

# *Acknowledgements*

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# Table of Contents

- [Introduction](#)
- [National Company Law Tribunal](#)
- [Transfer of Proceedings from Court to NCLT](#)
- [Procedure](#)
  - [Petition for winding up of the company](#)
  - [Powers of tribunal](#)
  - [Direction for filing the statement of affairs](#)
  - [Appointment of Company liquidator](#)
  - [Winding up order](#)
- [Winding up proceedings](#)
  - [1. Winding up for registered companies](#)
  - [2. Winding up for Unregistered Companies](#)
  - [Companies \(winding up\) rules 2020](#)
- [Views of the High Court](#)
- [Conclusion](#)

# Introduction

- National Company Law Tribunal is a quasi-judicial body that adjudicates company law disputes. The establishment of NCLT brought a lot of confusion among the petitioners and judges of the High Court as to whether the proceedings pending before High Courts are to be transferred to NCLT or they have to continue under the existing company law board.

## NCLT

President Qualification	<p>It means the president of the tribunal</p> <p>He shall be a person who is or has been a judge of a high court for five years</p> <p>Hold office as such for a term of 5 years</p> <p>Shall hold office as such until the attains the age of 67 years and other member attain age of 65 years</p>
The Central Government	Shall constitute the National company law tribunal
Judicial Member	<ol style="list-style-type: none"> <li>1. A judge of a high court</li> <li>2. A district judge for at least five years</li> <li>3. At least 10 years been an advocate of a court</li> </ol>
Technical member	<ol style="list-style-type: none"> <li>1. Proven ability, integrity and standing having special knowledge and experience of not less than 15 years</li> <li>2. In law, industrial finance, industrial reconstruction, industrial management or administration</li> <li>3. Investment, accountancy, labour matters or such other disciplines related to management, conduct of affairs, revival</li> </ol>
No of members	Not exceeding 11
Eligible criteria of age	50 years and above

## NCLT

Principal bench of tribunal	At New Delhi
Decision	If the members of a bench differ in opinion on any point, it shall be decided according to the majority
Amendment Appeal Days Not file appeal before the AT	Within 2 years from the date of the order The appellate tribunal Within a period of 45 days Within a further period not exceeding 45 days
Time for disposal of such application or petition or appeal	Within three months from the date of its presentation
In case Petition or appeal is not disposed of within the period of three months extension can be granted for a period of	Not exceeding 90 days

## NCLT

Place of service of order in case of an order against a company	The registered office of the company is situated
Place of service of an order In case of an order against a person	Where the persons concerned voluntarily resides, carries on business and personally works for gain
The President/Chairperson ,Members officers and the Employees of the Tribunal/Appellate Tribunal are deemed to be	Public servants within the meaning of section 21 of the indian penal code
A party to any proceeding or appeal before the tribunal	As the case may be, may either appear in person or authorize one or more CA, CS and Cost accountants
Provision of Limitation act, 1963	Apply to proceedings or appeals
Sitting hours	From 10:30 am to 1:00 pm and 2:00pm to 4:30 pm subject to any order made by the president
Office shall remain open	On the day of main indian festivals like Holi, Diwali, Eid, Christmas.
Working hours	It shall remain open on all working days from 9:30 am to 6:00 pm
Filing counter of the registry open time	From 10:30 am to 5:00 pm

## NCLT

Authority to decide the calendar of days of working of the Tribunal	President of the tribunal
Language and date on the appeal or petition or application or caveat petition or objection	English or a translated copy in case in Hindi or other regional language Gregorian calendar or corresponding date as per Gregorian Calendar in case Saka or other dates are used
Number of copies the appellant or petitioner	3 copies and shall Deliver one copy to each of the opposite party
Preservation of All necessary documents and records	For a period of a 5 years
The record of the petitions or applications and decisions passed	Shall be maintained by registry for a period of 15 years after the passing of the final order
The documents shall be marked	By the appellant or petitioner side as A series, by the respondent side as B series and the tribunal exhibits as C series
Witness called by the applicant numbered as	PWs
Witness called by the respondent numbered as	RWs
The certified copy of the order passed	Form INC-28

## NCLAT

Headed by a Chairperson	Shall hold office for a term 5 years and till completion of age of 70 years Eligible for re-appointment for another term of 5 years and age of 67 years
Appeal against any order Days In case appeal Not filed before the supreme court	To the supreme court Within a period 60 days Within a further period not exceeding 60 days
NCLAT Shall not while disposing of any proceeding before it	As the case may be, an appeal before it, be bound by the procedure laid down in The code of civil procedure, 1908
In case of an order against a company	At The registered office of the company is situated
In case of an order against a person	Where The persons concerned voluntarily resides, carries on business and personally works for gain



