CRITICAL ANALYSIS OF THE TRANSFORMATION OF THE COMPANY LAW BOARD INTO THE NATIONAL COMPANY LAW TRIBUNAL IN THE LIGHT OF VARIOUS COMMITTEE REPORTS

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1. INTRODUCTION

Companies Act, 1913 was in force in India before the Companies Act, 1956.The 1913 Act was founded on English Companies (Consolidated) Act of 1908. The Company Law Amendment Committee headed by Lord Justice Lionel Cohen, at the time of the end of 2nd World War, put forward its report after doing an extensive enquiry for a period of 2 years. The committee recommended extensive changes in the English Companies Act, 1929. It is on the recommendation of the Cohen Committee that the English Companies Act, 1948 was enacted. Taking inspiration from such changes, the Government of India also thought of reviewing the Indian Companies Act, 1913.[1]

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[1] GOVERNMENT OF INDIA, REPORT: BHABHA COMMITTEE REPORT (Department of Company Affairs, 1952), at 17.

The radical changes made in the 1948 Act encouraged Indian government to review the archaic 1913 Act. Thus, the Government constituted a committee headed by C.H. Bhabha (a Parsi businessman who took charge of the Commerce portfolio in the India from 15th August, 1947), which, after doing exhaustive research by interviewing various corporate law experts, submitted its report of 477 pages to the Indian Government in 1952.[2] By accepting most of the recommendations of the committee, the Parliament enacted the Companies Act, 1956. The Companies Act 1956 was to a large extent inspired by the English Companies Act, 1948, not only adopting many of the important provisions of the1948 Act but also redrafting various contentious sections.[3]

Under the 1956 Act, the power to undertake inquiry and investigation was vested with the Central Government and the CLB. Similarly, under the Companies Act 2013, which replaced the 1956 Act, that power is with the NCLT and the Central Government. But back in 1950, there was no authority which could investigate and inquire into the affairs of the company; so,

[2] The 477 pages Report by the Bhabha Committee ("Bhabha") was submitted to the Government of India in March 1952. The Government accepted most of the recommendations of the Bhabha Committee, thereby enacting the Companies Act, 1956.

[3] Bhabha, at 7.

the Bhabha Committee recommended establishing a statutory authority for undertaking this task. The Committee observed:-

The powers of inspection and investigation into the affairs of a company, which the Companies Acts of most countries confer on the Government or a quasi-independent authority, are intended primarily as a check on the activities of such people. We recognize that, in some cases, the use of the powers of inspection and investigation may initially tend to shake the credit of a company and thereby adversely affect its competitive position, although the allegations against the company may in the end be found to have been largely unfounded. It is, therefore, necessary that the investigation provisions of the Act should be so conceived as to reduce this threat to the credit of companies to a minimum. This risk should not, however, deter us from considering the desirability of conferring adequate powers on an appropriate authority to investigate the affairs of a company, where such investigation is prima facie called for. On the contrary, we consider it to be in the long-term interest of the trade and industry of this country that such powers should be vested in a competent authority and exercised energetically, albeit with due caution and fairness in all cases which require investigation.[4]

[4] *Id.* at 133.

The Committee recommended establishing a central authority in line with the Board of Trade (BOT) of England under the English Companies Act 1948 which can initiate investigation into the affairs of the company *suo moto* but the business community was suspicious of this move and feared that it will lead to unnecessary interference in their internal autonomy and harassment to honest and bona fide businessmen. However, the Committee was positive that if a central authority like the BOT is established on the basis of their recommendations, it will be able to deal effectively with all the issues of corporate world and the Committee went a step further and recommended adopting the provisions regarding the BOT under the Companies Act, 1948 in *toto*.

The power to prevent minority shareholders from oppression and mismanagement was given to the CLB under the 1956 Act and has been given to the NCLT under the 2013 Act. But when the CLB was constituted in 1964, it was just another department of the corporate Ministry and the Ministry used to look into such matters. The Bhabha Committee strongly advocated for a central authority like BOT of England to ensure corporate governance in India, which never came into being, but laid the foundation of the CLB as a forum for corporate disputes because after the 1956Act was passed on the recommendations of the Committee, a need was felt for such an authority.

