

Seminar on NCLT
ICAI Study Circle
16th October 2016

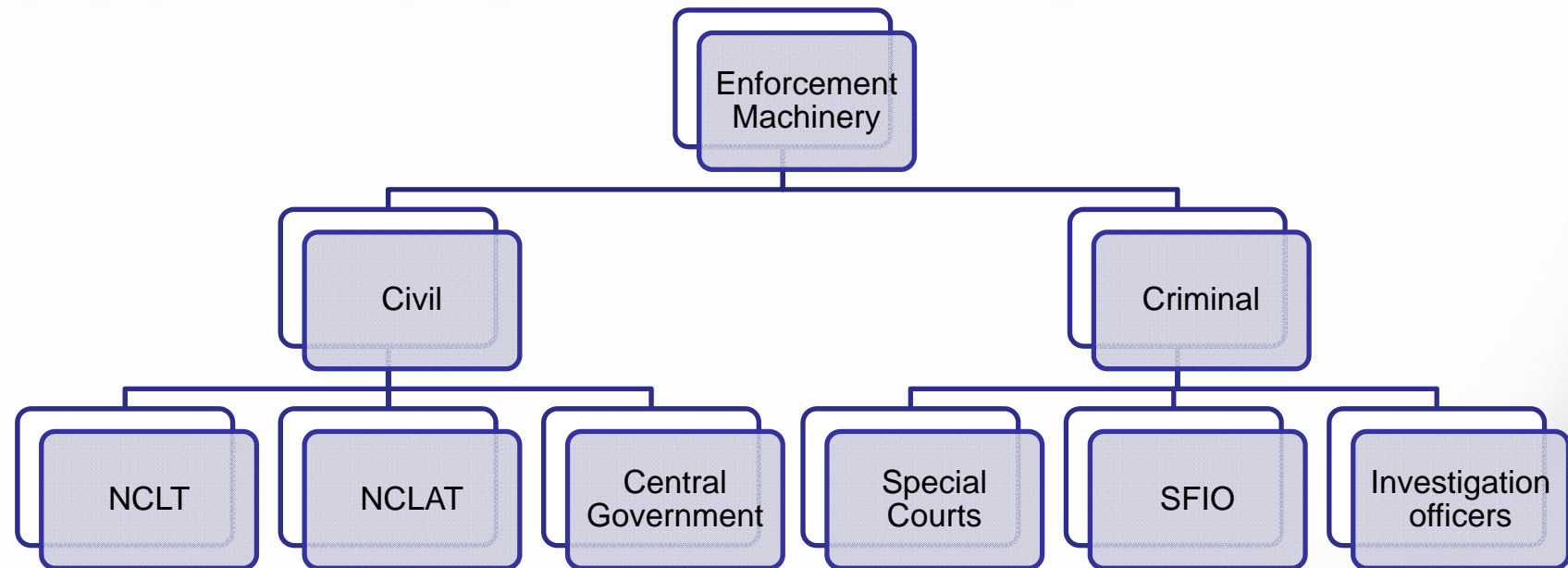
NCLT & NCLAT

Adv. Prachi Manekar-Wazalwar
Corporate Lawyer

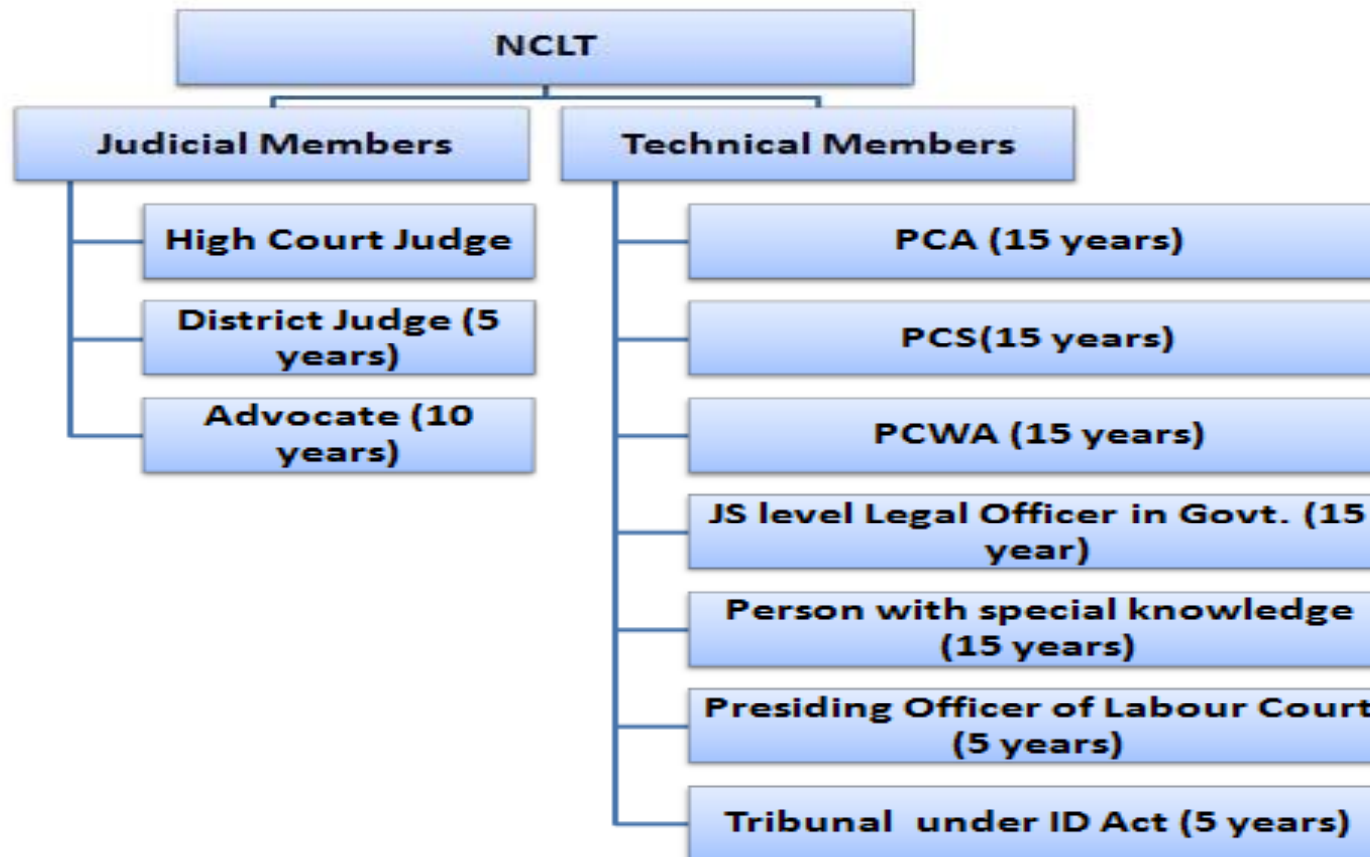


Please provide your inputs at
prachimanekar@gmail.com

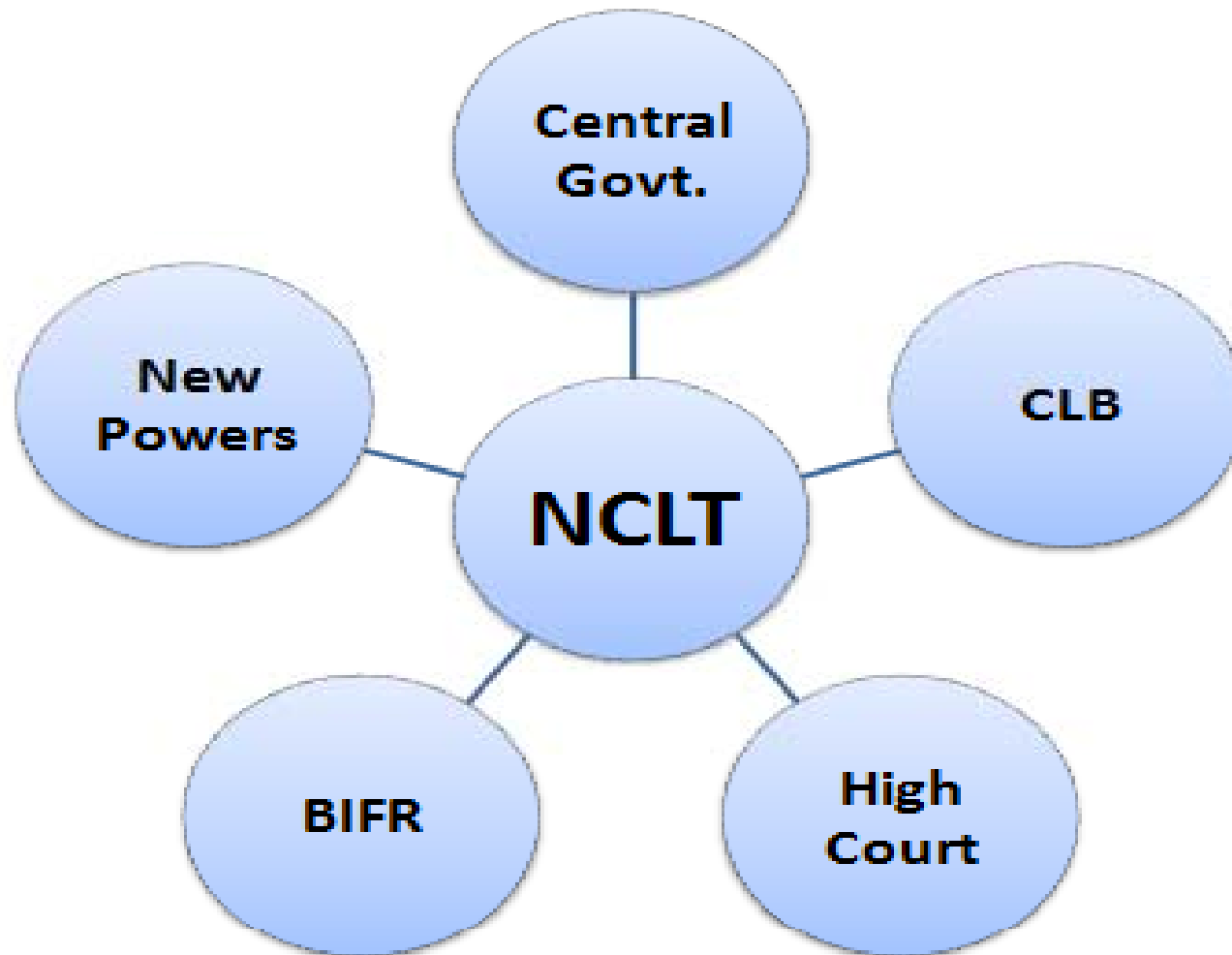
Why Tribunals



Constitution of Tribunals



Nature of Powers enjoyed by Tribunals



High Court

- Winding Up
- Compromise and Arrangement
- Reduction of Capital
- Revival of Defunct Companies
- Variation of rights

CLB

- Oppression and Mismanagement
- Compounding
- Refusal to transfer/transmit shares
- Call AGM/EOGM
- Inspection
- Investigation
- Restriction of shares and debentures
- Freezing of assets
- Restriction on Transfer of securities

BIFR

- Revival and Rehabilitation of Sick Cos.

New Powers

- Class action;
- Deregister a company and determine other incidental matters;
- Remove auditor of a company;
- Reopen of books of accounts
- Revise books of accounts
- Additional powers in case of non-payment of deposits
- Certain Powers in case of Fast Track Merger

