

“Appearance and Etiquette”

(ICSI-WIRC Webinar Lectures Series – NCLT Lab)

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04.00 to 06.30 P.M.**

Presented by

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Part - 1

Introduction to NCLT

INTRODUCTION TO NCLT

- NCLT was constituted under Section 408 of the Companies Act, 2013 with effect from 1st June, 2016 to exercise such powers and functions as are conferred by the Act or any other law for the time being in force.
- NCLT was established to act as a simpler, speedier and single judicial forum to adjudicate all disputes concerning the affairs of companies.
- NCLT has been given extensive powers under various sections of the Companies Act, 2013 and also under Insolvency and Bankruptcy Code, 2016.

INTRODUCTION TO NCLT

- The NCLT comprises of a president and as many as judicial and technical members as necessary. At present, NCLT has 48 members.
- Shri. BSV Prakash Kumar is the Acting President of NCLT.

NCLT BENCHES ACROSS INDIA

State	No. of Benches	Judicial Members	Technical Members
New Delhi	6	4	5
Mumbai	5	3	5
Kolkata	2	2	2
Ahmedabad	2	2	2
Allahabad	1	1	0
Bengaluru	1	1	1
Chandigarh	1	1	1
Chennai	2	2	2
Guwahati	1	1	-
Hyderabad	2	2	2
Jaipur	1	1	1
Cuttack	1	1	1
Amravati	1	1	0
Kochi	1	1	1
Indore	1	1	1
Total	28	24	24

Part - 2

Jurisdiction

TERRITORIAL JURISDICTION OF NCLT

S. No	Name of Bench	Location	Jurisdiction of Bench
1	Principle Bench	New Delhi	Delhi
2	Ahmedabad Bench	Ahmedabad	(1) Gujarat (2) Dadra and Nagar Haveli (3) Daman and Diu
3	Allahabad Bench	Allahabad	(1) Uttar Pradesh (2) Uttarakhand
4	Amravati Bench.	Hyderabad	Andhra Pradesh
5	Bengaluru Bench	Bengaluru	Karnataka.
6	Chandigarh Bench	Chandigarh	(1) Himachal Pradesh (2) Jammu and Kashmir (3) Punjab (4) Chandigarh (5) Haryana
7	Chennai Bench	Chennai	(1) Tamil Nadu (2) Union territory of Puducher
8	Cuttack Bench	Cuttack	Chhattisgarh Odisha
9	Guwahati Bench	Guwahati	(1) Arunachal Pradesh (2) Assam (3) Manipur (4) Mizoram (5) Meghalaya (6) Nagaland (7) Sikkim (8) Tripura
10	Hyderabad Bench	Hyderabad	Telangana
11	Indore Bench	Ahmedabad	Madhya Pradesh
12	Jaipur Bench	Jaipur	Rajasthan
13	Kochi Bench	Kochi	(1) Kerala (2) Union Territory of Lakshadweep
14	Kolkata Bench	Kolkata Bench	(1) Bihar (2) State of Jharkhand (3) State of West Bengal (4) Union territory of Andaman and Nicobar Islands
15	Mumbai Bench	Mumbai Bench	(1) Goa (2) State of Maharashtra

JURISDICTION OF NCLT UNDER IBC

- **Section 7** : Application by Financial Creditor (FC)
- **Section 9** : Application by Operational Creditor (OC)
- **Section 10** : Application by Corporate Debtor (CD)
- **Section 59** : Voluntary Liquidation of Corporate Persons

JURISDICTION OF NCLT UNDER COMPANIES ACT, 2013

- **Section 7 (7) except (c) & (d)** : Legal action to be taken by NCLT for furnishing false or incorrect information at the time of Incorporation.
- **Second proviso to sub-section (1) of section 14** : Any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the NCLT.
- **Section 55(3)** : Power to provide approval for issuance of redeemable preference shares by a company under certain circumstances.

JURISDICTION OF NCLT UNDER COMPANIES ACT, 2013

- **Section 58(3) & 59** : Power to rectify the Register of Members.
- **Section 90 (8) & (9)** : Register of significant beneficial owners in a company.
- **Section 97** : NCLT has the power to convene AGM in case of failure or default by the Company to call for AGM.
- **Section 98** : NCLT has the power to call for meetings other than AGM, in case of failure or default by the Company to call for the same.

