

**THOUGHTS ON TRIBUNALS SYSTEM IN INDIA & PRESENTATION BEFORE
TRIBUNALS, REGULATORS AND AUTHORITIES**

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INTRODUCTION

The word 'Tribunal' is derived from the word 'tribunes' which in turn is derived from the Latin word '*tribunus*'. In ancient Rome, 'Tribune' was the title of various elected officials and also implied the dais or platform upon which the elected official or leader sat and addressed his assembly.

Tribunals are judicial or quasi-judicial bodies, most of which were established to reduce pendency of cases in courts. The world over, many governmental bodies are titled 'tribunals' to emphasize that they are not courts of normal jurisdiction, for e.g. in Great Britain, the Employment Appeal Tribunal is an independent tribunal which determines legal disputes relating to employment law throughout Great Britain. Most countries have enacted laws dealing with the Tribunals within their Constitutional framework.

Presentation before Tribunals has certain procedural aspects which need to be mastered. The number of people practicing advocacy before tribunals remains low and repetitive as many are afraid to venture into this arena. However, it is possible to outshine in a tribunal setting, regardless of the jurisdiction, provided unwavering focus is applied at the time of preparation, presentation and advocacy before Tribunals and Authorities.

Tribunals have grown in India both in number and authority and their powers, functions, practice and procedure has become a subject in itself for both applicants/appellants, respondents and interested learners. Apart from Tribunals there may be bodies performing quasi-judicial functions which have been created and are administered by the Central Government and they may be falling in categories of Commissions, Boards or other Authorities.

These Tribunals, Commissions, Boards, Authorities provide independent adjudication of disputes and function through prescribed practice and procedure which may vary as per the nature of the function they perform.

EMERGENCE OF TRIBUNAL SYSTEM IN INDIA

The tribunal system has developed as a parallel to the traditional court system over the last eighty years. The judicial system in India is classified into various levels - at the top is the Supreme Court, followed by the High Courts at the State level, District courts at the District levels and Lok Adalats at the village and Panchayat levels. The Tribunals play a distinct role in this system.

The first Tribunal in India viz. The Income Tax Appellate Tribunal was created in 1941 to decide Income Tax cases under the Income Tax Act, 1922 and thus reduce the workload of Courts. Various Committees were setup to suggest reforms to deal with the problem of pendency of cases in the Courts. The Law Commission of India in its 58th Report in 1974, when studying aspects relating to the Reform of Judicial Administration, recommended that a separate high powered Tribunal or Commission should be set up to deal with the service matters. The Swaran Singh Committee Report in 1976, recommended the setting up of Tribunals in three broad areas to combat delays in the Indian legal system.

The Constitution (Forty-Second Amendment) Act of 1976 inserted Articles 323-A and 323-B in the Constitution of India for establishing Tribunals to adjudicate the matters specified in the sub-clauses of these Articles. Most provisions of the amendment came into effect on 3rd January 1977, some were enforced from 1st February and another came into force on 1st April 1977. The Articles related to Tribunals came into force on 3rd January, 1977. After the insertion of Articles 323A and 323B in the Constitution of India, several tribunals such as the Central Administrative Tribunal as well as sector specific tribunals were set up from the 1980s to 2010s. In 2010, the Supreme Court clarified that the subject matters under Article 323B are not exclusive, and legislatures are empowered to create tribunals on any subject matters under their purview as specified in the Seventh Schedule of the Constitution.

Appeals from tribunals usually lie with the concerned High Court. However, some laws specify that appeals will be heard by the Supreme Court. The Law Commission of India in its Report No. 272 in 2017, has said that “It is a settled legal proposition that the higher judiciary alone has the function of determining authoritatively the meaning of statutory enactment and to lay down the frontiers of jurisprudence of any body or Tribunal constituted under the Act. A Tribunal has to function under the Statute, whereas the higher judiciary is a Constitutional authority, which is entrusted not only with the task of interpreting the laws and the Constitution, but also to exercise supervisory control over the Tribunals”.

CONSTITUTIONAL PROVISIONS

The Constitution of India is the longest written constitution of any sovereign country in the world and currently it consists of XXII parts which are divided into Articles numbered up to 395 and 12 schedules. It is supreme law and all acts and rules derive their power from the Constitution.

The provision for Tribunals was added by the Constitution (Forty-Second Amendment) Act of 1976. The Constitution of India through Part XIVA, Articles 323A (Administrative Tribunals) and 323B (Tribunals for other matters) empower the Legislature to set up administrative and other tribunals respectively and describe the powers and functions that may be vested in such tribunals.

Under Article 323A of the Constitution of India, Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

Under Article 323 B of the Constitution of India, the appropriate legislature (parliament or state legislatures) may provide for the adjudication or trial by tribunals of any disputes, complaints, or

offences with respect to all or any of the matters with respect to which such Legislature has power to make laws viz.:

- Levy, assessment, collection and enforcement of any tax
- Foreign exchange, import and export across customs frontiers;
- Industrial and labour disputes;
- Matters connected with Land reforms covered by Article 31A
- Ceiling on urban property;
- Elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding specified matters
- Production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods
- Rent, its regulation and control and tenancy issues including the right, title and interest of landlords and tenants
- offences against laws with respect of any of the specified matters
- any matter incidental to any of the matters specified above

MEANING AND STRUCTURE OF INDIAN TRIBUNAL SYSTEM

In general terms, Tribunal is a quasi-judicial body set up to deal with problems such as resolving administrative or tax-related disputes.

However, despite authorizing the establishment of Tribunals, the Constitution of India does not define a 'tribunal'. Various Court judgments have tried demarcating the functions of both Court and Tribunal and in the process have tried to bring forth the meaning of each. The dictionary meaning as on in the internet (en.oxforddictionaries.com) of Tribunal is "*a body established to settle certain types of dispute*".

The Law Commission of India in its Report 272 dated 27th October 2017, titled ‘Assessment of Statutory Frameworks of Tribunals in India’ has described ‘Tribunal’ as an administrative body established for the purpose of discharging quasi-judicial duties.

Section 2(e) of The Tribunals Reform Act 2021 seeks to define the term by enumeration of Tribunals listed in the First Schedule to the Act. As per section 2(e) of the Tribunal Reform Act 2021 - Tribunal” means a Tribunal, Appellate Tribunal or Authority as specified in column (2) of the First Schedule. There are 16 Tribunals listed in the 2nd column of the First Schedule to the Tribunals Reform Act 2021 namely:

1. Industrial Tribunal constituted by the Central Government
2. Income-tax Appellate Tribunal
3. Customs, Excise and Service Tax Appellate Tribunal
4. Appellate Tribunal (under The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976)
5. Central Administrative Tribunal
6. State Administrative Tribunals
7. Railway Claims Tribunal
8. Securities Appellate Tribunal
9. Debts Recovery Tribunal
10. Debts Recovery Appellate Tribunal
11. Telecom Disputes Settlement and Appellate Tribunal
12. National Company Law Appellate Tribunal
13. National Consumer Disputes Redressal Commission
14. Appellate Tribunal for Electricity
15. Armed Forces Tribunal
16. National Green Tribunal

The Law Commission of India in its Report 272 dated 27th October 2017, titled ‘Assessment of Statutory Frameworks of Tribunals in India’ had recommended that there should be uniformity in the appointment, tenure and service conditions for the Chairman, Vice-Chairman and

Members appointed in the Tribunals. While making the appointments to the Tribunal, independence shall be maintained.

There are important decided cases wherein Courts have taken up matters related to the Constitutional validity of Tribunals, the requisites of tribunals, their powers and important aspects regarding the functioning of Tribunals.

In the landmark case of *L Chandra Kumar v. Union of India*, (1997) 3 SCC 261 - The judgment of a Constitution Bench of seven Judges of the Supreme Court of India in *L Chandra Kumar v. Union of India*, upheld the power of Parliament to set up tribunals and vest in them the power to decide cases on any subject matter. The question whether the Tribunals can be said to be effective substitutes for the High Courts in discharging the power of judicial review again came up for consideration in *L Chandra Kumar v. Union of India* (supra). The Court held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. The Court clearly held that the Tribunals are supplemental to High Courts and not their substitutes. Regarding the issue of the competence of Tribunal members, the Court observed that it is desirable that all the Tribunals should be kept under a single nodal agency that will monitor the working of the Tribunals and will ensure the uniformity in the appointment system.

The Supreme Court in *UOI v. R Gandhi, President Madras Bar Association* (2010) 11 SCC 1, observed and held as under: *The term 'Courts' refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the state for administration of justice that is for exercise of the judicial power of the state to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Courts refer to Civil Courts, Criminal Courts and High Courts. Tribunals can be either private Tribunals (Arbitral Tribunals), or Tribunals constituted under the Constitution (Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule) or Tribunals authorized by the Constitution (Administrative Tribunals under Article 323-A and Tribunals for other matters under Article 323-B) or Statutory Tribunals*

which are created under a statute ((Motor Accident Claims Tribunal, Debt Recovery Tribunals and consumer fora))”.

The landmark Madras Bar Association v/s Union of India & Anr (2014) judgment of the Supreme Court specifically rejected the contention that transferring judicial function, traditionally performed by the Courts, to the Tribunals offended the basic structure of the Constitution.

In S. P. Sampath Kumar Etc. versus Union of India and Ors. AIR 1987 SC 386, the Supreme Court decided that “It is the High Court which is being supplanted by Administrative Tribunal. The office of Chairman of the Tribunal, therefore, for all practical purposes should be equated with the office of the Chief Justice of a High Court. Judicial discipline generated by experience and training in an adequate dose is a necessary qualification for that post”. “The appointment of Chairman, Vice-Chairman and Administrative Members, therefore, should be made by the concerned Government only after consultation with the Chief Justice of India and such consultation must be meaningful and effective. Alternatively, a High Powered Selection Committee headed by the Chief Justice of India or a sitting Judge of the Supreme Court or concerned High Court nominated by the Chief Justice of India may be set up for making these appointments”.

LEGISLATIVE FRAMEWORK

The Administrative Tribunals Act 1985

The Administrative Tribunals Act 1985 is an Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of article 323A of the Constitution of India and for matters connected therewith or incidental thereto.

The Administrative Tribunals Act, 1985 was enacted on 27.02.1985 and came into force on 01.7.1985 vide Notification No. G.S.R. 527(E). The Act consists of 5 Chapters divided into 37 sections. The Central Administrative Tribunal is empowered to frame its own rules of procedure and practice. The employees of the Central Administrative Tribunal are required to discharge their duties under the general superintendence of the Chairman. Salaries and Allowances and Conditions of Service of the officers and other employees of the Tribunal are specified by the Central Government. Some of the important Rules framed under the Act are:

- The Central Administrative Tribunal (Financial and Administrative powers) Rules 1985
- The Central Administrative Tribunal (Procedure) Rules 1987
- The Central Administrative Tribunal Rules of Practice, 1993
- The Administrative Tribunal (Procedure for Appointment of Members) Rules 2011
- The Central Administrative Tribunal (salaries, allowances and conditions of service of the officers and employees) Rules 2017

The Administrative Tribunal (Amendment) Act 2006 was passed on 2nd January, 2007, and the provisions of the Act came into force on 19.2.2007. It brought some key changes in the Administration Tribunals Act 1985. The Administrative Tribunal & Administration Division of the Department of Personnel & Training of the Ministry of the Ministry of Personnel, Public Grievances and Pensions inter-alia governs the administration of the Administrative Tribunal Act, 1985, appointments of Chairman and other Group 'A' posts in Central Administrative Tribunal and budget and personnel matters of Central Administrative Tribunals.

The Tribunals Reforms Act, 2021

The Tribunal Reforms Act 2021, was enacted on 13.8.2021 and came into force on 04-04-2021. It is administered by the Department of Revenue, Ministry of Finance. The 2021 Act also amends the Finance Act, 2017, to bring certain provisions (such as qualifications, appointments, term of office, salaries and allowances of tribunal members) under the purview of the 2021 Act. Before the passage of this Act, these provisions were notified through Rules under the Finance Act, 2017. The Tribunals Reforms Act, 2021 replaces a similar Ordinance promulgated in April 2021 that sought to dissolve eight tribunals.

According to section 2(e) of the Act, “Tribunal” means a Tribunal, Appellate Tribunal or Authority as specified in column (2) of the First Schedule to the Act. The sixteen Tribunals specified in the First Schedule to the Act are:

1. Industrial Tribunal constituted by the Central Government under The Industrial Disputes Act, 1947
2. Income-tax Appellate Tribunal under The Income-tax Act, 1961
3. Customs, Excise and Service Tax Appellate Tribunal under the Customs Act 1962
4. Appellate Tribunal under The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
5. Central Administrative Tribunal under The Administrative Tribunals Act, 1985
6. State Administrative Tribunals under The Administrative Tribunals Act, 1985
7. Railway Claims Tribunal under The Railway Claims Tribunal Act, 1987
8. Securities Appellate Tribunal under The Securities and Exchange Board of India Act, 1992
9. Debts Recovery Tribunal under The Recovery of Debts and Bankruptcy Act, 1993
10. Debts Recovery Appellate Tribunal under The Recovery of Debts and Bankruptcy Act, 1993
11. Telecom Disputes Settlement and Appellate Tribunal under The Telecom Regulatory Authority of India Act, 1997
12. National Company Law Appellate Tribunal under The Companies Act, 2013
13. National Consumer Disputes Redressal Commission under The Consumer Protection Act, 2019
14. Appellate Tribunal for Electricity under The Electricity Act, 2003
15. Armed Forces Tribunal under The Armed Forces Act, 2007
16. National Green Tribunal under The National Green Tribunal Act, 2010

Chapter II of the Act comprising of sections 3 to 7 gives the provisions pertaining to ‘Conditions of service of Chairperson and Members of Tribunal’. Key provisions of the Act are:

- The Central Government may, by notification in the Official Gazette, make rules to provide for the qualifications, appointment, salaries and allowances, resignation, removal and other conditions of service of the Chairperson and Member of a Tribunal after taking into consideration the experience, specialization in the relevant field and the provisions of this Act.

- Search-cum-selection committees: The Chairperson and Members of the Tribunals will be appointed by the central government on the recommendation of a Search-cum-Selection Committee. State administrative tribunals will have separate search-cum-selection committees. The central government must decide on the recommendations of selection committees, preferably within three months of the date of the recommendation.
- Eligibility and term of office: The act provides for a four-year term for tribunal members. It sets the upper age for the chairperson at 70 years and for the other members at 67 years. The minimum age limit for appointments is 50 years.
- Uniform pay and rules: The act provide for uniform pay and rules for the search and selection committees across tribunals.
- Removal of tribunal members: It also provides for the removal of tribunal members. It states that the central government shall, on the recommendation of the Search-cum-Selection Committee, remove from office any Chairperson or a Member.

Section 33 of the Act, abolishes the following five Tribunals specified in the Second Schedule to the Act viz.

1. Appellate Tribunal under Cinematograph Act, 1952
2. Authority for Advance Rulings under Income-tax Act, 1961
3. Airport Appellate Tribunal under Airports Authority of India Act, 1994
4. Intellectual Property Appellate Board under Trade Marks Act, 1999
5. Plant Varieties Protection Appellate Tribunal under Protection of Plant Varieties and Farmer's Rights Act, 2001

Accordingly, any person appointed as the Chairperson or Chairman or President or Presiding Officer or Vice-Chairperson or Vice-Chairman or Vice-President or Member of the above Tribunal, Appellate Tribunal, or, other Authorities specified in the Second Schedule and holding office as such immediately before the notified date, shall, on and from the notified date, cease to hold such office. Any appeal, application or proceeding pending before the Tribunal, Appellate Tribunal or other Authorities specified in the Second Schedule, other than those pending before

the Authority for Advance Rulings under the Income-tax Act, 1961, before the notified date, shall stand transferred to the court.

The Tribunal (Conditions of Service) Rules, 2021

The Tribunal (Conditions of Service) Rules 2021 are in supersession of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020 - Published vide Notification No. G.S.R. 109(E), dated 12.2.2020. [The 2020 Rules were framed by the Ministry of Finance in exercising powers under Section 184 of the Finance Act 2017 and replaced the 2017 Rules, which were struck down by the Supreme Court, which directed the government to re-formulate the rules in conformity with the principles delineated by the court.

