



## NCLT & NCLAT have the Ability to Recall Orders: Legal Showcase

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### Abstract

*Laws pertaining to consumer protection are crucial to contemporary business and trade. These rules are intended to safeguard customers from being regarded with suspicion, unfair, and unjust corporate practices. The National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) are discussed in this essay. This paper is primarily concerned with the value of the NCLT and NCLAT in resolving business-related conflicts. The constitutionality of the NCLT and NCLAT provisions is a topic covered in this paper, which also includes a number of important rulings from the Supreme Court and High Courts on the subject. This paper discusses how the National Company Law Tribunal, National Company Law Appellate Tribunal (NCLAT), and National Company Law Tribunal were well-known in accordance with The Companies Act of 2013. This paper also considers the influence of NCLT and NCLAT constitution on corporation law litigation. In addition to discussing NCLT's helpfulness and role in settling business conflicts, this essay also addresses the appearance of authorized representatives before NCLT. The purpose of this essay is to describe the authority and purview of NCLT. This essay also makes an effort to explain concepts like the insolvency resolution process, petitions from corporate debtors and operational creditors, declarations of moratoria, time limits, and termination orders, as well as undervalued transactions and more than a few defaults and to talk on the subject of a combine Supreme Court and High Court judgment.*

**Keywords:** National Company Law Tribunal (NCLT), business, High Courts, trade, National Company Law Appellate Tribunal (NCLAT), Constitutional Validity, Jurisdiction

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### Introduction

By providing a single platform for resolution, specialised expertise, a creditor-friendly approach, effective resolution mechanisms like the Corporate Insolvency Resolution Process, time-bound resolution, and an appellate body for review, the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) have transformed the Indian insolvency regime.<sup>2</sup> However, there continues to be some ambiguity around the NCLT's and NCLAT's ability to recall their ruling. The term recall refers to a procedure wherein a court, legislative, or administrative body withdraws or revokes a prior decision or action.<sup>3</sup> On the other hand, review entails a reexamination of the court's, legislature's, or any other body's decisions. The

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<sup>2</sup> Kamath, Karan, "Constitutionality and Constitution of the National Company Law Tribunal and the National Company Law Appellate Tribunal" (2018) 7(1) *Christ University Law Journal* 43

<sup>3</sup> The Hindu Business Line, August 2023

aforementioned bodies attempt to correct a mistake in law, decision, or act by employing the review technique.<sup>4</sup> The creation of NCLT and NCLAT would give litigants a straightforward, efficient method for resolving disputes arising under the 2013 Companies Act. By creating a single point of access for conflict resolution, the integration and consolidation of the CLB, BIFR, and high court activities under NCLT will improve accessibility for litigants and improve accountability, transparency, and decision-making quality by ensuring consistency in procedures.<sup>5</sup> Of course, there are also hazards associated with eliminating High Court jurisdiction and creating benches that are smaller than those offered by the High Courts. These hazards are mostly covered by the speed and consolidation offered.<sup>6</sup> The 2013 Companies Act's reforms are still being implemented. These law changes represent a further development of a flexible and comprehensive strategy for swift justice. Two essential legal mechanisms review and recall protect the values of justice and fairness in a judicial system.<sup>7</sup> Review involves going over the decision to correct any obvious mistakes or inaccuracies that might have been introduced by a mistake. Recall, on the other hand, gives the court the authority to correct any procedural mistakes that were made when issuing a previous ruling. Together, these procedures uphold the legitimacy of the judicial system and guarantee fair outcomes for all parties involved.<sup>8</sup> There has recently been much debate about whether insolvency tribunals like the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) have the power to review and recall their earlier rulings.<sup>9</sup>

### Objectives

To offer an effective and efficient procedure for the adjudication of disputes originating from consumer protection legislation and corporate laws, consumer commissioners, NCLT, and NCLAT were established. These organisations are made to swiftly resolve disputes with an emphasis on safeguarding the interests of both consumers and businesses.<sup>10</sup> The protection of the interests of both consumers and businesses depends on the swift resolution of conflicts. Delays in resolving disputes may lead to higher costs and legal fees as well as harm to businesses' reputations. Additionally, it may cause consumers to lose faith in the judicial system's efficacy.<sup>11</sup>

### Research Methodology

The research conducted in this paper has been carried out on primarily the basis of secondary sources comprising, books, journals, and articles.

