

New company lawtribunal: SC gives qualified approval

The Supreme Court on Thursday upheld, with riders, the constitutional validity of the proposed National Company Law Tribunal (NCLT). This allows setting up of the body, meant to replace the Company Law Board (CLB), the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR).

A five-judge constitution bench asked the government to set up NCLT and its appellate forum without further delay. However, the bench struck down several provisions of the Companies Act, 2013, which provided for establishment of NCLT and its appellate forum. The court has asked the government to modify the rules according to the recommendations made in the judgment.

In the Companies Act, the tribunal was to not only replace CLB but also handle various cases on companies currently with the high courts, BIFR and AAIFR. It was to have 63 members and 21 benches. A constitution bench had already examined the Companies Act provisions in 2010 and found several legal hitches. The government then amended those provisions and argued the faults had been repaired.

However, the Madras Bar Association for the second time had challenged the provisions and the SC agreed certain provisions must go. The present judgment, delivered by a bench headed by Chief Justice H L Dattu, emphasised on the principles of independence of the judiciary and separation of powers, underlined in the 2010 judgment.

According to the court, many of the amended provisions- did not meet the conditions set by the earlier judgment. The main illegalities were related to the selection and appointment of members and heads of the tribunals.

One of the provisions found invalid was Section 409, which allowed a joint secretary in the government to be a technical member of the tribunal. The court wanted only a secretary or additional secretary to be appointed to the post.

More, the provision for a cost accountant with at least 15 years experience was also held invalid. The court held these provisions went against the “clear and categorical dicta in the 2010 judgment... Tinkering with them would evidently have the potential of compromising with standards which the 2010 judgment sought to achieve, nay, so zealously sought to secure,” went the verdict, written by judge A K Sikri.

Another serious illegality was on the composition of the selection committee.

According to the SC, the mandate of the 2010 judgment was not followed in the amended rules. There should have been a four-member committee and the chief justice was to have the casting vote in case of differences. Instead, the new Companies Act proposed a five-member committee. Another deviation from the 2010 judgment has been that one member each from the ministry of

corporate affairs and the ministry of finance were proposed for the selection committee. This, said the court, would again make it a five- member body, with bureaucrats having an upper hand.

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