

**IN THE HIGH COURT OF GUJARAT AT
AHMEDABAD**

DISTRICT: AHMEDABAD

(EXTRAORDINARY ORIGINAL JURISDICTION)

WRIT PETITION NO. _____ OF 2021 (P.I.L.)

Vikash Jain

...Petitioner

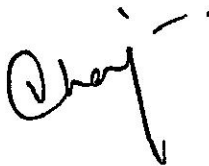
Versus

Union of India & Ors.

...Respondents

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Versus

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...Respondents

SYNOPSIS

The present Writ Petition under Article 226 of the Constitution of India, 1950 is being filed by the Petitioner in public interest before this Hon'ble Court for seeking necessary directions to the Respondents for quashing and setting aside the advertisement for vacancy of Technical Member in the National Company Law Tribunal.

Hence, this Petition...


(PETITIONER)

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IN THE HIGH COURT OF GUJARAT AT
AHMEDABAD
DISTRICT: AHMEDABAD
(EXTRAORDINARY ORIGINAL JURISDICTION)

WRIT PETITION NO. _____ OF 2021 (P.I.L.)

In Re: In the matter seeking challenge of
Vires of Section 413 (2) of the
Companies Act, 2013 & further seeks
to challenge the advertisement No.A-
12023/1/2021-Ad.IV dated
13.10.2021 for filling up posts of
Technical Member in the National
Company Law Tribunal (NCLT);

And

In the matter under Article 226 of the
Constitution of India, 1950;

And

In the matter of Section 413 (2) of the
Companies Act, 2013;

And

In the matter of:-

In the matter of:-

Vikash Jain

Age: 42 years, Male,

Occupation: Chartered accountant,

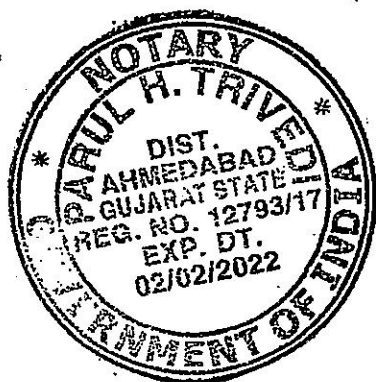
Having address at:

204, Wall Street 1, Nr Gujarat College,

Ellisbridge,

Ahmedabad 380006

...Petitioner



Versus

Okay
(PETITIONER)



1. UNION OF INDIA
Through its Secretary to Government,
Ministry of Corporate Affairs,
'A' Wing, Shastri Bhawan,
Rajendra Prasad Road,
New Delhi – 110 001.
 2. UNION OF INDIA
Through its Secretary
Ministry of Law and Justice
4th Floor, 'A' Wing,
Shastri Bhawan,
New Delhi-110001
- ...Respondents

To,
The Hon'ble Chief Justice
And the other companion judges
of the High Court of Gujarat.

The humble Petition of
the Petitioner above
named;

MOST RESPECTFULLY SHOWETH THAT:-

1. The present Writ Petition under Article 226 of the Constitution of India is being filed by the Petitioner in public interest. The present Petition is filed seeking challenge of Vires of Section 413 (2) of the Companies Act, 2013 and further seeks to challenge the advertisement No.A-12023/1/2021-Ad.IV dated 13.10.2021 for filling up posts of Technical Member in the National Company Law Tribunal (NCLT) which is *ultra vires* to the Article 13, 14, 21 and 50 of the

Query
(PETITIONER)



Constitution of India as the same are void, defective and unconstitutional, being violative of doctrines of separation of powers and independence of judiciary which are parts of the basic structure of the Constitution. So far as the present Petitioner is concerned, the Petitioner is a public spirited person and a law abiding citizen and is actively involved in the issues of public importance. Hence, there is no personal interest in the litigation except for the benefit of the public at large. The Petitioner has not filed any other Public Interest litigation with regard to the present subject matter.

2. The Petitioner is a Chartered Accountant in Practice enrolled with the Institute of Chartered Accountants of India (ICAI) and practicing as a Chartered Accountant (Membership No. 115545). The petitioner has more than 13 years of experience and apart from being Practicing Chartered Accountant, the Petitioner is also a qualified Insolvency Professional and has also undertaken many specialized courses such as certified Arbitrator, Qualified Independent director (Ministry of Corporate Affairs), Diploma in Information System Audit (ICAI) etc. The Petitioner being a practitioner in the field of Corporate/Insolvency laws. The Petitioner has also

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(PETITIONER)

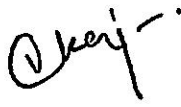
4



delivered around more than 1000 lectures at various forums, conferences and programs conducted by the ICAI , ICSI and various trade bodies. The Petitioner has also been member of various committees of Institute of Chartered Accountants of India (ICAI) at Regional and branch level of Corporate Law, Bank Audit, Insolvency and Bankruptcy Committee etc. The petitioner has been elected representative of Western Region and is elected regional council member of Institute of Chartered Accountants of India (ICAI).

