

***Role of Company Secretary  
In***

***National Company Law Tribunal  
(NCLT)***

***&***

***National Company Law Appellate Tribunal  
(NCLAT)***

***By***

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# *Who is Company Secretary?*

- *As per Companies Act, 2013*
- *company secretary or secretary means a company secretary as defined in clause (c) of subsection (1) of section 2 of the Company Secretaries Act, 1980.*

# *Company Secretary*



*Company  
secretary in  
Whole Time  
Employment*

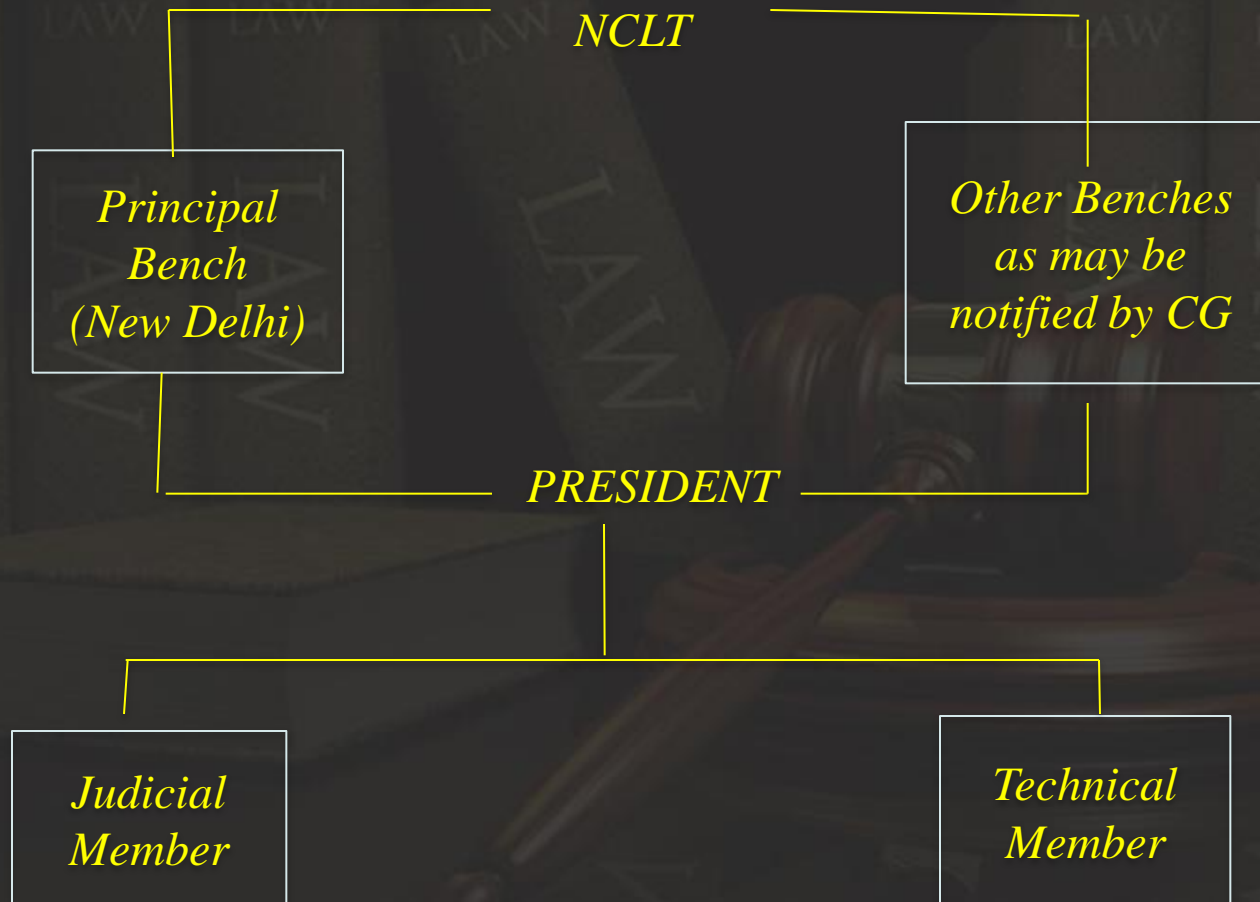
*Company  
Secretary in  
Whole Time  
Practice  
(PCS)*

