If you are planning to File an appeal before NCLT, then make sure that you are following the correct procedure as prescribed by Companies act 2013. In this article, we will discuss the process for filing of appeal before NCLT.

What needs to know about the process of filling an appeal before NCLT?

MCA has issued 3 notifications dated 01 June 2016 for setting up of National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) as well as notifying various sections of the Companies Act 2013.

Now, in continuation of Constitution of NCLT and NCLAT, MCA has again come up with notifications notifying NCLT Rules and NCLAT Rules on 21st July 2016 providing inter alia process and method for filing petition, application or appeal. Following are the requisite points for consideration for filing a petition, appeal or application before NCLT as per NCLT Rules:

The document to be filed before NCLT shall be in English and if in any other language, it shall be accompanied by a copy of Translation in English.

It will be typewritten, printed in double space, on one side of a legal paper, with margins: Top 4 c.m.Right-2.5 c.m. and left-5c.m.

It shall be duly paginated, indexed and stitched together in paper book form.

Every petition, application, appeal or document shall be filed in Triplicate.

Each document filed will be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

Copy of petition, application or appeal shall also be filed with the opposite party.

Certified True Copy of Resolution for authorization to sign, verify and institute on behalf of the company shall also be enclosed.

Every petition, application or appeal shall be filed in Form No. NCLT.1 along with the attachment of Notice of admission in Form NCLT-2. 9. Title Heading for Proceeding shall be in Form No. NCLT.4.

Every petition or application shall be verified by an Affidavit in Form No. NCLT.6.

Notice of Motion shall be filed in Form No. NCLT.3.

Notice to the opposite Party shall be issued in Form No. NCLT.5

All the Petition or application is required to be advertised which will be advertised in Form No. NCLT-3A in vernacular language and in English Newspaper. Advertisement if published shall also be placed on the website of the company if any.

Every Individual requires appearing either in person or through authorized Representative, who shall make an appearance through filing Vakalatnama or Memorandum of Appearance in Form No. NCLT.12 representing the respective parties.

No intern employed by Authorised Representative shall appear, access to the records or obtain copies of the order unless his name is entered in Register of intern maintained by a bench. An application shall be made by Authorised Representative in Form NCLT.10 for registering the intern.

Special Procedure has also been specified in Rule 66 to Rule 88 specifying the additional requirement for the applicant to be followed while filing an application under various provisions of Companies Act, 2013. Some of the additional requirements which include accompanying documents as mentioned in Annexure-B (which includes a copy of Memorandum and Articles, copy of balance sheet, Resolution, Bank Draft for filing fees etc.), a content of an application, Advertisement of application etc.

An application for rectification of Final order shall be filed within 2 years in Form No. NCLT.9.

The certified copy of the order of NCLT shall be filed with ROC in Form NO. INC-28 along with the fees of ₹ 500/- within 30 days.

# National Company Law Tribunal

Ever since the boom of industrialization, the government of India has come up with multiple laws to cope with it. For resolving the issues related to corporate disputes of civil nature under The Companies Act, 2013 the government on the recommendation of Justice Eradi Committee, established a quasi-judicial adjudicating body, the National Company Law Tribunal on June 1st, 2016. It was set up under section 408 of the Companies Act, 2013.

It acts like the adjudicating authority for matters related to the insolvency resolution of companies and limited liability partnerships under the Insolvency and Bankruptcy Code, 2016.

## National Company Appellate Tribunal

The National Company Appellate Tribunal is an authority which deals with the appeals arising out of the decision of the NCLT. It is basically an intermediate appellate authority for rectifying the errors of the NCLT. The decision of the Appellate Tribunal can further be challenged before the Supreme Court. Any party who is dissatisfied with the order of the NCLT can appeal before The Appellate Tribunal. The Appellate Tribunal will further review the decision of the Tribunal and set aside/modify or affirm it.

## Difference Between NCLT And NCLAT

|  |  |
| --- | --- |
| NCLT | NCLAT |
| Primary Jurisdiction | Appellate Jurisdiction |
| Evidences and witnesses presented before NCLT. | Reviews the decision of NCLT |
| NCLT does fact-finding and evidence collection. | The NCLAT decides a case based on already collected evidences and witnesses. |

## Why Is NCLT Constituted?

The National Company Law Tribunal constituted under Section 408 of The Companies Act, 2013 for the following purpose

* Disposing off the proceedings which are pending before the Company Law Board (CLB).
* To supervise the matters which are pertaining to the winding up, restructuring, compromise, etc. which are vested with the High Court.

The formation of The NCLT has helped to cater to the needs of the corporate sector. Further, it also aided in the promotion of interests of banks, financial sector institutions along with the stakeholders.

## Scope Of The National Company Law Tribunal

The NCLT amalgamates the jurisdiction of the Company Law Board, the Board for Industrial and Financial Reconstruction (BIFR), and The Appellate Authority for Industrial and Financial Reconstruction (AAIFR) and winding up or restructuring powers which were vested in the High Court. Hence, the Tribunal will have the powers to govern all the companies established under the Companies Act, 2013 in India.