2.1 The Petitioner being a public-spirited person and regular speaker at different forums, gets an opportunity to interact with various people from different backgrounds such as businessmen, traders, Chartered Accountants, Lawyers, Students, Company Secretaries etc. The Petitioner also undertakes a rigorous analysis of legal developments, policies and institutions. No contempt proceedings are ever initiated or any appreciation or stricture has been passed against the Petitioner.

3. The Petitioner is filing the present petition purely in public interest on his own and not at the instance of any other person or organization. The litigation cost,

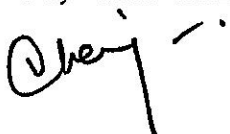

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including the travelling expenses and other expenses are being borne by the Petitioner himself. The Petitioner is self employed and its source of income is from its practice and consultancy, so the Petitioner has not mentioned any fixed income. It is also submitted that, the learned advocates for the Petitioner are doing *pro bono* litigation for the present Petition and therefore, except some costs, there will be no further expenses to be borne by the Petitioner. The Petitioner is a law abiding citizen and there is no contempt proceedings ever initiated or pending till today against the present Petitioner.

4. The Petitioner is filing the present petition purely in public interest on his own and not at the instance of any other person or organization. The litigation cost, including the travelling expenses and other expenses are being borne by the Petitioner himself. The Petitioner is self employed and its source of income is from its litigation practice and consultancy, so the Petitioner has not mentioned any fixed income. It is also submitted that, the learned advocates for the Petitioner are doing *pro bono* litigation for the present Petition and therefore, except some costs, there will be no further expenses to


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be borne by the Petitioner. The Petitioner is a law abiding citizen and there is no contempt proceedings ever initiated or pending till today against the present Petitioner.

4.1 That the facts of the case in brief are as follows:-

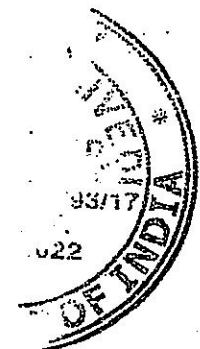
4.2 The Petitioner has preferred this litigation against tribunalisation of justice, bureaucratization of justice and its impact on judicial independence and separation of powers before this Hon'ble Court. Therefore, the Petitioner submits that he has *locus standi* to maintain the present writ petition.

GENESIS OF TRIBUNALISATION:

4.3 It is submitted that, delay and backlogs in the administration of justice is of paramount concern for any country governed by the rule of law. In our present judicial setup, disputes often take many decades to attain finality, travelling across a series of lower courts to the High Court and ending with an inevitable approach to the Supreme Court. Such crawling pace of the justice delivery system only aggravates the misery of affected parties. Although with nebulous origins, the adage "justice delayed, is justice denied" is apt in this context.

Over -
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Courts in this country, probably in a quest to ensure complete justice for everyone, overlook the importance of expediency and finality. This situation has only worsened over the years, as evidenced through piling pendency across all Courts. It would however be wrong to place the blame of such delay squarely on the judiciary, for an empirical examination of pendency clearly demonstrates that the ratio of judges against the country's population is one of the lowest in the world and the manpower (support staff) and infrastructure provided is dismal. In addition to the delay in administration of justice, another important facet requiring attention is the rise of specialization and increase of complex regulatory and commercial aspects, which require esoteric appraisal and adjudication. The existing lower courts in the country are not well equipped to deal with such complex new issues which see constant evolution as compared to the stable nature of existing civil, criminal and the tax jurisprudence.

4.4 It is evident there is a desperate need to overcome these hurdles of delay in administration of justice. Creation of tribunals has evolved as one solution in the ever-constant strive to increase access to justice. A 'Tribunal'

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(PETITIONER)

can be understood as a body tasked with discharging quasi-judicial functions with the primary objective of providing a special forum for specific type of disputes and for faster and more efficacious adjudication of issues. In *Jaswant Sugar Mills Ltd., Meerut vs. Lakshnichand*, a test was laid down whereunder it is to be examined whether the authority has the trappings of a Court, facets of which include the authority to make determinations, evidentiary and procedural powers and ability to impose sanctions. However, per a five-judge bench in *Associated Cement Co. Ltd. v. PN Sharma*, Tribunals were vested with a primarily judicial character for it was observed that:

"9. *Special matters and questions are entrusted to them for their decision and in that sense, they share with the courts one common characteristic; both the courts and the tribunals are "constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions", (vide Durga Shankar Mehta v. Thakur Raghuraj Singh [(1955) 1 SCR 267 at p. 272]). They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction.*

The procedure followed by the courts is regularly

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prescribed and in discharging their functions and exercising their powers, the courts have to conform to that procedure. The procedure which the tribunals have to follow may not always be so strictly prescribed, but the approach adopted by both the courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the courts, and features which are distinct and separate. The basic and the fundamental

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feature which is common to both the courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State."