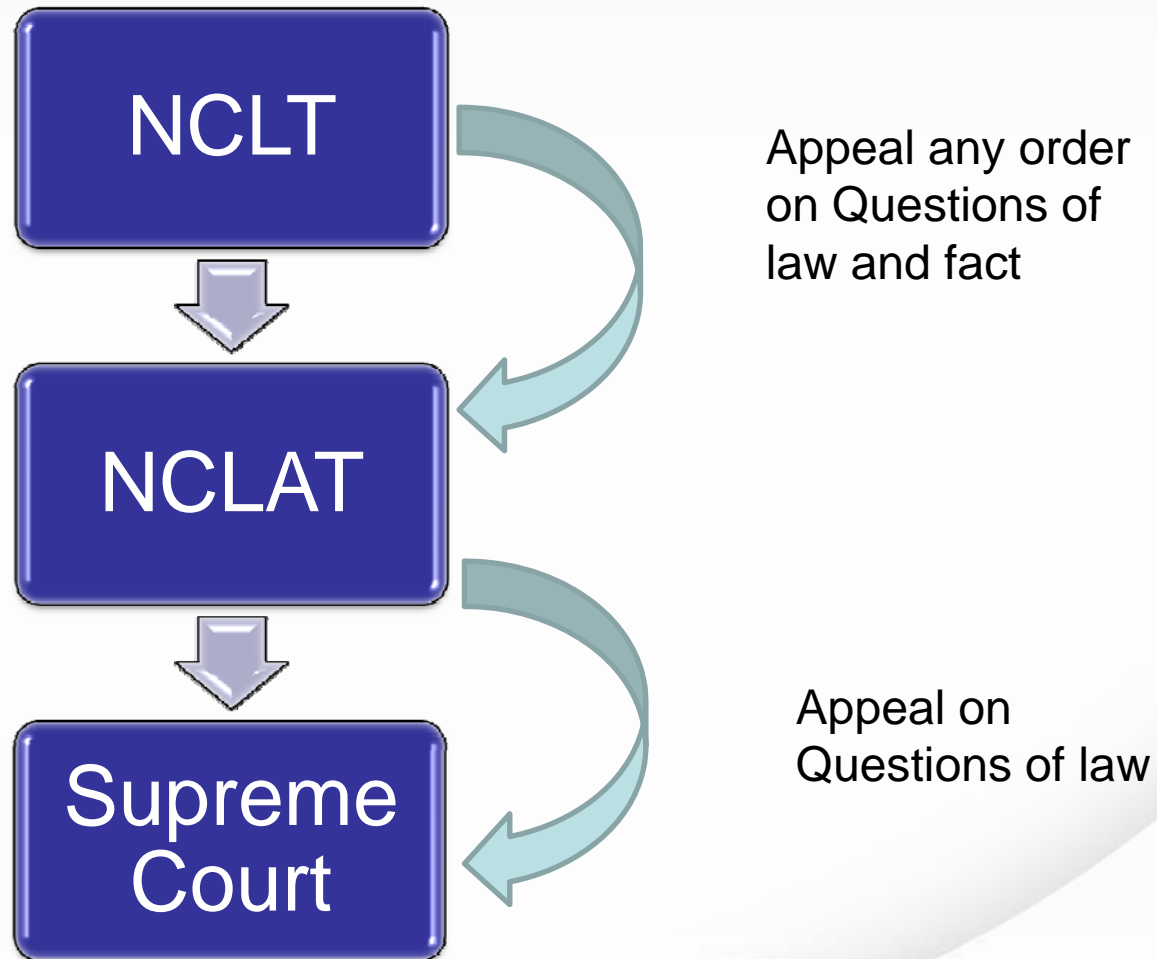
Important Questions

- Is it a mere transfer of powers to NCLT
- What are the powers of NCLT
- Have the processes for the corporate actions changed?
- Are there other authorities to support NCLT

CLB vs. NCLT

- Jurisdiction
- Scope of powers
- Nature of general powers
- Matters that can be taken up
- Nature of authority
- Limitation period

Remedies for Person Aggrieved by Order



What are the general powers

Powers of Civil Court

- summoning and enforcing the attendance of any person
- requiring the discovery and production of documents;
- receiving evidence on affidavits;
- 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
- issuing commissions for the examination of witnesses or documents.
- dismissing a representation for default or deciding it *ex parte*.
- setting aside any order of dismissal of any representation

Powers of Civil Courts continued

- granting stay or order status quo;
- ordering injunction or cease and desist;
- appointing commissioner (s) for the purpose under the Act;
- exercising limited power to review its decision to the extent of correcting clerical or arithmetical mistakes or any accidental slip or omission as provided in rule 189 of these rules;
- passing such order or orders as it may deem fit and proper in the interest of justice.

General Powers of Tribunals

- Contempt of Court
- Review
- Execution of orders
- Assistance of Magistrate or Collector
- Powers of Civil Court
- Power to Determine Procedure
- Inherent Power
- Power to dispense with procedure

Representation before NCLT/NCLAT

- A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more of the following persons to present his case before the Tribunal or Appellate Tribunal:
 - Chartered accountants;
 - Company secretaries;
 - Cost accountants;
 - Legal practitioners;
 - Any other person like officer of the company.

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The Companies Act, 2013 is a milestone in the second generation reforms that is set to change the face of the Indian corporate world. It has brought forth a new regime of investor protection and sets new standards of corporate governance. It is a strategic shift in the regulatory framework that will not only affect every company but also impact every entity associated with companies, be it a promoter, director, employee, shareholder, creditor, banker, consultant, financial advisor and so on.

