, had prescribed formats for publishing financial results. Now, in consultation with the market participants i.e. Listed Entities, Stock Exchanges and Members of the Institute of Chartered Accountants of India ('ICAI'), SEBI has decided that the existing formats as stated in Circular No.15/2015 dated November 30, 2015 shall continue till the period ending December 31, 2016.

- The formats for Unaudited/Audited quarterly financial results i.e. **Statement of Profit and Loss** and the Unaudited/Audited Half-Yearly **Balance Sheet** to be submitted by the Listed Entities, with the stock exchanges, shall be as per the formats for Balance Sheet and Statement of Profit and Loss (excluding notes and detailed sub-classification) as prescribed in **Schedule III to the Companies Act, 2013 for the period ending on or after March 31, 2017**
- SEBI further stated that until Companies(Indian Accounting Standards) Rules, 2015 ('**Ind-AS Rules**') become applicable, the listed entities shall adopt Companies (Accounting Standards) Rules, 2006 ('**AS Rules**') as prescribed by the Ministry of Corporate Affairs ('MCA').

- In order to facilitate **smooth transition** during the **first year of Ind-AS implementation**, **relaxations** are being given to the listed entities to which Ind-AS Rules are applicable from the accounting period beginning on or after April, 1, 2016.
- Rules are applicable from the accounting period beginning on or after April, 1, 2016. The timeline for submitting the financial results for the quarter ended **June 30, 2016 and September 30, 2016** may be extended to **September 14, 2016 and December 14, 2016** respectively.
- A listed entity may historically have a year-end other than 31st day of March, and may now be required to prepare financial statements for a period longer or shorter than the normal 12 month period for coinciding with 31st day of March as prescribed under Section 2 (41) of the Companies Act, 2013. In such cases, the Ind-AS financial statements for various periods beginning from April 01, 2016, shall have comparative information for a shorter or longer period i.e. beginning from a date other than 1st of April 2015
- For detailed information, please find below pasted link:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1467712561526.pdf

B. FORMULATION OF DIVIDEND DISTRIBUTION POLICY:

SEBI vide notification dated July 08, 2016 has made regulations to further amend Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. Such regulations may be called the These regulations may be called the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2016

and shall come into force on the date of their publication in the Official Gazette.

- Regulation 43 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 states that the listed entity shall declare and disclose the dividend on per share basis only. In the said circular SEBI has amended Regulation 43 by stating that the **top 500 listed entities shall now formulate a Dividend Distribution Policy and the same shall be disclosed in the Annual Reports** as well as on the website of the entity. However, the entities are considered top 500 entities based on market capitalization calculated as on March 31 of every financial year.
- Dividend Distribution Policy should include certain parameters which are laid down as under:
 - the circumstances under which the shareholders of the listed entities may or may not expect dividend ;
 - the financial parameters that shall be considered while declaring dividend ;
 - internal and external factors that shall be considered for declaration of dividend ;
 - policy as to how the retained earnings shall be utilized ;
 - parameters that shall be adopted with regard to various classes of shares.
- However, if the listed entity proposes to declare dividend in addition to the parameters stated above, they shall disclose such changes along with the justification for the same in its Annual Report and on website.
- The listed entities other than top 500 entities may voluntarily disclose Dividend Distribution Policy.

C. SIMPLIFICATION OF ACCOUNT OPENING KIT:

SEBI vide its Circular dated July 12, 2016 has provided a simplification process of part of Account opening kit to the clients of Stock Broker/Depository Participant.

- At present, a stock broker/ depository participant is required to provide a copy of the standard documents such as Rights & Obligations of stock broker, sub-broker and client for trading on exchanges (including additional rights & obligations in case of internet/ wireless technology based trading), Rights and Obligations of beneficial owner and depository participant, Uniform Risk Disclosure Documents and Guidance Note detailing Do's and Don'ts for trading on stock exchanges.
- Further, in consultation with the market participants and with a view to ease the account opening kit, it has been decided that stock broker/ depository participant shall make available the aforesaid standard documents to the clients, either in electronic or physical form, depending upon the preference of the client as part of account opening kit. Also, if the documents are made available in electronic form, stock broker/ depository participant shall maintain logs of the same.
- In addition to the above, stock exchanges / depositories / stock brokers/ depository participants shall also continue to make available the aforesaid documents on their website and keep the clients informed about the same and necessary steps shall be taken to implement the said circular in order to ensure its full compliance in respect of all new clients from August 01, 2016.
- For detailed instructions, please refer the below pasted link:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1468404844078.pdf

D. ACCEPTANCE OF FIXED DEPOSIT RECEIPTS (FDRS) BY CLEARING CORPORATIONS:

SEBI vide its circular dated July 15, 2016 has further aligned the risk management practices of the securities market with the Principles for Financial Market Infrastructures (“PFMIs”) to the recognized Clearing Corporations.