<sup>4</sup> Anon, 2016. E. Moderne ADR-Verfahren – Corporate Dispute Management. In Corporate Litigation

<sup>5</sup> S. Deepika Devi, M. Kannappan, A Study on National Company Law Tribunal, 119 (17), International Journal of Pure And Applied Mathematics, 2018 723-734

<sup>6</sup> Sreyan Chatterjee, Gausia Shaikh, et al., Watching India's insolvency reforms: a new dataset of insolvency cases, Indira Gandhi Institute of Development Research, Mumbai, August 2017.

<sup>7</sup> Gayathri.U & Arya. R, A Study on the importance of National Company Law Tribunal in India, 120 (5), 41-55.

<sup>8</sup> Sandeep Bhalla, Company Law in India Part 1, (IE Books Inc, 2nd Ed, 2016

<sup>9</sup> Dr. Rupinder Katoch (2017), Insolvency and Bankruptcy Code, 2016: Features, Mechanism and Challenges in implementation, 7 (9)

<sup>10</sup> Shubhra Johri & Dr. Parag Narkhede, A Study of Literature Review on Insolvency and Bankruptcy Code, 8, (2) Aegaeum Journal, 2020

<sup>11</sup> Malak Bhatt, Atreyo Banerjee, At what stage can Winding Up proceedings be transferred to NCLT? The Dichotomy in Contradictions, BAR & BENCH, (Oct 28, 2019)

**NCLT and NCLAT's inherent Powers**

In the case of *Agarwal Coal Corporation Private Limited v. Sun Paper Mill Limited & Anr.*, the NCLAT's three-member bench established a strong proposition of law that the Insolvency and Bankruptcy Code, 2016, which gives the adjudicating authority, or the NCLT, and the appellate authority, or the NCLAT, no express authority or provision for review or recall.<sup>12</sup> As a result, neither a judgement nor an order issued by the same may be appealed nor rescinded.

The NCLAT then convened a second three-member bench in *Rajendra Mulchand Varma & Ors. v. K.L.J Resources Ltd. & Anr.* steadfastly upheld the *Agarwal Coal Corporation* case's ratio. As a result, it became mandatory for the NCLT and NCLAT to uphold their rulings and orders.<sup>13</sup> However, a three-member panel of the NCLAT heard the historic case *UBI v. Dinkar T. Venkatasubramanian & Ors.* in 2023. The case brought up an important legal issue about whether the NCLT and NCLAT may take into consideration an application for recalling a judgement if appropriate grounds were provided even though they lacked the authority to review judgements under the Code. The three-member bench decided to submit the matter to a five-member bench for additional consideration. The NCLAT came to a decision that was favourable after giving it careful thought.<sup>14</sup> In light of the foregoing, this essay aims to draw attention to the fundamental distinction between the definitions of review and recall. The paper also seeks to define the conceptual difference between review and recall by going through the legal standing under the CrPC's framework and a vast body of precedents.<sup>15</sup> Additionally, it covers the inherent powers of the Tribunal under Rule 11 of the NCLAT Rules and how the tribunal may use those inherent powers to recall a decision. The article also outlines the practical ramifications of non-justice delivery in the event that a court or tribunal is unable to recall its rulings.<sup>16</sup>

**An Underlined Distinction between Review and Recall**

The phrase recalls a judgement means to revoke or reverse a judgement for matters of fact or when a judgement is quashed due to legal mistakes, according to Black's Law Dictionary.<sup>17</sup> The word review, on the other hand, is defined by the dictionary as a judicial examination, a second view or examination, a revision, or consideration for the purpose of correction. Review is specifically employed for an appeal court's review of a cause and for a follow-up investigation.<sup>18</sup>

In *Vijaya Sri v. State of Andhra Pradesh*, the Court came to the conclusion that recall requires the total revocation of a judgement or final order after examining the definitions of review and recall combined from many authoritative dictionaries. Review, on the other hand, refers to a re-examination and reconsideration of the same decision, as well as the continuance of the initial judgement or order with particular revisions. Therefore, the ability to recall a decision is distinct

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<sup>12</sup> Ministry of Corporate Affairs, Setting up of NCLT and NCLAT (March 19, 2012)

<sup>13</sup> *Rajendra Mulchand Varma & Ors. v. K.L.J Resources Ltd. & Anr.*, I.A. No. 3303/2022 in Company Appeal (AT) (Ins.) No. 359 of 2020.