## NCLAT

<b>A party to any proceeding or appeal before the appellate tribunal</b>	<b>As the case may be, may either appear in person or authorize one or more CA, CS and Cost accountants</b>
Provision of Limitation act, 1963	Apply to proceedings or appeals
Custody of records	The registrar
Holds its sitting	New Delhi
Sitting hours	Ordinarily from 09:30am to 01:00 pm and from 02:15 pm to 05:00 pm
Office shall remain open	09:30 am to 6:00 pm
Filing counter of registry	10:30 am to 05:00 pm
Decision regarding calendar of days	The chairperson of the appellate tribunal
All urgent matters filed before 12 noon shall be listed	On the following working days

## NCLAT

Language of the appeal	English or its English Translation in case it is in some other indian language
Number of copies	One authenticated copy
Registers shall be maintained and posted on a day to day basis	Register of appeals, Register of unnumbered appeals and & Register of interlocutory applications
Records shall be ordered to be destroyed by the registrar or deputy registrar after	Six years from the final conclusion of the proceedings after obtaining prior order of the chairperson
Process fee shall be deposited	By way of demand draft or Postal order favouring the Pay and accounts office, Ministry of office corporate affairs , payable at new delhi
Proof of engagement by the professionals like CAs or CS or CWA shall be submitted in NCLAT in the form of	Memorandum of appearance

# National Company Law Tribunal

- NCLT and NCLAT were constituted by the central government under [Section 408](#) of Companies Act, 2013 for the sole purpose of exercising and discharging the functions of the Companies act, 2013.
- Legislative Relations-Article 245 to 255.NCLT and NCLAT set up under article 245.

# Transfer of Proceedings from Court to NCLT- Section 434 of Companies Act, 2013

- All matters, proceedings, cases which are pending before the company law board as, under [Section 10-E](#) of Companies Act, 1956 before **such date** shall be transferred to tribunal and tribunal shall dispose of such cases.
- If any person is aggrieved by the order or any decision of company law board and wants to file an appeal to tribunal can do so within sixty days of communication of order or decision.
- All proceedings of Companies Act, 1956 and which include proceedings relating to either arbitration, compromise, arrangement, reconstruction, and winding of companies that are pending before either district court or High Court shall be transferred to the tribunal.
- Proceedings which are pending relating to winding up of companies before the establishment of IBC the applicants can file an application before the court to transfer such proceedings to the tribunal.
- It is also important to note only proceedings other than proceedings of winding up and proceedings that are not exclusively reserved for the order of the High Courts shall stand transferred.

- [Rule 5 of companies \(Transfer of pending proceedings\) Rules, 2017](#) states, all proceedings relating to winding up of the company on the ground of inability to pay debts and where notice has not been served on the respondent, shall stand transferred to the tribunal.
- Only those cases in which winding-up petitions were not served as per [Rule 26 of the companies \(court\) Rules, 1959](#) were transferred to NCLT .In other cases the High Court had jurisdiction to decide the cases.

# Procedure

- The below-mentioned procedure applies to companies only when a petition is filed before the tribunal other than the inability to pay its debts.
- The procedure which governs voluntary winding up and inability to pay its debts is mentioned in Insolvency and Bankruptcy code 2016.
- As per [Section 2\(94-A\)](#) of Companies Act, 2013 winding up means winding up of a company either under this Act or Insolvency and Bankruptcy Code, 2016.

# Petition for winding up of the company

- [Section 272](#) of Companies Act, 2013 states a company may be wound by submitting a petition to the tribunal by any one of the following:
  - By the company itself; or
  - Any Contributory or contributories ; or
  - All the persons who are mentioned under the [clauses \(a\) and \(b\)](#); or
    - Registrar of the companies where the registered office is situated can file; or
    - The person who is authorised by the central government or state government to file a petition on behalf of the central government or state government.

# Powers of tribunal

- [Section 273](#) of Companies Act, 2013 provides as soon as the petition is presented under [Section 272](#) of Companies Act, 2013 tribunal shall either,
- Dismiss the order or make an order for winding up;
- Pass any interim order;
- Appoint a provisional liquidator of the company;
- Pass any order within ninety days of the presentation of the petition;
- When there is any other alternative remedy available to the petitioner instead of winding up the company on the ground of just and equitable ground, the tribunal may reject such grounds and instruct the petitioners to pursue that alternative remedy.