JURISDICTION OF NCLT UNDER COMPANIES ACT, 2013 (Continued)

- **Section 130** : Re-opening of accounts (books of accounts or financial statement) on NCLT orders .
- **Section 131** : Approval of NCLT is required for voluntary revision of financial statement.
- **Section 140(5)** : NCLT has been empowered to change / remove statutory auditor either suo-moto or on application by Central Government.
- **Section 213** : NCLT may order investigation into the affairs of the Company if conditions of Section 213 are met and an application is made by prescribed persons in Section 213.

JURISDICTION OF NCLT UNDER COMPANIES ACT, 2013 (Continued)

Section 216 (2) : Investigation of ownership of a company by the Central government on instruction of the NCLT.

Section 221 : NCLT may order freezing of assets of a company on inquiry and investigation if conditions of section 221 are met.

Section 230 : has power to order a meeting of the creditors, or class of creditors, or of the members or class of members, as the case may be, in case of compromise or arrangements with Creditors or Members.

Section 231 : has power to enforce or arrangement sanctioned under Section 230.

JURISDICTION OF NCLT UNDER COMPANIES ACT, 2013 (Continued)

Section 232 : has power to order a meeting of the creditors, or class of creditors, or of the members or class of members, as the case may be, in case of mergers and amalgamation of companies.

Sections 241, 242 & 244: NCLT to entertain any claims of oppression and mismanagement of a company and to pass an order that the NCLT may deem fit in this regard.

Section 245: Class Action [read with notification by CG on 08.05.2019].

Sections 271: Winding up by Tribunal.

JURISDICTION OF NCLT UNDER COMPANIES ACT, 2013 (Continued)

Section 272: Petition for winding up.

Section 441: Compounding of certain offences.

..... and many more sections.

Part - 3

Appearance

APPEARANCE

The Art of Advocacy & Court Craft

- **Persons Authorised to Appear before NCLT**
 - Section 432 of the Act read with Rule 45 of NCLT Rules authorizes the party to any proceeding or appeal to appear in person or through CS, CA, CMA or legal practitioner.



APPEARANCE

The Art of Advocacy & Court Craft (Continued)

- **Pleadings**
 - Capture all material facts without missing any relevant point.
 - Use of Simple Language in Pleadings Vs. Legal Maxims in Pleadings.
 - Frame concise question of law and facts (in appeals).
 - Mention clearly the Grounds / Arguments (in appeal) on the basis of which relief is prayed.

APPEARANCE

The Art of Advocacy & Court Craft (Continued)

- **Preparation of Case**

- Case summary, list of dates & events and sufficient copies of Judgements relied upon should be kept ready.
- For preparing a case, knowing the law and the precedents are not sufficient. Presenting the case before the Tribunal requires a lot of soft skills apart from technical and procedural knowledge.

APPEARANCE

The Art of Advocacy & Court Craft (Continued)

- **Know Your Audience and Don't Overreact**
 - Every Tribunal / Bench is different.
 - Adapt your advocacy style to suit the forum.
 - Must identify / anticipate the likely questions from the Bench.
 - Learn how to seek attention.
 - Never overreact inside Court.

APPEARANCE

The Art of Advocacy & Court Craft (Continued)

- **Leaving a Good Impression**
 - Remember that you are always being observed.
 - Be polite but firm in your conduct.
- **Be on Time & Well prepared**
 - Reach early so there is time to speak to Opposite Counsel for a last minute resolution.
 - The court appreciates orderly conduct which creates a long lasting impression.

APPEARANCE

The Art of Advocacy & Court Craft (Continued)

- **Be Friendly to the Opposite Counsel**
 - Introduce yourself to Opposite Counsel and initiate a small conversation.
- **Keep your Client Informed**
 - Talk to your client in language they understand.
 - A well-informed client seems to be a much more settled client.
- **Service of Documents**
 - While tendering documents/ citations to Tribunal, ensure to have enough copies to circulate to other side.

APPEARANCE

The Art of Advocacy & Court Craft (Continued)

- **Believe in Submission**

- Regardless of the case, believe in your submissions.
- Tribunal observes when there is a half hearted submission.