<sup>14</sup> *Union Bank of India (Erstwhile Corporation Bank) v. Dinkar T. Venkatasubramanian & Ors.*, I.A. No. 3961 of 2022 in Company Appeal (AT) (Ins.) No. 729 of 2020.

<sup>15</sup> Parkinson, J.E., Corporate Power. In *Corporate Power and Responsibility Issues in the Theory of Company Law*. pp. 3–50, 1995

<sup>16</sup> Rule 11 of the NCLAT

<sup>17</sup> Henry Campbell Black, *Black's Law Dictionary* 1433 (West Publishing Co. 4<sup>th</sup> ed. 1968)

<sup>18</sup> Henry Campbell Black, *Black's Law Dictionary* 1483 (West Publishing Co. 4<sup>th</sup> ed. 1968)

from the ability to review it.<sup>19</sup> The CrPC has also consistently shown the arguments pertaining to review and recalling. It has been determined that Section 362 of the CrPC is mandatory and completely prohibits review, with the exception of correcting clerical or mathematical errors.<sup>20</sup> Furthermore, it has been decided that Section 482 of the CrPC cannot be used to review or change the judgement.<sup>21</sup> But it's crucial to understand that recalling is not the same as going back and changing a decision. If three conditions are met, namely (a) carrying out any orders issued under the CrPC; (b) protecting against the abuse of the judicial process; and (c) ensuring the achievement of justice, Section 482 grants the court broad enough powers to cover any type of case for the purpose of it being recalled or re-heard.<sup>22</sup> In *Grindlays Bank Ltd. vs. Central Government Industrial Tribunal & Ors.*, where a request to set aside an award made by the Industrial Tribunal was made, the Apex Court provided its opinion in response to this question.<sup>23</sup> A setting aside of an ex-parte order was not expressly provided for in the Industrial Disputes Act of 1947 or the Rules made under it. The Tribunal has the authority to pass the order, which is an accessory and incidental power to enable it to carry out its tasks effectively, the Court said, even though there was no specific provision to set aside the judgement.<sup>24</sup>

### **The Tussle of Interpretation**

However, as was indicated in the introduction, the ratio used in the *Agarwal Coal Corporation* case and the *Rajendra Mulchand Varma* case rendered it difficult for the NCLT or NCLAT to review their rulings, creating a serious jurisprudential weakness in the legal system.<sup>25</sup> There have been numerous instances when the tribunal has found that the parties' fraudulent actions had an impact on its rulings or that the tribunal itself committed mistakes that unfairly impacted one party. There were also occasions where the parties misled the tribunal, resulting in unfair results.<sup>26</sup> These circumstances give rise to questions about the fairness and integrity of the tribunal's rulings. The tribunal did not have the authority to recall that judgement or decision, despite such circumstances.<sup>27</sup> Therefore, it becomes crucial to examine the nature and scope of the inherent powers of NCLT and NCLAT in order to find answers to the aforementioned complexity. The Companies Act of 2013's Section 424(2) grants the tribunal a number of authorities similar to those granted to the Civil Court under the CPC.<sup>28</sup> Additionally, it should be observed that Section 151 of the CPC, which specifies the inherent powers of the Court, and Rule 11 of the NCLT Rules, 2016 and the NCLAT Rules, 2016, are analogous.<sup>29</sup> Additionally, it is a well-established notion that when performing adjudicatory duties, both the Courts and Tribunals exercise the State's legal authority. The Apex Court ruled in *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunhunwala & Ors.* that while there may be a variation between the

<sup>19</sup> *Vijaya Sri v. State of Andhra Pradesh*, 2006 SCC online AP 957

<sup>20</sup> Section 362 of the CrPC

<sup>21</sup> Section 482 of the CrPC

<sup>22</sup> Section 482 of the CrPC

<sup>23</sup> *Grindlays Bank Ltd. vs. Central Government Industrial Tribunal & Ors.*, 1980 (Supp) SCC 420

<sup>24</sup> Industrial Disputes Act of 1947

<sup>25</sup> India's Companies Act – Big Step Ahead, but with

Challenges, <https://www.controlrisks.com/en/newsletters/integrity-matters/issue-12/india-company-act-in-detail>

<sup>26</sup> *Agarwal Coal Corporation Private Limited v. Sun Paper Mill Limited & Anr.*, I.A. No. 265 of 2020 in Company Appeal (AT) (Ins.) No. 412 of 2019.