4.5 It is submitted that, in catena of judgments the Hon'ble Supreme Court has explicitly held that tribunals are mutually exclusive from administrative or legislative bodies, and although not strictly Courts, they nevertheless perform judicial functions. With the inclusion of technical members along with judicial members in composition of Tribunals, it is ensured that the adjudicatory authority is equipped with the technical knowledge required to comprehend and decide issues involving specialized subjects. Such issues are not unique to our country. Globally, the issues such as need for specialization or pendency have resulted in a unanimous consensus for tribunalisation. A perusal of the prevailing legal regime governing tribunals and their interface with the government, provides a useful benchmark in examining methods to retain their character.

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4.6 *Section 413: Term of office of President, Chairperson and other Members.*

(2) *A Member of the Tribunal shall hold office as such until he attains,—*

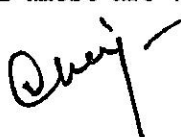
(a) *in the case of the President, the age of sixty-seven years;*

(b) *in the case of any other Member, the age of sixty-five years:*

Provided that a person who has not completed fifty years of age shall not be eligible for appointment as Member:

Provided further that the Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.

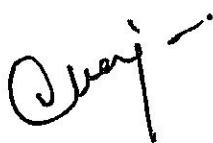
4.7 It is submitted that, the first proviso to Section 413 (2) of the Companies Act, 2013 and advertisement No.A-12023/1/2021-Ad.IV dated 13.10.2021 for filling up posts of Technical Member in the National Company Law Tribunal (NCLT) issued by the Respondent No.1 is *ultra vires* to Articles 14, 21 and 50 of the Constitution of India inasmuch as these are violative of the principles


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of separation of powers and independence of judiciary, apart from being contrary to the principles laid down by the Hon'ble Supreme Court in the case of *Madras Bar Association versus Union of India & Another* vide judgment dated 14.07.21 in Writ Petition (Civil) No.502 of 2021. Copy of the advertisement No.A-12023/1/2021-Ad.IV dated 13.10.2021 for filling up posts of Technical Member in the National Company Law Tribunal (NCLT) is annexed hereto and marked as **Annexure-P1**.

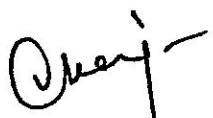
4.8 It is submitted that the advertisement dated 13.10.21 for filling up posts of Technical Member in the National Company Law Tribunal fixes a minimum age limit of 50 years for appointment as Tribunal Members in view of first proviso to Section 413 (2) of the Companies Act, 2013. This is contrary to the directions in the *Madras Bar Association* (2021) judgment as the Hon'ble Supreme Court has emphasized the need to appoint younger members in Tribunals to make their functioning strong. Surprisingly, a person below the age of 50 years is eligible to be made a High Court judge, it is strange to keep a minimum age limit of 50 years age for Tribunal members.


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(12)

4.9 That the level of knowledge prescribed in the various subjects covered by the syllabus of at least the chartered accountancy course is "expert knowledge". Insofar as the law subjects are concerned, the petitioner can vouch for CA/CS curriculum which is at par, if not at a higher level, with the LL.B. course. Therefore, it is clear that a chartered accountant, on passing his final examination and completing his articulated training, is an expert in taxation, accountancy, auditing, company law and other laws etc., and he is accordingly fully qualified to practise in these fields. In fact, Chartered Accountants are permitted to appear before number of Tribunals such as NCLT, NCLAT, ITAT etc.

4.10 It is submitted that, upon perusal of the said advertisement, procedure for selection is not prescribed with regard to the constitution of *Search-Cum-Selection Committee* for appointment to the post of Technical member in the National Company Law Tribunal in accordance with Section 412 of the Companies Act, 2013 since the appointment to the post of Technical member can be done only through *Search-Cum-Selection Committee*. However, on perusal of NCLAT advertisement the procedure of *Search-Cum-Selection*


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(14)

Committee is mentioned. This prima facie shows the arbitrary conduct of the Respondent No.1. Copy of the advertisement dated 13.10.21 of NCLAT is annexed hereto and marked as Annexure-P2.

4.11 It is submitted that, the Hon'ble Supreme Court has held in the case of *Madras Bar Association* has observed that

"Younger advocates who are around 45 years old bring in fresh perspectives. Many states induct lawyers just after 7 years of practice directly as District Judges. If the justice delivery system by tribunals is to be independent and vibrant, absorbing technological changes and rapid advances, it is essential that those practitioners with a certain vitality, energy and enthusiasm are inducted".