- At present, Fixed Deposit Receipts of banks are accepted by Clearing Corporations as eligible collateral from the participants. However, it is observed that some banks who are also trading members/ clearing members on the Stock Exchange/Clearing Corporation have placed Fixed Deposit Receipts issued by themselves as Collateral, with the Clearing Corporation.
- In order to solve the issue of ‘deposit of collateral’ with the Clearing Corporation, the Risk Management
- Review Committee of SEBI also considered the PFMI principle 5 on 'Collateral' which was implemented by SEBI, a member of the International Organization of Securities Commissions (IOSCO).
- However, based on recommendations of the Risk Management Review Committee of SEBI, it has been decided to further align the risk management practices of the securities market with the PFMIs and hence the Clearing Corporations are advised to implement the same.

➤ Further, Clearing Corporations are also directed to take necessary steps to ensure compliance with the relevant bye-laws, rule and regulations, to update about the said circular to their members and also disseminate the same on its website. It also advised to implement the provisions of this circular and communicate to SEBI for the status of the same.

➤ For detailed information, please refer the below mentioned link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1468572776249.pdf

A. EXTERNAL COMMERCIAL BORROWING

➤ RBI vide circular no.80 dated June 30,2016 has drawn attention of Authorized Dealers on External Commercial Borrowing, Trade Credits, etc in respect of ECB cases under the approval route.RBI in the said circular has decided that ECB proposals above certain thresholds which were amended vide Master Direction Jan 2016 are to be placed before the Empowered Committee.

➤ For detailed instructions, please refer the below pasted link:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/AP80040A3B29441046A5A5E3F4C404888B29.PDF>

B. QUATERLY REPORTING SYSTEM OF INDIAN BANKS

➤ RBI vide circular BS.CO.PPD.15123/11.01.021/2015-16 dated June 30, 2016 has discontinued the submission of quarterly return for reporting of profit and asset size of overseas operations of the bank.

➤ For detailed instructions, please refer the below pasted link:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT4355BA654DA835C4EB4911AF4B86D257A9F.PDF>

C. OPERATIONALISATION OF CENTRAL KYC REGISTRY (CKYCR)

➤ RBI vide circular dated November 26, 2015 had notified and authorized Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) to perform functions of CKYCR for individuals and legal entities.

➤ Further RBI vide circular dated July 08,2016 has stated that CKYCR for Schedule Commercial Bank (SCB) will commence from July 15,2016 for new individual accounts and has provided the steps to follow for uploading information in CERSAI.

➤ For detailed instructions, please refer the below pasted link:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/11CRF783AB2959AD4DF18EAD5EF0DD80FFAD.PDF>

D. DISCONTINUATION OF REPORTING OF BANK GUARANTEE ON BEHALF OF SERVICE IMPORTERS

➤ RBI vide master direction January 01,2016 had permitted Authorized Dealers (AD) to issue bank guarantee in favour of non-resident service provider on behalf of resident customer importing service and report the same to Chief General Manager-in- Charge .

➤ Further RBI vide circular dated July 05, 2016 has advised AD to discontinue such reporting for reducing burden of compliances on AD.

➤ For detailed instructions, please refer the below pasted link:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI087626F0A1523A492EA2AD74678AC55476.PDF>

ARTICLE OF THE MONTH

NATIONAL COMPANY LAW TRIBUNAL AND NATIONAL COMPANY LAW APPELLATE TRIBUNAL – NOW A REALITY

The Companies Act, 2013 ever since its inception has seen phased implementation. The latest in the process is a pleasant surprise on 1st June 2016 when Ministry of Corporate Affairs (MCA) notified constitution of National Company Law Tribunal (“NCLT”) and National Company Law Appellate Tribunal (“NCLAT”) and notified sections of Companies Act 2013 relating to NCLT.

On 21st July 2016, MCA issued Rules relating to NCLT and NCLAT.

BRIEF HISTORY OF NCLT

NCLT was first introduced in the Companies (Second Amendment) Act, 2002 to look into most corporate matters pending before Company Law Board (CLB), Board for Industrial and Financial Reconstruction (BIFR) and Corporate Benches of High Court. This was proposed on the recommendations of the Justice Eradi Committee.

The validity of the NCLT and NCLAT was one of the most debated issues in the company law since its introduction as it was a complete transfer of jurisdiction of High Court in Company matters to a Quasi Judicial Body.

