



MCA: 2013

October 28, 2013

**Shri Naved Masood, IAS
Secretary to Government of India
Ministry of Corporate Affairs
Shastri Bhawan
New Delhi**

Dear Sir,

Sub: Draft rules with respect to representation before the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT)

Section 432 of the Companies Act, 2013, which provides for the right to representation before the Tribunal or Appellate Tribunal, reads as under:

"A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be."

2. This is a wholesome and complete provision. This allows any party to be presented by any person, including members of specified professions and allows any member of specified profession to represent any party. This does not envisage rules to liberalise or restrict the rights of either the party or the professional in this regard. Hence the rules to restrict the rights of a professional or of a party may not be legally sustainable.

3. Further, the draft rules propose that a company secretary, chartered accountant or a cost accountant needs to have five years post qualification experience to represent a party. This does not seem to have any nexus with the purpose to be served, particularly when an illiterate person can theoretically present a party before NCLT or NCLAT. Besides, it appears discriminatory that a member of a profession would require five years' experience while a member of another profession does not require such experience, to represent a party.

4. In view of the above, we submit that the rules proposed may be withdrawn, or at least, the experience requirement for company secretaries, chartered accountants or cost accountants to represent a party before NCLT or NCLAT may be dropped.

Thanking You,

Yours faithfully,

M. S. Sahoo
(CS M. S. Sahoo)
Secretary

Copy to: Ms. Renuka Kumar, Joint Secretary, MCA