# Direction for filing the statement of affairs

when a petition is filed by any person in the tribunal other than the company

- [Section 274](#) of Companies Act, 2013 states when a petition is filed by any person in the tribunal other than the company to wind up its affairs tribunal shall direct the company to file its objections along with the statement of affairs within the thirty days of the order. Thirty days may be extended to further thirty days in certain unforeseen circumstances.
- When directors or officers of the company contravene this provision, they shall be punished with imprisonment which extends to six months or fine with which shall not be less than INR 25 thousand but it may extend to INR 5 lakhs or both.

# Appointment of Company liquidator

- [Section 2\(23\)](#) Company liquidator is the person who is appointed by the tribunal as per the provision of section 275 for the purpose of winding up of the company.
- Section 275 of Companies Act, 2013 provides that a tribunal may appoint any person as an official liquidator from the panel of the company liquidators.
- Any person who has been registered as insolvency professional under [Insolvency and Bankruptcy code 2016](#) shall be appointed as provisional liquidator by the tribunal.

# Winding up order

- [Section 277\(4\) to \(8\)](#) of Companies Act, 2013 states:
- After passing winding-up orders, the tribunal within three weeks shall set a winding-up committee to assist and monitor the liquidation proceedings.
- Winding up committee shall include the following persons:
- Official liquidator;
- any professional nominated by the tribunal;
- Nominee of secured creditors.

Company liquidator shall be appointed as chief of the winding-up committee and shall assist and monitor the liquidation proceedings such as:

- taking over the assets of the company;
- examination of the statement of the affairs of the company;
- recovery of any property or cash or any other assets of the company and any other benefits;
- engage in a review of audit reports and accounts of the company;
- sale of the assets of the company;
- finalise the list of creditors and contributors;
- any compromise, abandonment, and settlement of claims;
- payment of dividends;

- After assessing and monitoring liquidation proceedings the company liquidator shall place before the tribunal, the report and the minutes of meetings
- The final draft report which has been approved by the winding-up committee shall be placed before the tribunal for passing dissolution orders.

# Winding up proceedings

- In Companies Act, 1956 there were three modes by which a company may wound up:
- [Section 10](#) of Companies Act, 1956 – Winding up by court.
- [Section 488](#) of Companies Act, 1956 – Voluntary winding
- Member's Voluntary winding up.
- Creditor's Voluntary winding up.
- Winding up subject to the supervision of the court.

# Winding Up under Companies Act, 2013

- Initially there were two modes of winding-up procedures
- [Section 270](#) of Companies Act, 2013 – Winding up by tribunal.
- [Section 308](#) of Companies Act, 2013 – Voluntary winding up.
- Voluntary winding up is omitted by the Companies Act, 2013 and inserted in Insolvency and Bankruptcy Code 2016. Now there is only one way in which a company can be wound up that is winding up by tribunal.
- Winding up under Companies act, 2013 is divided:
  - Winding up for registered companies.
  - Winding up for unregistered companies.

# Winding up for registered companies

- [Section 270](#) of Companies Act, 2013 states a company can be wound up by the tribunal which is established under [Section 408](#) of Companies Act, 2013.
- Circumstances in which a company can be wound up:
- [Section 271](#) of Companies Act, 2013 provides a company can be wound up.
- If the company has by special resolution resolved that the company be wound by the tribunal.
- When a company has acted:
  - against the interest of sovereignty;
  - security of the state;
  - friendly relation with foreign states;
  - public order;
  - decency or morality.



- When an application is made by the registrar or by any person who is authorised by the central government to file a petition to the tribunal stating any one grounds mentioned:
- Affairs of the company have been conducted in a fraudulent manner; or
- The company was formed with the sole objective of conducting business for unlawful purposes.
- Persons who were engaged in the formation of company or management of its affairs have been guilty of fraud, misfeasance, or misconduct.
- And the tribunal comes to the conclusion that it is proper to wound the company.
- When the company fails to file with registrar its financial statements and annual returns for immediately preceding five consecutive years.
- Tribunal is of the opinion that it is just and equitable that a company should be wound up

# Winding up for Unregistered Companies

- An unregistered company shall wind up as per [Section 375](#) of Companies Act, 2013.
- Unregistered companies cannot be voluntarily wound up.
- Unregistered company shall be wound up if.
  - Unable to pay its debts.
  - Tribunal is of opinion it is just and equitable to wound up.
  - Company has been dissolved.
  - It ceased to carry on its business.
  - It is carrying business only for the purpose of winding up its affairs.