2. THE VARIOUS COMMITTEE REPORTS AFTER THE COMPANIES ACT 1956 UPON WHOSE RECOMMENDATIONS THE COMPANY LAW BOARD WAS RECONSTITUTED INTO THE NATIONAL COMPANY LAW TRIBUNAL AND THE REASONS FOR SUCH TRANSFORMATION

2.1. Sachar Committee

The object for which the Committee was constituted is as follows:-

to consider and report on what changes are necessary in the Companies Act 1956, and the Monopolies and Restrictive Trade Practices Act, 1969, with particular reference to the modifications which are required to be made in the form and structure of the Companies Act, 1956, and the Monopolies and Restrictive Trade Practices Act, 1969, so as to simplify them and to make them more effective whenever necessary.[5]

The CLB was established in the year 1963 by the Companies (Amendment) Act, 1963 as it was considered desirable for the better and convenient administration of the Companies Act, 1956 to set up a Board to which most of the powers and functions of the Central Government under the Companies Act or other

[5] GOVERNMENT OF INDIA, REPORT: COMMITTEE ON COMPANIES AND MRTP ACT (Department of Company Affairs, 1978), at 9.

laws could be entrusted. At that time, it was known as Board of Company Law Administration (now known as the Company Law Board). Together with it, a Tribunal was also set up to look into the matters of fraud, misfeasance and other malpractices of the companies and report the matter to the Central Government to take appropriate actions and the Tribunal was also empowered to hear cases relating to oppression and mismanagement. The provisions relating to the Companies Tribunal were, however, subsequently repealed by the Companies (Tribunal Abolition) Act, 1967 (No. 17 of 1967), but the provisions relating to the Company Law Board have remained in the statute and were subsequently strengthened by the Amendment Act of 1974 (Act No. 41 of 1974). The Companies Act, 1956, since its inception, has been amended 24 times and it was finally replaced by Companies Act, 2013, consolidating all the amendments that had been made in the 1956 Act so as to make it simpler and more streamlined.

The first recommendation that the Sachar Committee made regarding the CLB was restructuring the CLB on the lines of Income Tax Appellate Tribunal, which is an independent and quasi-judicial body. They commented:-

In the field of governmental control, however, we have recommended the restructuring of the Company Law Board on the model of the Income Tax Appellate Tribunal, which would

exercise independent and quasi-judicial functions in respect of several matters provided for in the Act, with a view to facilitating a better and quicker administration of the provisions of the law. At the same time, we have also suggested that a greater measure of self-discipline be imposed on company managements if they wish to be spared of the frequent need to obtain approval of governmental agencies on each and every matter, which may sometimes be regarded as falling within the realm of internal management of a company.[6]

The Committee recommended that the CLB be made an independent, quasi-judicial body like the Income Tax Tribunal with permanent benches in different regions of the country. It also recommended that matters of purely administrative nature should remain with the Central Government and other matters which require exercise of quasi-judicial powers, with the CLB, which must be reconstituted and function independently of the Central Government and not as one of the departments of the Government, ensuring speed and efficiency in discharge of these functions. The CLB must also be given the power to impose its order by prescribing penalty in case of default. The Committee also recommended that the members of the CLB be appointed on the lines of Chairman and Members of the Income Tax

[6] *Id.* at 7.

Tribunal by a Selection Board constituted under Rules framed for that purpose under Article 309 of the Constitution of India. The Central Government is empowered under Section 10E to prescribe necessary qualification and experience needed to be the Chairman or Member of the CLB. Accordingly, the Central Government made the Company Law Board (Qualification and Experience and Other Conditions of Service of Members) Rules, 1993, which prescribes the necessary qualification and experience needed to be appointed as a Member of the CLB.

The Committee wanted the Members to be appointed like the Members of the Public Service Commission, so as to give them more security and independence in making decisions, but this was not done. This should have been done to make the CLB more efficient and independent.

Then, the Sachar Committee spoke about the delegation of legislative powers with respect to the CLB and it was of the opinion that:-

except for the purpose of exercising powers under a few sections of the Act which it has to exercise by means of sittings of the Bench, operates virtually as the Central Government under a different name.[7]

[7] *Id.* at 10.

Before the 1988 amendment, the CLB was acting as just another department of the Government, which is why it was suggested that it be made an independent and quasi-judicial body.