Insights into the New Company Law provides a multi-dimensional view to enable the company and its stakeholders to better understand their modified role and responsibilities, privileges and liabilities. This is a thematic book that focuses on concepts and principles, balances theory with practice and explores the earlier situations in new light along with consequent transitional issues. It provides an incisive analysis aimed at understanding the essence of the new law.

This book will be invaluable to students pursuing courses of law, company secretary, and chartered accountancy, to companies, boards and senior management needing a clear overview of the new company law and is a good first point of reference for practitioners.

Prachi Manekar is a qualified company secretary and lawyer and an alumnus of the Indian Law Society. She is an advocate at the Bombay High Court and handles a variety of corporate cases at forums like the Supreme Court, High Courts, Company Law Board, Competition Commission and Arbitral Tribunals. She has represented the State in several matters at the aforesaid forums.

She specializes in corporate, commercial, constitutional and infrastructure law advising domestic and multi-national companies on a variety of corporate matters including M&A, company structures, corporate actions, joint ventures, commercial contracts and national and international arbitrations.

She has authored a book titled "*Management of Special Economic Zone*" and regularly contributes articles to magazines and journals. She is a prolific writer and frequent speaker at several conferences and seminars organized by leading professional institutes, associations and chambers on subjects like Company Law, M&A, Arbitration, Construction Contracts and SEZs.

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For more details

NCLT & NCLAT

Law, Practice and Procedure

(2nd edition)

Thank you

Prachi Manekar-Wazalwar
308, Jolly Bhavan No. 1, 10,
New Marine Lines, Mumbai-20
prachimanekar@gmail.com

022-22002352/55