

National Company Law Appellate Tribunal (NCLAT)

September 11, 2021

In news- The National Company Law Appellate Tribunal (NCLAT) has upheld an order of the Bengaluru bench of the National Company Law Tribunal (NCLT) to wind up Devas Multimedia Private as it was apparent that a fraud had occurred.

Key updates-

- In 2005, ISRO's commercial arm, Antrix corporation, had signed an agreement to lease two communication satellites to Devas for 12 years for Rs 167 crore.
- Devas, which then was a startup incorporated just for the purpose, was to provide audio-video services to mobile platforms in India using the space or S-band on ISRO's GSAT 6 and 6A satellites.
- The Devas Multimedia-Antrix Corp agreement was cancelled by the then UPA government in 2011 after allegations of the deal being a quid pro quo "sweetheart deal" were raised.
- In 2014, the Central Bureau of Investigation (CBI) and Enforcement Directorate (ED) were asked to probe the deal.
- Now, NCLAT in its recent order has said that every benefit or advantage accrued to Devas under the 2005 agreement was "through fraud, misrepresentation or suppression".
- This was apparent from the fact that the 2005 agreement was signed by a clerk who "had no background in science and technology", and was not at all aware of the functions of Devas' services.
- The NCLAT has also questioned Antrix as to how it allowed the said agreement to be signed by a clerk.

About National Company Law Tribunal (NCLT)-

- It is a **quasi-judicial body** in India that adjudicates issues relating to Indian companies.
- It is the adjudicating authority for the insolvency resolution process of companies and limited liability partnerships under the Insolvency and Bankruptcy Code, 2016.
- The tribunal was established under the Companies Act 2013 and was **constituted on 1 June 2016** based on the recommendation of the V. Balakrishna Eradi committee on law relating to the insolvency and the winding up of companies.
- All proceedings under the Companies Act, including proceedings relating to arbitration, compromise, arrangements, reconstructions and the winding up of companies shall be disposed of by the NCLT.
- The NCLT bench is **chaired by a Judicial member who is supposed to be a retired or a serving High Court Judge** and a Technical member who must be from the Indian Corporate Law Service, ICLS Cadre.
- No criminal court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal is empowered to determine by or under this Act.
- It has the power under the Companies Act to adjudicate proceedings:
 - Initiated before the Company Law Board under the previous act (the Companies Act 1956);
 - Pending before the Board for Industrial and Financial Reconstruction, including those pending under the Sick Industrial Companies (Special Provisions) Act, 1985;
 - Pending before the Appellate Authority for Industrial and Financial Reconstruction; and
 - Pertaining to claims of oppression and mismanagement of a company, winding up of companies and all other powers prescribed under the Companies Act.

Decisions of the tribunal may be appealed to the National Company Law Appellate Tribunal.

About NCLAT-

- It was constituted under Section 410 of the Companies Act, 2013 for hearing appeals against the orders of National Company Law Tribunals (NCLT).
- NCLAT is also the appellate tribunal for hearing appeals against the orders passed by NCLTs under Section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC) and Insolvency and Bankruptcy Board of India under Section 202 and Section 211 of IBC.
- It is **also the appellate tribunal to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India (CCI)** – as per the amendment brought by the Finance Act, 2017.
- NCLAT decisions **can be challenged in the Supreme Court on a point of law.**
- In some cases, NCLAT decisions have been overturned by the SC, like in the case of ArcelorMittal when the top court set aside the tribunal's order to pave the way for the global steel giant to acquire Essar Steel.

Composition-

- The **chairperson and judicial members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India.**
- The members of the tribunal and the technical members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of:
 - Chief Justice of India or his nominee (Chairperson).
 - A senior judge of the Supreme Court or a Chief Justice of the High Court
 - Secretary in the Ministry of Corporate Affairs
 - Secretary in the Ministry of Law and Justice

- Secretary in the Department of Financial Services in the Ministry of Finance
- Chairperson – Should be/been judge of the Supreme Court or should be/been Chief Justice of the High Court.
- Judicial Member – Is/has been a judge of a High Court or is a judicial member of a tribunal for 5 years or more.
- Technical member- Person with proven ability, integrity and standing having special knowledge and experience of 25 years or more (in specified areas)

Term of office of chairperson and members is 5 years and they can be reappointed for additional 5 years