Again, the Sachar Committee pointed out that there are several powers which were exercised by the Central Government, which must be transferred to the CLB and similarly, there were many matters of company law which were dealt with by the civil courts, but must be dealt with by the CLB, because it is a specialized body which can deal with such matters in a better way and it would also take the extra work off the shoulders of the courts. Thus, Sections 391 to 407 had been amended accordingly, giving some of the powers of the civil courts in company matters exclusively to the CLB or sharing it with the CLB.

Thus, the Committee observed:-

While making the suggestion for the constitution of an independent Company Law Board to whom we have assigned some of the functions presently exercised both by the Central Government and the courts, we have been guided by the consideration that the Act should be administered not only in a manner which gives the affected party a right to be heard, but that it also ensures speed, administrative efficiency and

application of judicial mind uninfluenced by 'executive considerations'.[8]

Again, the Committee made suggestions regarding changes to be made in Section 2(11) of the 1956 Act (dealing with the definition of the court under the Act) such that CLB maybe clothed with power to penalise for not following the provisions of the Act. Such an amendment has been made byAmendmentAct of1988by adding clause 4(D) under Section 10E and Section 634A.Thus, the orders of the CLB are to be enforced as if it is a decree of the civil court. So, these Sections have given teeth to the orders of the CLB to ensure that they are enforced.

However, an important suggestion that had been made by the Committee was that the rule-making power under the Act should remain with the Central Government and not with the CLB because of economic and public interest involved and in case of need, reference can be made to the CLB by the Central Government, as a result of which Section 642, which empowers the Central Government to make rules on important matters or to carry out the purposes of the Act, had been retained.

[8] *Id.*

The Committee further recommended that the Act of 1956 must be repealed and a new Act must be passed in light of the recommendations of the Committee and a saving clause must be placed therein so that any order passed or decision made by the Government or the CLB or by the Registrar before passing of the new Act remains unaffected, for avoiding any difficulty or confusion. Now, the Companies Act, 2013 has been passed replacing the 1956 Act, the need for had been felt since 1988;but due to several reasons, it never saw the light of day until 2013.

Another important amendment was by way of inserting Section 10F by the Amendment Act, 1988 which provided that the orders of the CLB are appealable before the concerned High Court, only on the question of law which was not there before the 1988 amendment. But as the NCLT has been constituted,appeals against the orders of the NCLT lies before the NCLAT not only on questions of law but also on questions of fact, which was not there before, thereby providing finality to the orders of the CLB to a great extent, which is not there in case of the NCLT.

The Committee recommended certain changes in the existing CLB like, the power to constitute the CLB should remain with the Central Government but the power to constitute the regional benches must be with the CLB, which was done under Section 10E(4B).The Committee also recommended that the Members

of the CLB must possess the necessary qualification to hold the post of judicial and technical members. Thus, the Company Law Board (Qualification and Experience and other conditions of services of members) Rules, 1993 provided for two categories of members to be appointed under the CLB, i.e. technical members and judicial members, following these recommendations. However, the Committee provided no recommendations regarding qualifications of the technical members who were required to deal with cases involving IPR or other technical matters.

Sachar Committee further recommended the compounding of corporate offences which was inserted in the 1956 Act by way of the Companies Amendment Act, 1988, which was later amended by the Companies (Amendment) Act, 2000. The Committee observed that a lot of default in compliance to the provisions of the Act happen due to ignorance and because of the complex nature of such provision and mostly, offences are of technical nature. That is why the Committee advocated the compounding of such offences.[9]

Consequently, the Companies (Amendment) Act was passed in 1988 encompassing all such recommendations and bringing

[9] CS Divesh Goyal, *Compounding under Companies Act - 2013*, TAXGURU (Mar. 2, 2017, 1:01 P.M.), http://taxguru.in/company-law/compounding-companies-act-2013.html#_ftnref2.

important changes in the CLB, making it a quasi-judicial, independent body under Section 10E and 10F of the 1956Act, accordingly having the power to regulate its own procedure.