4.12 It is submitted that, the advertisement dated 13.10.21 for filling up the post does not mention the about the reservation for the Scheduled Castes, Scheduled Tribes, Other Backward Classes and Economically Weaker Section (EWS) quota in services. Copy of the circular issued by Ministry of Law and


(PETITIONER)

(15)

Justice for the post of member of ITAT dated 06.07.18 is annexed hereto and marked as Annexure-P3.

5. The source of information of the facts pleaded is based on the notifications and resolutions issued by the Government which are available in public domain, information obtained and gathered under the right to information act, legal research undertaken by the Petitioner based on the articles, judgments and books.
6. That the Petitioner has not made a representation in this regard to the authorities as the Petitioner is challenging the constitutional validity of the first proviso of Section 413 (2) of the Companies Act, 2013 and filling up of posts of Technical members before NCLT, therefore, there is no requirement of any kind of representation to the authorities.
7. That to the best of the knowledge and information of the present Petitioner, no public interest litigation raising the same issue is filed before this Hon'ble Court or before any other Court.
8. That the present petition has been filed on the following amongst other grounds:-


(PETITIONER)

(16)

G R O U N D S

(a) It is submitted that, this Writ Petition furnishes a typical instance of a widespread malady which has infected the legislative system in India, the tendency of the legislature of not exercising legislative restraint and crossing their limits by encroaching into the judicial domain, contrary to the broad separation of powers envisaged under our Constitution.

(b) Over the last few decades, there has been a conscious move on the part of the State to tribunalize administration of justice. Several of these laws have been challenged. While the Hon'ble Supreme Court did initially permit limited tribunalisation, especially in adjudication of service disputes, consumer disputes and debt recovery matters, in order to ensure speedier justice, it has recently clamped down on the rapid dilution of judicial standards in these Tribunals. On 11th May, 2010, the Constitution Bench of the Supreme Court delivered a landmark verdict in the case of *Union of India v. R. Gandhi, President of Madras Bar Association* [2010] 156 Comp.Cas. 392. The Hon'ble Supreme Court in this case clarified for the first time, in the context of the proposed National Company Law

(PETITIONER)

(17)



Tribunal, norms relating to the actual composition and qualifications of tribunals taking over the functions of the High Court. These norms were carefully spelt out by the Hon'ble Apex Court with a view to ensure that *firstly* these tribunals are independent from the influence of the Executive and *secondly* to ensure that these tribunals are staffed with persons who possess adequate judicial and technical experience and are capable of administering justice in a fair and impartial manner.

- (c) The Constitution Bench of the Supreme Court in the NCLT judgment held that "the fundamental right to equality before law and equal protection of law guaranteed by Article 14 of the Constitution clearly includes a right to have the person's rights, adjudicated by a forum which exercises judicial power and technical expertise in an impartial and independent manner, consistent with the recognized principles of adjudication". The Court further held that wherever access to courts to enforce such rights is sought to be altered by directing a litigant to approach an alternative forum, then in such case the legislative act in question could be challenged before a Court of Law on the grounds that it is *ultra vires* the Constitution of India.


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(18)

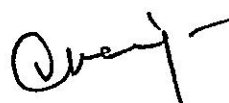
Hence, the Hon'ble Supreme Court has held that the minimum age limit of 50 years for appointment as Tribunal Members is illegal and arbitrary since the Tribunal which performs intrinsic judicial functions on the specialized and complex subject of law; a minimum age limit of 50 years members of tribunal is violative of Article 14 of the Constitution of India.

- (d) It is submitted that the minimum age limit of 50 years for appointment as Tribunal members in view of first proviso of Section 413 (2) of the Companies Act, 2013 will debar young professionals (CA/CS/CMA) with minimum 15/25 years of experience/practice to be eligible for the post of Technical member before NCLT.

9. That the petitioner is seeking interim relief on the following grounds :

GROUND FOR INTERIM RELIEF

- (a) Petitioner has a prima facie case. Balance of Convenience is in favour of the Petitioner. No irritable damage will cause to the Respondents and also it is in the interest of the Respondents also if interim relief prayed for is granted.


(PETITIONER)

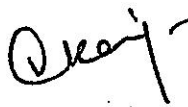
(9)

(b) It is submitted that impugned advertisement dated 13.10.2021 for the filling up of posts of Technical member in view of first proviso of Section 413 (2) of the Companies Act, 2013 prescribing the minimum age limit of 50 years is violative of Article 14, 21 and 50 of the Constitution of India and also settled position of law as laid down by the Hon'ble Supreme Court.

(c) It is submitted that the impugned advertisement dated 13.10.21 does not disclose the filling up the posts as per the prevailing reservation policy for services.