## Benefits Of The National Company Law Tribunal

* NCLT is an only specialized court for companies in India, hence it has exclusive jurisdiction.
* It will reduce the multiplicity of litigation which was earlier present.
* It has multiple branches which ease the procedure of registration of cases.
* The Tribunal consists of both technical and judicial member. Which aides in the decision making.
* The NCLT has reduced the time duration for winding up companies.
* Speedy disposal of cases will decrease the number of cases.

## Special Powers Of NCLT

Under Notification dated 1st June 2016, the government transferred all the powers of the Company Law Board to the National Company Law Board. The NCLT has discretionary power to look into cases pending before the CLB from any stage.

## Powers Of The NCLT

* Registration of Companies
* Issue related to transfer of shares
* Power to investigate
* Power to freeze assets of the company
* Conversion of Public Limited Company to Private Limited Company
* Corporate Debt Restructuring (CDR)
* Deposits
* Safeguarding interests of Shareholders
* Compounding of Offence

### The Procedure For Filing An Appeal In The National Company Law Tribunal

The Ministry of Corporate Affairs in continuation with the establishment of the NCLT and the NCLAT, have come with NCLT Rules and NCLAT Rules in 2016. It provides the procedure for filing an appeal before both the Tribunals. Following are the requisite points for filing the appeal before The National Company Law Tribunal

* The documents filed should be in English. If it is in another language, a copy of the Translation in English needs to be filed.
* The documents should be typewritten and printed in double space on legal paper at one side with margins: Top 4 cm, Right- 2.5 cm and left 5 cm.
* The document should be duly paginated and indexed together in paper book form.
* Every appeal shall be filed in Triplicate.
* Each document should have an index in triplicate stating the details and the fee paid.
* The copy of the appeal should be filed with the opposing party.
* Certified True Copy of Resolution for authorization to sign, verify and institute on behalf of the company shall also be enclosed.
* An appeal needs to be filed in Form NCLT. 1 accompanied with the notice of admission in Form NCLT-2.
* The Tile and the Heading for the Proceeding shall be in Form No. NCLT.4.
* Under Form No. NCLT.6. the petition or the application needs to be verified by the affidavit.
* The notion of Motion needs to be filed under Form No.NCLT.3.
* Notice to the opposite party shall be issued in Form No. NCLT.5.
* An advertisement in reference to the petition or application needs to be made in Form No. NCLT.3A in a vernacular and English newspaper. If the advertisement is placed, one needs to place it on the company website.
* An individual is required to appear either in person or an authorized representative by filing a memorandum of appearance/Vakalatnama in Form No. NCLT.12.
* The interns employed by the authorized representative don’t have the power appear before the Tribunal until and unless his name is included in the Register of Intern. The application for registering an intern should be made in Form NCLT.10 by the authorized representative.
* Rule 66 to 88 provide a special procedure to be followed in certain conditions while filing an application. These include accompanying documents as mentioned in annexure-B, application contents and advertisement of the application.
* The application for rectification of the final order needs to be filed under Form No.NCLT.9 within two years.
* The certified copy of the NCLT order shall be filed with the ROC in Form No. INC-28 accompanied with fees of Rs. 500 within a period of 30 days.

## Documents Required For Filing An Appeal Before The Tribunal

Documents required for filing an appeal before the NCLT under section 252 of the Companies Act

* Index of the appeal or petition
* Notice of admission
* Brief synopsis
* Important dates and Events
* Petition or application stating the grounds
* Every Petition shall be verified with an affidavit in the Form No. NCLT 6 and shall be made on a stamp paper of Rs. 10.
* The authorised representative has to make appearnace by filing a Vakalatnama or memorandum of Appearnacein Form No. NCLT 12.
* Certified copy of the Extract of resolution in favour of the Authorised Signatory/Authorised Representative
* Power of Attorney
* Master data of the company
* Audited financial records of the company filing the petition for the defaulted period
* Certificate of Incorporatio, Memorandum and AOA
* Notices of ROC to concerned company.
* demand draft ofstatutory fees
* Any other document like ITR, VAT, bank statement or other documents which prove company was operational

## Filing An Appeal In NCLT With LawyerINC

Once you post a query, our representative will get back to you and a lawyer will be assigned to your case

Our Lawyer will contact you and explain the whole procedure and will understand the details of your case

Once the objectives are set forth, the lawyer shall draft an appeal

Once an appeal is drafted, it will be filed in The NCLT.

The Legal proceedings will be initiated.

## Why Choose LawyerINC?

* Free consultation for Enquiry
* Renounced Legal Experts at your reach
* End to End services
* Assistance in filing the appeal in the National Company Law Tribunal
* We'll provide ongoing support and we'll be available at your service throughout the case.

