



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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SUPPLEMENT EXECUTIVE PROGRAMME (NEW SYLLABUS)

for

December, 2021 Examination

JURISPRUDENCE, INTERPRETATION AND GENERAL LAWS

MODULE 1

PAPER 1

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Lesson 12 - Special Courts, Tribunal under Companies Act and other Legislations

1) Section 58 of the Companies (Amendment) Act, 2020 has amended Section 410 of the Companies Act, 2013 w.r.t. "Constitution of Appellate Tribunal"-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)

(i) in the opening portion, the words "not exceeding eleven" is omitted;

Details of Changes:

The restriction on the appointment of the number of judicial and technical members in the Appellate Tribunal by the Central Government has been removed.

(ii) in clause (b), for the word, figures and letter "section 53N", the word, figures and letter "section 53A" is substituted.

Details of Changes:

The NCLAT constituted under Section 410 of the Companies Act, 2013 is empowered to hear appeals against any direction, decision or order referred to in Section 53A of the Competition Act, 2002 in accordance with the provisions of that Act.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MO==&docCategory=Notifications&type=open>

2) Section 59 of the Companies (Amendment) Act, 2020 has inserted a new Section 418A of the Companies Act, 2013 w.r.t. "Benches of Appellate Tribunal"-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)

Section 418A- (1) The powers of the Appellate Tribunal may be exercised by the Benches thereof to be constituted by the Chairperson:

Provided that a Bench of the Appellate Tribunal shall have at least one Judicial Member and one Technical Member.

(2) The Benches of the Appellate Tribunal shall ordinarily sit at New Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify:

Provided that the Central Government may, by notification, after consultation with the Chairperson, establish such number of Benches of the Appellate Tribunal, as it may consider

necessary, to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002 and under section 61 of the Insolvency and Bankruptcy Code, 2016.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open>

3) Benches of Appellate Tribunal (inserted by The Companies Amendment Act 2020 Amendment Effective from 22nd January 2021)

The Companies Amendment Act 2020 inserted section 418A in the Companies Act, 2013. It provides as under:

The powers of the NCLAT may be exercised by the Benches thereof to be constituted by the Chairperson. Further, it has been provided that a Bench of the NCLAT shall have at least one Judicial Member and one Technical Member.

The Benches of the NCLAT shall ordinarily sit at New Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify. Provided that the Central Government may, by notification, after consultation with the Chairperson, establish such number of Benches of the NCLAT, as it may consider necessary, to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002 and under section 61 of the Insolvency and Bankruptcy Code, 2016.

Impact

The said amendment inserted the provisions related to constitution, powers, sitting place, jurisdiction etc. of National Company Law Appellate Tribunal (NCLAT).

For more details visit:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTQxODk=&docCategory=NotificationandCirculars&type=open>

4) The Companies (Amendment) Act, 2020 amends the provision of section 435 of the Companies Act, 2013 related to establishment of Special Courts (effective from 22nd January 2021)

Section 435 (1)

Old Provision

The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification establish or designate as many Special Courts as may be necessary.

New provision

The Central Government may, for the purpose of providing speedy trial of offences under this Act, except under section 452, by notification establish or designate as many Special Courts as may be necessary.

Impact

The new provision has exempted the offence under section 452 i.e. Punishment for wrongful withholding of property out of the jurisdiction of Special Courts.

For more details visit:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTQxODk=&docCategory=NotificationandCirculars&type=open>

Lesson 13 - Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation (Amendment) Act, 2021 amends the Arbitration and Conciliation (Amendment) Act, 2021

Hon'ble President of India promulgated 'The Arbitration and Conciliation (Amendment) Ordinance, 2020' on November 04, 2020 with an objective to ensure that all the stakeholder parties get an opportunity to seek unconditional stay of enforcement of arbitral awards, where the underlying arbitration agreement or contract or making of the arbitral award are induced by fraud or corruption.

Amendments in the ordinance *inter-alia* include amendments to Section 43J of **Arbitration and Conciliation Act, 1996**, which prescribes qualification, experience and norms for accreditation of arbitrators, is substituted with the following section.

43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the Regulations.

Accordingly, the qualifications for appointment as arbitrators, which were earlier prescribed in the principal Act, will now be through Regulations.

Impact

The provisions of the Arbitration and Conciliation (Amendment) Ordinance, 2020 were adopted in the principal Act by virtue of the Arbitration and Conciliation (Amendment) Act, 2021.

For more details visit:

<https://egazette.nic.in/WriteReadData/2021/225832.pdf>

Note: Students appearing in December, 2021 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 31st May, 2021.