(d) Petitioner hereby seeks an interim stay on the filling up of posts of Technical member by the Respondent No.1 since any appointment made pursuant to the said advertisement dated 13.10.21 would be illegal and arbitrary.

10. The Petitioner has not filed any other appeal or application either before this Court or before the Hon'ble Supreme Court of India or before any other Courts on the same subject matter of this petition.


(PETITIONER)

(20)

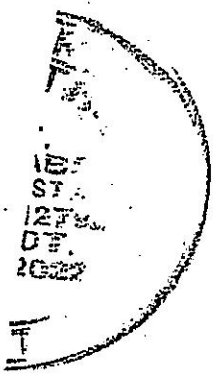
11. The Petitioner has no other alternative efficacious remedy but to approach this Hon'ble Court by way of this petition.

12. The Petitioner prays that this Hon'ble Court may be pleased to:-

(a) Your Lordships may be pleased to pass a Writ of Mandamus or any other appropriate Writ, Order or direction, declaring first proviso to Section 413 (2) of the Companies Act, 2013 as *ultravires* and violative of Article 14, 21 and 50 the Constitution of India, 1950 and further be pleased to declare as unconstitutional and *non-est* and nullify and void ab initio and also contrary to the principles laid down by the Hon'ble Supreme Court in the case of *Madras Bar Association versus Union of India* reported in Writ Petition (Civil) No.502 of 2021;

(b) Your Lordships may be pleased to pass a Writ of Mandamus or any other appropriate Writ, Order or direction to quash and set aside the impugned advertisement No.A-12023/1/2021-Ad.IV dated 13.10.2021 for filling up posts of Technical


(PETITIONER)



Member in the National Company Law Tribunal (NCLT) issued by the Respondent No.1 being violative of Article 14, 21 and 50 the Constitution of India, 1950 and also contrary to the principles laid down by the Hon'ble Supreme Court in the case of *Madras Bar Association versus Union of India* reported in Writ Petition (Civil) No.502 of 2021;

(c) Pending admission, hearing and final disposal of this Petition, Your Lordships may be pleased to stay the implementation, operation and execution of the impugned advertisement No.A-12023/1/2021-Ad.IV dated 13.10.2021 for filling up posts of Technical Member in the National Company Law Tribunal (NCLT) issued by the Respondent No.1 and further be pleased to restrain the Respondent No.1 from taking any further steps for filling up posts of Technical member in the National Company Law Tribunal pursuant to the impugned advertisement No.A-12023/1/2021-Ad.IV dated 13.10.2021 in the interest of justice;

(d) Ad-Interim relief in terms of paragraph (d);



(PETITIONER)

(22)

(e) Your Lordships may be pleased to grant any other relief or reliefs' as this Hon'ble Court may deem just, fit and expedient be granted in favour of the Petitioner;

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE PETITIONER SHALL AS IN DUTY BOUND SHALL FOREVER PRAY.

Place:
Date:

DRAWN & FILED BY

Advocates for the Petitioner

[VISHAL J. DAVE] & [HIRAL U. MEHTA]

AFFIDAVIT

I, Vikash Jain, Age: 42 years, Male, Occupation: Chartered Accountant, Having address at: 204, Wall Street 1, Nr Gujarat College, Ellisbridge, Ahmedabad-380 006, the Petitioner herein do hereby state of solemn affirmation that what has been stated hereinabove in para. Nos. 1 to 9 is true to my knowledge and I believe the same to be true and correct. Para. Nos. 10 to 11 are the formal contentions. Para 12 is the prayer clause.

SOLEMNLY AFFIRMED ON THIS 23 OCT 2021 DAY OF October, 2021 AT AHMEDABAD.

DEPONENT

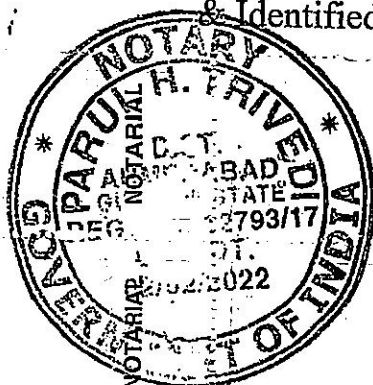
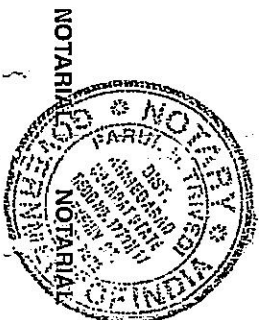
Explained & Interpreted in Vernacular language to the Deponent & Identified by me.

Advocate

Sr. NO. 333/2021
SOLEMNLY AFFIRMED
BEFORE ME

PARUL H. TRIVEDI
NOTARY

23 OCT 2021 GOVT. OF INDIA



Annexure 'P1'

(23)

No. A-12023/1/2021-Ad.IV
Government of India
Ministry of Corporate Affairs

'A' Wing, 5th floor, Shastri Bhawan,
Dr. R.P. Road, New Delhi-110001
Dated: 13th October, 2021.