2.2. Eradi Committee

The next Committee to be discussed is the Eradi Committee under the chairmanship of Justice V. Balakrishna Eradi. The Committee was constituted on 22.10.99 by the then Prime Minister, Shri Atal Bihari Vajpayee. It was a high-level Committee on law relating to the insolvency and winding up of companies. The Committee's main object was to study the prevailing law relating to the winding up of the companies and revamp it in accordance with the contemporary law on the subject and to advice improvements in the procedure at various levels of the insolvency proceedings of the companies so as to ensure the speedy disposal of such cases, in line with the international practices.[10]

The Committee presented its report to the Government on 31st August and advocated for establishing a national tribunal having the powers and jurisdiction of the CLB. The powers presently exercised by the BIFR (Board for Industrial and Financial

[10] PIB, *Justice Eradi Committee on Law Relating to Insolvency of Companies* (Mar. 5, 2017, 11:00 A.M.), http://pib.nic.in/focus/foyr2000/foaug2000/eradi2000.html.

Reconstruction) or the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) under the Sick Industrial Companies Act, 1985 (SICA) regarding rehabilitation and revival of sick companies and by the respective High Courts' regarding the winding up of companies and powers of the CLB must be transferred to the tribunal. For that, the Committee recommended amending Article323B of the Constitution so that powers of the respective High Courts could be transferred to the tribunal. Also, the Committee recommended that the tribunal should have the power to prescribe the time for every step to be taken by the Liquidator, within which winding up has to be done, to speed up the process.[11]

The Eradi Committee observed that there were multiple agencies like the CLB, the respective High Courts and the BIFR dealing with various subject matters of company law. The Committee stated:-

The High Courts are not able to devote exclusive attention to winding up cases which is essential to conclude the winding up of companies quickly. The experiment with BIFR for speedy revival of companies has also not been encouraging.[12]

[11] J. Venkatesan, *Eradi panel recommends repeal of SICA*, THE HINDU (Feb. 12, 2017, 10:07 A.M.), http://www.thehindu.com/2000/09/03/stories/0203000g.htm.

[12] GOVERNMENT OF INDIA, REPORT: *COMMITTEE ON LAW RELATING TO*

The Committee basically emphasized that the multiplicity of forums has led to conflicts of decisions, chaos and confusion, and delayed the justice delivery system. So, it suggested that there must be one national tribunal having the power of the High Courts as well as of the CLB and the BIFR, as it observed that because of a huge backlog of cases, the High Courts are not able to give the much-needed attention and priority to the winding up cases, delaying the matter at hand. Also, the BIFR, which was constituted to rehabilitate and recover sick companies, had not been able to do its job very well since its establishment in the year 1987. Thus, there must be a national tribunal which will deal with all the cases earlier dealt with by the CLB, the High Courts and the BIFR/AAFIR and all the pending cases must be transferred to the tribunal after its establishment, so that there is a single forum dealing with all the matters of company law, removing all the confusion and chaos caused by these multiple forums.

Therefore, the Committee recommended that the Sick Industrial Companies (Special Provisions) Act, 1985 be repealed and Article 323B of the Constitution be amended to set up a national tribunal, and Section 10E relating to the CLB also be repealed.

INSOLVENCY AND WINDING UP OF COMPANIES (Ministry of Law, Justice and Company Affairs, 2000), Preface.

The reason forwarded for the establishment of a tribunal having the power of all the three authorities by the Committee was:-

The above recommendation has been prompted by a desire to avoid multiplicity of authorities.

The multiplicity of forums had led to chaos and confusion and delays in the justice delivery system. One institution for all corporate issues would speed up the justice delivery system and provide the much-needed relief to the litigants who earlier had to run from one forum to another for resolving their corporate disputes.

It had been recommended to the Committee that the power of the courts must be statutorily conferred on the CLB but the Committee observed that:-

jurisdiction of the Courts be statutorily conferred on the Company Law Board did not find favor at this stage when the CLB does not have adequate Members, Benches at all the seats of the High Courts, and infrastructure to deal with multiplicity of proceedings involved in matters relating to winding up.[13]

So, at the time when the Committee was constituted in 1999, the CLB neither had sufficient Members nor enough benches at different locations to take care of the cases that were going on in

[13] *Id.* at 18.

the different civil courts. That is why the Committee recommended that that was not the time forth CLB, having a paucity of members, to be burdened with more cases of the courts by transferring the powers of the courts to the CLB. Ultimately, the Committee thought that instead of transferring the power to the CLB, it would be better to have a single body to deal with all the cases of company law, i.e. a national tribunal having more members and more benches to deal with wide variety of corporate cases.