## Companies (winding up) rules 2020

- On January 24, 2020, the Ministry of Corporate Affairs notified rules governing the procedure for winding up which shall take effect from April 1, 2020. This rule shall be applicable only when a petition is filed with the tribunal for winding up on grounds other than the inability to pay debts as mentioned under [Section 271](#) of Companies Act, 2013.

Position prior to the enactment of these winding up rules under [Section 361](#) of Companies Act, 2013 which deals with the summary of proceeding, only the following class of companies would be wound up.

- Companies whose book value of assets is not more than one crore.
- A certain class of companies which has been mentioned by the central government.
- The central government shall appoint the liquidator of the company and he shall take all the assets and actionable claims of the company into his custody and within thirty days he shall submit the report to central government including the statements showing that there has been:
  - No fraud has been committed either in its promotion.
  - Formation and management of the affairs of the company.
  - And, once the central government is satisfied shall issue the order of winding up of the company.

With the introduction of [Companies \(winding up\) Rules, 2020](#) the following classes of Company can directly file a petition with the central government for winding up. These classes of companies are exempt from filing an application with NCLT for winding up.

Companies which accepts deposit and which is having total outstanding deposit	Up to INR 25 lakhs
Companies which is having total outstanding loans and including secured loan	Up to INR 50 lakhs
Companies whose total turnover	Up to INR 50 crore
Companies which is having paid-up capital	Up to INR 1 crore

A company shall be wound up as per provisions of Section 271(a) [Rule 3 companies \(winding up\) rules](#) shall apply.

- The petition for winding up of the company shall be presented in form WIN 1 or in, form WIN 2 to the tribunal.
- The statement of affairs of the company shall be filed in form WIN 4.
- Appointment for provisional liquidator shall be filed in form WIN 7.
- Winding up order shall be filed in form WIN 11.

## Views of the Supreme Court in Jaipur Metals and Forech IndiaLtd

- Facts of the case: Jaipur Metals
- Appeal filed before the Apex Court by an employees union challenging the judgement of the High Court which refused to transfer winding up proceedings pending before it to NCLT. The HC stated that NCLT had passed the order without jurisdiction. The High Court set aside an order of the NCLT in which the NCLT had admitted a petition under Section 7. NCLT observed that till date no liquidation order had been passed and accordingly referring to non obstante clause admitted the application.
- The Apex court observed that Section 434 of the Companies Act is substituted by the Eleventh Schedule of the code. Yet Section 434 as substituted appears only in the Companies Act. In case of any inconsistency, IBC shall prevail in view of Section 238 of the code.

# Forech India Ltd Vs Edelweiss ARC Ltd.

- Operational Creditor's (Forech India td.) appeal to continue with a winding up petition that has been filed by the said creditor way back in 2014.
- Scope of section 11 is limited and only bars a corporate debtor from initiating a petition u/s 10 in respect of whom a liquidation order has been made. It does not follow that until a liquidation order has been made against the corporate debtor , an insolvency petition may be filed under section 7 or section 9 as the case may be as has been held by the NCLAT. Hence any reference to Section 11 in the context of the problem before us is wholly irrelevant.



## Forech India Ltd Vs Edelweiss ARC Ltd. Case contd

- However the apex court refused to interfere with the ultimate order passed by the NCLAT because it considered the FC's application as an independent proceeding.
- The apex court granted liberty to the appellant to apply before the apex court for transfer of proceedings under the proviso to Section 434 of the Companies Act from HC of Delhi to NCLT which could then be treated as a proceeding under Section 9 of the code.

# Conclusion

- Companies (Winding-up) Rules, 2020 were introduced by the Ministry of Corporate Affairs on January 24, 2020, which brought a significant change in the process of winding up of companies, reducing the burden of the tribunal, and providing exit opportunities to classes of companies. Tribunals should give the order to wind up the company only when all the alternatives are extinguished otherwise the tribunal should advise the companies to revive or restore their companies.