<sup>27</sup> *Rajendra Mulchand Varma & Ors. v. K.L.J Resources Ltd. & Anr.*, I.A. No. 3303/2022 in Company Appeal (AT) (Ins.) No. 359 of 2020

<sup>28</sup> The Companies' Act of 2013's Section 424(2)

<sup>29</sup> Rule 11 of the NCLT Rules, 2016

Court's and the Tribunal's methods, their respective roles are not fundamentally dissimilar.<sup>30</sup> In addition, it was determined in *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal* that the inherent powers of tribunals and courts constitute authority that is not granted to them. Instead, because of the weight of their obligation to provide justice to parties in front of them, tribunals and courts naturally possess those capabilities.<sup>31</sup> In *Kapra Mazdoor Ekta Union v. Birla Cotton Spinning & Weaving Mills Ltd. & Anr.*, where the Court considered the essence of the power of review, an incredibly crucial principle was established by the Apex Court. It was established that the Court's or a quasi-judicial authority's ability to review its decision must be specifically granted by law. Procedural review, on the other hand, was forcefully argued to be of a different type and inherent in the Court or Tribunal in the judgement. The Hon'ble Supreme Court's aforementioned rulings unambiguously establish the difference between review and recall.<sup>32</sup> Since inherent powers are preserved as a result of the declaration made in Rule 11 of the NCLT Rules, 2016, and NCLAT Rules, 2016, this Tribunal is not given the authority to review; rather, the authority to recall its judgement is inherent in the NCLT and NCLAT.<sup>33</sup> *UBI v. Dinkar T. Venkatasubramanian & Ors.* held that the NCLT or NCLAT's ability to recall a judgement does not allow them to rehear a case in order to identify any apparent errors in the judgement, as doing so would amount to reviewing the judgement. The Tribunal lacks the authority to have its decision reviewed. The NCLAT's five-member special bench was subsequently tasked with reviewing this recall application. The bench was questioned on the following topics:

1. Can the NCLAT consider a request for the recall of the judgement on sufficient grounds despite not having any authority to do so?
2. Can it be inferred from the NCLAT's rulings in the cases of *Agarwal Coal Corporation Private Ltd* and *KLJ Resources Ltd* that the NCLAT lacks the authority to recall a ruling?
3. Do the NCLAT's rulings in the cases of *Agarwal Coal Corporation Private Ltd* and *KLJ Resources Limited* establish the right legal framework?<sup>34</sup>

The bench looked at the Supreme Court's ruling in *AR Antulay v. RS Nayak*, which stated that a party who has been the subject of a decree but has not received notice may file a complaint with the court that issued the decree if there has been an obvious violation of natural justice principles.<sup>35</sup> The NCLAT looked at how a review petition and a recall petition differ from one another. It was investigated whether a court could review or overturn an order. It was decided that although in a review case, the court would examine for errors, in a recall case, the court would look for procedural errors, such as failing to give a party affected by the decision a chance to respond or committing fraud against the court.<sup>36</sup> The orders in *Agarwal Coal Corporation Private Ltd* and *KLJ Resources Ltd* (previous) were examined by the NCLAT. These two cases had both ruled that the NCLAT lacked any authority for review or recall. The NCLAT has since overturned the earlier rulings regarding the recall part, stating that the tribunals do indeed have the authority to recall.

<sup>30</sup> *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala & Ors.*, AIR 1961 SC 1669

<sup>31</sup> *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*, AIR 1962 SC 527.

<sup>32</sup> *Kapra Mazdoor Ekta Union v. Birla Cotton Spinning & Weaving Mills Ltd. & Anr.*, (2005) 13 SCC 777.

