

## Assessing NCALT

### What is the issue?

\n\n

The National Company Law Appellate Tribunal seems to be lacking the specifics to ensure the purposeful functioning of the competition adjudications in India.

\n\n

### What are the legal mechanisms in place?

\n\n

\n

- The Indian competition adjudicatory structure consists of -

\n

\n\n

\n

- i. Competition Commission of India (CCI)

\n

- ii. National Company Law Appellate Tribunal (NCLAT)

\n

\n\n

\n

- **CCI** - The Competition Commission of India is a statutory body responsible for enforcing The Competition Act, 2002.

\n

- It is tasked with preventing activities that have an adverse effect on competition among companies in India.

\n

- The commission is entrusted with regulatory powers for effective regulation.

\n

- **NCALT** - NCLAT serves as the appellate authority for hearing appeals against the decisions, directions or orders passed by -

\n

\n\n

\n

- i. National Company Law Tribunal(s) (NCLT)

- \n
- ii. Insolvency and Bankruptcy Board of India
  - iii. Competition Commission of India (CCI)
- \n

\n\n

### **Are tribunals effective?**

\n\n

- Tribunals were envisioned as ad-hoc mechanisms to address the problem of judicial delays.
  - They are a tool to harness cost-effectiveness, accessibility, expedited functioning and expert knowledge.
  - Nevertheless, reality with the state of competition appeals in India is not appreciable, with some inherent shortfalls in the system.
- \n

\n\n

### **What are the concerns?**

\n\n

- **Delays** - The appellate authority is required to dispose of appeals expeditiously; possibly within six months from the date of receipt of appeal.
  - However, data suggests that such a deadline is not complied with.
  - Resultantly, the average disposal rate per year of competition appeals falls between only 40-50%.
  - **Procedure** - In addition to the delay caused at the appellate stage, there lies further scope of appeal at the Supreme Court level.
  - The absence of detailed, stage-wise timelines governing the appellate process adds to the problem.
  - Resultantly, the numerous layers of judicial procedures largely undermine the very purpose of these adjudicatory mechanisms in place for ensuring fair competition.
- \n

- **Capacity** - The maximum permissible strength of the NCLAT is 11 members.  
\n
- However, it currently comprises only three, leading to limited capacity at the tribunal.  
\n
- **Composition** - NCLAT also does not comprise of any technical members on board.  
\n
- There is lack of specific expertise in competition law and policy, for a professional handling of the company cases.  
\n

\n\n

### **What should be done?**

\n\n

- \n
- There is an urgent need to appoint more members in NCALT to ensure that the pending-appeals do not pile up as huge burden.  
\n
- In its 272nd Report, the Law Commission of India has recommended that specialised tribunals should comprise of technical persons.  
\n
- This may include persons with special knowledge and professional experience or expertise of not less than 15 years in the particular field.  
\n
- E.g. in the UK, the Competition Appellate Tribunal (CAT) comprises a combination of industry experts, economists and legal practitioners, etc.  
\n
- Case-management techniques such as setting stage-wise timelines, arranging case-management conferences, etc should be adopted.  
\n

\n\n

\n\n

**Source: Financial Express**

\n\n

\n



**SHANKAR**  
**IAS PARLIAMENT**  
*Information is Empowering*