To,

1. Registrars General of All High Courts.
2. Secretaries to Government of India, All Ministries/Departments of the Government of India.
3. All Chief Secretaries to the State Government/Union Territories.
4. Registrar, National Company Law Appellate Tribunal.
5. Secretary, National Company Law Tribunal.
6. Secretary, CCI.
7. Secretary, IBBI.
8. Secretary, NFRA,
9. Secretary, Institute of Chartered Accountants of India (ICAI), I.P. Estate, New Delhi-110002.
10. Secretary, Institute of Cost Accountants of India (ICoAI), Sudder Street, Kolkata.
11. Secretary, Institute of Company Secretaries of India (ICSI), Institutional Area, Lodhi Road, New Delhi-110003

Sub: Filling up of 09 (nine) posts of Judicial Member and 06 (six) posts of Technical Members in the National Company Law Tribunal (NCLT) - inviting online applications for.

Sir,

I am directed to state that online applications (available on portal <https://apptbmembermca.gov.in>) are invited for the 09 (nine) post of Judicial Members and 06 (six) posts of Technical Members, National Company Law Tribunal (NCLT) constituted under Section 408 of the Companies Act, 2013. The number of vacancies are tentative and may decrease or increase without prior notice.

2. The selected candidates will be required to serve at any of the already constituted NCLT benches or benches to be constituted in future in different parts of the country in a phased manner with All India transfer liability as per availability of the vacancies/exigencies of work.

3. **Qualifications for Judicial Member:** As per the provisions of Section 409(2) of the Companies Act, 2013, a person shall not be qualified for appointment as Judicial Member unless he/she:-

- (a) is, or has been, a judge of a High Court, or
- (b) is, or has been, a District Judge for at least five years, or
- (c) has, for at least ten years been an advocate of a court.

Explanation - For the purposes of clause (c), in computing the period during which a person has been an advocate of a court, there shall be included any period during which

TRUE COPY



(PETITIONER)

(24)

the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he become an advocate.

Qualifications for Technical Member: As per the provision of Section 409 (3) of the Companies Act 2013 as amended by Companies (Amendment) Act, 2017, a person shall not be qualified for appointment as a Technical Member unless he/she-

- (a) has, for at least fifteen years been a member of the Indian Corporate Law Service or Indian Legal Service and has been holding the rank of Secretary or Additional Secretary to the Government of India; or
- (b) is, or has been in practice as a chartered accountant for at least fifteen years; or
- (c) is, or has been, in practice as a cost accountant for at least fifteen years; or
- (d) is, or has been, in practice as a company secretary for at least fifteen years; or
- (e) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than fifteen years, in industrial finance, industrial management, industrial reconstruction, investment, accountancy; or
- (f) is, or has been, for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947).

4. A person shall not be eligible for appointment as Member unless he/she has completed the age of 50 (fifty years) [Section 413(2) of Companies Act, 2013] as on the last date of receipt of online application.

5. **Terms of Appointment:** The Member(s) will draw pay in the pay level of 15 as per 7th Central Pay Commission plus allowances as admissible. Pay protection is available for applicants, serving or retired (Government officer or Chairman, Vice-chairman, President, Vice-President, Presiding officer, Member of a Tribunal, Appellate Tribunal or an authority, or a Judge of High Court), who are/were in higher pay scale, including apex scale in Govt. of India. The pay scale and other service conditions would be governed by National Company Law Tribunal (Salaries and Allowances and other terms and conditions of service of the President and other Members) Rules, 2015. A copy of the rules is also available on the website of the Ministry of Corporate Affairs. A person selected, if already in Government Service, may retain his/her lien with his/her parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.

6. After joining as a Member in the Tribunal, if any Member wishes to apply for other assignments in any organization/post, his/her application will be considered for forwarding to that assignment only after completion of two years of service as Member NCLT.

7. Every Member shall hold office for a period of five years from the date on which he/she enters upon his/her office, but shall be eligible for re-appointment for another term of 5 years. The term of appointment is, however, subject to the maximum age limit of sixty-five years.