A Quasi Judicial Body is an entity such as an arbitrator or tribunal board, generally of public administrative agency, which has powers and procedure resembling those of a court of law or judge, and which is obliged to objectively determine facts and draws conclusions from them so as to provide the basis of an official action. Such actions are able to remedy a situation or impose legal penalties, and may affect the legal rights, duties or privileges of specific parties.

The major differences of such Tribunal from Judicial is the Tribunal can have its own procedure and need not follow strict judicial rules of evidence and procedure and are also not bound by precedent in common law. This has raised litigation with the question of effectiveness of mechanism and its independence and concern was mainly for qualification prescribed for members, have been held to be defective

The matter was put to rest with the judgement of Supreme Court dated 14th May 2015 in the matter of Writ Petition filed by the Madras Bar Association challenging the constitutional validity of NCLT and NCLAT. The Writ Petition was dismissed by the Apex Court and allowed functioning of NCLT and NCLAT.

So, finally after waiting of long 14 years, NCLT and NCLAT has become reality with the notification no. S.O. 1932(E) and S.O. 1933(E) both dated June 1, 2016.

The NCLT rules consists of a set of 165 Rules divided in 20 parts along with applicable forms for applications/ petitions, schedule of fees and list of documents to be attached with various applications/ petitions, etc.

The NCLAT rules consists of a set of 104 Rules divided in 16 parts along with applicable forms for applications/ petitions, schedule of fees and list of documents to be attached with various applications/ petitions, etc.

NCLT has powers to delegate inquiry related to proceedings before it, securing assistance of a magistrate or collector to take possession of property. NCLT will have an impact on improving India's ranking in the World Bank's Ease of Doing Business index. With setting up of NCLT, the matters relating to insolvencies will also be heard as per proposed Bankruptcy Code.

As NCLT and NCLAT has power to make its own procedure it is expected to get speedy remedy and cases will be disposed of expeditiously.

BENCHES AND LOCATIONS

On June 1, 2016 vide notification no S.O. 1935(E) the Central Government has constituted 11 Benches of NCLT at 10 locations.

Under the CLB regime there were only **5 benches**. However, the NCLT has commenced with **11 benches, with the Principal Bench being in New Delhi**. This will provide wider reach for adjudicating company law matters in India. Territorial Jurisdiction of the Bench and its locations are as under:

Sr. No.	Title of the Bench	Location	Territorial Jurisdiction of the Bench
1.	a) National Company Law Tribunal, Principal Bench. b) National Company Law Tribunal, New Delhi Bench.	New Delhi	1. State of Haryana. 2. State of Rajasthan. 3. Union territory of Delhi.
2.	National Company Law Tribunal, Ahmedabad Bench.	Ahmedabad	1. State of Gujarat. 2. State of Madhya Pradesh. 3. Union territory of Dadra and Nagar Haveli. 4. Union territory of Daman and Diu.
3.	National Company Law Tribunal, Allahabad Bench.	Allahabad	1. State of Uttar Pradesh. 2. State of Uttarakhand.
4.	National Company Law Tribunal, Bengaluru Bench.	Bengaluru	1. State of Karnataka.
5.	National Company Law Tribunal, Chandigarh Bench.	Chandigarh	1. State of Himachal Pradesh. 2. State of Jammu and Kashmir. 3. State of Punjab. 4. Union territory of Chandigarh.
6.	National Company Law Tribunal, Chennai Bench.	Chennai	1. State of Kerala. 2. State of Tamil Nadu. 3. Union territory of Lakshadweep. 4. Union territory of Puducherry.
7.	National Company Law Tribunal, Guwahati Bench.	Guwahati	1. State of Arunachal Pradesh. 2. State of Assam. 3. State of Manipur. 4. State of Mizoram. 5. State of Meghalaya. 6. State of Nagaland. 7. State of Sikkim. 8. State of Tripura.
8.	National Company Law Tribunal, Hyderabad Bench.	Hyderabad	1. State of Andhra Pradesh. 2. State of Telangana.

9.	National Company Law Tribunal, Kolkata Bench.	Kolkata	1. State of Bihar. 2. State of Jharkhand. 3. State of Orissa. 4. State of West Bengal. 5. Union territory of Andaman and Nicobar Islands.
10.	National Company Law Tribunal, Mumbai Bench.	Mumbai	1. State of Chhattisgarh. 2. State of Goa. 3. State of Maharashtra.

HIGHLIGHTS

1. Dissolution of CLB/ BIFR/ AAIFR and cases pending before Company Bench of High Court will be transferred

With the establishment of the NCLT and NCLAT, the Company Law Board under the Companies Act, 1956 stands dissolved and BIFR and AAIFR, matters pending before Company Bench with High Court will be transferred to NCLT .