# *What is National Company Law Tribunal (NCLT) ?*

*NCLT can be called as Mega Tribunal, because NCLT, Consolidate the Corporate Jurisdiction of the Following:-*

- Company Law Board,*
- Board for Industrial and Financial Reconstruction (BIFR),*
- The Appellate Authority for Industrial and Financial Reconstruction.*
- Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High courts*

# *STRUCTURE OF NCLT*



# *Members of Tribunal*

*President*

*Judicial  
Member*

*Technical  
Member*

*Judge of  
High court  
for 5 years.*

*Judicial Member of NCLT-  
Or held a judicial  
office for 5 years,  
Or Advocate of the  
High Court for 5  
years.*

*CA/CS/ICWA  
for atleast 15  
years and other  
applicable  
criteria*

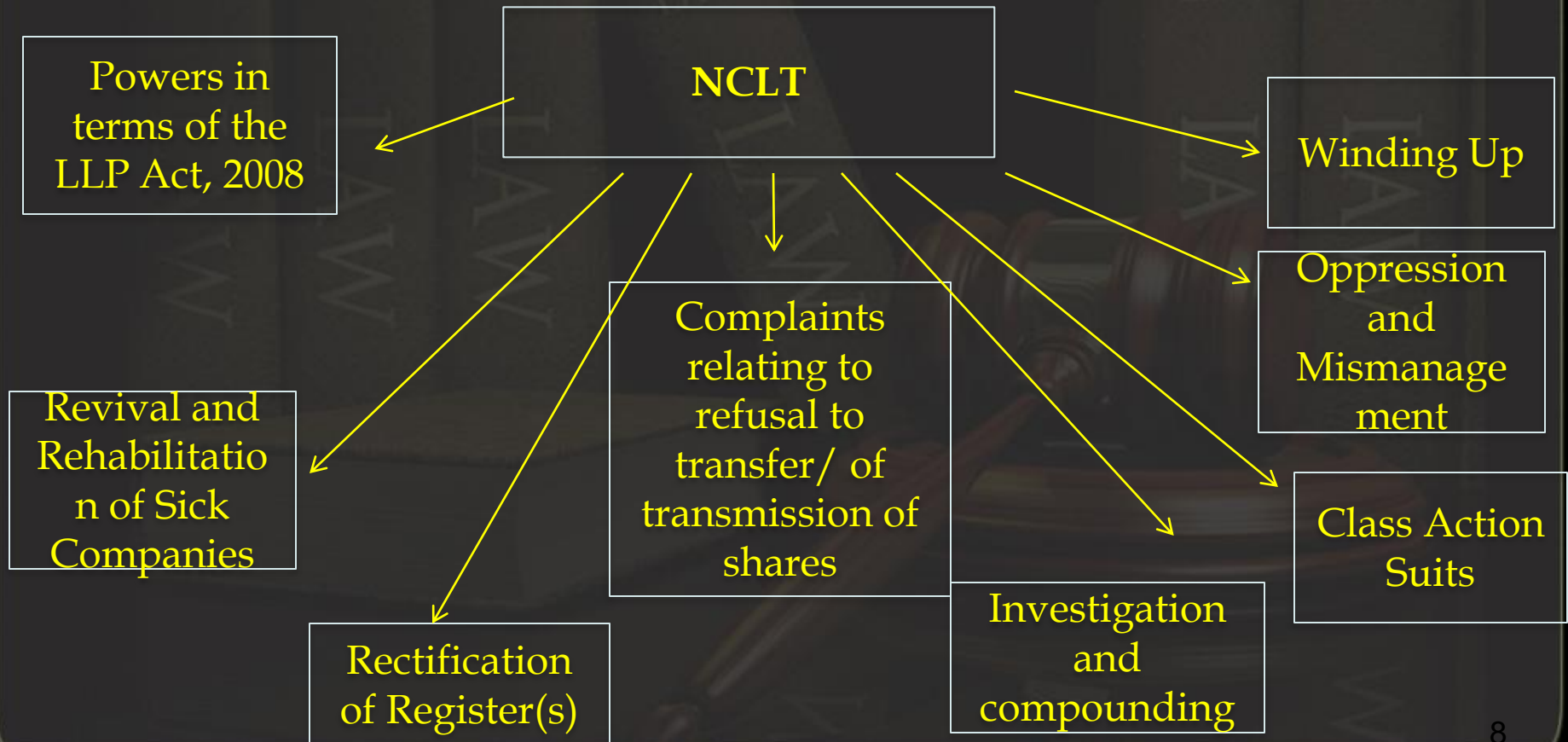
# NCLT Benches

*In exercise of the powers conferred by section 410 of the Companies Act, 2013, the Central Government hereby constitutes the National Company Law Appellate Tribunal for hearing appeals against the orders of the National Company Law Tribunal with effect from the 1st day of June, 2016.*

*The NCLT is functioning with its eleven Benches – two at New Delhi and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai. The Principal Bench of the NCLT will be at New Delhi.*

# NATIONAL COMPANY LAW TRIBUNAL POWERS

*Pursuant to the New Act coming into force in entirety, NCLT inter-alia shall have the following power:*





# *Major Sections of Companies Act, 2013 Deals in NCLT & NCLAT*

<i>S. No</i>	<i>Sections</i>	<i>Particular</i>
