

# NCLAT, IBC AND COMPANIES ACT

December 27, 2019

**Source:** *The Hindu*

**Manifest pedagogy:** NCLAT has been an active instrument and institution for appeals under IBC, companies act and various other matters such as copyrights, directors etc. The importance as an institutional perspective for UPSC is paramount by looking at its growing stature with more and more issues of corporate governance reforms and need to simplify business procedures in India.

**In news:** The National Company Law Appellate Tribunal (NCLAT) has ordered to reinstate Cyrus Mistry as the chairman at Tata Sons.

**Placing it in syllabus:** Corporate governance

**Static dimensions:**

- NCLAT and its powers
- Role of National Company Law Tribunal (NCLT) under the Companies Act and IBC
- Advantages of NCLT & NCLAT

**Current dimensions:** Tata Mistry dispute

**Content:**

**NCLAT and its powers:**

- The NCLAT is a tribunal which was formed in 2016 under **Section 410 of the Companies Act, 2013.**
- It is responsible for hearing appeals from the orders of National Company Law Tribunal (NCLT).
- It also **hears appeals from orders** issued by the Insolvency and Bankruptcy Board of India (IBC) **under Section 202 and Section 211 of IBC.**

- It also hears appeals from any direction issued, decision made, or order passed by the **Competition Commission of India (CCI)**.
- The NCLAT includes a Chairperson, a judicial member, and a technical member and a total of not more than eleven members.
- **No criminal court shall have jurisdiction** to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered to determine by or under the Companies Act.

### **Role of National Company Law tribunal (NCLT) under Companies Act and IBC:**

It **has the power to adjudicate proceedings** which are:

- Initiated before the Company Law Board under the Companies Act 1956;
- Pending before the Board for Industrial and Financial Reconstruction;
- Pending before the Appellate Authority for Industrial and Financial Reconstruction;
- Pertaining to claims of oppression and mismanagement of a company, winding up of companies and all other powers prescribed under the Companies Act.

### ***Its role under IBC:***

- NCLT is the **adjudicating authority for insolvency resolution process of companies** and limited liability partnerships under the **Insolvency and Bankruptcy Code (IBC), 2016**.
- A **plea for insolvency** is submitted to the NCLT by financial or operation creditors or the corporate debtor itself.
- The **maximum time allowed** to either accept or reject the plea is **14 days**.
- If the plea is accepted, the tribunal has to appoint an

- Interim Resolution Professional (IRP)** to draft a resolution plan within 180 days (extendable by 90 days).
- Now **the Corporate Insolvency Resolution process is initiated by the court.**
  - The **Board of directors of the company stands suspended** and the promoters do not have a say in the management of the company.
  - **Decisions of the tribunal may be appealed to the NCLAT,** the decisions of which may **further be appealed to the Supreme Court** of India on a point of law.

#### **Advantages of NCLT & NCLAT:**

- It shall **avoid multiplicity of litigation** before various forums, thus consolidating Corporate Jurisdiction.
- There shall be at least 11 benches of the NCLT, thereby **providing justice almost at one's doorstep.**
- Reduction in pendency of cases, **expeditious disposal of cases.**
- This tribunal shall comprise of technical experts who will provide **more concrete and precise decision.**
- There will be a **mixture of judicial and equitable jurisdiction** while deciding matters.
- There shall be **reduction in period of winding up of companies** from 20-25 years to 2 years.

#### **Tata-Mistry dispute:**

- **Cyrus Mistry succeeded Ratan Tata as Tata Sons chairman when he retired in December 2012.**
- Mistry is the son of Pallonji Mistry, the single largest shareholder of Tata Sons, with a stake of over 18 per cent, and was a director of Tata Sons since 2006 until his ouster.
- He is the managing director of Shapoorji Pallonji Group, a construction firm.

- **On 24 October, 2016 the Tata group, which is led by holding company Tata Sons removed Cyrus Mistry as chairman.**
- In January 2017, Tata Sons appointed N. Chandrasekaran, who had been the CEO of TCS as the chairman of Tata Sons.
- However, Mistry had alleged that following his appointment as chairman of the Tata Group, the Articles of Association were modified and **“inappropriate interpretation” of the rules followed.**
- He blamed that he was not given free hand.
- The issue was related to **Article 118**, which was amended in 2012 to **give more powers to directors nominated by the Tata Trusts in the appointment and removal of the chairman.**
- Two months after his removal, Mistry’s family-run firms approached the NCLT as minority shareholders, against Tata Sons, Ratan Tata and some other board members.
- **In April, 2017 NCLT dismissed plea filed by two Mistry family-owned investment companies** seeking a waiver from the requirement for shareholders’ approval to file a petition against Tata Sons Ltd.
- **Mistry in his pleas primarily argued that his removal was not in accordance with the Companies Act** and that there was rampant **mismanagement of affairs across Tata Sons.**
- They appealed for NCLAT and it has restored Cyrus Mistry as executive chairman of Tata Sons on 18th December, 2019.
- It has also **termed that appointment of N Chandrashekhar as executive chairman illegal.**
- However, the **tribunal has said that the restoration order will be operational only after four weeks**, the time allowed to Tatas to file an appeal.

