



# APPEARANCE, ADVOCACY & PROCEDURES

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# ADVOCACY & APPEARANCE

- Art of conducting cases in Court both by Arguments and by the manner of bringing out the evidence so as to convince the Court.
- Advocacy is an Art of persuasion or an Art of convincing others.
- Advocacy is a process and not an event.
- The art of advocacy is not a casual or artificial exercise. It is the result of hours of hard work and research. If you want to argue for 15 minutes in the court, it will require at least 5 hours of preparation. Please do not carry the impression that advocacy means only the gift of the gab. The gift of the gab is only part of it. But it is the mastery acquired by you over the facts and the law that will keep you in good stead before the court.

# THINGS TO DO FOR GOOD ADVOCACY


- Good voice
- Command of words
- Confidence
- Persistence
- Knowledge of law
- Experience
- Appearance- must look neat and tidy
- Speak clearly
- Keep your papers and document in good order.
- Punctual, do not rush.
- Equal approach either big case or small case
- As a general rule brevity in a speech of any sort is a great virtue.
- Begin the speech by introducing the parties to the dispute followed by statement of the points at issue.. Words that simply child can understand.
- Explain the detailed facts in dispute.. Make sure you understand it firmly.. Strive for accurate statement of fact.
- Deal with opponent's argument point by point.
- Don't be sycophantic but be polite and respect the court.
- Don't speak too fast and never express your opinion..

# KEY POINTS OF ADVOCACY

- Develop a checklist
- Develop a structure.
- Look at previous similar cases and their determination. Precedents have a lot of value.
- Introduce subject, give background and facts, analysis of law, application of law, grounds for your case and prayer for relief.
- Study facts and documents carefully. Do not miss any important aspects as the first chance is usually the last chance.
- Make a clear brief on law and evidence. Keep focus of main issues & results to be achieved
- Avoid frequent interruptions or objections. Wait for your chance.
- Do not argue with the Judges. Explain with reason. Focus on winning war nor battles.
- Co-operate with Opposite Counsel/Representative... The “Learned Friend”

# PREPARATION OF THE CASE

- It is essential to have a thorough knowledge of the law and procedure.
- Q-What has to be proved or disproved?
- How is your case to be approved and your opponents' disapproved?
- Researching the law which applies to the case.. Read reported cases..
- Documentary evidence is very important.
- Inspection of document.. Client must make full disclosure..
- Make copies of those documents and peruse all of them..
- Try to prevent any element of surprise..

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- Preparation and presentation depends on the orderliness.. Keep your court papers in good order or in chronological order.. Page numbers..
  - Prepare a bundle of documents.. Make sure it is not too thick or large..
  - Labeling the documents..
  - Having clear and detailed knowledge of how you intend to present the case at the time when do your pleadings..
  - General principle, when making allegations we should pile up as many facts which lead to the conclusion of the arguments

# JURISDICTION OF THE BENCHES

Sr. No.	Name of Bench	Location	Territorial Jurisdiction of the Bench
1.	NCLT, Principal Bench NCLT, New Delhi Bench	New Delhi	Union Territory of Delhi
2.	NCLT, Ahmadabad Bench	Ahmadabad	State of Gujarat. State of Madhya Pradesh. Union territory of Dadra and Nagar Haveli. Union territory of Daman and Diu.
3.	NCLT, Allahabad Bench	Allahabad	State of Uttar Pradesh. State of Uttarakhand.
4.	NCLT, Bengaluru Bench	Bengaluru	State of Karnataka
5.	NCLT, Chandigarh Bench	Chandigarh	State of Himachal Pradesh. State of Jammu and Kashmir. State of Punjab. Union territory of Chandigarh. State of Haryana.

<b>Sr. No.</b>	<b>Name of Bench</b>	<b>Territorial Jurisdiction of the Bench</b>
6.	NCLT, Chennai Bench	State of Tamil Nadu. Union territory of Puducherry
7.	NCLT, Guwahati Bench	State of Arunachal Pradesh. State of Assam. State of Manipur. State of Mizoram. State of Meghalaya. State of Nagaland. State of Sikkim. State of Tripura.
8.	NCLT, Jaipur Bench	State of Rajasthan
9.	NCLT, Hyderabad Bench.	State of Andhra Pradesh. State of Telangana
10.	NCLT, Mumbai Bench	State of Maharashtra State of Goa
11.	NCLT, Cuttack Bench	State of Chhattisgarh State of Odisha.