<i>01.</i>	<i>Section 7(7) [except Clause (c) and (d)]</i>	<i>Incorporation of Companies(furnishing false or incorrect information).</i>
<i>02.</i>	<i>Section 14 (1)and (2)</i>	<i>Alteration of Articles(conversion of public company to private company).</i>
<i>03.</i>	<i>Section 55(3)</i>	<i>Issue and Redemption of Preference Shares.</i>
<i>04.</i>	<i>Section 61(1)(b)</i>	<i>Changes in voting rights by Consolidation or sub-division of share Capital.</i>
<i>05.</i>	<i>Section 66</i>	<i>Reduction of share capital.</i>
<i>06.</i>	<i>Section 75</i>	<i>Damages for Fraud(fail to repay deposits and interest thereon in terms of Section 74(2).)</i>

<b>07.</b>	<b><i>Section 97, 98 and 99</i></b>	<b><i>Power of the Tribunal to call annual general meetings and meetings of Members.</i></b>
<b>08.</b>	<b><i>Section 131</i></b>	<b><i>Voluntary revision of financial statements or Boards' report.</i></b>
<b>09.</b>	<b><i>Section 140 Second proviso to sub-section (4) and sub-section (5)</i></b>	<b><i>Removal, resignation of auditor and giving of special notice.</i></b>
<b>10.</b>	<b><i>Section 169(4)</i></b>	<b><i>Removal of Directors</i></b>
<b>11.</b>	<b><i>Section 218</i></b>	<b><i>Protection of employees during investigation</i></b>
<b>12.</b>	<b><i>Section 221</i></b>	<b><i>Freezing of assets of company on inquiry and investigation.</i></b>
<b>13.</b>	<b><i>Sections 241, 242 [except clause (b) of sub-section (1), clause (c) &amp; (g) of sub-section (2)], 243, 244, and 245.</i></b>	<b><i>Prevention of Oppression and Mismanagement</i></b>
<b>14.</b>	<b><i>Section 441</i></b>	<b><i>Compounding of certain offences</i></b>