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8. Selected candidates will be required to produce a medical fitness certificate before joining.
9. Applications of persons working in Court/Government Service/Public Sector Undertaking/other organizations should be forwarded through proper channel within 10 days from the closing date of online application. The forwarding authorities should also certify (in the format given in Annexure of the online application) that the entries in the application have been verified from the records and found correct, and that no disciplinary/vigilance proceedings are either pending or contemplated against the applicant and that no major/minor penalties have been imposed on the officer during the last ten years. The forwarding authorities should enclose the up-to-date Confidential Report Dossiers of the applicant for the last five years.
10. Interested persons are advised to visit the portal <https://apptrbmembermca.gov.in>, in order to submit online application from 10.00 AM of 15.10.2021. The detailed instruction for filling up the application form online are available on the portal (under "Instruction for applying online" heading). All requisite and relevant documents need to be uploaded online while filling up of application. Last date for submitting online application is 12.11.2021 at 05:30 PM.
11. Print out of the applications after final submission on online portal duly completed, and signed alongwith copies of uploaded documents, and through proper channel (accompanied by a certificate by the present employer in Annexure), wherever applicable, should reach Shri Riazul Haque, Under Secretary, Ministry of Corporate Affairs, Room No 526, A 'Wing, 5th floor, Shastri Bhawan, New Delhi-110001 latest by 05:30 PM of 22.11.2021.

Yours faithfully,


(Rakesh Tyagi)
Director

Copy to:

1. Under Secretary, Ad.II Section, MCA for circulation among eligible ICLS Officers
2. Technical Director, NIC, MCA with the request to upload the vacancy circular on the portal.
3. Technical Director, NIC, DoPT with the request to upload the vacancy circular on the DoPT's website.
4. E governance Cell, Ministry of Corporate Affairs with the request to upload the vacancy circular on the website of the Ministry.

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Annexure P2

No. A-12023/4/2019-Ad.IV
Government of India
Ministry of Corporate Affairs

'A' Wing, 5th floor, Shastri Bhawan,
New Delhi-110001
Dated, the 13th October, 2021

Vacancy Circular

Sub: Selection for the posts of Judicial and Technical Members in the National Company Law Appellate Tribunal (NCLAT) - Inviting applications therefore:-

- Tribunal:** - The National Company Law Appellate Tribunal (NCLAT) is an Appellate authority established under Section 410 of the Companies Act, 2013, to hear various appeals against the orders/decisions of National Company Law Tribunal (NCLT), under the Companies Act, 2013 and Section 61 of the Insolvency and Bankruptcy Code (IBC), 2016, the Insolvency and Bankruptcy Board of India (IBBI) under Section 202 and 211 of IBC, 2016, the Competition Commission of India (CCI) under the Competition Act, 2002 and the National Financial Reporting Authority (NFRA) under the Companies Act, 2013. Principal Bench of NCLAT is situated at New Delhi and another Bench is situated at Chennai. Other bench, if any, will be established in future at other places in the country, as decided. A Member, upon selection, may be posted at any of these places.
- Vacancy:** - Applications are being invited for the following vacancies. (the number of vacancies are subject to change without prior notice):-

Post	Number of vacancies	Place	Date of Vacancy
Judicial Members	Three	New Delhi or Chennai or other benches, if any, to be established in future at other places in the country.	19.04.2021, 11.09.2021 and 23.01.2022
Technical Member	Two		01.07.2021 and 21.02.2022

- Qualification and other terms and conditions:-** The qualifications, eligibility, salary and other terms and conditions of the appointment of a candidate will be governed by the provisions of the Tribunals Reforms Act, 2021 and the Tribunal (Conditions of Service) Rules, 2021. Main terms and conditions are following:-

(i) **Qualifications {Sub-rules 11 of Rules 3 of the Tribunal (Conditions of Service) Rules, 2021}:-**

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(a) Judicial Member:-

- (i) is, or has been, a Judge of a High Court; or
- (ii) is a Judicial Member of the National Company Law Tribunal for five years; or
- (iii) has been an advocate for ten years with substantial experience in litigation in matters relating to company affairs before National Company Law Tribunal, National Company Law Appellate Tribunal, High Court or Supreme Court.

(b) Technical Member:- A person of proven ability, integrity and standing having special knowledge and professional experience, of not less than twenty-five years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy or any other matter which is useful to the National Company Law Appellate Tribunal.

(ii) Salary and allowances {Rules 10 and 11 of the Tribunal (Conditions of Service) Rules, 2021}:- The Member shall be paid a salary of Rs. two lakh twenty-five thousand per month plus other allowances as admissible.

(iii) Term of office {Section 5 of the Tribunals Reforms Act, 2021}:- Every Member of a Tribunal shall hold office for a term of four years or till he/she attains the age of sixty-seven years, whichever is earlier.

(iv) Minimum age {Section 3 (1) of the Tribunals Reforms Act, 2021}:- A person shall not be eligible for appointment as Member in, NCLAT unless he/she has completed the age of 50 (fifty years) as on the last date for submission of applications.

[Note: Candidates may refer the Tribunals Reforms Act, 2021 and the Tribunal (Conditions of Service) Rules, 2021 for other terms and conditions].

