PARDIGM SHIFT FROM CLB TO NCLT

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DRAFT RULES

• National Company Law Tribunal Rules, 2015.
• National Company Law Appellate Tribunal Rules, 2015.
• Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
FORMS BY WHICH ORIGINAL PROCEDINGS COMMENCE

• Form NCT 1 to be filed for many of the Sections; should be accompanied by form NCT 2
• Form NCT 9 restoration of a company struck off
• Form NCT 11 for repayment of deposits
• Form NCT 13 for reduction of capital
NCLT

• Sec.430 – bars jurisdiction of civil courts
• No civil court shall have any jurisdiction
• any suit or proceeding in respect of which the tribunal or appellate tribunal is empowered
• Under this Act or any other law for the time being in force
• No injunction shall be granted by any court or other authority
NCLT

• Sec.268 – No appeal shall lie in any court or authority and no civil court shall have any jurisdiction

• In respect of any matter in which the tribunal or appellate tribunal is empowered this chapter

• No injunction shall be granted by any court or other authority
NCLT- Criminal Jurisdiction
not barred

1956 Act
• First class magistrate or presidency magistrate
• Sessions court (revision or appeal)
• High Court

2013 Act
• Special court - judge should be immediately before appointment shall be holding office of a sessions judge or as an additional sessions judge – Sec.435 (3)
• High court (revision or appeal) Sec.437
NCLT

- Impact of Sec.430
- Sec.96 (AGM), 97 (application to tribunal for AGM) and 98 (application to tribunal for EGM)
- Sec.169 - Removal of directors
NCLT

• IMPACT OF SEC.430
• Evidences have to be taken by NCLT
• Rajinder Kumar Malhotra vs Harbhans Lal Malhotra & Sons Ltd (1996) 87 Comp.Cases 146 (CLB)
• Draft Rule 8 filing of evidence by affidavit – form NCT 7
Whether High Court Jurisdiction is completely ousted in civil matters

- Sec.2(29) court means-
  (i) High court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under Sub-clause (ii)
  (ii) district court
  (iii) court of sessions having jurisdiction to try any offence under this or previous companies law
  (iv) the special court established under sec.435
  (v) any metropolitan magistrate or a judicial magistrate of the first class having jurisdiction to try any offence under this Act or any previous company law
Whether High Court Jurisdiction is completely ousted in civil matters

- Sec. 130 re-opening of accounts
- Application is made by the CG, Income tax authorities, SEBI, any other statutory regulatory body or authority or any person concerned
- An order is made by a court of competent jurisdiction or Tribunal
Whether High Court Jurisdiction is completely ousted in civil matters

- Sec.210 (2) where an order is passed by a court or tribunal in any proceeding before it that the affairs of the company ought to be investigated, the central government shall order investigation into the affairs of that company
Whether High Court Jurisdiction is completely ousted

• Sec.463 (1)
• Relief from prosecution
Procedure before NCLT and NCLAT

- Sec.424
- Shall not be bound by code of civil procedure
- Shall be guided by principles of natural justice
- Other provisions of this act or rules made thereunder
- Shall have power regulate their own procedure
Application of Limitation Act

- Sec.433 provisions of Limitation Act apply to proceedings before tribunal or appellate tribunal
- Impact
- “Prescribed period” means that the respective or relevant period to be reckoned as defined in the Limitation Act, 1963. Draft Rule 2(37)
- Rule 106
Application of Limitation Act

• If no period is given in the Act, then Art.137 of Limitation would apply.
• Art.137 prescribes a maximum of period of three years
• If not filed within 3 years then application for condonation of delay has to be filed
• Bank of Rajasthan Ltd vs Rajasthan Breweries Ltd (2007) 140 Com.cas 622 CLB
Appeal to NCLAT

• Sec.421
• Consent orders cannot be appealed
• Appeal has to be filed within a period of 45 days
• On sufficient cause being shown can be filed within a further period not exceeding 45 days
Appeal to Supreme court

- Sec.423
- Appeal within a period of sixty days
- On sufficient cause within a further period not exceeding sixty days.
- Tenecco Mauritius Ltd vs Bangalore Union Services Ltd & others
Contempt Powers

- Sec. 425
- Tribunal and appellate tribunal both have contempt powers
Transitional provisions

- Sec.434
- 434(1)(b) On notification, all pending matters shall stand transferred to tribunal
- 434(1)(c) all proceedings under the Companies Act, 1956 including proceedings relating to arbitration, compromise and arrangements and reconstruction and winding up of companies, pending immediately before such date before any district court or High Court shall stand transferred to tribunal
- 434(1)(d) any appeal before AAIFR and reference before BIFR shall stand abated
  provided the company may make a reference to the tribunal within 180 days from the date commencement of this Act
Time limit for disposal

• Sec.422
• Sec.422(1) Every endeavour shall be made to dispose every application or petition presented to NCLT and every appeal to NCLAT within 3 months
• Sec.422(2) record the reason and the president or chairperson by taking into account the reason so recorded extend the period by such period not exceeding ninety days as he may consider necessary.
Mediation and conciliation

• Sec.442
• 442(1) CG shall maintain a panel of experts to be called as the Mediation and conciliation panel for mediation between the parties during the pendency of any proceedings
• Any of the parties may at any time during the proceedings may apply and the CG, tribunal or appellate tribunal shall appoint one or more experts
• May suo-motu refer the matter
• Within 3 months forward its recommendation
• Any party aggrieved may file objection
Review

• Draft Rule 17(1) proviso - Provided that where the case was disposed of on merits the decision shall not be re-opened except by way of review.
Enforcement of orders

- Draft Rule 26(4)
- Draft Rule 27
THANK YOU