Thus, based on the recommendations of the EradiCommittee report, the Company Law (Second Amendment) Act, 2002 was passed which made some fundamental changes in the Companies Act, 1956.It introduced Section 10FA, which provided for the dissolution of the CLB and Part 1B and 1C, which provided for NCLT and NCLAT. Part 1B provided for the constitution, composition, powers etc. for the NCLT and likewise, Part 1C dealt with the NCLAT, to hear appeals against the orders of the NCLT. The Tribunal encompasses the powers of the concerned High Courts and the CLB and the BIFR, after the repeal of the SICA, 1985.On the recommendation of the Eradi Committee, the law of "Insolvency in Companies" was introduced.

The Committee recommended that the winding up proceedings relating to unlisted companies be dealt with by the CLB and the

CLB be strengthened by appointing adequate number of members and increasing the Benches of the CLB to deal with those additional number of cases until the NCLT is constituted, but the recommendation was not followed and the winding up cases of all companies, listed or unlisted, were dealt with by the High Courts themselves. Also, the condition of the CLB remained the same, facing the paucity of Members and benches until it was replaced.

The next recommendations were regarding Section 435, which provided that the winding up cases can be transferred to the district courts from the High Courts, but the Committee observed that this Section was rarely used. If it would have been used, it would surely ease the burden of the respective High Courts. Thus, the Committee recommended that there was no point in keeping such a Section and recommended for its repeal which was actually done and advocated for setting up of a tribunal in its place.

2.3. **J.J. Irani Committee**

The committee was constituted on 2nd December, 2004, under the chairmanship of Jamshed Jiji Irani, an Indian businessman who, before joining Tata Steel, was working for the British Iron and Steel Research Association and retired from the post of Director of Tata Steel in the year 2007.

The object for constituting Irani Committee was mentioned in the press note dated03/2005:-

Government had undertaken an exercise to comprehensively revise the Companies Act, 1956, to enable a simplified compact law to replace the existing Act, that would address the changes taking place in the national and global economic scenario, enable adoption of internationally best practices as well as provide adequate flexibility for timely evolution of new arrangements to meet the requirements of the corporate sector in India.[14]

So the main purpose of the J.J. Irani Committee was to revamp the Companies Act, 1956 and replace it with a new one keeping in view the changes that have taken place in our economy due to liberalization and globalization. There has been a consistent demand from the corporate sector for the simplification of the applicable laws and procedures because the Companies Act, 1956 was overtly complex, haphazard and very bulky. So, we needed a new legislation which was simple and compact by reducing the size of the Act and removing redundant provisions.

[14] Government of India, Ministry of Company Affairs, *Presentation of the Report of the Expert Committee on Company Law by Dr. J.J. Irani, Chairman of the Expert Committee* (Mar. 4, 2017, 12:05 P.M.), http://mca.gov.in/Ministry/pdf/press_release/Press_032005.html.

The urgent need for a new legislation was explained by the Committee stating that the present law is so complex that everybody needed an advocate and experts like Chartered Accountants to understand it. The Committee observed:-

We should have simplicity in laws and it should be contemporary in nature, so that we don't need anybody to interpret. The UK government has updated their laws in 2006 and in thus, it was immediately after the Enron reaction.[15]

Thus, we also needed a new law in tune with the present times. This was thankfully done by the UPA government by enacting the Companies Act, 2013.

Next, the Irani Committee observed

Since the Indian Companies Act is a central legislation, it should appropriately remain so. The "sovereign vacuum" created by withdrawal of the Central Government from any area of corporate operation and entrustment of the same entirely to a regulator may generate demands in the Indian Federal system for State legislations on the subject, which we feel could lead to duplication and confusion. Further, regulatory urge to control

[15] *Dr J.J. Irani holds forth on corporate governance*, THE INDIAN EXPRESS (Feb. 15, 2017, 3 P.M.), http://archive.indianexpress.com/news/dr-j-j-irani-holds-forth-on-corporate-governance/469028.

corporate governance often becomes intrusive, posing serious regulatory risks in addition to inhibiting the freedom for decision making necessary for corporate functioning.[16]

Thus, the Irani Committee pleaded for the control of the Central Government under the new Act, as it had been under the 1956 Act. Otherwise, several state legislations would create chaos and confusion which would not be good for the economy. Thus, the Companies Act, 2013 is a central legislation under the supervision of the Central Government.