# *Right to legal representation*

*As per Section 432, 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:-*

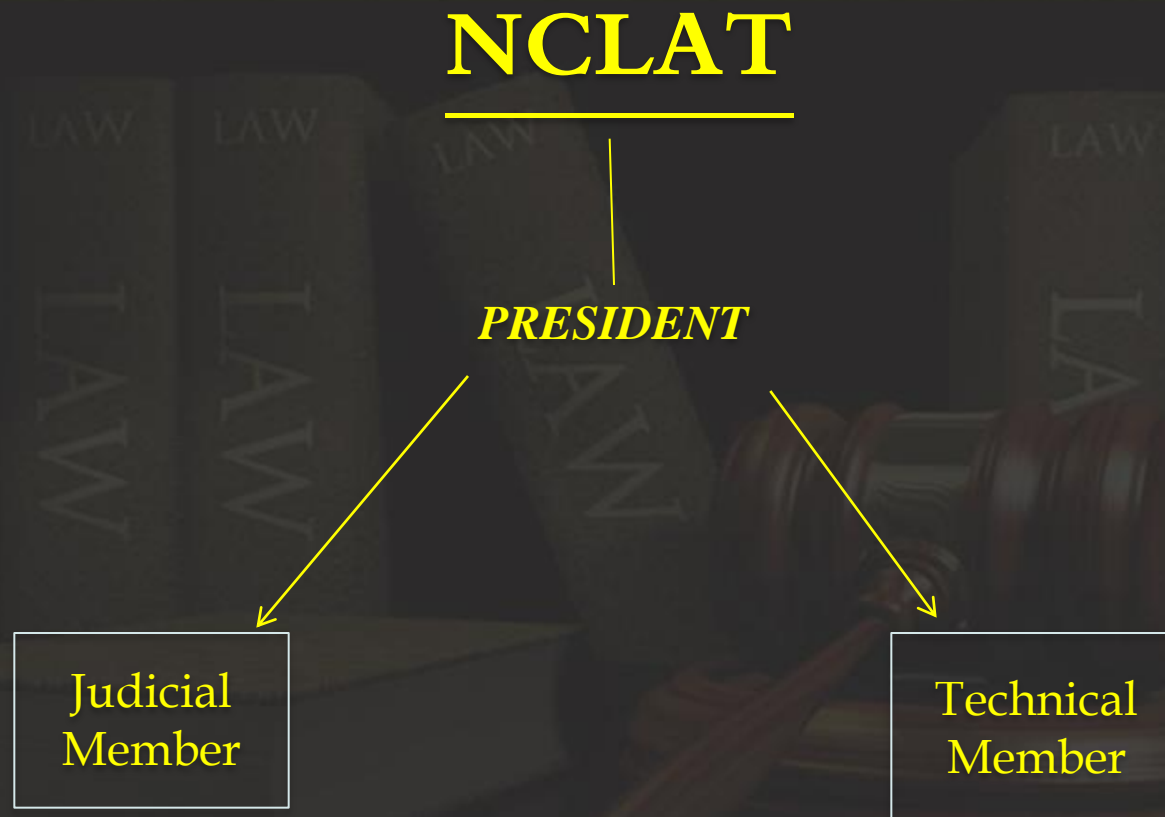
- Chartered accountants; or*
- Company secretaries; or,*
- Cost accountants; or,*
- Legal practitioners; or,*
- Any other person like officer of the company.*

# *What is National Company Law Appellate Tribunal (NCLAT) ?*

*National Company Law Appellate Tribunal is new Forum of Quasi Judicial and Have Following Powers:-*

- Issue of Direction(s), orders, Summons, Warrants, or other mandatory Process;*
- Power to extend time;*
- Power to exempt.*