A Quick Recap of what  
we studied in  
Companies Act

# Chapter-XX Winding up of the Companies

Section 271:Grounds for winding up of a Company	<ol style="list-style-type: none"> <li>1) Company has passed special resolution</li> <li>2) Company has acted against the interest of the sovereignty and integrity of India , decency ,morality etc</li> <li>3) If on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or there was a fraud in formation/management of the company</li> </ol>
Section 272:Petition for Winding up of a company	<ol style="list-style-type: none"> <li>1) The Company</li> <li>2)The contributory</li> <li>3)The Registrar</li> <li>4)Any person authorized by Central Govt.</li> </ol>
Section 274:Penal provision against the director/officer in case of failure to complete accounts and audit	Punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than Rs. 25000 but which may extend to Rs. 5 lakh or with both
Section 275:Who may be Appointed as the	The Insolvency professionals

<b>Section 277: Intimation of Passing of winding up order or appointment of provisional liquidator</b>	<b>Within a Period not exceeding 7 days</b>
Section 277: Within three weeks from the date of passing of winding up order, Company liquidator shall make an application to the tribunal for	Constitution of a Winding up committee and monitor the progress of liquidation
Section 277: Composition of Persons in Winding up Committee	<ol style="list-style-type: none"> <li>1) Official liquidator attached to the Tribunal</li> <li>2) Nominee of secured creditors</li> <li>3) A professional nominated by the Tribunal</li> </ol>
Section 278: Order for the winding up of a company shall operate in Favour of	All the creditors and All contributories as if made on their joint petition
Section 279: Effect of passing of order of winding up or appointment of a provisional liquidator	<ol style="list-style-type: none"> <li>1) No suit or Other legal proceeding shall be commenced</li> <li>2) If Other legal proceedings are pending at the</li> </ol>

Section 280:Jurisdiction of the Tribunal	<ol style="list-style-type: none"> <li>1) To entertain proceeding by or against the company.</li> <li>2) Any claim made by or against the company</li> <li>3) Any application made under section 233 (merger and amalgamation) or any question of priorities</li> </ol>
Section 281:Submission of report by the company liquidator to the Tribunal	Within 60days from the order
Section 284:Non co-operation by company or officers with Company liquidator	Imprisonment which may extend to 6 months or with fine which may extend to Rs. 50000, or with both
Section 287:Composition of the advisory committee appointed by the Tribunal	<ol style="list-style-type: none"> <li>1) Not more than 12 members ,being creditors and Contributories after a meeting convened by Company liquidator or such other person in such proportion as the Tribunal may direct</li> </ol>
Section 288:Periodicity of submission of report by the Company liquidator	Quarterly Report
Restriction on power of company liquidator	<ol style="list-style-type: none"> <li>1) To raise loan from the financial institution for further expansion</li> </ol>

<b>Pari Passu chart of creditor and security</b> <b>Security    Workmen dues    Secured Creditors</b> <b>Rs. 100000    Rs. 100000    Rs. 300000</b> <b>Aggregate amount Rs. 400000</b>	<b>Workmen portion is One Fourth the value of the security</b>
<p>Order of payment of dues under section 327(1)</p>	<ol style="list-style-type: none"> <li>1) Revenue and taxes due from Central Government/state Government and payable within the 12 months</li> <li>2) All wages and salary payable within a period not exceeding 4 months within the 12 months</li> <li>3) All accrued holiday remuneration becoming payable</li> <li>4) Amount due on death or disablement of any employee</li> <li>5) Provident fund and Pension fund due</li> <li>6) Expenses of investigation</li> </ol>
<p>Section 329:Transfer of property, movable or immovable or any other delivery not made in the ordinary course of its business or in favour of purchaser not to have affect</p>	<p>Void against the company Liquidator</p>

Section 334:In case of Winding up by the Tribunal, any disposition of the property including actionable claims after the commencement of winding up shall be	Void
Section 335:Where any company is being wound up by the Tribunal, any attachment, distress or execution put in force shall be	Void
Section 337:Every officer of a company who is found guilty of transfer of documents or alienation of property shall be	Imprisonment one year to 3 years and fine 1 lakh to 3 lakh
Section 344:Where a company is wounding up, every invoice, order, business letter etc shall contain a statement that	The company is wounding up
Penal provision, if a company contravenes of section 344(1)-To company, officer and liquidator	He shall be punishable with fine which shall not be less than Rs. 50000 rupees but which may extend to Rs. 3 lakh rupees
Winding up of a company by the Tribunal under the Companies Act, 2013 shall be deemed to commence	At the time of the presentation of the petition for the winding up



Section 359:Appointment of Official liquidator made by	The Central Government
Section 361:The Central Government may order for winding up of company by summary procedure in case	The company has assets of book value not exceeding Rs. 1 crore
Section 362:The official Liquidator shall expeditiously dispose of all assets	Within 60 days of his appointment
Section 362:The official liquidator shall serve a notice to the debtors/contributories to deposit the amount due	Within 30 days
Section 363:Time available with a creditor aggrieved by the decision of the official liquidator under section 363 to file an appeal before the Central Government	Within 30 days of such decision

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