Moreover, the Tribunal, Appellate Tribunal and other Authorities (Qualification, Experience and other Conditions of Service of Members) Rules, 2017 were issued by virtue of the Finance Act 2017, to regulate the selection and service conditions of such tribunal members. Nevertheless, the Supreme Court Bench had struck down the Rules, and had then issued an interim direction to the effect that terms and conditions of appointment to the tribunals shall be in terms of the respective statutes before the enactment of the Finance Bill, 2017.

Thereafter, the Tribunals Reforms Act 2021 came into force. The Tribunal (Conditions of Service) Rules, 2021 published vide Notification G.S.R. 635 (E). dated 15.9.2021 were framed in exercise of the powers conferred by section 3 of the Tribunal Reforms Act, 2021. The Rules divided into VI Chapters comprising 17 Rules, shall apply to the Chairperson and Member of the Tribunal as specified in column (2) of the First Schedule of the Tribunal Reforms Act, 2021. Rule 3 of the Rules lays down the qualifications for appointment of chairperson and member of the Tribunals mentioned in column (2) of the First Schedule of the Tribunal Reforms Act, 2021.

Some important Rules are - Chapter II of the Rules (Rule 3 to 7) pertains to Appointment of Chairperson and Member; Chapter III (Rule 8 and 9) pertain to Resignation or Removal of Chairperson or Member; Chapter IV (Rule 10 to 12) pertains to Salary and Allowances; Chapter V (Rule 13 and 14) pertain to Pension, Provident Fund, Gratuity and Leave.

In 2023, important amendments were made to the Rules vide Notification G.S.R. 444(E). dated 16.6.2023, the Tribunal (Conditions of Service) Amendment Rules, 2023 and vide Notification G.S.R. 655(E). dated 5.9.2023, the Tribunal (Conditions of Service) Second Amendment Rules, 2023.

The Finance Act 2017

Ordinarily, Finance Acts are enacted at the beginning of every accounting year to give effect to the government's fiscal policies. They contain important changes dealing with income tax, goods and services tax, custom duties etc. However, sometimes they also contain non-taxation proposals. The Finance Act 2017 came into effect from April 1, 2017 after the President granted assent to the Bill on March 31, 2017, and apart from setting the fiscal agenda, inter-alia made changes that affected the powers and composition of various tribunals.

The Finance Act, 2017 merged certain existing tribunals (as detailed below), and gave the Union government the power to govern appointments and modify service terms and conditions of members of tribunals and allowed the government to make changes in them through rules (executive action). Generally, service conditions of chairperson and members of various quasi-judicial tribunals were prescribed under relevant legislation establishing such tribunals. The Finance Act 2017, however, amended such legislation, granting the power to the Government to make rules with respect to: (i) qualifications; (ii) appointments; (iii) term of office; (iv) salaries and allowances; (v) resignation; (vi) removal; and (vii) other conditions of service for members of such tribunals. The rules would then be applicable to members of such tribunals, including chairpersons, vice-chairpersons and members, among others, of specified tribunals, appellate tribunals, and other authorities. The amendments in the Finance Act, 2017 had modified the conditions of service of 19 tribunals (mentioned below).

In exercise of the powers conferred by section 184 of the Finance Act, 2017, the Central Government had framed 'The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017. The constitutional validity of the Finance Act and the rules was challenged by way of writ petition in *Jairam Ramesh v.*

Union of India, Writ Petition (Civil) No. 558 of 2017 which is pending before the Supreme Court. The Rules were struck down by the Court.

Section 184 of the Finance Act 2017 provided for the Central Government to notify Rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the nineteen Tribunal, Appellate Tribunal or other Authorities specified in column (2) of the Eighth Schedule to the Act. These were as follows:

1. Industrial Tribunal constituted by the Central Government under The Industrial Disputes Act, 1947
2. Income-tax Appellate Tribunal under The Income-tax Act, 1961
3. Customs, Excise and Service Tax Appellate Tribunal under the Customs Act 1962
4. Appellate Tribunal under The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
5. Central Administrative Tribunal under The Administrative Tribunals Act, 1985
6. Railway Claims Tribunal under The Railway Claims Tribunal Act, 1987
7. Securities Appellate Tribunal under The Securities and Exchange Board of India Act, 1992
8. Debts Recovery Tribunal under The Recovery of Debts and Bankruptcy Act, 1993
9. Debts Recovery Appellate Tribunal under The Recovery of Debts and Bankruptcy Act, 1993
10. Airport Appellate Tribunal under The Airport Authority of India Act, 1994
11. Telecom Disputes Settlement and Appellate Tribunal under The Telecom Regulatory Authority of India Act, 1997
12. Appellate Board under the Trademarks Act 1999
13. National Company Law Appellate Tribunal under The Companies Act, 2013
14. Authority for Advance Ruling under The Income Tax Act 1961
15. Film Certification Appellate Tribunal under The Cinematograph Act 1952
16. National Consumer Disputes Redressal Commission under The Consumer Protection Act, 1986
17. Appellate Tribunal for Electricity under The Electricity Act, 2003

18. Armed Forces Tribunal under The Armed Forces Act, 2007

19. National Green Tribunal under The National Green Tribunal Act, 2010

The 8 Tribunals that were merged in lieu of section 185 of the Finance Act 2017 (specified in the Ninth Schedule to the Finance Act 2017) are as follows:

Tribunal/ Appellate Tribunal (being merged) and their respective Acts	Tribunal/ Appellate Tribunal/ Authority (with which they are being merged) and which will exercise the jurisdiction
1. The Employees Provident Fund Appellate Tribunal under the Employees Provident Funds and Miscellaneous Provisions Act, 1952	The Industrial Tribunal constituted by the Central Government under the Industrial Disputes Act, 1947
2. The Copyright Board under the Copyright Act, 1957	The Intellectual Property Appellate Board under the Trade Marks Act, 1999.
3. The Railway Rates Tribunal under the Railways Act, 1989	The Railway Claims Tribunal under the Railway Claims Tribunal Act, 1987
4. The Appellate Tribunal for Foreign Exchange under the Foreign Exchange Management Act, 1999	The Appellate Tribunal under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.
5. The National Highways Tribunal under the Control of National Highways (Land and Traffic) Act, 2002	The Airport Appellate Tribunal under the Airport Authority of India Act, 1994
6. The Cyber Appellate Tribunal under the Information Technology Act, 2000	The Telecom Disputes Settlement and Appellate Tribunal under the Telecom Regulatory Authority of India Act, 1997
7. The Airports Economic Regulatory Authority Appellate Tribunal under the Airports Economic Regulatory	The Telecom Disputes Settlement and Appellate Tribunal under the Telecom Regulatory Authority of India Act, 1997

Authority of India Act, 2008	
8. The Competition Appellate Tribunal under the Competition Act, 2002	The National Company Law Appellate Tribunal under the Companies Act, 2013

EFFECTIVE PRESENTATION BEFORE TRIBUNALS, AUTHORITIES & REGULATORS

Tribunals/quasi-judicial authorities have a decorum and in most cases they are the first adjudicating authority or appellate authority, where appeal against their order lies to High Court or Supreme Court, as the case may be; therefore, it is of utmost importance that presentation before them are done according to acceptable and adequate standards.

Tribunals and other Authorities, most of them being quasi-judicial institutions, have a diverse mandate that include investigations and related appeals, complaints etc. Each of these mandates involves different procedures. Some of the cases are conducted with court-like proceedings while others are conducted entirely through the exchange of written documents. Regardless of the nature of the case, the representations of counsel on behalf of parties – whether it is by way of written submissions, oral submissions or both – play an important role in the Tribunal’s decision-making process. Poor representation means the client’s case is not put forward in its best light. Conversely, cases which are well prepared and effectively presented have a positive effect on the Tribunal members and their thinking. Conciseness and careful attention to efficiency and the preservation of time are fundamental aspects of effective advocacy before the Tribunals.

To make an effective representation before Authorities and Tribunals, excellent preparation must be done with respect to familiarity with the tribunal’s practice or procedure rules. Every Tribunal functions as per the procedures laid down in the rules made for this purpose in accordance with which it hears appeals; conducts proceedings and passes orders.

Tribunals/Quasi-Judicial Bodies where Chartered Accountants (CAs) can appear as Authorized Representative or Agent:

1. National Green Tribunal (NGT) – Under section 18(1) of the National Green Tribunal Act 2010 read with Rule 8 of the National Green Tribunal (Practices and Procedure) Rules, 2011, a CA can file application before NGT as duly authorized Agent
2. Income Tax Appellate Tribunal (ITAT) - As per Rule 2(ii)(a) of the Income-tax (Appellate Tribunal) Rules, 1963, in relation to an assessee, 'Authorized representative' means a person duly authorized by the assessee under section 288 of the Income Tax Act 1961 to attend before the Tribunal. A Chartered Accountant who holds a valid certificate of practice is covered as an 'Authorized representative' for appearance before ITAT under section 288(2)(iv) of the Income-tax Act, 1961. Hence, Chartered Accountants can represent before ITAT.
3. Customs, Excise and Service Tax Appellate Tribunal (CESTAT) – Under section 146A of Customs Act 1962 read with Rule 9 of Customs (Appeals) Rules 1982, and under section 35Q (2) (c) of Central Excise Act 1944 read with Rule 12 of the Central Excise (Appeals) Rules, 2001 a CA can appeal as an Authorized Representative before CESTAT.
4. Goods and Services Tax Appellate Tribunal (GSTAT) - Under section 116 of the Central Goods and Services Tax Act, 2017, any Chartered Accountant who holds a certificate of practice and who has not been debarred from practice can appear before GSTAT as Authorized Representative.
5. The Appellate Tribunal – Under section 32 of Foreign Exchange Management Act (FEMA), 1999, a Chartered Accountant can present the case to Special Director (Appeals)
6. Securities Appellate Tribunal – Under section 15V of Securities and Exchange Board of India (SEBI) Act 1992 read with Rule 4(3) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a Chartered Accountant is authorized to appear before the Securities Appellate Tribunal. Under section 22C of the

Securities Contracts (Regulation) Act 1956, a Chartered Accountant is authorized to appear before the Securities Appellate Tribunal.

7. Telecom Disputes Settlement and Appellate Tribunal – Under section 17 of Telecom Regulatory Authority of India (TRAI) Act, 1997, a Chartered Accountant is authorized to present the case before the Telecom Disputes Settlement and Appellate Tribunal.
Under section 30 of the Airports Economic Regulatory Authority of India Act, 2008, a Chartered Accountant is authorized to present the case before the Appellate Tribunal i.e. TDSAT.
8. National Company Law Tribunal and National Company Law Appellate Tribunal – Under section 432 of the Companies Act, 2013, read with Rules 23 and 45 of the National Company Law Tribunal (NCLT) Rules, 2016, and with Rule 22 and 63 of the National Company Law Appellate Tribunal (NCLAT) Rules, 2016, a Chartered Accountant is authorized to appear before National Company Law Tribunal and National Company Law Appellant Tribunal
9. Reals Estate Appellate Tribunal and Real Estate Regulatory Authority – Under section 56 of the Real Estate (Regulation and Development) Act, 2016, a Chartered Accountant is authorized to appear before the Real Estate Appellate Tribunal or the Real Estate Regulatory Authority
10. Competition Commission of India – Under section 35 of the Competition Act 2002, a Chartered Accountant is authorized to appear before the Competition Commission of India
11. Central Regulatory Electricity Commission - Under Rule 20 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023, A party may authorize a member of any statutory professional body holding a Certificate of Practice to represent and plead on his behalf before the Commission in tariff matters or matters involving matters of accounting, taxation, etc.
12. Insolvency and Bankruptcy Board of India – Under section 206 of the Insolvency and Bankruptcy Code 2016 read with the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, a chartered accountant can render his services as insolvency professional.

Tips for effective representation:

In general, your first task is to present the relevant facts — that is, the evidence that supports your case. The second task is to make submissions about the evidence — that is, tell the adjudicator what conclusions you want them to draw from the evidence that you presented. The third task is to describe how the law supports your case. The final task is to explain how all of this should result in the adjudicator making a decision in your favour.

The usual steps in a tribunal hearing are:

- Preliminary matters
- Opening statements
- Submission of evidence
- Closing arguments

The following are general guidelines for preparing and delivering effective advocacy before the Tribunal:

- Understand the Tribunal's jurisdiction, rules and procedures
- Prepare thoroughly for the hearing
- Submissions should be well organized and convincing.
- Use clear and concise language so that the facts are presented logically
- Be to the point while filing written submissions
- Use expert evidence when necessary
- The closing argument should be well drafted as it will be a preview of the case for the Tribunal.

Other points to be kept in mind:

- When approached by a potential client is to decide whether to agree to represent the client in the particular matter after carefully analyzing all information at hand. It is important to ascertain whether the client engaged or attempted to engage other professionals for this case, if so, reasons for the case being rejected needs to be ascertained.
- Not only the client, but the case too needs to be thoroughly scrutinized before being taken up. Consider your expertise and experience with similar cases and time availability to handle the case
- Paint a clear picture to yourself and to the client regarding the favorable and unfavorable aspects of the case
- Do not misrepresent facts but present all facts which are material and have a bearing on the issue under consideration

Propriety and Decorum in Conduct of Affairs:

There should be propriety and decorum in the manner of conduct of affairs towards the Authorities, the clients and even to the opponents.

It is desirable to be in proper dress in court or before a presiding officer, say a full suit or a black coat with black tie worn over any suitable dress. The color of the shirt should always be white and tie to match the suit.

Under Rule 17 of the Securities Appellate Tribunal (Procedure) Rules 2000, the dress regulations for the Presiding Officer and for the representatives of the parties have been specified. The dress for the Presiding Officer shall be white or striped or black pant with black coat over white shirt and black tie or a buttoned-up black coat. In the case of female Presiding Officer, the dress shall be black coat over white saree. Every authorized representative, other than a relative or regular employee of the party shall appear before the Appellate Tribunal in his professional dress if any, and if there is no such dress, a male, in a suit or buttoned-up coat over a pant or national dress that is a long buttoned up coat on dhoti or churridar pyjama, and a female, in a coat over white or

any other sober coloured saree or in any other sober dress. All other persons appearing before the Appellate Tribunal shall be properly dressed.

Rule 17A of the Income Tax (Appellate Tribunal) Rules 1963 prescribes the dress regulation for the members and for the representatives of the parties. According to the Rule, Summer dress for the Members shall be white shirt, white pant with black coat, a black tie or a buttoned-up black coat. In winter, striped or black trousers may be worn in place of white trousers. In the case of female Members, however, the dress shall be black coat over white saree or any other sober saree. Dress for the authorized representatives of the parties (other than a relative or regular employee of the assessee) appearing before the Tribunal shall be the following:

(a) In the case of male, a suit with a tie or buttoned-up coat over a pant or national dress, i.e., a long buttoned-up coat on dhoti or churidar pyjama. The color of the coat shall, preferably, be black.

(b) In the case of female, black coat over white or any other sober coloured saree.

Where, however, the authorized representatives belong to a profession like that of lawyers or Chartered Accountants and they have been prescribed a dress for appearing in their professional capacity before any Court, Tribunal or other such authority, they may, at their option, appear in that dress, in lieu of the dress mentioned above.

All other persons appearing before the Tribunal shall be properly dressed.

At the CESTAT (Customs, Excise and Service Tax Appellate Tribunal), the assessee or his authorized representative has to appear before the Tribunal in his professional dress, if any. However, where no professional dress is specified, the following dress code should be adhered to for appearing before the CESTAT: Males Close-collared black coat, or in an open collared black coat, with white shirt and black tie; Females - Black coat over a white sari or nay other white dress.

Under Rule 69 of Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 a professional dress for the advocate has been prescribed. While appearing before the Tribunal, the Advocate shall wear the same professional dress as prescribed for appearance before the Court or wear a coat with a tie or a close coat.

Skills required for Representation:

Court craft is a popular word which means the art or craft of conducting the affairs of a court. Craft would imply the skill, dexterity, technique or ability of performing a task. Tribunal Craft would be an appropriate term to describe the art of understanding the functioning of Tribunals and the objectives for which they have been established and thereby effectively representing clients and Tribunals and winning cases.