# STRUCTURE OF NCLAT



# *Definition of Certain Terms*

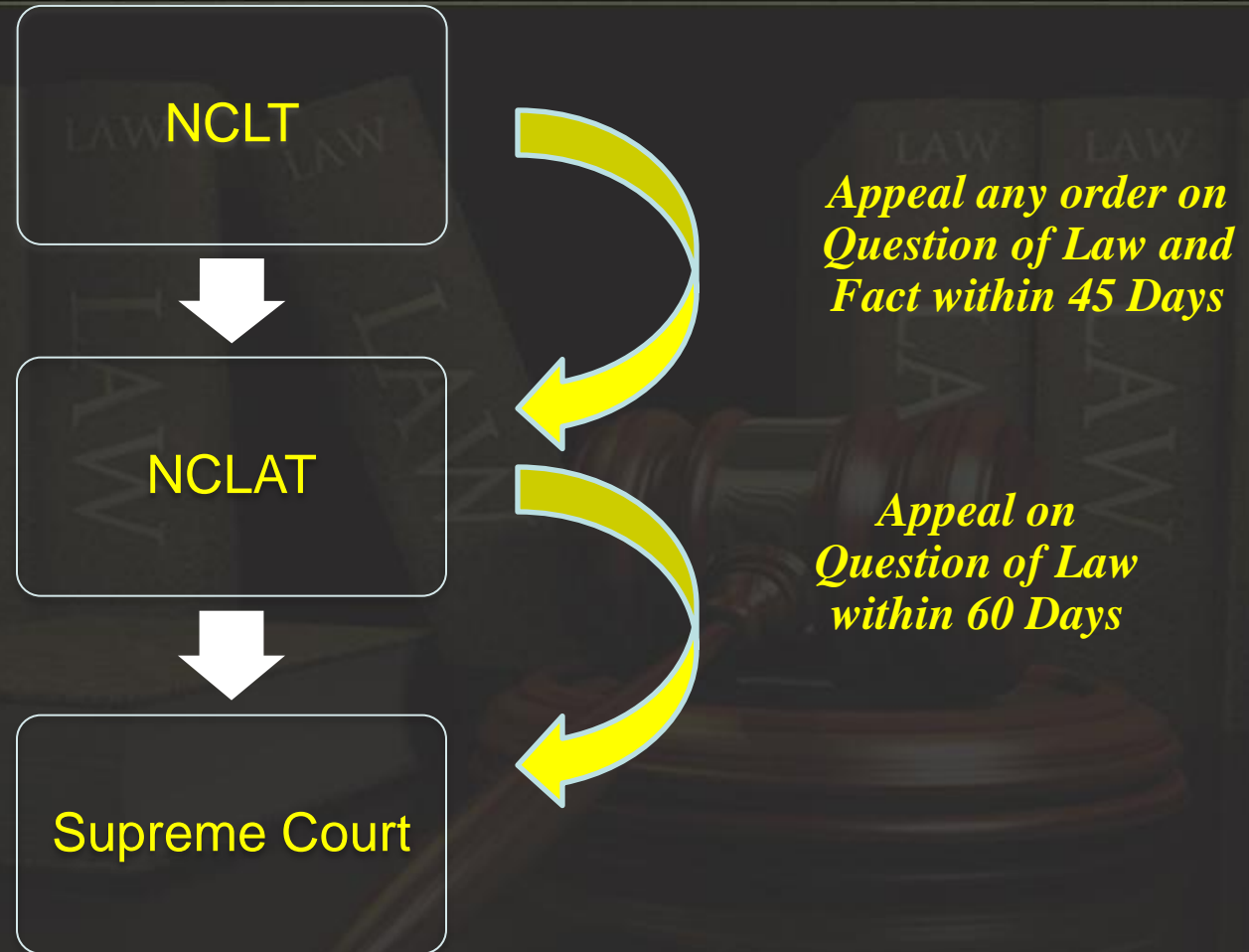
- *Chairperson means Chairperson of Appellate Tribunal.*
- *Judicial Member means a member of Tribunal or Appellate Tribunal as the Case may be.*
- *Member means a member whether judicial or Technical of the Tribunal as the Case may be.*
- *President means the President of the Tribunal.*
- *Technical Member means a member of the Tribunal or Appellate as the case may be.*

# ***TRANSITIONAL PROVISIONS***

*Section 434 has provided following, transfer of pending cases :-*

- All matters, proceedings before CLB before such date shall stand transferred to NCLT immediately.*
- An person aggrieved from the order of the CLB (before the Notified date), may file the appeal to high court with in 60 days.*
- All cases pending before High Court or District Court( in Respect of matters related to “Companies Act’) will be transferred to the Tribunal.*
- Any enquiry or scheme pending before BIFR or any appeal pending before AAIFR to shall stand abated*

# REMEDIES FOR PERSON AGGRIEVED BY ORDER





# ***SCOPE FOR COMPANY SECRETARIES***

*Establishment of NCLT/NCLAT shall offer various following opportunities to Practicing Company Secretaries as they have been authorized to appear before the Tribunal/ Appellate tribunal:-*

- *Compromise and arrangement,*
- *Sick companies,*
- *Winding up, (only Notified sections)*
- *Reduction of capital,*
- *PCS as a member of NCLT,*
- *Act as Company representative in all other related Matters.*