Sr. No.	Name of Bench	Territorial Jurisdiction of the Bench
12.	NCLT, Kochi Bench	State of Kerala Union territory of Lakshadweep.
13.	NCLT, Kolkata Bench	State of Bihar. State of Jharkhand. State of West Bengal. Union territory of Andaman and Nicobar Islands

**BENCHES AT AMRAVATI & INDORE IS EXPECTED TO BE STARTED**



**FEES FOR FILING APPLICATION/PETITION  
BEFORE NCLT**

S.No.	Section of the Companies Act, 2013	Nature of application / petition	Fees
1.	Sec. 7 (7)	Application to Tribunal where company has been incorporated by furnishing false or incorrect info or by any fraudulent action.	5,000/-
2.	Sec. 55 (3)	Application for issue further redeemable preference shares.	5,000/-
3.	Sec. 58 (3)	Appeal against refusal of registration of shares.	1,000/-
4.	Sec. 59	Appeal for rectification of register of member.	1,000/-
5.	Sec. 62 (4)	Appeal against order of Govt. fixing terms and conditions for conversion of debentures and shares.	5,000/-
6.	Sec. 71 (9)	Petition by Debenture-trustees.	2,000/-
7.	Sec. 71 (10)	Application in the event of failure of redeeming of debentures.	1,000/-
8.	Sec. 73 (4)	Application by deposition for repayment of deposit or interest.	500/-
9.	Sec. 74 (2)	Application to allow further time as considered reasonable to the company to repay deposits.	5,000/-
10.	Sec. 97 (1)	Application for calling of Annual General meeting.	1,000/-
11.	Sec. 98 (1)	Application for calling of general meeting of company other than annual general meeting	1,000/-
12.	Sec. 119 (4)	Petition to pass an order directing immediate inspection of minute's books or directing a copy thereof be sent forthwith to persons requiring it	500/-

15.	Sec. 130 (1)	Application for re-opening of books of account, if made by any person other than Central Government, Income Tax authorities, SEBI or any other statutory regulatory body or authority.	5,000/-
16.	Sec. 131 (1)	Application by company for voluntary revision of financial statement on Board's report.	5,000/-
17.	Sec. 140 (4)	Application for not sending the copy of representation of auditor to the members.	1,000/-
18.	Sec. 140 (5)	Application by any other person concerned for change of auditors.	2,000/-
19.	Sec. 169 (4)	Application for not sending copies of representation	1,000/-
20.	Sec. 213	Application to Tribunal for investigation into company affairs.	5,000/-
21.	Sec. 218 (1)	Application for approval for action proposed against employee.	1,000/-
22.	Sec. 222 (1)	Application for imposition of restrictions on securities.	2,500/-
23.	Sec. 241 (1)	Application in cases of oppression and mismanagement.	10,000/-
24.	Sec. 242 (4)	Application for regulating the conduct of company.	2,500/-
25.	Sec. 243 (1) (b)	Application for appointment as Managing Director	5,000/-
26.	Sec. 244 (1)	Application for waiver of requirement specified in clause (a) or (b) of Sec. 244 (1)	2,500/-
27.	Sec 252	Revival of Companies when struck off by ROC	1,000/-
28.	Sec 245	Class action suits	5000/-
29.	Sec. 441	Application for compounding of certain offences.	1,000/-
30.	Section 421	Appeals to NCLAT	5,000/-
31.	Application under any other provisions specifically not mentioned herein above		1,000/-

# FORMS OF NCLT

FORMS	PARTICULARS	RULES
NCLT 1	Petition/ Application or IA alongwith attachments	Rule 34
NCLT 2	Notice of Admission	Rules 34
NCLT 3	Notice of Motion	Rule 34
NCLT 3A	Advertisement dealing Petition	Rule 35
NCLT 3B	Individual Notice of Petition/ Application to Creditors, Members etc	Rule 68
NCLT 3C	Lodging of Caveat	Rule 25
NCLT 4	Memorandum of Caveat	
NCLT 5	Notice to Opposite Party	Rule 37
NCLT 6	General Affidavit Verifying Petition	Rule 34
NCLT 7	Affidavit by way of Evidence	Rule 39
NCLT 8	Application for Execution of Orders	Order 21, Rule 11
NCLT 9	General Form if no specific form given	

<b>FORMS</b>	<b>PARTICULARS</b>	<b>RULE</b>
NCLT 10	Application for registration of intern of authorised representative	Rule 46
NCLT 11	Application u/s 71(9), 74(10), 73(4) or u/s 74(2) & 76(2)	
NCLT 12	Memorandum of Appearance	Rule 45
NCLT 13	Public Notice of Petition u/s 245	Rule 87
NCLT 14	Affidavit of illiterate, visually challenged person	Rule 128
NCLT 15	Application for production of documents, form of summons	Rule 131
NCLT 16	Form recording of Depositions	Rule 140
NCLT 17	Certificate of Discharge	Rule 142
NCLT 18	Register of Appeals	