After that, the Irani Committee talks about how voluminous the Companies Act, 1956 is, also containing provisions which are procedural in nature. The law of the old Act was very rigid and any changes in it required parliamentary amendment. Therefore, the Companies Act, 1956 failed to adapt itself to the changes that have happened in the national as well as in the international scenarioand was regarded as being outdated. On the other hand, the Act of 1956 contained certain fundamental provisions which needed to be retained. So, the Irani Committee gave a solution -

Therefore, we recommend that the Company Law may be so drafted that while essential principles are retained in the substantive law, procedural and quantitative aspects are shifted

[16] GOVERNMENT OF INDIA, REPORT: EXPERT COMMITTEE ON COMPANY LAW (Ministry of Corporate Affairs, 2005), at 5.

to the rules. This would enable the law to remain dynamic and to adapt to the changes in business environment.

The procedural part has been separated from the substantive part in the 2013 Act on the basis of this recommendation, thus providing greater flexibility in rule-making so as to adapt the law in accordance with the varying technological and economic scenario. Procedural aspects of the act have thus been notified separately by the Government after carefully framing it in line with the modern times.[17]

Next, the Irani Committee talks about speedier disposal of corporate disputes. They observed that the time taken by the existing framework is longer than usual.Further, rehabilitation, liquidation, winding up, mergers and amalgamations required speedier disposal. Thus, the Committee welcomed the 2002 Amendment which provided for establishing NCLT and NCLAT.The Committee observed, *"It is time for the forum with specialization to deal with corporate issues, bringing together expertise from various disciplines".* Therefore, a single unified

[17] *Companies Act, 2013: Fresh thinking for a new start*, DELOITTE (Mar. 23, 2017, 3 P.M.), https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/thoughtpapers/in-tax-companies-act-2013-fresh-thinking-for-a-new-start-noexp.pdf.

forum will ensure speedier disposal of justice than multiple forums causing chaos and confusion.

Next, the Committee talks about offences and penalties, recommending that the matters of procedural nature which do not irretrievably affects the shareholder's rights need to be treated differently. The Committee observed:-

At present, the process of prosecution for offences faces many delays. Under the present law, all lapses, howsoever trivial, are required to be tried by the Trial Court as criminal offences. Delays are also attributable to the procedural aspects required to be followed to bring the offender to book them under Companies Act, 1956. Most violations are of procedural nature. However, there is no structure for dealing with such offences speedily. The delayed processing of complaints leads to enormous administrative burden and high cost to the economy. The process of prosecution gets prolonged and the deterrent effects of the penal provisions get diluted.

Therefore, the Government took heed of the Committee's recommendation and under the Companies Act, 2013, the procedural aspects have been separated from the main Act and are notified separately. Further, they have been simplified contrary to the old Act and several rules and procedures have

been prescribed by the Government for speedy disposal of corporate cases.

Next, the Committee recommended that for speedy disposal of corporate criminal cases involving penalties, the proposed NCLT should have special benches having criminal jurisdiction, whose orders must be appealable only before NCLAT. In the1956 Act, there were no such provisions but if we see the 2013 Act, it provides for Special Courts under Section 435, presided by a Single Judge appointed by the respective High Courts, who must be holding the position of Sessions Judge or Additional Sessions Judge, having criminal jurisdiction in respect of offenses under the Act.

The Central Government, by notification, informed that these Special Courts will deal with cases which are punishable by imprisonment of 2 years or more.[18] These courts are established, as pointed out by the Committee, for the speedy disposal of corporate criminal cases.

The Committee also recommended that there should be a limitation period provided for prosecution of offenses under the

[18] *Now, 8 special courts for speedy trials under companies law*, THE ECONOMIC TIMES (Mar. 25, 2017, 6P.M.), http://economictimes.indiatimes.com/news/economy/policy/now-8-special-courts-for-speedy-trials-under-companies-law/articleshow/52385959.cms.