The following skills are important for representation before Tribunals and other Authorities:

- Knowledge of substantive and procedural law relating to the legislation concerned.
- Knowledge of Constitutional law, particularly when a case is to be represented before Tax Tribunals
- In depth understanding of court procedure and appellate mechanism and regulations and rules governing the above.
- Practical / hands-on experience in appearance before the forums concerned and putting forth arguments and advancing contentions.
- Skill of advocacy, examination of witnesses, cross-examination and re-examination of witnesses.
- Ability to summarize arguments after conducting examination of witnesses.
- Skill in Presentation of the case effectively before the presiding officer/judicial officer
- Knowledge of compilation procedure in relation to
 - appeal petitions,
 - paper books,
 - annexure,
 - case law citations,
 - material documents relating to evidence to be appreciated by the concerned forum.
- Advancing counter arguments, improvising of arguments impromptu etc.
- Coordinating with lead counsel

- Upholding the interest of the profession concerned, by conducting himself as a member of an honorable profession in a dignified manner

If petitioner dutifully complies with all rules of procedure, he/she will likely produce a brief that is clear, appropriate, and acceptable in Tribunals.

PRINCIPLES OF NATURAL JUSTICE

Natural justice is an expression of English common law, and involves a procedural requirement of fairness. There is no precise and scientific definition of natural justice. Natural Justice in simple terms means the minimum standards or principles which the administrative authorities should follow in deciding matters which have civil consequences. It implies fairness, equity and equality. The concept of natural justice is to prevent miscarriage of justice. The principles of natural justice apply to judicial, quasi-judicial as well as administrative proceedings at any time they make a decision that seriously affects the rights of others, including interested parties, and members of the public.

Tribunal hearings and decisions are guided by and in accordance with the administrative law principles of natural justice. These principles apply to all Tribunals and Authorities regardless of any rules, policies or practices established by these individual tribunals or authorities.

The principles of natural justice are not embodied rules and are not codified and do not need a statutory basis. The principles of natural justice, originated from common law in England, and were drawn from natural law (Jus Naturale). The principles of natural justice encompass the following two rules: -

1. *Nemo judex in causa sua* - No one should be made a judge in his own cause or the Rule Against Bias.
2. *Audi alteram partem* - Each party should be given the opportunity to be heard or the Rule of Fair Hearing or the rule that no one should be condemned unheard.

RULE AGAINST BIAS (NEMO JUDEX CAUSA SUA)

Bias means an operative prejudice, whether conscious or unconscious in relation to a person or a subject. The existence of any kind of Bias can be detrimental to the cause of justice. Therefore, to ensure non-existence of Bias the following two aspects should be taken care of: -

- a) No one should be a judge in his own cause
- b) Justice should not only be done but manifestly and undoubtedly be seen to be done.

The rule against Bias ensures that a judge is impartial and is in a position to apply his mind objectively and indiscriminately to the dispute before him. This absence of Bias can be ensured by asserting the following two main aspects: -

- The person exercising adjudicatory powers must not have any personal or proprietary interest in the subject or the outcome of the proceedings.
- There must not be real likelihood of bias.

Real likelihood of bias means a mere possibility of bias as against an actual bias or a reasonable suspicion of bias. It is a subjective term as it is difficult to access the state of mind of an individual. Therefore, the courts depend upon the existence or non-existence of reasonable ground for believing that the deciding factor was likely to have been biased.

A decision which is a result of bias is a nullity and the trial is 'Coram non-judice' (indicates a legal proceeding that is outside the Judge's competence or jurisdiction). Inference of bias, therefore, can be drawn only on the basis of factual matrix and not merely on the basis of insinuations, conjectures and surmises. Bias manifests variously (personal bias, pecuniary bias, subject-matter bias, departmental bias and pre-conceived notion bias) and may affect the decision in a variety of ways.

RULE OF FAIR HEARING (AUDI ALTERAM PARTEM)

The principle of *audi alteram partem* is the one of the basic concept incorporated in the principle of natural justice. It implies that a person must be given opportunity to defend himself in any proceeding of law or administrative proceeding. No decision can be declared without hearing both the parties. This principle is sine qua non i.e. indispensable part of judiciary of every

civilized society. This rule covers various stages through which judiciary proceeding passes starting from notice to final determination. Therefore, right to fair hearing includes: -

- a) Right to notice
- b) Right to present case and evidence
- c) Right to rebut adverse evidence
 - (i) Right to cross examination
 - (ii) Right to legal representation
- d) Disclosure of evidence to party
- e) Report of enquiry to be shown to the other party
- f) Reasoned decisions or speaking orders

Natural Justice demands that every decision should mention the reasons for arriving at such decision. Application of the Principles of Natural Justice can be excluded either expressly or by necessary implication subject to the provisions of Articles 14 and 21 of the Constitution of India. Some situations for exclusion may be exclusion in Emergency; in cases of Confidentiality; based on Impracticability; in cases of Interim Preventive action; in cases of Legislative action.

ADMINISTRATIVE TRIBUNALS

The Government set up the Administrative Reforms Commission in 1966 to examine the problem and suggests solutions with respect to setting up of tribunals. The Commission recommended setting up Independent Tribunals to act as the final adjudicatory authority in respect of service disputes. In 1976, the Indian Parliament enacted the 42nd Constitution (Amendment) Act, 1976, inserting Articles 323A and 323B in the Constitution of India, which provided for the establishment of administrative and other tribunals to deal with the matters specifically provided for.

Thereafter, to give effect to Article 323A (2) of the Constitution of India, the Administrative Tribunals Act, 1985 was enacted on 27.02.1985 and came into force on 01.7.1985 vide Notification No. G.S.R. 527(E). The Act consists of 5 Chapters divided into 37 sections. It

adjudicates disputes and complaints with respect to recruitment and conditions of service of persons appointed to the public service and posts

The Act is not applicable to: i. any member of the naval, military or air force or of any other armed forces of the union; ii. any officer or servant of the Supreme Court or of any High Court or courts subordinate thereto, iii. any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union Territory having a legislature, of that legislature.

The Act provides for the establishment of three kinds of administrative Tribunals:

- i. The Central Administrative Tribunal (CAT) - It is established by the Central Government and has jurisdiction to deal with matters pertaining to the Central Government or other authorities under the control of the Central Government. Section 14(2) of the Administrative Tribunals Act, 1985 empowers the Central Government to extend the provisions of the Act to local or other authorities within the territory of India or under the control of Government of India and to Corporations or Societies owned or controlled by Government of India.
- ii. The State Administrative Tribunals (SATs) - It is established by the Central Government for a State, upon receipt of a request in this behalf, to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunal for that State.
- iii. The Joint Administrative Tribunals – Two or more States may enter into an agreement that the same Administrative Tribunal shall be the Administrative Tribunal for each of the States participating in the agreement, and if the agreement is approved by the Central Government, it may establish a Joint Administrative Tribunal to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunals for those States.

The Central Administrative Tribunal was set up on 01.11.1985. As on date, it has 19 regular Benches, 17 of which operate at the principal seats of High Courts and the remaining two at Jaipur and Lucknow.

The Administrative Tribunals are distinguishable from the ordinary courts with regard to their jurisdiction and procedure. They exercise jurisdiction only in relation to the service matters of the litigants covered by the Act. They are also free from many of the procedural technicalities of

the ordinary courts. The Central Administrative Tribunal is empowered to frame its own rules of procedure and practice.

The Tribunal consists of a Chairman and Members. The Members of Central Administrative Tribunal (CAT) and State Administrative Tribunals (SATs) are drawn from judicial as well as administrative streams. The sanctioned strength of Members of Central Administrative Tribunal is 70 (including Chairman, CAT), out of which 35 are Judicial Members and 35 are Administrative Members. As per Tribunals Reforms Act, 2021, the Chairman can be a Judicial Member or an Administrative Member. The appointment of Members in CAT is made on the basis of the recommendations of a Search-cum-Selection Committee (ScSC) chaired by Chief Justice of India or a sitting Judge of Supreme Court (nominated by the Chief Justice of India). After receipt of recommendations of ScSC, appointments are made with the approval of Appointments Committee of the Cabinet.

State Administrative Tribunals (SATs) were set up in the following States: Karnataka, Maharashtra, West Bengal, Kerala and Haryana (not functional). The appointments to the vacancies in SATs are made on the basis of proposals sent by the State Governments. Thereafter, their appointments undergo the same process as the one in respect of Central Administrative Tribunal.

Procedure & Powers

The Tribunal is guided by the principles of natural justice in deciding cases and is not bound by the procedure, prescribed by the Civil Procedure Code.

Procedure:

Under section 22 of the Administrative Tribunals Act, 1985, lays down the powers and procedures of the Administrative Tribunals:

(1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding

whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and after hearing such oral arguments as may be advanced.

Under the Act, an aggrieved person can also appear before it personally. Government can also present its cases through its departmental officers or legal practitioners. Further, only an affordable and nominal fee of Rs.50 is to be paid by the applicants for filing the original application before the Tribunal.

Powers:

Under section 22(3) of the Administrative Tribunal Act 1985, A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witness or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (i) any other matter which may be prescribed by the Central Government.

Power to Punish for Contempt:

Under Section 17 of the Administrative Tribunal Act, 1985, the Tribunal has been conferred with

the power to exercise the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise the provisions of the Contempt of Courts Act, 1971, subject to the modifications specified in section 17 of the Act.

Order and Appeals:

In pursuance of the provisions contained in the Administrative Tribunals Act, 1985, the Administrative Tribunals, set up under it, exercise original jurisdiction in respect of service matters of employees covered by the Act. Under section 27 of the Act, the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court and such order shall be executed in the same manner in which any final order would have been executed.

However, after the Supreme Court's judgment dated 18.03.1997 in the case of *L. Chandra Kumar & Others Vs UOI*, the appeals against the orders of an Administrative Tribunal shall lie before the Division Bench of the concerned High Court. Therefore, the orders of Central Administrative Tribunal are now being challenged by way of Writ Petition under Article 226/227 of the Constitution before respective High Court in whose territorial jurisdiction the Bench of the Tribunal is situated. Whereas, initially the decision of the Tribunal could be challenged before Hon'ble Supreme Court by filing Special Leave Petition.

ARMED FORCES TRIBUNAL (AFT)

The Armed Forces Tribunal was established under the Armed Forces Tribunal Act 2007. The Act, which was enacted on 25th December, 2007 and came into force on 15th June 2008, provides for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act 1950 and also to provide for appeals arising out of orders, findings or sentences of court martial held under the said Acts and for matters connected therewith or incidental thereto.

Besides the Principal Bench in New Delhi, the AFT has Regional Benches at Chandigarh, Lucknow, Kolkata, Guwahati, Chennai, Kochi, Mumbai, Jabalpur, Srinagar and Jaipur. Each Bench comprises of a Judicial Member and an Administrative Member. The Judicial Members are retired High Court Judges and Administrative Members are retired Members of the Armed Forces who have held rank of Major General/ equivalent or above for a period of three years or more, Judge Advocate General (JAG), who have held the appointment for at least one year are also entitled to be appointed as the Administrative Member.

Procedure & Powers

The Tribunal shall transact their proceedings as per the Armed Forces Tribunal (Procedure) rules, 2008. All proceedings in the Tribunal will be in English. The Tribunal will normally follow the procedure as is practiced in the High Courts of India.

Section 14(1) of the Armed Forces Tribunal Act 2007 provides that the Tribunal shall exercise all the jurisdiction, powers and authority in relation to all service matters. Under section 14(2) of the Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed. On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing. For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit.

Under section 15 of the AFT Act 2007, the Tribunal shall exercise, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a court martial or any matter connected therewith or incidental thereto. Under section 15(2) of the Act, any person aggrieved by an order, decision, finding or sentence passed by a court martial may prefer an appeal in such form, manner and within such time as may be prescribed.

The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary. However, no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.

The Tribunal shall allow an appeal against conviction by a court martial where the finding of the court martial is legally not sustainable due to any reason whatsoever; or the finding involves wrong decision on a question of law; or there was a material irregularity in the course of the trial resulting in miscarriage of justice, but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant. The Tribunal may allow an appeal against conviction, and pass appropriate order thereon.

Notwithstanding any other provisions in this Act, for the purposes of jurisdiction and powers, the Tribunal shall be deemed to be a criminal court for the purposes of relevant sections of the Indian Penal Code and Chapter XXVI of the Code of Criminal Procedure, 1973.

Powers of Tribunal in matters of Appeals against Court Martial:

- Power to substitute for the findings of the court martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court martial and pass a sentence afresh for the offence specified or involved in such findings
- If sentence is found to be excessive, illegal or unjust, the Tribunal may
 - (i) remit the whole or any part of the sentence, with or without conditions;
 - (ii) mitigate the punishment awarded
 - (iii) commute such punishment to any lesser punishment
- Enhance the sentence awarded by a court martial
- Release the appellant, if sentenced to imprisonment, on parole with or without conditions
- Suspend a sentence of imprisonment
- Pass any other order as it may think appropriate.

The Tribunal, while hearing and deciding an appeal, shall have the power--

(a) to order production of documents or exhibits connected with the proceedings before the court

martial;

(b) to order the attendance of the witnesses;

(c) to receive evidence;

(d) to obtain reports from Court martial;(e) order reference of any question for enquiry;

(f) appoint a person with special expert knowledge to act as an assessor; and

(g) to determine any question which is necessary to be determined in order to do justice in the case.

All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of the following sections of the Indian Penal Code: Section 193 (Punishment for false evidence), Section 219 (Public servant in judicial proceeding corruptly making report, etc., contrary to law) and Section 228 (Intentional insult or interruption to public servant sitting in judicial proceeding).

WATER DISPUTES TRIBUNAL

According to Article 262 of the Constitution of India, for adjudication of disputes relating to waters of inter-State rivers or river valleys, the Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

The Parliament has enacted Inter-State River Water Disputes (ISRWD) Act, 1956 for adjudication of disputes relating to waters of inter-State rivers and river valley thereof. When any request under the said Act is received from any State Government in respect of any water dispute on the inter-State rivers and the Central Government is of the opinion that the water dispute cannot be settled by negotiations, the Central Government constitutes a Water Disputes Tribunal for the adjudication of the water dispute.

So far 9 water disputes Tribunals have been constituted to adjudicate inter-State River water disputes out of which 5 Tribunals have adjudicated the water disputes and subsequently these Tribunals have been dissolved.

The dissolved Tribunals are:

- Godavari Water Disputes Tribunal – Concerning the States of Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh & Odisha was constituted in April, 1969 and Award was given in July, 1980.
- Krishna Water Disputes Tribunal –I – Concerning the States of Maharashtra, Andhra Pradesh, Karnataka, was constituted in April, 1969 and Award was given in May, 1976
- Narmada Water Disputes Tribunal – Concerning the States of Rajasthan, Madhya Pradesh, Gujarat and Maharashtra was constituted in October, 1969 and Award was given in December, 1979
- Cauvery Water Disputes Tribunal – Concerning the States of Kerala, Karnataka, Tamil Nadu and Puducherry was constituted in June, 1990 and dissolved in 2018
- Vansadhara Water Disputes Tribunal (VWDT) – Concerning the States of Andhra Pradesh & Odisha, effective date of constitution of which was in September, 2012, was dissolved in March 2022.

Currently, the water disputes Tribunals which are active are:

- Krishna Water Disputes Tribunal –II (effective date of constitution being 1.2.2006) – Concerning the States of Karnataka, Telangana, Andhra Pradesh and Maharashtra
- Mahanadi Water Disputes Tribunal (Constituted in March 2018) – Concerning the States of Odisha and Chhattisgarh
- Mahadayi Water Disputes Tribunal (date of reckoning of the constitution of the Tribunal is w.e.f. 21.08.2013) – Concerning the States of Goa, Karnataka and Maharashtra
- Ravi & Beas Water Tribunal (Constituted in April 1986) – Concerning the States of Punjab, Haryana and Rajasthan

A bill to amend the ISRWD Act 1956 has been introduced in Parliament in 2019 and is yet to be passed. The Bill seeks to establish a single Tribunal in place of multiple Tribunals for water disputes.

NATIONAL GREEN TRIBUNAL (NGT)

The National Green Tribunal has been established on 18.10.2010 under the National Green Tribunal Act 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. The Tribunal is mandated to make and endeavor for disposal of applications or appeals finally within 6 months of filing of the same.