2. Matters transferred to NCLT

While provisions relating to the investigation of a company's accounts, freezing of assets, class action suits, conversion of a public company to a private company will now be governed by the NCLT. And appeal relating to this would be before NCLAT instead of High Court.

3. Powers continue with High Courts till transferred

The powers of High Court under the Companies Act 2013 / 1956 relating to reduction of share capital, winding-up and compromise or arrangement (merger, demerger, and settlement) will still continue with the High Courts of respective state and subsequently it will be transferred to NCLT.

4. Appeals

Any person aggrieved by the decision of the NCLT can file an appeal under Section 421 of the Companies Act, 2013 to **NCLAT within 45 days from the date of the NCLT order.**

The **NCLAT order can be appealed in the Supreme Court within 60 days** from the date the order passed by the NCLAT.

5. Notified Sections

Following provisions of the Companies Act 2013 were made effective vide Notification dated June 01, 2016

Sr No.	Chapter No	Chapter Name	Section notified	Powers under CA 2013
1	II	Incorporation of Company	7 (7) [except clause (c) and (d)]	Legal action for false or incorrect information or representation in any of the document pursuant to incorporation except removal of name or winding up orders.
2	II	Incorporation of Company	14 (1) and (2)	Conversion of status of the Company from Private to Public and Public to

				Private.
3	IV	Share Capital and Debentures	55 (3)	Further issue of Redeemable Preference Shares to its Existing Preference Shareholder in case Company is not in position to Redeem its Preference Shares or pay dividend thereof (roll over)
4	IV	Share Capital and Debentures	Proviso to 61(1) (b)	Consolidation and sub-division of shares resulting in change in voting percentage of shareholding
5	IV	Share Capital and Debentures	62 (4) to (6)	Decide on any appeal by the Company against the order of Government for conversion of any loan / debenture into equity shares in public interest in case of terms and conditions not acceptable by the Company.
6	IV	Share Capital and Debentures	71 (9) to (11)	Redeem Debentures in case of secured assets becomes insufficient
7	V	Acceptance of Deposits	75	Action against the Company in case it intends to defraud the depositors.
8	VII	Management and Administration	97	Power to call AGM in case of failure of the Company to hold it
9	VII	Management and Administration	98	Power to call Meeting of Members other than AGM
10	VII	Management and Administration	99	Penal provision for non compliance with directions of Tribunal to call for AGM / Members Meeting
11	VII	Management and Administration	119 (4)	Order for inspection in case of default made by Company for not providing copy of Minutes of GM
12	IX	Accounts of Companies	130	Order for Re-Opening of Accounts if earlier Accounts are prepared in fraudulent manner or the affairs of Companies were mismanaged
13	IX	Accounts of Companies	131	Order for voluntary revision of Financial Statement or Director's Report filed by the Company
14	X	Audit and Auditors	140 (4) and (5)	Removal of Auditor without giving opportunity for representation and also suo moto order to change the Auditors in case Tribunal finds him involved in fraud

15	XI	Appointment and Qualification of Directors	169(4)	Order that representation need not be read out in case of removal of Director
16	XIV	Inspection, Inquiry and Investigation	213	Investigation into the Company's affairs
17	XIV	Inspection, Inquiry and Investigation	216(2)	Power to appoint Inspector for investigation
18	XIV	Inspection, Inquiry and Investigation	218	Power to approve taking of any action against the employees
19	XIV	Inspection, Inquiry and Investigation	221	Power to freeze assets of Company during investigation if prejudicial to the interest of the Company and other stakeholders
20	XIV	Inspection, Inquiry and Investigation	222	Power to freeze securities of Company during investigation
21	XIV	Inspection, Inquiry and Investigation	224 (5)	Power of Tribunal based on inspector's report to disgorgement of assets of the Company in case of fraud by the Director or KMP or other person and make them liable personally without any limitation of liability
22	XVI	Prevention of Oppression and Mismanagement	241, 242 [except Clause (b) of Sub Section (1), Clause (c) and (g) of Sub Section (2)], 243, 244 and 245	Oppression Mismanagement and Class Action suits
23	XXI V	Registration Office and Fees	399	No production of documents filed with Registrar relating to Courts Orders without permission of Tribunal or Court
24	XXV II	National Company Law Tribunal	415 to 433 both inclusive	Appointment, Removal, Power, Procedure for appeal etc of NCLT
25	XXV II	National Company Law Tribunal	434 (1)(a) and (b) and sub section (2)	Transition provision for pending CLB cases
26	XXV III	Special Courts	441	Power to compound certain offences which are punishable with Fine only
27	XXI X	Miscellaneous	466	Dissolution of Company Law Board

OUR VIEWS:

Establishment of National Company Law Tribunal (NCLT), a quasi judicial structure is a boon in the dynamic Corporate Governance environment as the objective is to reduce the burden of High Court from piling up of cases of Company Law matters. Speedy, efficient and time bound disposal of matters will be big relief for all the stakeholders.