- **Be Clear & Slow**

- Speak slowly and clearly because the Presiding member generally takes notes.

- **Be Honest with the Tribunal**

- Respond honestly to questions from the Bench.
- Never give misleading impression to the Bench.

APPEARANCE

The Art of Advocacy & Court Craft (Continued)

- **Last-Minute Basics**
 - Turn your phone to silent.
 - Face the bench and bow from the waist whenever you enter or leave a sitting courtroom.
 - Stand when addressing the court.
 - State brief facts of the case along with relevant page number of pleadings and supporting citations.
 - Formulate issues and state relevant points.

APPEARANCE

The Art of Advocacy & Court Craft (Continued)

- **Last-Minute Basics (Continued)**
 - Submit a list of citations to the Tribunal & hand over the Xerox copies of binding decisions to the Court Master / Opposite Counsel.
 - Have the phone numbers of all of the persons connected with the case including Opposite Counsel.

APPEARANCE

The Art of Advocacy & Court Craft (Continued)

- **Dress Code for PCS**
- Rule 124 of NCLT Rules, 2016 read with ICSI (Guidelines for Attire and Conduct of Company Secretaries), 2020 provides that following dress code has to be adhered to by PCS:
- **For Male Members**
 - Navy Blue Suit (Coat & Trouser), preferably with CS Logo/ Insignia OR Navy Blue Blazer over a sober colored Trouser, Insignia
 - Neck Tie (ICSI)
 - White full sleeve Shirt
 - Formal Shoes

APPEARANCE

The Art of Advocacy & Court Craft (Continued)

- **Dress Code for PCS (Continued)**
- **For Female Members**
 - Navy Blue corporate suit (Coat & Trouser), preferably with CS Logo/ Insigni OR Saree / any other dress of sober colour with Navy Blue Blazer with CS logo, Insignia
 - A sober footwear like Shoes/Bellies/Wedges, etc.

APPEARANCE

The Art of Advocacy & Court Craft (Continued)

- **General Guidelines for Communication**

- Do not speak out of turn unless essential to bring necessary and correct facts to the knowledge of the Bench.
- Give concise and to the point answer when the any questions is asked by the Bench and do not attempt to evade the question. In case you do not know the answer then request for time to apprise the Bench about the correct factual position.
- Avoid habit of talking to your associates when Opposite Counsel is presenting arguments to the Bench.

APPEARANCE

The Art of Advocacy & Court Craft (Continued)

- **Myths**

- I am a PCS but I cannot argue well. Only Advocates can argue well.
- I have not studied the subject(s) and I have not received any formal training in arguments or presenting facts persuasively like Advocates.
- In Tribunal, Bench gives more considerate hearing to the Advocates in comparison to other professionals.
- I have been practicing as a Company Secretary for 10-20 years. It's difficult to venture into a new area of practice.
- I cannot argue because I can't handle the pressure and its out of my comfort zone.

Part - 4

Etiquette

ETIQUETTE

- Professional Etiquette comprises of mainly the following:
 1. **Duty to Tribunal**
 2. **Duty to Client**
 3. **Duty to Opposite Counsel**
 4. **Duty to Colleagues**
 5. **Obligation to Society**

ETIQUETTE

Duty to Tribunal

- Counsel (Practitioner) shall conduct himself with dignity and self-respect during the presentation of his case and while otherwise acting before Tribunal.
- Counsel shall maintain towards the Tribunals a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.
- Counsel shall never attack institutions (both inside and outside).
- Counsel shall not influence the decision of a Tribunal by any illegal or improper means. Private communications with Judge relating to a pending case are forbidden.

ETIQUETTE

Duty to Tribunal (Continued)

- Counsel shall use his best efforts to restrain and prevent his client from restoring to sharp or unfair practices or from doing anything in relation to the Tribunal, Opposite Counsel or parties which you yourself should not to do.
- Counsel shall refuse to represent the client who persists in such improper conduct.
- Counsel shall not consider himself a mere mouthpiece of the client and shall exercise his own judgment in the use of restrained language in correspondence.