Vide Notification dated 17th August 2011, the Central Government specifies the following ordinary places of sitting of the National Green Tribunal - New Delhi was the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai were the other 4 place of sitting of the Tribunal.

Any person seeking relief and compensation for environmental damage involving subjects in the legislations mentioned in Schedule I of the National Green Tribunal Act, 2010 may approach the Tribunal. The statutes in Schedule I are:

- The Water (Prevention and Control of Pollution) Act, 1974;
- The Water (Prevention and Control of Pollution) Cess Act, 1977;
- The Forest (Conservation) Act, 1980;
- The Air (Prevention and Control of Pollution) Act, 1981;
- The Environment (Protection) Act, 1986;
- The Public Liability Insurance Act, 1991;
- The Biological Diversity Act, 2002.

The Tribunal has jurisdiction over all civil cases involving a substantial question relating to environment and the question. Additionally, any person aggrieved by an order/direction of any of the Appellate Authorities under the legislations mentioned above can also challenge them before the National Green Tribunal.

Procedure & Powers

As per section 19 of the National Green Tribunal (NGT) Act 2010, the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 or by the rules of evidence contained in the Indian Evidence Act, 1872 but shall be guided by the principles of natural justice and the Tribunal shall have power to regulate its own procedure. However, the Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure 1908 while trying a suit. Further all proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Vide Notification dated 4th April, 2011 (G.S.R. 296 (E)), in exercise of the powers conferred by sub-section (4) of Section 4 read with Section 35 of the National Green Tribunal Act, 2010, the Central Government (Ministry of Environment and Forests) framed rules namely, the National Green Tribunal (Practices and Procedure) Rules, 2011, prescribing for Practices and Procedure for the adjudicatory process in NGT. The National Green Tribunal (Practices and Procedure) Rules 2011 lay down the procedural aspects with respect to filing applications and appeals at the National Green Tribunal.

An application or appeal to the Tribunal can be presented by the applicant or appellant in person or by an agent or duly authorized legal practitioner. As per Rule 27 of the Rules, the legal practitioner or as the case may be, the presenting officer, shall appear before the Tribunal in his professional dress as prescribed for appearance before the Courts, and if there is no such dress, then in the case of a male, in a suit with a tie or close coat or any other customary dress of sober color, and in the case of a female, in a saree or any other customary dress of sober color.

An application or appeal to the Tribunal shall be presented in Form I of the National Green Tribunal (Practices and Procedure) Rules 2011, by the applicant or appellant, as the case may be, in person or by an agent or by a duly authorized legal practitioner, to the Registrar or any other officer authorized in writing by the Registrar to receive the same or be sent by registered post with acknowledgement duly addressed to the Registrar of the Tribunal or and sent to concerned place of sitting. Where the application is for relief and compensation, it shall be made in Form II of the Rules.

According to section 20 of the National Green Tribunal Act, 2010, the Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. As per section 25 of the National Green Tribunal Act, 2010, an Award or Order or decision of the Tribunal under this Act shall be executable by the Tribunal as a decree of a Civil Court, and for this purpose, the Tribunal shall have all the powers of a Civil Court. Any person aggrieved by any order, decision or award of the Tribunal, may file an appeal to the Supreme Court.

INCOME TAX APPELLATE TRIBUNAL (ITAT)

Section 252 of the Income-tax Act, 1961 provides that the Central Government shall constitute an Appellate Tribunal to exercise the powers and discharge the functions conferred on the Appellate Tribunal by the said Act. The Income-tax Appellate Tribunal was established on 25th January, 1941, in pursuance of a similar provision contained in the erstwhile Indian Income-tax Act, 1922.

ITAT is a quasi-judicial institution set up in January, 1941 and specializes in dealing with appeals under the Direct Taxes Acts. The ITAT was constituted on 25th January 1941 by virtue of section 5A of the then Indian Income Tax Act, 1922. The orders passed by the ITAT are final, an appeal lies to the High Court only if a substantial question of law arises for determination. Starting in 1941 with six Members constituting three Benches - one each at Delhi, Kolkata (Calcutta) and Mumbai (Bombay), the numbers of Benches have progressively increased and presently ITAT has 63 Benches spread over 30 different stations (including 2 circuit benches) covering almost all the cities having a seat of the High Court.

The Income Tax Act 1961, vide section 252, lays down the provisions for the constitution of the Appellate Tribunal, and specifies that the Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

According to section 252A of the Income Tax Act 1961, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President and other Members of the Appellate Tribunal appointed after the commencement of the Tribunals Reforms Act, 2021, shall be governed by the provisions of Chapter II of the said Act. Provided that the President, Vice-President and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.

Procedure & Powers

The Income-tax Appellate Tribunal, constituted under the Income-tax Act, deals with second appeals in all matters of direct taxes, including appeals against the revisionary orders of Administrative Commissioners as well as orders denying registration under Section 12A or under Section 80G of the Income-tax Act 1961, etc. The Appellate Tribunal also deals with second appeals in all matters of the Black Money (Undisclosed foreign income and assets) and imposition of Tax Act, 2015 including any revisionary order passed by the Principal Commissioner/Commissioner under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Any assessee aggrieved by any of the orders specified in Section 253 of the Income Tax Act 1961, may appeal to the Appellate Tribunal against such order, and the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.

A Bench shall consist of one judicial member and one accountant member. The President or any other member of the Appellate Tribunal authorized in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Assessing Officer in the case does not exceed fifty lakh rupees, and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade II of that Service or any equivalent or higher post for at least three years or who has been an advocate for at least ten years. An accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949, or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant, or who has been a member of the Indian Income-tax Service, Group A and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years. The Central Government shall also appoint the President and Vice-President of the Tribunal.

If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

The Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the income-tax authorities referred to in section 131 of the Income Tax Act 1961, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code 1860, and the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure.

The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeals by the Appellate Tribunal so as to impart greater efficiency, transparency and accountability by—

- (a) eliminating the interface between the Appellate Tribunal and parties to the appeal in the course of appellate proceedings to the extent technologically feasible;
- (b) optimizing utilization of the resources through economies of scale and functional specialization;
- (c) introducing an appellate system with dynamic jurisdiction.

For the purposes of giving effect to this scheme, the Central Government may by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply to such scheme or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification. However, no such direction shall be issued after the 31st day of March, 2025.

Income-Tax (Appellate Tribunal) Rules 1963

According to section 255(5) of the Income Tax Act 1961, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

The Appellate Tribunal has, accordingly, framed its own rules called the Income-tax (Appellate Tribunal) Rules, 1963 to regulate the procedure of the Appellate Tribunal and the procedure of the Benches of the Tribunal. The Rules detail the procedure for filing the memorandum of appeal to the Tribunal.

Rule 8 of the Income-tax (Appellate Tribunal) Rules, 1963, requires that every memorandum of appeal to be written in English and shall set forth, concisely and under distinct heads, the grounds of appeal without any argument or narrative; and such grounds shall be numbered consecutively.

According to Rule 9, Memorandum of Appeal should be in triplicate and documents to be submitted with Appeal include:

- Order appealed against - 2 copies (including one certified copy).
- Order of Assessing Officer - 2 copies
- Grounds of appeal before first appellate authority [i.e., Commissioner of Income-Tax (Appeals)] - 2 copies.
- Statement of facts filed before first appellate authority [i.e., Commissioner of Income-Tax (Appeals)] - 2 copies.
- In case of appeal against penalty order – 2 copies of relevant assessment order.
- In case of appeal against assessment under section 143(3), read with section 144B of Income Tax Act 1961 – 2 copies of the draft assessment order & 2 copies of Inspecting Assistant Commissioner's directions under section 144B
- In the case of appeal against assessment under section 143(3), read with section 144A - 2 copies of the Inspecting Assistant Commissioner's directions under section 144A;
- In the case of assessment under section 143, read with section 147 - 2 copies of the original assessment order, if any.
- Copy of challan for payment of fee

The assessee can proceed by himself for appeal or can authorize a representative to appear before the tribunal in his/her place. Under Rule 16 of the Rules, in any appeal by an assessee, where the memorandum of appeal is signed by his authorized representative, the assessee shall append to the memorandum a document authorizing the representative to appear for him. However, if the document has not been appended to the memorandum, then the authorized representative appearing for the assessee at the hearing of an appeal shall file such a document before the commencement of the hearing.

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

The Customs Excise and Service Tax Appellate Tribunal (CESTAT) was constituted originally as Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) on October 11, 1982 under section 129 of the Customs Act, 1962. It was renamed CESTAT on 14 May 2003. Although it has been created under the Customs Act, 1962 it is mandated to decide appeals under the following four Acts - Customs Act, 1962, Central Excise Act, 1944, Finance Act, 1994 and the Customs Tariff Act, 1975. However, tribunal may, in its discretion, refuse to admit an appeal in respect of an order where the amount of fine or penalty determined by such order, does not exceeds Two Lakhs rupees.

According to section 129 of the Customs Act 1962, the CESTAT shall consist of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal. A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade I of that service or any equivalent or higher post for at least three years, or who has been an advocate for at least ten years. A technical member shall be a person who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of Principal Commissioner of Customs or Commissioner of Customs or Central Excise or any equivalent or higher post for at least three years.

The Central Government shall appoint a person who is or has been a Judge of a High Court; or one of the members of the Appellate Tribunal, to be the President thereof. The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President, or, as the case may be, Vice-Presidents, thereof. The qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President or other Members of the Appellate Tribunal appointed after the commencement of the Tribunal Reforms Act, 2021, shall be governed by the provisions of Chapter II of the said Act. However, the President. Vice-President and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.

CESTAT is headed by the President with Principal bench at New Delhi. The regional Benches are at Mumbai, Kolkata, Chennai, Bangalore, Ahmedabad, Allahabad, Chandigarh and Hyderabad.

Each division bench shall comprise one Judicial member and one Technical member. In case of difference of opinion, the matter is referred to the President to refer to a third member to decide on the points of difference. The President or any member may sitting singly, dispose of matters where the value of the goods confiscated absolutely or the duty in dispute (where the classification and valuation is not one of the points of dispute) or the amount of fine or penalty does not exceed Rupees Fifty Lakhs. If a Bench hearing the matter finds that there are conflicting decisions, then it may refer the matter to the President of the Tribunal to constitute a Larger Bench of the Tribunal to resolve the conflict. Apart from the above division bench, single member bench and larger bench, there is also a special antidumping bench for dealing with appeals under section 9C of the Customs Tariff Act 1975 involving questions relating to anti-dumping duties, subsidies etc. It is a special bench constituted by the President which consists of the President of the Tribunal and not less than two members and shall include one Judicial member and one Technical member.

Appeals in matters where classification or valuation is or one of the issues, appeals lie to Supreme Court. In other cases, appeals lie to the High Court. On questions of fact, the Tribunal is the final Appellate Authority.

Procedure & Powers

The procedure adopted by this tribunal is covered in the following legislations: Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 (The Procedure Rules); Central Excise (Appeals) Rules, 2001; Customs (Appeals) Rules, 1982 and Rule 9 of Service Tax Rules, 1994. The Procedure Rules are required to be followed in respect of appeals, stay applications and other proceedings to which the Rules apply. Appeals and Cross-objections to the Tribunal shall be in the prescribed forms under the relevant sections of the Acts dealt with by the Tribunal.

A memorandum of appeal to the Tribunal shall be in the relevant form and shall be presented by the appellant in person or by an agent to the concerned officer, or sent by registered post addressed to the concerned officer. The appellant may, in case of urgency or for other sufficient reason, present or send the appeal to the concerned officer of the Bench nearest to him, even though the matter relates to a different Bench.

The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

The Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:

- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.

Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

GOODS AND SERVICES TAX APPELLATE TRIBUNAL

The Goods and Services Tax Appellate Tribunal (GSTAT) has been constituted by the Central Government under section 109 of the Central Goods and Services Tax Act, 2017 for hearing

appeals against orders passed by the Appellate Authorities or the Revisional Authorities under the Act. The Principal Bench of the GSTAT is located at New Delhi and there shall be State Benches located in different States.

Goods and Services Tax Appellate Tribunal is the forum of second appeal in GST laws and the first common forum of dispute resolution between Centre and States. The appeals against the orders in first appeals issued by the Appellate Authorities under the Central and State GST Acts lie before the GST Appellate Tribunal, which is common under the Central as well as State GST Acts. Being a common forum, GST Appellate Tribunal will ensure that there is uniformity in redressal of disputes arising under GST, and therefore, in implementation of GST across the country.

Chapter XVIII of the CGST Act provides for the Appeal and Review Mechanism for dispute resolution under the GST Regime. Section 109 of this Chapter under CGST Act empowers the Central Government to constitute, on the recommendation of Council, by notification, with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

Procedure & Powers

The Tribunal is not bound by the Code of Civil Procedure, 1908, but follows the principles of natural justice and has the authority to regulate its own procedure.

The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:--

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

- (e) issuing commissions for the examination of witnesses or documents;
- (f) dismissing a representation for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (h) any other matter which may be prescribed.

Orders issued by the Tribunal can be enforced as if they were court decrees, with the Tribunal having the authority to seek execution within the local jurisdiction.

All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

THE APPELLATE TRIBUNAL

The Appellate Tribunal, as it presently exists, is the conglomeration of the appellate tribunals set up under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA), the Foreign Exchange Management Act, 1999 (FEMA) and the Prevention of Money-laundering Act 2002 (PMLA). It currently hears appeals under five Central Acts, namely, SAFEMA, PMLA, FEMA, NDPS Act (The Narcotic Drugs and Psychotropic Substances Act 1985) and PBPTA (The Prohibition of Benami Property Transactions Act 1988 as amended in 2016).

The Appellate Tribunal was originally constituted as the ‘Appellate Tribunal for Forfeited Property’ (ATFP) in 1977 under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA). Thereafter:

- Section 25 of the PMLA 2002, mandated the Central Government to establish an Appellate Tribunal to hear appeals against the Adjudicating Authority and other authorities under the Act. The Finance Act of 2016 substituted section 25 of the Prevention of Money Laundering Act, 2002 (PMLA) with a new section 25 providing that the Appellate Tribunal constituted under the SAFEMA shall be the Appellate

Tribunal for hearing appeals against the orders of the Adjudicating Authority and other authorities under the Act with effect from 01.06.2016. The same Finance Act also amended the name of this Appellate Tribunal from “Appellate Tribunal for Forfeited Property” to “Appellate Tribunal”.

- In 2016, consequent to the enactment of The Benami Transactions (Prohibition) Amendment Act, 2016 which also provided for the establishment of an appellate tribunal to hear cases under the Benami Transactions (Prohibition) Act, 1988 which was renamed ‘The Prohibition of Benami Property Transactions Act, 1988’ (PBPT Act) by the same Amendment Act, a notification dated 25.10.2016 was issued to the effect that the Appellate Tribunal established under section 25 of the PMLA shall discharge the functions of the Appellate Tribunal under the PBPT Act.
- The Finance Act 2017 merged the Appellate Tribunal for Foreign Exchange constituted under section 18 of the Foreign Exchange Management Act, 1999 (FEMA) with the Appellate Tribunal under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA).

The Tribunal adjudicates upon appeals and allied petitions filed against the attachment/forfeiture orders passed by the Competent Authority under SAFEMA/NDPS Acts, Adjudicating and other authorities under PMLA, and the Income Tax Department under the Prohibition of Benami Property Transactions Act. It also adjudicates upon appeals filed against the orders imposing fine passed by the Financial Intelligence Unit, India (FIU-India) and other orders passed by other authorities under FEMA imposing penalties. While appeals from the orders of the Tribunal under the PMLA, PBPTA and FEMA lie to the High Court under the relevant provisions of the respective Acts, the SAFEMA and NDPS Acts do not provide for filing of appeal from the orders of this Tribunal.

Appellate Tribunal is National Tribunal having its Headquarters at New Delhi. At present, it has no other permanent benches. The Appellate Tribunal comprises a Chairman and four Members. As per the Tribunal (Conditions of Service) Rules, 2021, a person shall not be qualified for appointment as Chairman unless he is, or has been, a Judge of a Supreme Court or Chief Justice of a High Court, and shall not be qualified for appointment as Member unless he has held the

post of Additional Secretary to the Government of India or any equivalent or higher post and has performed judicial, quasi-judicial or adjudicating function for three years.