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.. • 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

FORM NO. NCLT. 12 (see rule 45) Memorandum of appearance To The Registrar, National Company Law Tribunal . . . . . . . . . . Bench, In the matter of . . . . . . . . . . Petitioner. V. . . . . . . . . . . Respondent (C.P. NO . . . . . . . . . . of 20 . . . . . . . . . . ) Sir, Please take notice that I, AB, Company Secretary in practice/ practising Chartered Accountant/ practising Cost Accountant, duly authorised to enter appearance, and do hereby enter appearance, on behalf of . . . . . . . . . . petitioner/ opposite party/ Registrar/ Regional Director/ Government of . . . . . . . . . . in the above-mentioned petition. \*A copy of the resolution passed by the Board of Directors authorising me to enter appearance and to act for every purpose connected with the proceedings for the said party is enclosed, duly signed by me for identification. Yours sincerely, Dated . . . . . . . . . . day of . . . . . . . . . . Address: Enclosure: as aforesaid Tele No.:

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH COURT - IV 21 MA 3537 IN C.P 4719(MB)/2018 CORAM : SHRI RAJASEKHAR V.K. MEMBER (J) SHRI RAVIKUMAR DURAISAMY MEMBER (T) ORDER SHEET OF THE HEARING HELD ON 29.11.2019 Name of the Parties: Hemant Prakash S. Jain SECTION 19(2) OF THE INSOLVENCY & BANKRUPTCY CODE, 2016 ORDER 1. This is a Miscellaneous Application bearing No. 3537/2019 in CP(IB)- 4719(MB)/2018 filed under section 19(2) of the IBC, 2016 by Mr. Hemantprakash S. Jain, IRP appointed in the matter of A R Coating Solutions (India) Pvt. Ltd., the Corporate Debtor as Respondent No. 1, and Mr. Ramreddy Dnyandevreddy Macchapalle as Respondent No.2 and Ms. Asha Ram Reddy as Respondent No.3, the directors of the Corporate Debtor. In this MA, the prayer sought is that the Hon’ble Tribunal be pleased to issue appropriate directions to the directors and the management of the Corporate Debtor for extending full co-operation and providing all necessary assistance. Further, another prayer was also sought to issue direction to the directors and the management (Respondent No. 2 & 3) of the Corporate Debtor forthwith to provide/hand over all the Information including Books of Account/Bank Account and all other relevant documents from the Corporate Debtor to the Petitioner viz. Hemant Prakash S Jain, IRP in this matter. 2. When the matter was heard today, Ld. Counsel for the IRP and the IRP in person are present and explained the situation prevailing in the Corporate Debtor and insisted for reliefs as per the prayers sought in this Miscellaneous Application. Having considered the facts and circumstances, the situation and the prayer sought by the IRP, the Bench is satisfied with the submissions made by the Applicant on the prayers that Directors and the management of the Corporate Debtor to extent full co-operation, provide necessary assistance and the information to the Petitioner. By exercising the power U/s 19(2) of the IB Code. We hereby direct the Directors, Promotors and management of the Corporate Debtor to forthwith extend full co-operation, provide all assistance and hand over all the Information including Books of Account/Bank Account and all other relevant documents of the Corporate Debtor to the IRP to effectively complete the Corporate Insolvency Resolution Process. 3. Further, the Bench also directs the Promoters(s), Director(s) and one of the Senior Managers of the Corporate Debtor to be present in person on the next date of hearing. List this matter on 17.12.2019 for compliance of the directions issued by this Bench. Sd/- Sd/- RAVIKUMAR DURAISAMY RAJASEKHAR V.K. Member (Technical) Member (Judicial) 29.11.2019/svr

FORM NO. NCLT. 2 [See rule 34] BEFORE THE NATIONAL COMPANY LAW TRIBUNAL . . . . . . . . . . . BENCH : . . . . . . . NOTICE OF ADMISSION Date: . . . . . . . . . . . . . . . . . . . . . . From: . . . . . . . . . . . . . . . . . . . . . . (Insert name of party filing the Admission) To : The Registrar, NCLT ( . . . . . . . . . . . . . . . . . . . . . . Bench). ... Applicant. - Vs- ... Respondent. The Party named above requests that the Tribunal grant the following relief: . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . (Insert the relief or order sought) In terms of . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . (Insert the section of the Act, or the Rules/Regulation, that provides for the order or relief sought) For the following reasons: (Insert a concise statement of the circumstances, and the particulars of the request) In support of this Application, the applicant has attached an affidavit setting out the facts on which the Applicant relies. Name and Title of person signing on behalf of Applicant: . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Authorised Signature and Address: . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Tel No. Fax No. e-mail: This form is prescribed under Rule under . . . . . . . NCLT Rules, 2016. For rehabilitation : Rehab. Petition No. Transfer Petition For Transferred. (CLB/BIFR/AIFp/HHC) No (CP.No.OR . . . . . . . . . . . . . . ) Matters from the : CLB/BIFR/AIFR/HHC For Other matters : Company Petition No.