



BANKRUPTCY COURTS AWAIT A FLOOD OF DEFAULT FILINGS

Context:

In order to provide relief to Covid-19 pandemic-hit companies, the government temporarily suspended the initiation of corporate insolvency resolution processes in 2020.

The government is expecting a flurry of default cases in the National Company Law Tribunal (NCLT) now and preparing a framework so that the lender and the borrower could settle the matter outside the tribunal.

Relevance:

GS-III: Indian Economy (Economic Development of India, Macroeconomics, NPAs)

Dimensions of the Article:

1. National Company Law Tribunal (NCLT)
2. What is the need for intervention to resolve mounting NPAs?
3. What is the government doing regarding surge of NPAs?
4. What can be done for better resolution?
5. National Company Law Appellate Tribunal (NCLAT)
6. Differences between NCLT and NCLAT

National Company Law Tribunal (NCLT)



- The National Company Law Tribunal is a quasi-judicial body in India that adjudicates issues relating to Indian companies.
- The tribunal was established under the Companies Act 2013 and was constituted on 1 June 2016 by the government of India.
- Hence, NCLT is a Statutory Body.
- All proceedings under the Companies Act, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies shall be disposed of by the National Company Law Tribunal.
- The National Company Law Tribunal is the adjudicating authority for insolvency resolution process of companies and limited liability partnerships under the Insolvency and Bankruptcy Code, 2016.
- No criminal court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

What is the need for intervention to resolve mounting NPAs?

- According to the latest Financial Stability Report (FSR) of the Reserve Bank of India (RBI), the gross NPA ratio of all scheduled commercial banks may increase from 7.5% in September 2020 to 13.5% by September 2021 in a baseline scenario and may escalate to almost 15% under a severe stress scenario.
- Delays in disposal of IBC cases were having an adverse impact on efforts by banks and financial institution to recover non-performing assets.
- According to the officials, the number of total pending cases in the National Company Law Tribunal (NCLT) has mounted to over 20 thousand.

What is the government doing regarding surge of NPAs?

- Lenders are free to initiate new insolvency and bankruptcy proceedings against financially stressed companies as the one-year moratorium period has ended and as per the law, the moratorium, cannot be extended beyond one year.
- In order to reduce the burden on the NCLT, the government is working to provide a framework to save small and medium firms from the lengthy legal hassles.
- The framework will have a provision of pre-pack mechanism, which can be used by lenders and investors to resolve the matter amicably.



What can be done for better resolution?

- Government should look to expedite bringing provisions around pre-pack which can facilitate consensual resolution of case between corporate debtor and lenders.
- The government needs to enhance the entire NCLT infrastructure and simplify admission procedures so that stressed companies referred to the NCLT can be resolved faster.

National Company Law Appellate Tribunal (NCLAT)

- The National Company Law Appellate Tribunal (NCLAT) is a tribunal which was formed by the Central Government of India under Section 410 of the Companies Act, 2013.
- Hence, NCLAT is also a Statutory Body.
- The tribunal is responsible for hearing appeals from the orders of National Company Law Tribunal(s) (NCLT), starting on 1 June, 2016.
- The tribunal also hears appeals from orders issued by the Insolvency and Bankruptcy Board of India under Section 202 and Section 211 of IBC.
- It also hears appeals from any direction issued, decision made, or order passed by the Competition Commission of India.

Differences between NCLT and NCLAT

- NCLT makes the judgement on the insolvency resolution proceedings. NCLAT makes judgement on the decisions made by the NCLT.
- NCLT is the primary Tribunal and NCLAT is the appellate tribunal.
- NCLT analyzes the evidences that are presented by the insolvent debtor or their creditors. NCLAT analyzes the decisions that are made by the NCLT.

-Source: The Hindu