INDUSTRIAL TRIBUNAL

Industrial Tribunal are constituted by the Central Government under the Industrial Disputes Act 1947. Central Government Industrial Tribunal (CGIT)-cum-Labour Courts (CGIT-cum-LCs) have been set up under the provisions of the Industrial Disputes Act, 1947 for adjudication of industrial disputes in organizations for which the Central Government is the appropriate Government. There are 22 CGIT-cum-LCs set up in various States. These Tribunals are located at Dhanbad (Jharkhand), Mumbai, New Delhi and Chandigarh (two courts each) and one each at Kolkata, Jabalpur, Kanpur, Nagpur, Lucknow, Bangalore, Jaipur, Chennai, Hyderabad, Bhubaneswar, Ahmedabad, Ernakulam, Asansol and Guwahati. Further, the two Industrial Tribunals namely the CGIT-cum-LC, Mumbai and CGIT-cum-LC, Kolkata also function as National Industrial Tribunals. Consequent upon amendment to Industrial Disputes Act, 1947 and Employees' Provident Fund & Miscellaneous Provisions Act, 1952 through Finance Act, 2017, these CGITs/NITs are now also mandated to adjudicate appeals arising out of Employees' Provident Fund & Miscellaneous Provisions Act, 1952.

According to Section 7A of the Industrial Disputes Act 1947, the appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule to the Act and for performing such other functions as may be assigned to them under this Act.

Matters specified in the Second Schedule to the Industrial Disputes Act 1947:

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including re-instatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;

5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

Matters specified in the Third Schedule to the Industrial Disputes Act 1947:

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
8. Classification by grades;
9. Rules of discipline;
10. Rationalisation;
11. Retrenchment of workmen and closure of establishment; and
12. Any other matter that may be prescribed.

A Tribunal shall consist of one person only to be appointed by the appropriate Government. A person shall not be qualified for appointment as the presiding officer of a Tribunal unless -

- he is, or has been, a Judge of a High Court; or
- he has, for a period of not less than three years, been a District Judge or an Additional District Judge;
- he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years' experience in the labour department including three years of experience as Conciliation Officer. However, no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or
- he is an officer of Indian Legal Service in Grade III with three years' experience in the grade.

The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

As per section 7B of the Industrial Disputes Act 1947, the Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes. A National Tribunal shall consist of one person only to be appointed by the Central Government. A person shall not be qualified for appointment as the presiding officer of a National Tribunal unless he is, or has been, a Judge of a High Court. The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

The qualifications, appointment, term of office, salaries and allowances, resignation and removal and other terms and conditions of service of the Presiding Officer of the Industrial Tribunal appointed by the Central Government under section 7A, shall, after the commencement of the Tribunal Reforms Act, 2021, be governed by the provisions of Chapter II of the said Act. Provided that the Presiding Officer appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of the Industrial Disputes Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.

Procedure & Powers

The Industrial Disputes Act 1947 lays down the provisions with respect to procedure and powers of the Tribunals and National Tribunals. The Government has also framed the Industrial Disputes (Central) Rules 1957, which lays down the detailed procedure for reference of industrial dispute to Boards of Conciliation, Court of Inquiry, Labour Court, Tribunal and National Tribunal.

According to section 11 of the Industrial Disputes Act 1947, every Board, Court, Labour Court, Tribunal and National Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:--

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents and material objects;
- (c) issuing commissions for the examination of witnesses;
- (d) in respect of such other matters as may be prescribed;

and every inquiry or investigation by a Board, Court, Labour Court, Tribunal or National Tribunal, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code 1860.

All conciliation officers, members of a Board or Court and the presiding officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code 1860.

Every Labour Court, Tribunal or National Tribunal shall be deemed to be Civil Court for the purposes of sections 345, 346 and 348 of the Code of Criminal Procedure, 1973.

Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under order 21 of the Code of Civil Procedure, 1908.

The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.

Under section 11A of the Industrial Disputes Act 1947, the Tribunals and National Tribunals have power to give appropriate relief in case of discharge or dismissal of workmen. Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. However, in any proceeding under this section the Labour Court, Tribunal or National Tribunal, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

RAILWAY CLAIMS TRIBUNAL

The Railway Claims Tribunal Act, 1987 was enacted to provide speedy disposal of claims against the Railway Administration. The Act provided for the establishment of the Railways Claims Tribunal, for inquiring into and determining claims against a Railway Administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents or untoward incidents and for matters connected therewith or incidental thereto. The Act lays down provisions for establishment of Tribunal, its Benches, officers and staff, their term, eligibility, the jurisdiction, powers and authority of Tribunal, its procedure, execution of its orders and appeals.

The substantive liability of the railway administration for loss, destruction, damage, non-delivery or deterioration of goods entrusted to them for carriage and for death or injuries or loss to a passenger in a railway accident or untoward incident is laid down in The Railways Act 1989. Railways Claims Tribunal with Benches in different parts of the country, and with judicial and technical members, provide much relief to the rail users by way of expeditious payment of compensation to the victims of rail accidents and to those whose goods are lost or damaged in rail-transit.

The Finance Act 2017, merged the Tribunal under the Railways Act 1989 with the Railways Claims Tribunal. According to section 33 of the Railways Act 1989, The Railway Claims Tribunal established under section 3 of the Railway Claims Tribunal Act, 1987 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Tribunal for the purposes of this Act and the said Tribunal shall exercise the jurisdiction, authority and powers conferred on it by or under this Act.

Jurisdiction

According to section 13 of the Railway Claims Tribunal Act, 1987, the Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were

exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act -

(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for-

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;

(ii) compensation payable under section 82A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of section 124A of the Railways Act, 1989, all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration under section 124A of the said Act or the rules made thereunder.

The Claims Tribunal shall also exercise, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, the jurisdiction, powers and authority conferred on the Tribunal under Chapter VII of the Railways Act, 1989.

The provisions of the Railways Act, 1989 and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under the Railway Claims Tribunal Act 1987.

Procedure & Powers

The Railway Claims Tribunal exercises the powers and authority conferred on it by or under the Railway Claims Tribunal Act 1987 and under Chapter VII of the Railways Act, 1989. The Government has also laid down the Railway Claims Tribunal (Procedure) Rules 1989, which

give the detailed procedure of filing applications with the Tribunal, jurisdiction of benches, procedure and powers of Tribunal, framing and determination of issue etc.

According to Rule 5 of the Railway Claims Tribunal (Procedure) Rules 1989, an application may be made to the Tribunal in triplicate either by the applicant in person or by an agent or by his duly authorized legal practitioner to the Registrar of the Tribunal.

The Claims Tribunal shall consist of a Chairman, four Vice-Chairmen and such number of Judicial Members and Technical Members as the Central Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Claims Tribunal may be exercised by Benches thereof. A Bench shall consist of one Judicial Member and one Technical Member. It shall be competent for the Chairman or any other Member authorized by the Chairman in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Claims Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may, by general or special order, specify. However, if at any stage of the hearing of any such case or matter, it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer, to such Bench as the Chairman may deem fit.

According to section 18 of the Railway Claims Tribunal Act 1987, the Claims Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Claims Tribunal shall have powers to regulate its own procedure including the fixing of places and times of its enquiry. The Claims Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872,

requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(i) any other matter which may be prescribed.

According to section 38 of the Railways Act 1989, The Tribunal shall have the powers of a civil court under the Code of Civil Procedure, 1908 for the purposes of taking evidence on oath, enforcing the attendance of witnesses, compelling the discovery and production of documents, issuing commissions for the examination of witnesses and of review and shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1973 and any reference in such section or chapter to the presiding officer of a court shall be deemed to include a reference to the Chairman of the Tribunal.

The Tribunal shall also have power to pass such interim and final orders as the circumstances may require, including orders for the payment of costs. The decisions or orders of the Tribunal shall be by a majority of the members sitting and shall be final. The Tribunal may transmit any decision or order made by it to a civil court having local jurisdiction and such civil court shall execute the decision or order as if it were a decree made by that court.

An appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the High Court having jurisdiction over the place where the Bench is located. No appeal shall lie from an order passed by the Claims Tribunal with the consent of the parties.

SECURITIES APPELLATE TRIBUNAL

Securities Appellate Tribunal (SAT) is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India (SEBI) Act, 1992 to exercise

jurisdiction, powers and authority conferred on the Tribunal by or under this Act or any other law for the time being in force.

Consequent to Government Notification No. DL-33004/99 dated 27th May, 2014, SAT hears and disposes of appeals against orders passed by the Pension Fund Regulatory and Development Authority (PFRDA) under the PFRDA Act, 2013. Further, in terms of Government Notification No. DL-(N)/04/0007/2003-15 dated 23rd March, 2015, SAT hears and disposes of appeals against orders passed by the Insurance Regulatory Development Authority of India (IRDAI) under the Insurance Act, 1938, the General Insurance Business (Nationalization) Act, 1972 and the Insurance Regulatory and Development Authority Act, 1999 and the Rules and Regulations framed thereunder.

The Securities Appellate Tribunal has only one bench that sits at Mumbai and has jurisdiction over all of India. The objective of SAT is to hear appeals against the orders passed by SEBI or by an adjudicating officer under SEBI Act, 1992 or any rules and regulations made thereunder, and appeals against orders passed by the PFRDA and the IRDAI

Under section 110 of the Insurance Act 1938 which was changed via the Insurance Laws (Amendment) Ordinance 2014 promulgated on 26th December, 2014, and then later inserted by The Insurance Laws (Amendment) Act 2015, any person aggrieved by an order of the Insurance Regulatory and Development Authority of India (IRDA) may prefer an appeal to the SAT having jurisdiction in the matter within 45 days from the date on which a copy of the order made by the Authority is received by him and it shall be in such form and accompanied by such fees as may be prescribed. SAT may entertain an appeal after expiry of the said 45-day period if it is satisfied that there is sufficient cause for not filing within that period. SAT shall endeavor to dispose of the appeal finally within 6 months from the date of the receipt of appeal.

The Pension Fund Regulatory and Development Authority Act, 2013 which came into force on 1st February 2014, vide section 36 lays down that any person aggrieved by an order made by the Pension Fund Regulatory and Development Authority or by an adjudicating officer under this Act may prefer an appeal before the Securities Appellate Tribunal which shall have jurisdiction over the matter within a period of forty-five days from the date of receipt of the order appealed against and it shall be in such form and manner and shall be accompanied by such fee as may be

prescribed. SAT may entertain an appeal after the expiry of the said period, if it is satisfied that there was sufficient cause for not preferring the appeal within that period. SAT shall endeavor to dispose of the appeal finally within six months from the date on which the appeal is presented to it.

Procedure & Powers

The procedural aspects of appeals to SAT are contained in

- Securities Appellate Tribunal (Procedure) Rules, 2000
- Depositories (Appeal to Securities Appellate Tribunal) Rules 2000
- Securities Contract (Regulation) (Appeal to Securities Appellate Tribunal) Rules 2000
- Pension Fund Regulatory and Development Authority (Appeal to Securities Appellate Tribunal) Rules, 2014
- Insurance (Appeal to Securities Appellate Tribunal) Rules, 2016

The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and has powers to regulate its own procedure including the places at which it shall have its sittings. The Securities Appellate Tribunal shall have, for the purposes of discharging their functions, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex-parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex-parte;
- (h) any other matter which may be prescribed.

Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. An appeal from the order of this Tribunal lies directly to the Supreme Court.

Every appeal to SAT shall be filed within a period of forty-five days from the date on which a copy of the order against which the appeal is filed, is received by the appellant. The Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

A memorandum of appeal shall be presented in the Form by any aggrieved person in the registry of the Appellate Tribunal within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar. The Appellate Tribunal shall hold its sitting either at a place where its office is situated or at such other place falling within its jurisdiction, as it may deem fit by the Appellate Tribunal.

Points to be noted with respect to appeal at SAT are as follows:

1. The proceedings of the Appellate Tribunal shall be conducted in English or Hindi.
2. Every appeal, application, reply, representation or any document filed before the Appellate Tribunal shall be typewritten, cyclostyled or printed neatly and legibly on one side of the good quality paper of foolscap size in double space and separate sheets shall be stitched together and every page shall be consecutively numbered and filed in the prescribed manner.
3. The appeal shall be presented in five sets in a paper book along with an empty file size envelope bearing full address of the respondent and in case the respondents are more than one, then sufficient number of extra paper books together with empty file size envelope bearing full addresses of each respondent shall be furnished by the appellant.
4. The Registrar shall endorse on every appeal the date on which it is presented or deemed to have been presented and shall sign endorsement. If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number.
5. If an appeal on scrutiny is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant to rectify the same in his presence and if the said defect is not

formal in nature, the Registrar may allow the appellant such time to rectify the defect as he may deem fit. If the appeal has been sent by post and found to be defective, the Registrar may communicate the defects to the appellant and allow the appellant such time to rectify the defect as he may deem fit.

6. Every memorandum of appeal shall be accompanied with a prescribed fee

7. Every memorandum of appeal shall set forth concisely under distinct heads, the grounds of such appeal without any argument or narrative, and such ground shall be numbered consecutively and shall be in the prescribed manner

8. Every memorandum of appeal shall be in five copies and shall be accompanied with copies of the order, at least one of which shall be certified copy, against which the appeal is filed.

9. Where a party is represented by authorised representative, a copy of the authorisation to act as the authorised representative and the written consent thereto by such authorised representative, shall be appended to the appeal.

9. A memorandum of appeal shall not seek relief or reliefs therein against more than one order unless the reliefs prayed for are consequential.

10. The Appellate Tribunal shall notify the parties the date of hearing of the appeal in such manner as the Presiding Officer may by general or special order direct.

11. On the day fixed or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Securities Appellate Tribunal shall, then, if necessary, hear the Board or its authorised representative against the appeal, and in such case the appellant shall be entitled to reply. During the course of the hearing of appeal the written arguments could be supplemented by time-bound oral arguments.

In case the appellant does not appear in person or through an authorised representative when the appeal is called for hearing, the Securities Appellate Tribunal may dispose of the appeal on merits. However, where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Securities Appellate Tribunal that there was sufficient cause for his not appearance, when the appeal was called for hearing, the Securities Appellate Tribunal shall make an order setting aside the ex-parte order and restore the appeal.

12. Dress regulations for the Presiding Officer and for the representatives of the parties - The dress for the Presiding Officer shall be white or striped or black pant with black coat over white shirt and band or a buttoned-up black coat and band. The dress for the two other Members shall

be white or striped or black pant with black coat over white shirt and black tie or buttoned up black coat. In the case of female Presiding Officer, the dress shall be black coat over white saree.

Every authorised representative, other than a relative or regular employee of the party shall appear before the Appellate Tribunal in his professional dress if any, and if there is no such dress, a male, in a suit or buttoned-up coat over a pant or national dress that is a long buttoned up coat on dhoti or churridar pyjama, and a female, in a coat over white or any other sober coloured saree or in any other sober dress. All other persons appearing before the Appellate Tribunal shall be properly dressed.

Every order of the Appellate Tribunal shall be signed and dated by the Presiding Officer and the two other members. The Presiding Officer will have powers to pass interim orders or injunction, subject to reasons to be recorded in writing, which it considers necessary in the interest of justice.

DEBTS RECOVERY TRIBUNAL AND DEBTS RECOVERY APPELLATE TRIBUNAL

The Debts Recovery Tribunals (DRTs) and Debts Recovery Appellate Tribunal (DRATs) were established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), renamed in 2019 as Recovery of Debts and Bankruptcy Act (RDB Act) 1993, with the specific objective of providing expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for matters connected therewith or incidental thereto. Another debt recovery legislation is The Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest (SARFAESI) Act, 2002, which is an Act to regulate securitization and reconstruction of Financial Assets and enforcement of security interest and for matters connected therewith or incidental thereto. At present, 39 DRTs and 5 DRATs are functioning across the country. Each DRT and DRAT are headed by a Presiding Officer and a Chairperson respectively.