Companies Act to ensure speedy disposal of corporate cases and also to avoid multiplicity of proceedings. Under Section 422 of the 2013 Act, the Tribunals have been asked to dispose of the cases within 3 months though it is discretionary, not mandatory. Also, appeal to the NCLATwill have to be made within 45 days and to the Supreme Court within 60 days only through SLP, thus giving finality to the orders of the tribunal. However, the Courts have been given the discretion to extend the period in case of exigencies. Thus, contrary to the 1956 Act,(which, by way of 2002 Amendment Act, inserted Section 10GE which provided for limitation period but as the NCLT was not constituted until 2013,it was never implemented). The 2013 Act provided for limitation period under Section 433, implementing the 2002 Amendment. Thus, the cases have to be disposed of within this limited time period, ensuring the speedy disposal of corporate cases.

The Committee also recommends that certain offences must be made compoundable to save the Courts' time and to ensure the speedy disposal of cases. Under the 2013 Act, Section 441 provides for compounding of offences, providing for penalty up to 5 lakh rupees. The 1956 Act also provides for compounding of offences under Section 621A, as amended bythe 2002 Amendment Act, providing that offences with fine not exceeding Rs 50,000 can be compounded by the Regional

Director and those offences with fine exceeding Rs 50,000can be compounded by the CLB.Under new Act, offences of up to 5 lakh rupees can be compounded by NCLT.

The Committee also recommended that in case of prosecution for offences under the Act, imprisonment or penalty with imprisonment must be imposed only with prior approval of the Central Government, after investigation is done under the supervision of the Governmentto filter out false or vexatious claims against the company.

Also, the Committee recommended that cases involving substantial public interest and multi-disciplinary ramification must be handled by the SFIO (Serious Fraud Investigation Office) established under the new Act. The SFIO will contain members from all fields so that it can deal with all sorts of matters effectively. The Committee observed:-

The Central Government may refer complex cases involving substantial public interest or multi-disciplinary ramifications to the officers of the SFIO. The Committee feels that setting up of such an organization is essential to unravel the complex corporate processes that may hide fraudulent behaviour. The SFIO should be strengthened further and its multi-disciplinary character retained.

So if we see the current act of 2013, it provides for Serious Fraud Investigation Office under Section211. It is headed by a Director and experts from the fields of:-

i. Banking;
ii. Corporate affairs;
iii. Taxation;
iv. Forensic audit;
v. Capital market;
vi. Information technology;
vii. Law; or
viii. Such other fields as may be prescribed.

Thus, we can say that the recommendations of the Committee have been followed here. Under Section 212, if the Central Government receives a report from the Registrar or by special resolution of the company or in public interest or from any department of the Central Government or state government, the matter can be referred to the Director of the SFIO and he can designate as many inspectors among the experts as required for investigation into the affairs of the company. It is a specialized, multi-disciplinary organization established to investigate frauds of complex and serious nature and it has been strengthened with wide discretionary powers. I think it is a very good step by the Government which will protect the interests of not only the

shareholders but also of the company and would prevent the happening of another Satyam type scam.

3. **CERTAIN FUNDAMENTAL CHANGES HAVE ALSO BEEN BROUGHT IN THE FUNCTIONING OF THE NCLT, UNLIKE THE CLB, WHICH WAS INDEPENDENT OF THE IRANI COMMITTEE RECOMMENDATIONS**

At the time of registration, if there are any procedural errors, it can now be questioned at any time. The Tribunal can take various deterrent measures under the Act like dissolving the company as well as cancellation of registration. If the registration of a company is obtained wrongfully or illegally, then Section 7(7) provides for de-registration of companies in appropriate cases. The remedy of de-registration is different from winding up and striking off.[19]

The 2013 Act retains the remedy provided to the minority shareholders from oppression and mismanagement. However, certain changes have been introduced in the new Act like the bar for mismanagement has been set little higher and for oppression it has been set little lower. Thus, in case of mismanagement, the test of "winding up on just and equitable grounds" has been

[19] Prachi Manekar-Wazalwar, *NCLT – Powers & Functions under Companies Act, 2013,* LAWSTREETINDIA (Mar. 28, 2017, 11:00 A.M.), http://lawstreetindia.com/experts/column?sid=164.

extended even to mismanagement matters, whereas in the 1956 Act, it was available only under oppression. Also, the minimum eligibility criteria for applying to the Tribunal in the case of oppression and mismanagement has been relaxed. Thus, even members who do not fulfil the eligibility criteria can apply to the Tribunal. [20]