**LIST OF DOCUMENTS TO BE ATTACHED TO  
PETITION OR APPLICATION**

Sr No.	Section	Nature of Petition	Encl to the Petition
1	Sec. 55(3)	Application for issue further redeemable preference shares.	<ol style="list-style-type: none"><li>1. Copy of the memorandum and articles of association.</li><li>2. Documents showing the terms of issue of the existing preference shares.</li><li>3. Copy of the Board Resolution and resolution of general meeting for issue of further redeemable preference shares.</li><li>4. Copy of the latest audited balance sheet with the profit and loss account of the company with auditor's report and director's report.</li><li>5. Affidavit verifying the petition.</li><li>6. Bank draft evidencing payment of application fee.</li><li>7. Memorandum of appearance with copy of the Board Resolution or the executed Vakalatnama, as the case may be</li></ol>



Sr No.	Section	Nature of Petition	Encl to the Petition
2	58(3) or 59	Appeal against refusal of registration of shares; or Appeal for rectification of register of member	<p>Where the company is the petitioner.</p> <ol style="list-style-type: none"> <li>1. Copy of the memorandum and articles of association</li> <li>2. Latest audited balance-sheet and profit and loss account, auditor's report and director's report.</li> <li>3. Authenticated copy of the extract of the Register of Members.</li> <li>4. Copy of the resolution of the Board or Committee of Directors (where applicable)</li> <li>5. Any other relevant documents.</li> <li>6. Affidavit verifying the petition.</li> <li>7. Bank draft evidencing payment of application fee.</li> <li>8. Memorandum of appearance with copy of the Board Resolution or the executed Vakalatnama, as the case may be.</li> <li>9. Two extra copies of the petition.</li> </ol> <p>Where the petition is made by any other person.</p> <ol style="list-style-type: none"> <li>1. Documentary evidence in support of the statements made in the petition including the copy of the letter written by the petitioner to the company for purpose of registering the transfer of, or the transmission of the right to, any share, or interest in, or debentures as also a copy of the letter of refusal of the company.</li> <li>2. Copies of the documents returned by the company.</li> <li>3. Any other relevant document.</li> <li>4. Affidavit verifying the petition.</li> <li>5. Bank draft evidencing payment of application fee.</li> <li>6. Memorandum of appearance with copy of the Board's Resolution or the executed Vakalatnama, as the case may be.</li> <li>7. Two extra copies of the petition</li> </ol>

Sr No.	Section	Nature of Petition	Encl to the Petition
3	Sec. 61(1)	Application to Tribunal for consolidation and division of share capital	<ol style="list-style-type: none"><li>1. Copies of memorandum and articles of association;</li><li>2. Copies of audited balance sheets for past 3 years;</li><li>3. Resolution for allowing such consolidation or division and providing justification for the same;</li><li>4. Documents in proof of new capital structure and class of shares being consolidated or divided;</li><li>5. Affidavit verifying the petition.</li><li>6. Bank draft evidencing payment of application fee.</li><li>7. Memorandum of appearance with copy of the Board's Resolution or the executed Vakalatnama, as the case may be.</li><li>8. Two extra copies of the application</li><li>9. Any other relevant documents</li></ol>

Sr No.	Section	Nature of Petition	Encl to the Petition
4	Sec. 97 (1)	Application for calling of Annual General meeting	<ol style="list-style-type: none"> <li>1. Affidavit verifying the petition.</li> <li>2. Bank draft evidencing payment of application fee.</li> <li>3. Any other relevant document</li> </ol>
5	Sec. 98 (1)	Application for calling of general meeting of company other than annual general meeting	<ol style="list-style-type: none"> <li>1. Documentary evidence in proof of status of the applicant.</li> <li>2. Affidavit verifying the petition.</li> <li>3. Bank draft evidencing payment of application fee.</li> <li>4. Memorandum of appearance with copy of the Board's Resolution or the executed Vakalatnama, as the case may be.</li> <li>5. Any other relevant document</li> </ol>
6	Sec. 119(4)	Petition to pass an order directing immediate inspection of minutes books or directing a copy thereof be sent forthwith to person requiring it	<ol style="list-style-type: none"> <li>1. Documentary evidence, if any, showing the refusal of the company to give inspection to the petitioner.</li> <li>2. Affidavit verifying the petition.</li> <li>3. Bank draft evidencing payment of application fee.</li> <li>4. Memorandum of appearance with copy of the Board's Resolution or the executed Vakalatnama, as the case may be.</li> <li>5. Any other relevant document.</li> </ol>

# APPLICATION UNDER SECTION 241

## *RULE 81*

- (1) An Application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act, shall be filed in the Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.
- (2) Where an application is presented under section 241 on behalf of any members of a company entitled to apply under sub-section (1) of the said section, by any one or more of them, the letter of consent signed by the rest of the members so entitled authorising the applicant or the applicants to present the petition on their behalf, shall be annexed to the application, and the names and addresses of all the members on whose behalf the application is presented shall be set out in a schedule to the application, and where the company has a share capital, the application shall state whether the applicants have paid all calls and other sums due on their respective shares.
- (3) A copy of every application made under this rule shall be served on the company, other respondents and all such persons as the Tribunal may direct.