A District Judge is appointed as Presiding Officer of the Tribunal and he is assisted by with one or more Recovery Officers and such other officers and employees as the Government may think

fit. The qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Presiding Officer of the Tribunal appointed after the commencement of the Tribunals Reforms Act, 2021, shall be governed by the provisions of Chapter II of the said Act. However, the Presiding Officer appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of the RDB Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force. The Central Government may authorize the Presiding Officer of one Tribunal to discharge also the functions of the Presiding Officer of another Tribunal.

The Central Government shall, by notification, establish one or more Appellate Tribunals, to be known as the Debts Recovery Appellate Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under the RDB Act. A person shall not be qualified for appointment as the Chairperson of an Appellate Tribunal] unless he (a) is, or has been, or is qualified to be, a Judge of a High Court; or (b) has been a member of the Indian Legal Service and has held a post in Grade I of that service for at least three years; or (c) has held office as the Presiding Officer of a Tribunal for at least three years.

The Government may authorize the Chairperson of any other Appellate Tribunal, established under any other law for the time being in force, to discharge the functions of the Chairperson of the Debts Recovery Appellate Tribunal under the RDB Act in addition to his being the Chairperson of that Appellate Tribunal. It may also authorize the Chairperson of one Appellate Tribunal to discharge also the functions of the Chairperson of other Appellate Tribunal.

The Central Government shall, by notification, establish such number of Debt Recovery Appellate Tribunals to exercise jurisdiction, powers and authority to entertain appeal against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016.

Jurisdiction, Power & Authority

A Tribunal shall exercise, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. It shall also exercise, jurisdiction, powers and authority to entertain and decide applications under Part III of Insolvency and Bankruptcy Code, 2016. It shall have circuit sittings in all district headquarters.

The Appellate Tribunal shall exercise, jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under the RDB Act. It shall also exercise, jurisdiction, powers and authority to entertain appeals against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016.

The Chairperson of an Appellate Tribunal shall exercise general power of superintendence and control over the Tribunals under his jurisdiction including the power of appraising the work and recording the annual confidential reports of Presiding Officers. The Chairperson may direct the Tribunals to furnish, information relating to pending cases both under the RDB Act and the SARFAESI Act, or under any other law for the time being in force, number of cases disposed of, number of new cases filed and such other information as may be considered necessary. The chairperson may also convene meetings of the Presiding Officers of Tribunals periodically to review their performance, may submit report to Central Government and initiate inquiry against them if required. Furthermore, the chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, transfer any case from one Tribunal for disposal to any other Tribunal.

Procedure

The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

DRT and DRAT shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (h) any other matter which may be prescribed.

Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code 1860 and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. For the purpose of proof of any entry in the 'bankers books', the provisions of the Bankers' Books Evidence Act, 1891 shall apply to all the proceedings before the Tribunal or Appellate Tribunal.

The Central Government may, for the purpose of this Act, by rules, lay down uniform procedure consistent with the provisions of this Act for conducting the proceedings before the Tribunals and Appellate Tribunals. The detailed procedure for application to the Tribunal and for appeal to the Appellate Tribunal is given in the Recovery of Debts and Bankruptcy Act (RDB Act) 1993, and Debts Recovery Tribunal (Procedure) Rules, 1993.

TELECOM DISPUTES SETTLEMENT AND APPELLATE TRIBUNAL

Telecom Disputes Settlement & Appellate Tribunal (TDSAT) has been set up under Section 14 of the Telecom Regulatory Authority of India Act, 1997 to adjudicate disputes and dispose of appeals with a view to protect the interests of service providers and consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector. TDSAT was formed in order to bring in functional clarity and strengthen the regulatory framework and the disputes settlement mechanism in the telecommunication sector, the TRAI Act of 1997 was amended in

the year 2000 and TDSAT came into existence on 29th May, 2000 and started hearing cases from January 2001.

The Tribunal exercises jurisdiction over Telecom, Broadcasting, Information Technology and Airport tariff matters under the Telecom Regulatory Authority of India (TRAI) Act, 1997, the Information Technology Act, 2008 and the Airport Economic Regulatory Authority of India Act, 2008. The Tribunal exercises original as well as appellate jurisdiction in regard to Telecom, Broadcasting and Airport tariff matters. In regard to Cyber matters the Tribunal exercises only the appellate jurisdiction.

The TDSAT can adjudicate upon any dispute between: Licensor and a licensee; Two or more service providers; between a service provider and a group of consumers. However, the Tribunal does not have any jurisdiction to try any matter which deals with anti-competitive trade practices or any consumer complaint. The TDSAT can also hear and dispose of appeal against any direction, decision or order of the Telecom Regulatory Authority of India (TRAI) under this Act

After coming into force of the relevant provisions of the Finance Act 2017, the jurisdiction of TDSAT stands extended to matters that lay before the Cyber Appellate Tribunal and also the Airport Economic Regulatory Authority Appellate Tribunal, as both these tribunals were merged with TDSAT. Therefore, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (i.e. from 26.5.2017), TDSAT shall be the Appellate Tribunal for the purposes of the Information Technology Act 2000 and shall exercise the jurisdiction, powers and authority conferred on it by or under the IT Act 2000. The Central Government shall specify, by notification the matters and places in relation to which the Appellate Tribunal may exercise jurisdiction.

The Tribunal consists of a Chairperson and two Members appointed by the Central Government. The selection of Chairperson and Members of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India. The Chairperson should be or should have been a Judge of the Supreme Court or the Chief Justice of a High Court. A Member should have held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years

or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration.

Procedure & Powers

The TDSAT shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and it shall have powers to regulate its own procedure. The TDSAT shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document, from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing an application for default or deciding it, ex parte;
- (h) setting aside any order of dismissal of any application for default or any order passed by it, ex parte; and
- (i) any other matter which may be prescribed.

In addition, the Tribunal can call for the records relevant to disposing of a Petition or appeal, for the purpose of examining the legality or propriety or correctness of any decision or of any order etc. of TRAI.

Every proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

An order passed by the Appellate Tribunal shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court. The Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

In respect of Telecom, Broadcasting and Airport tariff matters, the Tribunal's orders can be appealed to the Supreme Court but only on substantial questions of law. However, no appeal lies against an interlocutory order or against any decision or order made by the Tribunal with the consent of the parties. In regard to Cyber matters, the Tribunal's order can be appealed before High Court.

In exercise of the powers conferred by Section 16(1) of the Telecom Regulatory Authority of India Act, 1997, the Telecom Disputes Settlement & Appellate Tribunal made the Telecom Disputes Settlement & Appellate Tribunal Procedures, 2005 which came into force on 12th December, 2005 to regulate its functions. In exercise of the powers conferred by sub-section (1) read with clause (da) of Sub-section (2) of Section 35 of the Telecom Regulatory Authority of India, Act 1997, the central Government framed the Telecom Disputes Settlement and Appellate Tribunal (Form, Verification and the Fee for filing an appeal) rules, 2003.

The applicant or appellant may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

NATIONAL COMPANY LAW TRIBUNAL (NCLT)

The Central Government vide notification of the Ministry of Corporate Affairs (MCA) constituted the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) with effect from the June 01, 2016. The constitution of the aforesaid Tribunals is in exercise of the powers conferred by Sections 408 and 410 respectively of the Companies Act, 2013.

The National Company Law Tribunal (NCLT) has been established for adjudication of disputes with respect to corporate civil disputes arising under the Companies Act 2013 and Insolvency and Bankruptcy Code, 2016.

The genesis of the NCLT and NCLAT began with the Companies (Second Amendment) Act, 2002 which provided for the setting up of a National Company Law Tribunal and Appellate Tribunal to replace the existing Company Law Board (CLB) and Board for Industrial and Financial Reconstruction (BIFR).

NCLT was constituted vide Ministry of Corporate Affairs (MCA) Notification S.O. 1932(E) dated 1.6.2016 and as per Notification S.O. 1936(E) dated 1.6.2016 all matters or proceedings or cases pending before the Board of Company Law Administration (Company Law Board) shall stand transferred to the National Company Law Tribunal on 01st day of June, 2016 and it shall dispose of such matters or proceedings or cases in accordance with the provisions of the Companies Act, 2013 or the Companies Act, 1956. The MCA issued the National Company Law Tribunal Rules, 2016 vide notification dated 21st July, 2016.

The NCLT shall consist of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

In the first phase the Ministry of Corporate Affairs have set up eleven Benches, one Principal Bench at New Delhi and one each Regional Benches at New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guahati, Hyderabad, Kolkata and Mumbai. These Benches will be headed by the President and 16 Judicial Members and 09 Technical Members at different location. Subsequently, more Benches at Cuttack, Jaipur, Kochi, Amravati, and Indore have been setup and new members have joined.

The NCLT Benches and their Jurisdiction is as follows:

1. (a) NCLT, Principal Bench and (b) NCLT, New Delhi Bench - Union Territory of Delhi
2. NCLT Ahmedabad Bench - State of Gujarat; Union Territory of Dadra and Nagar Haveli; Union Territory of Daman and Diu

3. NCLT Allahabad Bench - State of Uttar Pradesh; State of Uttarakhand
4. NCLT Amravati Bench - State of Andhra Pradesh
5. NCLT Bengaluru Bench - State of Karnataka
6. NCLT Chandigarh Bench - State of Himachal Pradesh; State of Jammu and Kashmir; State of Punjab; Union Territory of Chandigarh; State of Haryana
7. NCLT Chennai Bench - State of Tamil Nadu; Union Territory of Puducherry
8. NCLT Cuttack Bench - State of Chhattisgarh; State of Odisha.
9. 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
10. NCLT Hyderabad Bench - State of Telangana
11. NCLT Indore Bench - State of Madhya Pradesh
12. NCLT Jaipur Bench - State of Rajasthan.
13. NCLT Kochi Bench - State of Kerala; Union Territory of Lakshadweep
14. NCLT Kolkata Bench - State of Bihar; State of Jharkhand; State of West Bengal; Union Territory of Andaman and Nicobar Island
15. NCLT Mumbai Bench - State of Maharashtra; State of Goa

Procedure before Tribunal and Appellate Tribunal

The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of the Companies Act 2013 or of the Insolvency and Bankruptcy Code, 2016 and of any rules made hereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act or under the Insolvency and Bankruptcy Code, 2016, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) dismissing a representation for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (h) any other matter which may be prescribed.

Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,:

- (a) in the case of an order against a company, the registered office of the company is situate; or
- (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code 1860, and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose,

the powers under the provisions of the Contempt of Courts Act, 1971 which shall have effect subject to the modifications as specified in the Companies Act.

The Tribunal may, in any proceedings for winding up of a company under the Companies Act 2013 or in any proceedings under the Insolvency and Bankruptcy Code, 2016, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such company under this Act or of corporate persons under the said Code, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,-- (a) take possession of such property, books of account or other documents; and (b) cause the same to be entrusted to the Tribunal or other persons authorized by it.

Procedure for Application to NCLT

The National Company Law Tribunal Rules, 2016 notified on 21st July, 2016 lay down the procedural aspects for application and proceedings at NCLT.

An applicant meaning a petitioner or an appellant or any other person or entity capable of making an application including an interlocutory application or a petition or an appeal under the Companies Act 2013, is eligible to apply to NCLT. Under section 432 of the Companies Act 2013, 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 authorize 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. The authorization must be in writing.

A legal practitioner or authorised representative shall be entitled to appear and act, in any proceeding before the Tribunal only if he files into Tribunal vakalatnama or Memorandum of Appearance as the case may, duly executed by or on behalf of the party for whom he appears. While appearing before the Tribunal, the authorised representatives shall wear the same professional dress as prescribed in their Code of Conduct.

The procedural aspects of filing application to NCLT are specified in the NCLT Rules 2016. An applicant can file application including interlocutory application to the NCLT. 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. In case of an interlocutory application, the petition or application shall be filed in Form No. NCLT-1 accompanied by such attachments thereto along with Form No. NCLT-3.

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. Applicants have to file the petitions/ applications/ documents in triplicate before all benches of the NCLT.

The Tribunal shall issue notice to the respondent to show cause against the application or petition on a date of hearing to be specified in the Notice.

Procedure with respect to institution of proceedings, petitions, appeals etc. are laid down in Rule 20 of the National Company Law Tribunal Rules, 2016 (NCLT Rules 2016).

Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate with stipulated fee at the filing counter, accompanied by documents duly certified and duly verified from the originals. The procedural aspects for presentation of petition or appeal are laid down in Rule 23 of the NCLT Rules 2016.

Rule 35 of the NCLT Rules 2016 lays down the procedure to be followed when the application or petition is required to be advertised.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT)

National Company Law Appellate Tribunal (NCLAT) was constituted with effect June 01, 2016 vide Notification S.O. 1933(E) dated 1.6.2016 in exercise of the powers conferred by Sections 410 of the Companies Act, 2013. The National Company Law Appellate Tribunal Rules, 2016 (NCLAT Rules 2016) were notified on 21st July, 2016.

National Company Law Appellate Tribunal (NCLAT) is the Appellate Tribunal for hearing appeals against the orders of National Company Law Tribunal(s) (NCLT), with effect from 1st June, 2016. NCLAT is also the Appellate Tribunal for hearing appeals against the orders passed by NCLT(s) under Section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC), with effect from 1st December, 2016. NCLAT is also the Appellate Tribunal for hearing appeals against the orders passed by Insolvency and Bankruptcy Board of India under Section 202 and Section 211 of IBC.

NCLAT is also the Appellate Tribunal to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India (CCI) – as per the amendment brought to Section 410 of the Companies Act, 2013 by Section 172 of the Finance Act, 2017, with effect from 26th May, 2017.

NCLAT is also the Appellate Tribunal to hear and dispose of appeals against the orders of the National Financial Reporting Authority – as per the amendment brought to Section 410 (a) of the Companies Act, 2013 by Section 83 of the Companies (Amendment) Act, 2017, with effect from 7th May, 2018.

Under section 421 of the Companies Act 2013, any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed. NCLAT may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period. However, no appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

The NCLAT shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against and shall send a copy of every order made by it to the Tribunal and the parties to appeal.

Procedure for Appeal to NCLAT

As stated earlier, under section 432 of the Companies Act 2013, 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 authorize 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.

The Procedural aspects of appeals to NCLAT are specified in the NCLAT Rules 2016. Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorized representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter. Every appeal shall be accompanied by a certified copy of the impugned order. All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon. The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.

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 Form NCLAT-2 and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.

Checklist for filing of Appeals under the Companies Act, 2013 & the Insolvency and Bankruptcy Code, 2016

- Appeals to be in Form NCLAT-1 along with an affidavit in Form NCLAT-4 of the National Company Law Appellate Tribunal Rules, 2016 (Rules)
- In E-Filing: (User manual is available on e-filing portal in Help Center, i.e., <https://efiling.nclat.gov.in/helpInner.drt>)
- ‘Act’, ‘Section’, ‘NCLAT Location’, ‘Jurisdiction/Location’ should be selected correctly.
- Case title will be auto filled, which is to be filled by the respective parties at the time of filling the details of Appellant(s) and Respondent(s)).

- NCLT case Details should be mentioned correctly such as (i) case type, (ii) case number, (iii) Bench (iv) case year and (v) case title as per impugned order.
- Copy order dates & Presiding Judge(s) and other members' details should be mentioned correctly as per the impugned order.
- If parties want to file Interlocutory Application (IA) along with appeal, tick mark (✓) in the given column.
- Appellant's and Respondent's list as well as representative details under the tab "Add Appellant", "Add Respondent" and "Add Representative" should be updated accordingly, as per memo of parties.
- Upload documents. (Color scanned copies of original documents should be uploaded.)
- Filing fees is to be deposited through Bharatkosh/Demand Draft as per Act/Rules (details of Transaction ID for Bharatkosh payments or Demand draft fees particulars should be mentioned correctly and separately for each appeal/application).
- Details are required to be submitted separately for each impugned order being challenged.
- In IA, Contempt case, Review Application, Restoration Application, e-filing number /case number of pending/disposed case should be mentioned correctly.
- In IA(s), Contempt case, review application, restoration application, etc. case type and subject should be selected correctly before uploading documents.
- Please ensure that uploading of documents for IA should be done separately from main case in e-filing.
- Separate IAs to be filed in e-filing portal for exemption from filing certified copy of impugned order, true typed/translated copy of annexures and dim/illegible pages etc.
- Please check and ensure that all details of documents are uploaded with correct indexing in single PDF (Volume-wise).
- Bookmarking / pagination should be done as per index, while uploading the documents in e-filing portal and it is mandatory to fill all the details.