Class Action Suit is a welcome move in Indian Corporate Regulation which gives powers to minority shareholders to take action not only against the Company and its officers but also against the Audit Firm, Expert, Advisor or Consultant (including Company Secretary) of the Company. As more onus is endeavored, Professionals need to act more diligent while performing their duties.

NCLT will certainly reduce the multiplicity of courts or forums or authorities before whom various corporate matters were divided. With adequate infrastructure, manpower and Judicial and technical members for NCLT , one has to see that the objective for which NCLT is set up is achieved.

Link of above notifications are as under:

NCLT and NCLAT: http://www.mca.gov.in/Ministry/pdf/Notification_02062016_II.pdf

Benches and location: http://www.mca.gov.in/Ministry/pdf/Notification_02062016_I.pdf

NCLT Rules, 2016: http://www.mca.gov.in/Ministry/pdf/Rules_22072016_1.pdf

NCLAT Rules, 2016: http://www.mca.gov.in/Ministry/pdf/Rules_22072016.pdf

URL for Website of NCLT: <http://nclt.gov.in>

INSPIRATIONAL QUOTES

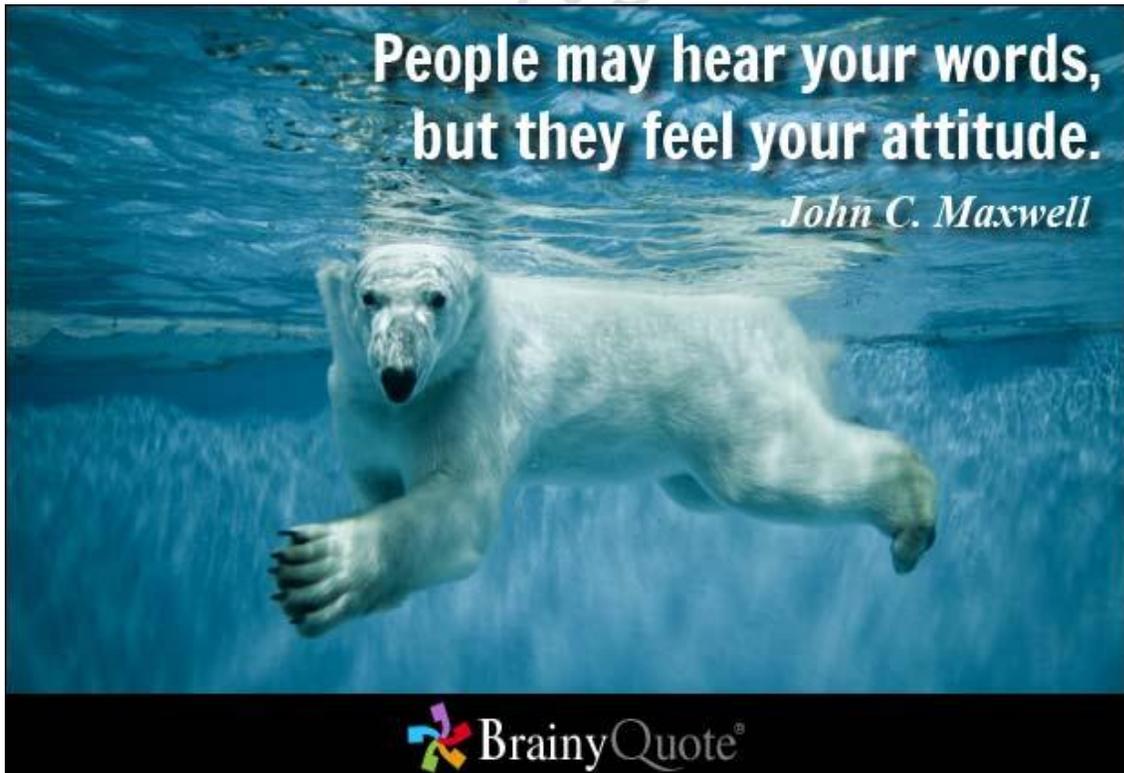
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- Aristotle

People may hear your words,
but they feel your attitude.

John C. Maxwell



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