ETIQUETTE

Duty to Tribunal (Continued)

- Counsel shall avoid scandalous attacks in pleadings.
- Counsel shall avoid using intemperate language during arguments in Tribunal.
- Counsel shall appear in Tribunal at all times only in the prescribed dress, and his appearance shall always be presentable.
- Counsel shall not enter appearance, act, plead or practice in any way before a Tribunal if the sole or any member thereof is his close relative.

ETIQUETTE

Duty to Tribunal (Continued)

- Counsel shall not appear in or before any Tribunal for or against an organization or an institution, society or corporation, if he is a member of the Executive Committee of such organization or institution.
- Counsel shall not act or plead in any matter in which he has pecuniary interested.

ETIQUETTE

Duty to Clients

- Counsel shall not provoke parties to go into litigation.
- Counsel shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given, to the client.
- Upon his withdrawal from a case, Counsel shall refund such part of the fee as has not been earned.
- Counsel shall at the commencement of his engagement and during the its continuance, make all such full and frank disclosures to his client relating to his connection with the parties and any interest in subject matter of case as are likely to affect his clients judgment in either engaging him or continuing the engagement.

ETIQUETTE

Duty to Clients (Continued)

- Counsel shall fearlessly to uphold the interests of client by all fair and honourable means without regard to any unpleasant consequences to himself or any other.
- Counsel shall not act on the instruction of any person other than his client or his authorised agent.
- Counsel shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds.
- Counsel shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.

ETIQUETTE

Duty to Clients (Continued)

- Counsel shall not, directly or indirectly, bid for or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any person, any property sold pursuant to any order of Tribunal or other proceeding in which he was in any way professionally engaged.
- If a Counsel has advised in connection with the matter or has drawn pleadings or acted for a party, then he shall not appear or plead for the opposite party.

ETIQUETTE

Duty to Opposite Counsel

- Counsel shall not in any way communicate or negotiate upon the subject matter of controversy with any party represented by a Opposite Counsel except through that legal professional.
- Counsel shall do his best to carry out all legitimate promises made to the Opposite Counsel even though not reduced to writing or enforceable under rules of the Tribunal.

ETIQUETTE

Duty to Colleagues

- Counsel shall not permit his professional services or name to be used in aid of or to make possible, the unauthorized practice of law.
- Counsel shall not enter appearance in any case without obtaining NOC if a Vakalatnama / Memo of Appearance has already been filed by an Advocate / PCS engaged for a party.

ETIQUETTE

Obligation to Society

- Keeping in mind the limits of his own economic condition, every Counsel shall offer free legal assistance to the person genuinely in need but who cannot fully or adequately pay for it.
- Senior PCS have a special responsibility to guide young members by providing them opportunity for assisting in legal assignments, whenever possible so as to enable them to learn and get requisite training for practicing court craft.

Part - 5

Post COVID-19 Pandemic (Future of Advocacy & New Norms for PCS)

POST COVID-19 PANDEMIC – FUTURE OF ADVOCACY

E-filing and Virtual Hearings

- E-filing of pleadings is likely to become essential part of practice.
- More and more legal Benches of NCLT are likely to adopt virtual hearing of cases.
- Virtual hearing of case have resulted in increasing productivity of legal Counsels as they do not have to waste time in running from one legal forum to another for attending matters.
- Both the Senior PCS and the young members, should get ready to seize this opportunity by learning new skills and embracing technology.

POST COVID-19 PANDEMIC - NEW NORMS FOR PCS

Use of Technology

- This is no more luxury.
- It has become a basic requirement to enhance quality of our services.

Distance is not material

- Development of means of transportation brought the world closure.
- Now technological advances have brought the world under one roof.

POST COVID-19 PANDEMIC - NEW NORMS FOR PCS (Continued)

Virtual is real

- Virtual Technology is no more a story but a hard reality.
- It is opening new dimensions which were previously beyond our imagination.
- Professionals who are ready to ride this tide will progress and others will be left behind.

Realignment of Focus

- CS should now focus on achieving result / objective by utilizing minimum resources.

POST COVID-19 PANDEMIC - NEW NORMS FOR PCS (Continued)

Waste Management

- Minimizing the wastages of resources and time shall be the driving force in increasing operational efficiencies / profits in challenging business environment.

Personal Touch without Physical Presence

- We must think of ways to develop personal touch without physical presence for optimum utilization of time and resources.

Thank
you!