Checklist for filing of Appeals under the Competition Act, 2002

- Appeals to be in Form appended to ‘The Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fees for Filing Compensation Applications) Rules, 2009’ (Rules 2009) Along with an affidavit.
- Refer also Rules 3 & 6 and the Form appended to the aforesaid Rules and Regulation 7, 8 and 9 of ‘The Competition Appellate Tribunal (Procedure) Regulations, 2011’
- In E-Filing: (User manual is available on e-filing portal in Help Center, i.e., <https://efiling.nclat.gov.in/helpInner.drt>)
- ‘Act’, ‘Section’, ‘NCLAT Location’, ‘Jurisdiction/Location’ should be selected correctly.
- Case title will be auto filled, which is to be filled by the respective parties at the time of filling the details of Appellant(s) and Respondent(s)).
- In case of penalty imposed by the C.C.I., penalty amount to be mentioned correctly as per the impugned order.
- C.C.I. case details should be mentioned correctly such as (i) Case number and (ii) Case title.
- Copy order dates & Presiding Judge(s) and other members’ details should be mentioned correctly as per the impugned order.
- If parties want to file Interlocutory Application (IA) along with appeal, tick mark (✓) in the given column.
- Appellant’s and Respondent’s list as well as representative details under the tab “Add Appellant”, “Add Respondent” and “Add Representative” should be updated accordingly, as per memo of parties.
- Upload documents. (Color scanned copies of original documents should be uploaded.)
- Filing fees is to be deposited through Bharatkosh/Demand Draft as per Act/Rules (details of Transaction ID for Bharatkosh payments and Demand draft fees particulars should be mentioned correctly and separately for each appeal/application).
- Details are required to be submitted separately for each impugned order being challenged.
- In IA, Contempt case, Review Application, Restoration Application, e-filing number/case number of pending/disposed case should be mentioned correctly.

- In IA(s), Contempt case, review application, restoration application, etc. case type and subject should be selected correctly before uploading documents.
- Please ensure that uploading of documents for IA should be done separately from main case in e-filing.
- Separate IAs to be filed in e-filing portal for exemption from filing certified copy of impugned order, true typed/translated copy of annexures and dim/illegible pages etc.
- Please check and ensure that all documents are uploaded with correct indexing in single PDF (Volume-wise).
- Bookmarking / pagination should be done as per index, while uploading the documents in e-filing portal and it is mandatory to fill all the details.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

The National Consumer Disputes Redressal Commission (NCDRC), India is a quasi-judicial commission in India which was set up in 1988 under section 20 of the Consumer Protection Act of 1986. Thereafter, the Consumer Protection Act, 1986 was repealed and replaced by enactment of the Consumer Protection Act 2019 on 9th August 2019, to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto. The Act came into force on 20.07.2020.

The Act provided the provision for a three-tier adjudication system at the district, state and national levels with a view to provide speedy and simple redress to consumer disputes. Section 53 of the Consumer Protection Act 2019, thus, lays down the provisions for the establishment of a National Consumer Disputes Redressal Commission (NCDRC), to be known as the National Commission. It shall ordinarily function at the National Capital Region and perform its functions at such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette. The Central Government may, by notification, establish regional Benches of the National Commission, at such places, as it deems fit.

The NCDRC shall consist of President and a minimum of 4 members. The Commission is headed by a sitting or a retired Judge of the Hon'ble Supreme Court of India or a sitting or a

retired Chief Justice of an Hon'ble High Court, in terms of Rule 3 (12) (a) of the Tribunal (Conditions of Service) Rules, 2021.

According to the Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021, the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed fifty lakh rupees, the State Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration exceeds fifty lakh but does not exceed two crore rupees and the National Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration, exceeds two crore rupees.

The Consumer Protection Act 2019 and The Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2020, give the necessary procedure and manner of filing and hearing of appeal by the commissions. The Consumer Protection (Consumer Commission Procedure) Regulations, 2020, gives the detailed procedure of the Commissions.

Every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under this Act. Any person aggrieved by an order of NCDRC, may prefer an Appeal against such order to Supreme Court of India within a period of 30 days.

APPELLATE TRIBUNAL FOR ELECTRICITY

The Appellate Tribunal for Electricity (APTEL) has been set up in exercise of powers conferred under section 110 of the Electricity Act 2003 w.e.f.7th April, 2004 notified vide S.O. 478 (E) and falls under the Ministry of Power, Government of India. APTEL shall ordinarily sit at Delhi. The Appellate Tribunal commenced functioning and hearing of appeals, petitions etc. from 21st July'2005 as per notification issued by the Ministry of Power on 19/7/2005.

APTEL has jurisdiction throughout India and has been set up to hear appeals or original petitions against the orders of the Adjudicating officer or the Appropriate Commission under this Act (The Central Regulatory Commission or State Regulatory Commission or Joint Commission constituted under Section 76 (i) or 82 or 83 of the Act), or any other law for the time being in force. The Tribunal is conferred with original jurisdiction to hear petitions under Section 121 of the Act and issue directions to any Appropriate Commission for the performance of its statutory functions.

APTEL is also the appellate tribunal under the Petroleum and Natural Gas Regulatory Board Act, 2006 and hears appeals against the orders passed by the Petroleum and Natural Gas Regulatory Board.

The APTEL comprises a Chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court, one Judicial Member who has been or qualified to be a judge of High Court, two Technical Members who are electricity sector experts and one Technical Member who is an expert from petroleum and natural gas sector. Each bench has at least one Judicial and one Technical Member.

Procedure & Powers

The Electricity Act 2003 and the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 contains the procedural aspects of filing applications or appeal at the APTEL.

A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Appellate Tribunal, as the case may be. The Appropriate Commission may authorize one or more legal practitioners or any of its officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before the Appellate Tribunal, as the case may be.

The Appellate Tribunal may, after hearing the Appropriate Commission or other interested party, if any, from time to time, issue such orders, instructions or directions as it may deem fit, to any Appropriate Commission for the performance of its statutory functions under this Act.

Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

According to section 120 of the Electricity Act 2003, The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and the Appellate Tribunal shall have powers to regulate its own procedure.

The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation of default or deciding it *ex parte*;
- (h) setting aside any order of dismissal or any representation for default or any order passed by it *ex parte*;
- (i) any other matter which may be prescribed by the Central Government.

An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court. The Appellate Tribunal may transmit any order made by it to a civil court

having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court. All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code 1860 and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

REAL ESTATE APPELLATE TRIBUNAL

The Real Estate (Regulation & Development) Act, 2016 (RERA) received the assent of the President on the 25th March, 2016, and was published in the Official Gazette on 26th March, 2016. The Act came into force on 1 May 2016 with 61 of 92 sections notified. The remaining provisions came into force on 1 May 2017.

Chapter VII of the Real Estate (Regulation and Development) Act, 2016 deals with the constitution of the Real Estate Appellate Tribunal. Section 43 of the Act which came into effect on 1st May 2016, provides that the appropriate Government within one year of the coming into force of this Act, shall establish an Appellate Tribunal to be known as (name of the State/Union Territory) Real Estate Appellate Tribunal, by notification. The appropriate Government may, if it deems necessary, establish one or more benches of the Tribunal, for various jurisdictions in the State or Union Territory. The Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government. The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal.

Procedure & Powers

The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of Appellate Tribunal and he shall, in addition to presiding over the meetings of the Appellate Tribunal, exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed.

According to section 53 of the RERA Act, 2016, The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. It shall have power to regulate its own procedure. The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examinations of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or directing it ex parte; and
- (g) any other matter which may be prescribed.

All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code 1860, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Every order made by the Appellate Tribunal under the RERA Act 2016, shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court. It may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the court.

Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

Real Estate Appellate Tribunals in few States

Until the establishment of an Appellate Tribunal, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act. After the Tribunal is established, all matters pending with the Appellate Tribunal designated, shall stand transferred to the Tribunal so established and shall be heard from the stage such appeal is transferred.

As per the Ministry of Housing and Urban Affairs (MOHUA), All States/UTs have notified Rules under the RERA; 26 States/UTs have set up permanent Real Estate Regulatory Authority; 6 States/UTs have established interim Real Estate Regulatory Authority and 28 States/UTs have set up Real Estate Appellate Tribunal (Regular -24, Interim – 04)

The Real Estate (Regulation and Development) Act, 2016 provides for establishing Real Estate Regulatory Authority (RERA) and Appellate Tribunal for monitoring and adjudicating disputes relating to real estate projects and also to frame Rules under this Act. The status of the same with respect to few states in India is as follows:

Tamil Nadu

<https://www.tnreat.tn.gov.in/ords/r/wstnreat/tnreat-new121/home>

The Tamil Nadu Government vide G.O.Ms.No.112, Housing & Urban Development Department, dated 22.06.2017 has approved the Tamil Nadu Real Estate (Regulation & Development) Rules, 2017 to carry out the provisions of Real Estate (Regulation & Development) Act, 2016. The Government has constituted the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) to hear the appeals from the decisions, directions or orders of the Tamil Nadu Real Estate Regulatory Authority (TNRERA) and the Adjudicating Officer and for matter connected therewith or incidental thereto. Government vide G.O.Ms.No.103, Housing and Urban Development Dept., dated 24.07.2018 has allowed TNREAT to hear appeals related to Union Territory of Puducherry.

Karnataka

<https://rera.karnataka.gov.in/aboutKREAT>

The Karnataka Real Estate (Regulation and Development) Rules, 2017 were published in the Official Gazette dated 24th October, 2016 in part I of the Karnataka Gazette (Extra Ordinary Number 1193). Subsequently, Karnataka Real Estate (Regulation and Development) Rules, 2017 were approved by the State Government and notified on 10th July, 2017 effective when it came into force.

Section 43 of The Real Estate (Regulation and Development) Act, 2016 contemplates establishment of the Real Estate Appellate Tribunal as a first appellate forum to deal with grievances against any direction or decision or order made by the Real Estate Regulatory Authority or by an Adjudicating officer, under the Act. In pursuance, thereof the government of Karnataka in compliance with proviso to sub Section (4) of Section 43 of the Real Estate (Regulation and Development) Act, 2016 had designated the Karnataka Appellate Tribunal as an interim Real Estate Appellate Tribunal for the state of Karnataka stationed at Bengaluru Vide G.O.No.DOH 158 KHB 2017 dated 16/12/2017. The said interim appellate tribunal functioned till 02/01/2020. In compliance with Section 43(1) of the Real Estate (Regulation and Development) Act, 2016 the Department of Housing, Government of Karnataka has established the Karnataka Real Estate Appellate Tribunal (KREAT) vide Notification No.DOH 44 RERA 2019 Dated 30/12/2019. The said appellate tribunal has commenced its function with effect from 03/01/2020. The territorial Jurisdiction of the Karnataka Real Estate Appellate Tribunal extends to the whole of Karnataka.

Maharashtra

<https://mahareat.mahaonline.gov.in/>

Government of Maharashtra has implemented the Real Estate (Regulation and Development) Act on May 1, 2017 and established Maharashtra Real Estate Appellate Tribunal, vide Notification No. 23 dated 8 March 2017. The Maharashtra Real Estate Appellate Tribunal (Form of Annual Statement of Accounts and Annual Report Rules, 2017 were laid down vide Notification No. REA2016/CR.No.123/DVP-2 Dated 18th April 2017 and the Maharashtra Real Estate Appellate Tribunal, Officers and Employees (Appointment and Service Conditions) Rules, 2017 were laid

down vide Notification No. No. REA 2016/CR No. 79/DVP-2.Dated 17th April, 2017. The Maharashtra Real Estate Appellate Tribunal has also laid down the Maharashtra Real Estate Appellate Tribunal Regulations, 2019 to regulate its own practice and procedure.

Madhya Pradesh

<https://reat.mp.gov.in/>

Government of Madhya Pradesh implemented the Real Estate (Regulation and Development) Act and established Madhya Pradesh Real Estate Regulatory Authority on May 1, 2017. The Madhya Pradesh Real Estate (Regulation and Development) Rules 2017 were notified. The Madhya Pradesh Real Estate Appellate Tribunal has also been established under the Act.

Rajasthan

<https://reat.rajasthan.gov.in/>

The Real Estate (Regulation and Development) Act, 2016 was brought into effect by Govt. of India on 01.05.2016. The Rajasthan Real Estate (Regulation and Development) Rules, 2017 were notified on 01.05.2017. Govt. of Rajasthan has constituted the Rajasthan Real Estate Appellate Tribunal (Raj. REAT) on 01.05.2017. The Tribunal's office started functioning with effect from 1st march 2021,

Haryana

<https://haryanarera.gov.in/login/loginview/3>

The Government of India has enacted The Real Estate (Regulation and Development) Act, 2016. Under the Real Estate (Regulation and Development) Act, 2016, Government of Haryana has notified The Haryana Real Estate (Regulation and Development) Rules, 2017 which came into force from 28.07.2017. The Government of Haryana has established the Haryana Real Estate Appellate Tribunal.

ARBITRAL TRIBUNAL

The Indian law of arbitration is contained in the Arbitration and Conciliation Act 1996. As per section 2(d) of the Act, an arbitral tribunal means a sole arbitrator or a panel of arbitrators. Thus, an arbitral tribunal (or arbitration tribunal) is a panel of one or more adjudicators which is convened and sits to resolve a dispute by way of arbitration. The tribunal may consist of a sole arbitrator, or there may be more arbitrators but the number of arbitrators can never be even number under the Arbitration & Conciliation Act, 1996.

The composition of the Arbitral Tribunal is laid down in Chapter III of the Act. Section 10(1) says that the parties are free to determine the number of arbitrators. This is, however, subject to the condition that such number shall not be an even number. In case there is no provision as to number of arbitrators in the arbitration agreement, the reference will be to a sole arbitrator as per Section 10(2).

The parties to arbitration are free to agree on a procedure for appointing the arbitrator or arbitrators. In the failure of any such procedural agreement, in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

If the parties fail to appoint arbitrator or fail to agree upon the name of a sole arbitrator, the appointment shall be made by the Supreme Court or the High Court or any person or institution designated by such Court. (Section 11)

The designating authority will take into account the followings before appointing an arbitrator : - (section 11(8) and section 11(9))

- 1) An qualification required of the arbitrator by the agreement of the parties ; and
- 2) Other consideration as are likely to secure the appointment of an independent and impartial arbitrator.
- 3) In case of International Commercial Arbitration, Supreme/ High Court or any person or institution designated by such court may appoint an arbitrator of a nationality other than nationalities of the parties where the parties belong to different nationalities. (Section 11(9))

According to section 29 of the Act, unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members. However, if authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.

Procedure & Powers

According to section 19 of the Act, the arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings. However, failing any procedural agreement between the parties, the arbitral tribunal may, conduct the proceedings in the manner it considers appropriate, and in doing so, the power of the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

In relation to any arbitration proceeding or a proceeding under the Act, the arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908, shall have the discretion to determine, the costs payable by one party to another and the amount of such costs.

A contract that includes an agreement to arbitrate disputes typically outlines some key aspects relating to any potential future arbitration. The rules and procedures that will be used in an arbitration proceeding are typically part of this agreement. If an outside service will be used to handle an arbitration proceeding, as in the case of institutional arbitration, the contract may specify whether that service's already-established rules and procedures will be used. Because of the variety of arbitration services, as well as the flexibility provided to parties to draw up their own rules, there is no single set of rules or procedures that apply to all arbitrations.

Party who makes the claim is called claimant; party against whom the claim is made is called a Respondent. Claimant has to file a statement of claims within the period agreed. Claimant shall also state the facts and enclose the relevant documents. The copy of statement of claim is given to each member of arbitral tribunal as to the respondent. Respondent on receiving the statement of claim shall file his defence in response the particulars submitted by the Claimant. Further, the respondent is allowed to submit a counter claim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the

arbitration agreement. Upon receiving the reply, the claimant may add something further called Rejoinder. Parties may amend and supplement their claim or defence during the course of proceeding. However, to ensure that this process does not go on and on, tribunal may refuse to give permission to file such a submission or to amend supplement claim or defence in Arbitration proceedings. Finally, the respondent gives a closing address and then the claimant gives a closing address. The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.