# *Role of Company Secretary*

## *Compromise and arrangement*

- *Preparation of scheme of Compromise and arrangement.*
- *Petition to the NCLT and NCLAT for Confirmation of the scheme.*
- *Obtaining Tribunal order sanctioning scheme.*
- *Appearing on behalf of the Company, before Tribunal*

# *Role of Company Secretary*

## *Revival & Rehabilitation of Sick Companies*

- *Making Application to the Tribunal for Getting the Status of Sick, on behalf of Board of Directors.*
- *Appearing before the Tribunal on Various Matters in Respect Sick Company.*

# Role of Company Secretary

## Winding up

- *Preparation and Submission of Petition of Winding Up before Tribunal.*
- *Submission to the Liquidator, an Affidavit as to the affairs of the company.*
- *Assisting the Liquidator in the Proceeding of winding up.*
- *Act as an Official Liquidator, under Winding up*

# Role of Company Secretary

## *Winding up*

- *MCA has notified sections of winding up 270 to 288, (Winding up by the Tribunal)*  
*290 to 303, (Winding up by the Tribunal)*  
*324, (Debts of all descriptions to be admitted to proof)*  
*326 to 365. (Provisions applicable to every mode of winding up)*
- *Section in respect of Voluntary Winding up are yet to be Notified (i.e Section 304-323)*

# Role of Company Secretary

## *Reduction of capital*

- *Make an Application to the Tribunal.*
- *Appear before the Tribunal, on the behalf of the Company.*

# Role of Company Secretary

## Member of NCLT

*A Practicing Company Secretary can be Appointed as a Technical Member of NCLT, provided he has 15 years working experiences as Secretary in Whole-Time Practice.*

# Role of Company Secretary

## *Other related Matters*

- *Analysis and Prepare Drafts in Respect of Matters which are required to be dealt with NCLT or NCLAT.*
- *Appear before the Tribunal on behalf of the Company*
- *Appeal to supreme court*
- *Help the Company to execute the order of the Tribunal.*
- *Private liquidator and many others*



# ***CHALLENGES FOR COMPANY SECRETARIES***

- *With every opportunity there comes challenges for the professionals in the manner of dealing with the cases with NCLT and NCLAT like court craft and art of advocacy etc, since the cases that are being dealt with Company Law Board, High Court and BIFR will be now dealt by NCLT and NCLAT.*

# *ART OF ADVOCACY*

- ✓ *Must File Memorandum of Appearance with Tribunal along with Pleadings*
- ✓ *Dress Code as Prescribed by Institute/ NCLT Rules*
- ✓ *Service of documents to opposite party, if any*
- ✓ *SWITCH OFF Mobile Phone (NOT VIBRATION MODE)*
- ✓ *Standing position of councils- Petitioner at Left Hand Side of Judge & Defendant at Right Hand Side of Judge*
- ✓ *Case Summery/Fact Sheet of the Case*

# *ART OF ADVOCACY CONT....*

- *Preparation and Rehearsal*
  - ✓ *Use notes - as prompts not to read*
  - ✓ *Find Merits – Focus on it*
  - ✓ *Body Language – Positive and Respectful*
  - ✓ *Make clear brief on law and evidence. Keep focus on main issues & result to be achieved*
  - ✓ *Avoid frequent interruptions or objections. Wait for your chance*

# *ART OF ADVOCACY CONT....*

- ✓ *Knowledge of development of law and background will be helpful*
- ✓ *DO NOT ARGUE with the Judge, explain with reason. Focus on winning war not battles*
- ✓ *Co-operate with opposite counsel or representative..... “The Learned Friend”*
- ✓ *Make clear brief on law and evidence. Keep focus on main issues & result to be achieved*
- ✓ *Look previous similar cases and their determination – For Precedents*

# CONCLUSION

*In the view of vast opportunities emerging with establishment of National Company Law Tribunal, the Practicing Company Secretaries should standardize their competencies with the global benchmarks to provide value added services in assisting the Tribunal in:*

- *Dispensation of justice*
- *And speedier disposal of matters like merger, amalgamation, restructuring, revival and rehabilitation of sick companies and winding up of companies*

**Don't wait  
for  
opportunity.  
Create it.**



- Dr. APJ Abdul Kalam



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