The remedy for refusal by the companies to register transfer of shares and securities as well as rectification of register of members is given under Section 58 and 59 of the 2013Act, while under the 1956 Act, it was given under Section 111 and 111A.This power has been transferred to the Tribunal from the CLB. But in the new Act, certain improvements have been made. Now, this remedy is available in case of all kinds of securities whereas earlier, it was only available for shares and debentures.[21]

Chapter XIV deals with the powers of the NCLT regarding investigation. Certain changes have been made under the new Act. Earlier, the order foran investigation into the affairs of the company could be made only on the application of at least 200 members. Now, it has been reduced to only 100 members. Also, under the new Act, the investigation into the affairs of the

[20] *Id.* at 2.
[21] *Id.*

company will be ordered only if the applicant is able to satisfy the Tribunal that such circumstances exist where it is imperative to do an investigation. The investigation can be ordered overseas also. Also, there are provisions which empower the Government to provide assistance to Courts and investigative agencies of other countries conducting an investigation in our country. Earlier, during an investigation, restrictions could be imposed on dealings with any type of shares. Now, such power has been extended to securities as well. Thus, the Tribunal can impose restrictions on securities too. Now, the Tribunal has also been given the power to freeze the assets of the company during the investigation, which cannot be used during such period. Such a proceeding can be initiated at the instance ofa wide variety of persons in certain situations.[22]

One very positive change that has been brought by the 2013 Act is that the number of benches of the Tribunal has been increased to 11.Earlier, the CLB used to have only 5 benches for the entire country due to which there was a huge backlog of cases, which has been remedied by the new Act.

Another major problem that has been addressed by the new Act is that earlier, there was no express provision in the 1956 Act which specifically excluded the jurisdiction of the civil courts.

[22] *Id.* at 3.

Thus, there were multiplicity of proceedings and conflicting judgements all the time. Also, matters used to get delayed due to the technicalities of the procedural law. Putting an end to this mess, Section 430 of the 2013 Act expressly excludes the jurisdiction of the Civil Courts in company matters, which I think will be a big relief to the litigants.[23]

4. CONCLUSION

We must not forget that the main purpose for which tribunals were created was speedy disposal of cases and simplification of procedure, because strict adherence to the Civil Procedure Code delayed the matter to a great extent. Thus, the Tribunals are governed by the principle of natural justice but under the 1956 Act, technicalities were pleaded by the parties very often. Also, the procedures followed under the old Act were very complex and there was difficulty in execution of such orders. But I hope that the new Companies Act will not face such challenges after taking lessons from the old Act.

It was the Eradi Committee which came up with the idea of the NCLT to replace the erstwhile CLB through Companies (Amendment Act), 2002, but the provisions were never notified

[23] Varun Marwah, *10 features that distinguish the NCLT from the CLB*, BAR&BENCH (Mar. 30, 2017, 11:10 A.M.), http://barandbench.com/10-features-distinguish-nclt-clb/.

and the CLB continue to function as the vires of the NCLT were challenged before the Madras High Court and later on, before the S.C. Ultimately, in the case of *Union of India v. R. Gandhi, President, Madras Bar Association [(2010) 11 SCC 1]* ,the Supreme Court gave the green signal to the constitution of the NCLT, subject to certain changes that has to be made by the Government in the constitution and selection process, which was found by the court to be faulty.[24]

On 1st June 2016, the provisions for the constitution of NCLT/NCLAT were notified. The transfer of power from various forums to the Tribunals will happen in 2 phases. In the first phase, the powers of the CLB will be transferred to the NCLT and in second phase, the powers of the respective High Courts and the BIFR will be transferred to the Tribunals. Also, the NCLT has been equipped with several new powers and functions, some of which I have already discussed.[25] So, the constitution of the NCLT will usher in a new era of corporate dispute resolution, making the Tribunals far more potent and dynamic than its predecessor, taking note from the various Committee Reports and the working of the CLB under the old Act. But the condition of Tribunals in India has never been very

[24] *Supra* note 19, at 1.
[25] *Id.*

good as they face a lot of challenges and step-motherly treatment by the Government. Though they are created with lots of enthusiasm but that enthusiasm fizzes out over a period of time, as had happened with the CLB, which never had full strength, had been reeling under the pressure of backlog of cases, had inadequate infrastructure, etc. I hope that the NCLT/NCLAT will not meet the same fate and would perform much better than its predecessor.