If the claimant fails to submit the statement of his claims, the arbitral tribunal shall terminate the proceedings. If the respondent fails to submit his statement of defense, the arbitral tribunal shall continue the proceedings and the award will be made on the material and the evidence available before the tribunal, and the tribunal will not treat the failure itself as an admission of the allegation made by the claimants. The Tribunal shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited. If a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal. An arbitral award shall be final and binding on the parties and persons claiming under them respectively. Where the time for making an application to set aside the arbitral award has expired, then such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court.

REGULATORS; AUTHORITIES & BOARDS

A Regulatory Authority is a public or government entity accountable for exercising control, supervising and implementing the rules and regulations in various sectors. It is among its functions to apply norms, restrictions, or limitations, establish the standard for operations, and enforce or ensure conformance in these areas.

The following are some of the prominent regulatory authorities in India:

1. Airports Economic Regulatory Authority (AERA)

<https://aera.gov.in/home>

Consequent to the recommendations of the Naresh Chandra Committee report, the Government of India established Airports Economic Regulatory Authority (AERA). It is a statutory body constituted under the Airports Economic Regulatory Authority Act, 2008 (AERA Act 2008) vide Notification No. GSR 317 (E) dated 12th May 2009. The Airports Economic Regulatory Authority Bill, 2007 was passed by the Parliament in 2008 and received assent of the President on December 5, 2008. The AERA Act, 2008 came into effect on January 1, 2009 except Chapter III and Chapter VI of AERA Act, 2008 which came into effect on September 1, 2009. In accordance with the AERA Act, 2008 the Central Government established Airports Economic Regulatory Authority of India, as an independent economic regulator, aimed to create level playing field, foster healthy competition amongst all major airports, to monitor performance standards at major airports, encourage investment in airport facilities and regulate tariffs and other charges for aeronautical services rendered at airports.

2. Atomic Energy Regulatory Board (AERB)

<https://www.aerb.gov.in/english/>

The Atomic Energy Regulatory Board (AERB) was constituted on November 15, 1983, by the President of India by exercising the powers conferred by the Atomic Energy Act, 1962 to carry out certain regulatory and safety functions under the Act. The regulatory authority of AERB is derived from the rules and notifications promulgated under the Atomic Energy Act and the Environment (Protection) Act, 1986. AERB has powers to take enforcement actions to administer the provisions of Rules made under Atomic Energy Act 1962 for ensuring radiological safety as well as industrial safety.

3. Bureau of Indian Standards (BIS)

<https://www.bis.gov.in/>

Bureau of Indian Standards (BIS) is the National Standard Body of India established under the Bureau of Indian Standards Act 2016 (BIS Act 2016), assuming the functions of the erstwhile Indian Standards Institution (ISI). BIS Act 2016 came into force on 12 October 2017 superseding BIS Act 1986. BIS Act 2016 provides for the establishment of a national standards body for the harmonious development of the activities of standardization, conformity assessment and quality assurance of goods, articles, processes, systems and services and for matters connected therewith or incidental thereto. BIS operates under the framework of the BIS Act of 2016 and the Rules and Regulations framed there under.

4. Central Board of Direct Taxes (CBDT)

<https://incometaxindia.gov.in/Pages/default.aspx>

The Central Board of Direct Taxes (CBDT) is a statutory authority functioning under the Central Board of Revenue Act, 1963. It is a part of the Department of Revenue in the Ministry of Finance. Its functions include formulation of policies, dealing with matters relating to levy and collection of direct taxes, and supervision of the functioning of the entire Income Tax Department. CBDT also proposes legislative changes in direct tax enactments and changes in rates and structure of taxation in tune with the policies of the Government. The CBDT is headed by Chairman and at present comprises of six members. The Chairman and Members are ex-officio Special Secretaries to the Government of India.

5. Central Board of Indirect Taxes & Customs (CBIC)

<https://www.cbic.gov.in/>

Central Board of Indirect Taxes and Customs (erstwhile Central Board of Excise & Customs) is a part of the Department of Revenue under the Ministry of Finance, Government of India. The Board was constituted under the Central Board of Revenue Act, 1963. It deals with the tasks of

formulation of policy concerning levy and collection of Customs, Central Excise duties, Central Goods & Services Tax and IGST, prevention of smuggling and administration of matters relating to Customs, Central Excise, Central Goods & Services Tax, IGST and Narcotics to the extent under CBIC's purview. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise and Central GST Commissionerates and the Central Revenues Control Laboratory. The CBIC is headed by Chairman and at present comprises of six members. The Chairman and Members are ex-officio Special Secretaries to the Government of India.

6. Central Electricity Regulatory Commission (CERC)

<https://www.cercind.gov.in/index.html>

The CERC is a statutory body functioning under section 76 of the Electricity Act 2003 (CERC was initially constituted under the Electricity Regulatory Commissions (ERC) Act, 1998 on 24th July, 1998). The ERC Act, 1998 has since been replaced by the Electricity Act, 2003 and CERC created under the provisions of the ERC Act, 1998 has been recognized as the Central Electricity Regulatory Commission under the Electricity Act, 2003. The Electricity Act, 2003 has significantly enlarged the spectrum of responsibility of CERC. Under the CERC Act, 1998 only the tariff fixation powers were vested in CERC. The Electricity Act, 2003 has entrusted on CERC several other responsibilities in addition to the tariff fixation powers. These include the powers to grant license for inter-State transmission, inter-State trading and consequently to amend, suspend and revoke the license, the powers to regulate the licensees by setting performance standards and ensuring their compliance, etc. The Commission functions in a quasi-judicial manner and has the powers of Civil Courts. It consists of a Chairperson, three full time Members and the Chairperson of the Central Electricity Authority (CEA) as Ex-Officio Member.

7. Competition Commission of India (CCI)

<https://www.cci.gov.in/>

The Competition Act, 2002 was passed by the Parliament in the year 2002, to which the President accorded assent in January, 2003. It was subsequently amended by the Competition (Amendment) Act, 2007. In accordance with the provisions of the Amendment Act, the Competition Commission of India was established. The provisions of the Competition Act relating to anti-competitive agreements and abuse of dominant position were notified on May 20, 2009. The Competition Commission of India ('Commission') has been established to enforce the competition law under the Act. The Commission consists of a Chairperson and not more than 6 Members appointed by the Central Government. It is the statutory duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India as provided in the Preamble as well as Section 18 of the Act. The Commission is also mandated to give its opinion on competition issues to government or statutory authority and to undertake competition advocacy for creating awareness of competition law.

8. Food Safety and Standards Authority of India (FSSAI)

<https://www.fssai.gov.in/>

The Food Safety and Standards Authority of India (FSSAI) is a Statutory Authority established under the Food Safety and Standards Act, 2006 (FSS Act 2006). The FSS Act 2006 was enacted with the objective to consolidate the laws relating to food and for laying down science based standards for articles of food as well as to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. The Food Safety and Standards Authority of India (FSSAI) was established under the FSS Act 2006, in September 2008, as the apex authority on all matters of food safety and to ensure safe and wholesome food to consumers. As per Section 5 of the FSS Act, 2006 the FSSAI shall consist of a Chairperson and twenty-two members out of which one-third shall be women. The FSSAI and State Food Authorities are jointly responsible for implementation & enforcement of FSS Act, 2006.

9. Inland Waterways Authority of India (IWAI)

<http://iwai.nic.in/>

The Inland Waterways Authority of India (IWAI) came into existence on 27th October 1986 under the Inland Waterways Authority of India Act 1985, for development and regulation of inland waterways for the purpose of shipping and navigation. The IWAI is inter-alia responsible for development, maintenance and regulation of National Waterways (NWs). The Authority primarily undertakes projects for development and maintenance of Inland Water Transport (IWT) infrastructure on National Waterways (under the National Waterways Act 2016) through grant received from Ministry of Shipping. The development and regulation of waterways which are not declared as NWs remain under the domain of respective State Governments.

10. Insolvency and Bankruptcy Board of India (IBBI)

<https://ibbi.gov.in/en>

The Insolvency and Bankruptcy Board of India was established on 1st October, 2016 with its head office at New Delhi, by Notification S.O. 3110(E) under section 188(1) of the Insolvency and Bankruptcy Code, 2016 (Code). It is a key pillar of the ecosystem responsible for implementation of the Code that consolidates and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.

It has regulatory oversight over the Insolvency Professionals, Insolvency Professional Agencies, Insolvency Professional Entities and Information Utilities. It writes and enforces rules for processes, namely, corporate insolvency resolution, corporate liquidation, individual insolvency resolution and individual bankruptcy under the Code. It is also tasked to promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of the Code. It has also been designated as the 'Authority' under the Companies (Registered Valuers and Valuation Rules), 2017 for regulation and development of the profession of valuers in the country.

11. Insurance Regulatory & Development Authority of India (IRDAI)

<https://irdai.gov.in/home>

Insurance Regulatory and Development Authority of India (IRDAI), is a statutory body formed under the Insurance Regulatory and Development Authority Act, 1999 (IRDA Act, 1999) for overall supervision and development of the Insurance sector in India. The powers and functions of the Authority are laid down in the IRDA Act, 1999 and Insurance Act, 1938. The Insurance Act, 1938 is the principal Act governing the Insurance sector in India. It provides the powers to IRDAI to frame regulations which lay down the regulatory framework for supervision of the entities operating in the Insurance sector. Section 14 of the IRDA Act, 1999 specifies the Duties, Powers and Functions of the Authority.

The key objectives of the IRDAI include protecting the interest of policyholders, speedy and orderly growth of insurance industry, speedy settlement of genuine claims, effective grievance redressal mechanism, promoting fairness, transparency and orderly conduct in financial markets dealing with insurance, prudential regulation while ensuring the financial security of the Insurance market.

12. Pension Fund Regulatory and Development Authority (PFRDA)

<https://www.pfrda.org.in>

On 23rd August, 2003, Interim Pension Fund Regulatory & Development Authority (PFRDA) was established through a resolution by the Government of India to promote, develop and regulate pension sector in India. The contributory pension system was notified by the Government of India on 22nd December, 2003, now named the National Pension System (NPS) with effect from the 1st January, 2004. The NPS was subsequently extended to all citizens of the country w.e.f. 1st May, 2009 including self-employed professionals and others in the unorganized sector on a voluntary basis.

The Pension Fund Regulatory & Development Authority Act was passed on 19th September, 2013 and the same was notified on 1st February, 2014. PFRDA is regulating NPS, subscribed by employees of Government of India, State Governments and by employees of private

institutions/organizations & unorganized sectors.

13. Petroleum and Natural Gas Regulatory Board (PNGRB)

<https://pngrb.gov.in/eng-web/index.html>

The Petroleum and Natural Gas Regulatory Board (PNGRB) was constituted under The Petroleum and Natural Gas Regulatory Board Act, 2006 notified via Gazette Notification dated 31st March, 2006. The Act provide for the establishment of Petroleum and Natural Gas Regulatory Board to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to promote competitive markets and for matters connected therewith or incidental thereto.

Further as enshrined in the act, the board has also been mandated to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country.

14. Real Estate Regulatory Authority

The Real Estate (Regulation and Development) Act, 2016, was enacted on 25th March 2016, to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto. The Act came into force on 1 May 2016 with 61 of 92 sections notified. The remaining provisions came into force on 1 May 2017.

State-level Real Estate Regulatory Authorities were established under Section 20 of the RERA Act 2016 by the ‘appropriate Government’, to register and regulate real estate projects and to

exercise the powers conferred on it and to perform the functions assigned to it under the Act. In this regard, ‘Appropriate Government’ means in respect of matters relating to,—

- (i) the Union territory without Legislature, the Central Government;
- (ii) the Union territory of Puducherry, the Union territory Government;
- (iii) the Union territory of Delhi, the Central Ministry of Urban Development;
- (iv) the State, the State Government;

However, the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority. The appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be.

15. Reserve Bank of India (RBI)

<https://www.rbi.org.in/>

The Reserve Bank of India was established on April 1, 1935 in accordance with the provisions of the Reserve Bank of India Act, 1934. The Central Office of the Reserve Bank was initially established in Kolkata but was permanently moved to Mumbai in 1937. The Central Office is where the Governor sits and where policies are formulated. The Reserve Bank's affairs are governed by a central board of directors.

Though originally privately owned, since nationalization in 1949, the Reserve Bank is fully owned by the Government of India. The Preamble of the Reserve Bank of India describes the basic functions of the Reserve Bank as: “to regulate the issue of Bank notes and keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage; to have a modern monetary policy framework to meet the challenge of an increasingly complex economy, to maintain price stability while keeping in mind the objective of growth.”

16. Securities and Exchange Board of India (SEBI)

<https://www.sebi.gov.in/index.html>

The Securities and Exchange Board of India was constituted as a non-statutory body on April 12, 1988 through a resolution of the Government of India. The Securities and Exchange Board of India was established as a statutory body in the year 1992 and the provisions of the Securities and Exchange Board of India Act, 1992 came into force on January 30, 1992.

The Preamble of the Securities and Exchange Board of India describes the basic functions of the Securities and Exchange Board of India as "...to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto"

SEBI conducts regular inspections of the Market Infrastructure Institutions (MIIs), market intermediaries and the entities associated with the securities market to oversee their activities and to ensure compliances with various regulations/ directions issued by the regulator. Enforcement actions are initiated by SEBI, as deemed appropriate, in the instances of violation(s) of the laws regulating the securities market.

17. Telecom Regulatory Authority of India (TRAI)

<https://trai.gov.in/>

The Telecom Regulatory Authority of India (TRAI) was established with effect from 20th February 1997 by an Act of Parliament, called the Telecom Regulatory Authority of India Act, 1997, to regulate telecom services, including fixation/revision of tariffs for telecom services which were earlier vested in the Central Government.

One of the main objectives of TRAI is to provide a fair and transparent policy environment which promotes a level playing field and facilitates fair competition. In pursuance of above objective TRAI has issued from time to time a large number of regulations, orders and directives to deal with issues coming before it and provided the required direction to the evolution of Indian telecom market from a Government owned monopoly to a multi operator multi service open competitive market. The directions, orders and regulations issued cover a wide range of subjects including tariff, interconnection and quality of service as well as governance of the Authority.

The TRAI Act was amended by an ordinance, effective from 24 January 2000, establishing a Telecommunications Dispute Settlement and Appellate Tribunal (TDSAT) to take over the adjudicatory and disputes functions from TRAI. TDSAT was set up to adjudicate any dispute between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers, and to hear and dispose of appeals against any direction, decision or order of TRAI.

IMPORTANT WEBSITES

Central Administrative Tribunal - <https://cgat.gov.in/>

Karnataka State Administrative Tribunal – <https://ksat.karnataka.gov.in/>

Maharashtra State Administrative Tribunal <https://mat.maharashtra.gov.in/>

West Bengal State Administrative Tribunal - <http://wbst.gov.in/>

Kerala State Administrative Tribunal - <https://keralaadministrativetribunal.gov.in/main/home/>

Armed Forces Tribunal - <https://aftdelhi.nic.in/index.php>

Appellate Tribunal for Electricity: <http://aptel.gov.in/>

Appellate Tribunal under SAFEMA Act, 1976: <http://atfp.gov.in/>

Customs, Excise and Service Tax Appellate Tribunal: <http://www.cestatnew.gov.in/>

Debts Recovery Tribunals (DRTs) and Debts Recovery Appellate Tribunal:

<https://www.drt.gov.in/>

Income Tax Appellate Tribunal: <http://itat.nic.in/>, <http://itatonline.org/>

Insolvency and Bankruptcy Board of India: <http://www.ibbi.gov.in/>

National Company Law Appellate Tribunal (NCLAT): <http://www.nclat.nic.in/>

National Company Law Tribunal (NCLT): <http://nclt.gov.in/>

National Consumer Dispute Redressal Commission: <http://ncdrc.nic.in/>

National Green Tribunal: <http://www.greentribunal.gov.in/>

Securities Appellate Tribunal: <http://sat.gov.in/>

Telecom Disputes Settlement & Appellate Tribunal: <http://www.tdsat.gov.in/Delhi/Delhi.php>