# APPLICATION UNDER SUB-SECTION (1) OF SECTION 244. *RULE 83A*

- An application in Form No. NCLT. 9 may be filed before the Tribunal for waiver of requirement of clause (a) or (b) of Section 244 of the Act which shall be accompanied by such documents as mentioned in Annexure-B.

# MEANINGS

- Meaning of Application **Rule 2 (5)**

Any Application, Interlocutory Application or proceedings filed under the provisions of the Act, including any transferred application or transferred petition as defined under sub-rule (29).

- Meaning of Interlocutory Application **Rule 2 (15) and Rule 32**

An Application in any appeal or original petition on proceeding already instituted in the Tribunal, but not being a proceeding for execution of the order or direction of Tribunal.

**Interlocutory Application are a form of incidental proceedings and they are in aid to final proceedings. An Interlocutory Petition is initiated with a view to prevent the ends of justice being defeated when the Original Application is unable to address the immediate circumstances. Interlocutory Application is filed to support the main application for an interlocutory relief during the pendency of the proceedings of the main application.**

Every Interlocutory Application for stay, direction, Condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in prescribed form and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.

# MEANING

- Authorized Representative **Rule 2 (6)**

A person authorised in writing by a party to present his case before the Tribunal as the representative of such party as provided under section 432 of the Act.

Sec 432: 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.

- Pleadings **Rule 2 (19)**

Application including Interlocutory Application, Petition, Appeal, Revision, Reply, Rejoinder, Statement, Counter Claim, Additional Statement Supplementing the Original Application and Reply Statement under these rules and as may be permitted by the Tribunal.

# GENERAL INFORMATION

- Sitting Hours **Rule 9**

The sitting hours of the Tribunal shall ordinarily be from 10:30 AM to 1:00 PM and 2:00 PM to 4:30 PM, subject to any order made by the President.

- Working Hours **Rule 10**

Except on Saturdays, Sundays and other National Holiday, the office of the Tribunal shall remain open on all working days from 09.30 A.M. to 6.00 P.M.

The Filing Counter of the Registry shall be open on all working days from 10.30 AM to 5.00 P.M.



# GENERAL INFORMATION

- Inherent Power **Rule 11**

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

- Listing of cases **Rule 13**

An urgent matter filed before 12 noon shall be listed before the Tribunal on the following working day, if it is complete in all respects as provided in these rules and in exceptional cases, it may be received after 12 noon but before 3.00 P.M. for listing on the following day, with the specific permission of the Bench

# PRESENTATION OF PETITION OR APPEAL (RULE 23)

- Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in **triplicate** by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.
- All the documents filed in the Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.
- Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed under these rules.
- In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative.
- The processing fee prescribed by these rules, with required number of envelopes of sufficient size and notice forms shall be filled alongwith memorandum of appeal.

# NUMBER OF COPIES TO BE FILED

## *RULE 24*

- The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or petition or application or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

# GENERAL PROCEEDINGS

## *RULE 34*

- (1) In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice.
- (2) The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in Form No. NCLT. 4.
- (3) Every petition or application or reference shall be filed in form as provided in Form No. NCLT. 1 with attachments thereto accompanied by Form No. NCLT. 2 and in case of an interlocutory application, the same shall be filed in Form No. NCLT. 1 accompanied by such attachments thereto along with Form No. NCLT. 3.
- (4) Every petition or application including interlocutory application shall be verified by an affidavit in Form No. NCLT.6. Notice to be issued by the Tribunal to the opposite party shall be in Form NCLT-5.

# FILING OF REPLY AND OTHER DOCUMENTS BY THE RESPONDENTS (RULE 41)

(1) Each respondent may file his reply to the petition or the application and copies of the documents, either in person or through an authorised representative, with the registry as specified by the Tribunal.

(2) A copy of the reply or the application and the copies of other documents shall be forthwith served on the applicant by the respondent.

(3) To the reply or documents filed under sub-rule (1), the respondent shall specifically admit, deny or rebut the facts stated by the applicant in his petition or application and state such additional facts as may be found necessary in his reply.

# FILING OF REJOINDER (RULE 42)

- Where the respondent states such additional facts as may be necessary for the just decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent



**THANK YOU**

***YOU ARE WHAT YOU READ***