<sup>33</sup> Rule 11 of the NCLT Rules, 2016, and NCLAT Rules, 2016,

<sup>34</sup> *Union Bank of India v. Dinkar T. Venkatasubramanian*, 2023 SCC OnLine NCLAT 283, order dated 25-05-2023

<sup>35</sup> *AR Antulay v. RS Nayak*, 1988

<sup>36</sup> *Asit Kumar Kar v. State of West Bengal and Others* [(2009) 2 SCC 703

However, it affirmed the review component of the orders from earlier judgements.<sup>37</sup> However, the tribunal maintained that it had the inherent authority to recall a judgement under Rule 11 of the NCLAT Rules, 2016, but that this authority could only be used if a procedural mistake was committed when the previous judgement was delivered.<sup>38</sup> The earlier judgements may be recalled, for example, in situations where the necessary party is not served when the necessary party was not present when the judgement was delivered and the absence would adversely affect that party's rights, or if the judgement was obtained through judicial fraud.<sup>39</sup>

### Conclusion

It is a well-established legal concept that the authority to handle the issue must originate from the statute itself. Anything that is not clearly mentioned in the statute is therefore not law. However, the NCLAT in the UBI case set forth the correct legislation regarding the recall of judgements, taking into account that recall helps a person to verify that his right is not violated by an error of any court or tribunal.<sup>40</sup> The basic goal of judgement recall is to protect individual rights while acknowledging that, despite being typically accurate, judicial decisions can occasionally contain errors. In light of these arguments, the NCLAT's strategy strikes a balance between the necessity of resolving procedural irregularities or fraudulent practices and the requirement for finality in judgements, ensuring the impartial and just administration of justice within the National Company Law Tribunal framework.<sup>41</sup> The authority of review and recall has been categorically addressed in the current judgement, not just for courts but also for the NCLAT and NCLT. By reducing pointless appeals, this key advance seeks to speed up the correction of clerical and procedural errors.<sup>42</sup>

However, there is cause for concern over the potential misuse of this decision because litigants might try to take advantage of it by filing review applications that are actually recall applications.<sup>43</sup> This abuse might make the IBC's processes for banks and financial institutions less effective by allowing parties to appeal negative decisions and block future legal action. The delicate balance between the capacity for review and recall will be preserved in spirit to what extent remains to be seen.<sup>44</sup> Invoking Rule 11 where particular provisions are missing from the Companies Act or the NCLT rules has also become customary. This practice emphasises the necessity for the NCLT to employ its natural authority and address situations coming under its purview with more assurance.<sup>45</sup> At the moment, the hesitation or unwillingness to use these natural authorities leads resentful parties to turn to the NCLAT and other venues, which results in a significant loss of important time for all parties involved.<sup>46</sup> The ability of NCLAT to review and recall decisions offers much-needed clarity, but care must be taken to prevent abuse of this

<sup>37</sup> Agarwal Coal Corporation Private Limited v. Sun Paper Mill Limited & Anr., I.A. No. 265 of 2020 in Company Appeal (AT) (Ins.) No. 412 of 2019.

<sup>38</sup> Rule 11 of the NCLAT Rules, 2016

<sup>39</sup> Backhaus, J.G., Company Board Representation. The Elgar Companion to Law and Economics, Second Edition.

<sup>40</sup> Petrakis, V., 2015. The National Mortgage Insurance Corporation: The Concept, Role and Importance. *Pravo - teorija i praksa*, 32(4-6), pp.27-39

<sup>41</sup> Worthington, S., 2016. 4. Shareholders as an Organ of the Company. In Sealy & Worthington's Text, Cases, and Materials in Company Law (DRAFT). pp. 187-272

<sup>42</sup> Jones, L., 2017. 17. Company Law II Company Officers and Liabilities

<sup>43</sup> Backhaus, J.G., Company Board Representation. The Elgar Companion to Law and Economics, Second Edition

<sup>44</sup> Patel Narshi Thakershi v. Pradyumansingji Arjunsinji AIR 1970 SC 1273

<sup>45</sup> Patel Narshi Thakershi v. Pradyumansingji Arjunsingji AIR 1970 SC 1273

<sup>46</sup> Jiura Oraon v. State of Jharkhand 2014 (3) JCR 100

decision. The NCLT should also use its inherent powers more assertively, lessen the burden on appellate authority, and ensure effective and prompt case resolution.<sup>47</sup>

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<sup>47</sup> Sharada Bai v. Padamlal 2003 AI HC 1756 (AP)