4. **Procedure for selection:** - The Search-Cum-Selection Committee constituted under the Tribunal Reforms Act 2021 for recommending names for appointment to the said post shall scrutinise the applications with respect to suitability of application for the posts by giving due weightage to qualification and experience of candidates and shortlist candidates for conducting personal interaction. The final selection will be done on the basis of overall evaluation of candidates done by the Committee based on the qualification, experience and personal interaction.
5. **Application Procedure:-** Eligible and willing persons are requested to send their scanned application in pdf version, strictly as per the format enclosed along with supporting documents from 15th October, 2021 to email at mappnt-ncit@gov.in. The last date for submitting the application by e-mail is 12th November, 2021 by 5:30 PM. Further, the hard copy of the signed application alongwith supporting documents is required to be sent to the following address latest by 05:30 PM of 22nd November, 2021:

**Shri Riazul Haque, Under Secretary,
Ministry of Corporate Affairs, Room No 526, 'A' Wing,
5th Floor, Shastri Bhawan, New Delhi-110001**

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6. For the person working in any Government/semi-government/courts/Public Sector Undertaking/statutory and autonomous bodies the application should be accompanied with (i) Certificate to be furnished by the employer/ head of office/ forwarding authority as in Annexure-II of the application (ii) clear photocopies of the up-to-date CR/APAR dossier of the officer containing CR/APARs of at least last five years duly attested by a Group A officer (iii) cadre clearance (iv) integrity certificate/clearance from vigilance and disciplinary angle as in Annexure-III of the application (v) statement giving details of major or minor penalties, if any, imposed on the officer during the last ten years. The application along with above documents should reach to the address as mentioned in para 5 latest by 05:30 PM of 22nd November, 2021:-
7. No TA/DA will be admissible to the candidates to be called for interview/interaction. The candidates are required to make own arrangements.
8. Any Application received after due date without necessary Annexure as mentioned above will not be entertained.


(Rakesh Tyagi)
Director

To:

1. Registrar Generals of All High Courts
2. Secretaries to Government of India, All Ministries/Departments of the Government of India
3. All Chief Secretaries to the State Governments/Union Territories
4. All RDs/ROCs/OLs in the Ministry of Corporate Affairs
5. Registrar, National Company Law Appellate Tribunal (also requested to upload the vacancy circular on the NCLAT's website)
6. Secretary, National Company Law Tribunal
7. Secretary, Competition Commission of India
8. Chairperson, Insolvency and Bankruptcy Board of India
9. Secretary, National Financial Reporting Authority
10. Technical Director, NIC, MCA with the request to upload the vacancy circular on the online portal.
11. Technical Director, NIC, DoPT with the request to upload the vacancy circular on the DoPT's website
12. E-governance Cell, Ministry of Corporate Affairs with the request to upload the vacancy circular on the website of the Ministry.

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Annexure 'P3'

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F. No. A-12023(1)/2/2018-Admn.III(LA)
GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF LEGAL AFFAIRS

CIRCULAR

**Subject: Applications for appointment to the posts of Member (Judicial/ Accountant),
Income Tax Appellate Tribunal.**

In exercise of the powers conferred by section 252 of the Income-Tax Act, 1961, the Central Government has constituted the Income Tax Appellate Tribunal to hear appeals against the orders passed by various authorities stated in section 253 of the Act.

2. Applications are invited for the following posts of Judicial Members and Accountant Members in the Income Tax Appellate Tribunal, constituted under the Income-tax Act, 1961:-

Judicial Member:-

	Reserved for SC	Reserved for ST	Reserved for OBC	Unreserved	Total
No. of Posts	01	03	08	09	21*

Accountant Member:-

	Reserved for SC	Reserved for ST	Reserved for OBC	Unreserved	Total
No. of Posts	03	02	01	10	16*

* One post each of Accountant Member and Judicial Member is reserved for persons with disabilities. Persons with the following disabilities will be considered for appointment, subject to production of medical certificate and medical examination by the appropriate Medical Board:

- (i) One Arm
- (ii) One Leg
- (iii) Both Legs
- (iv) Low Vision

The number of vacancies indicated above is only approximate and is liable to increase or decrease due to unexpected circumstances that may occur.

#3. The posts belong to General Central Services Group 'A' (Gazetted) and are in Level 16 (Rs. 205400 – 224400/-) in the Pay Matrix (VII CPC). The posts are temporary at present, but are likely to continue.

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4. Candidates already in service and entitled to pension will continue to enjoy the same benefits.

#5. QUALIFICATIONS:-

(a) JUDICIAL MEMBER:- A person shall not be qualified for appointment as a Judicial Member unless:- (i) he has for at least ten years held a judicial office in the territory of India; or (ii) he has been a Member of the Indian Legal Service and has held a post in Grade-II of the Service or any equivalent or higher post for at least three years; or (iii) he has been an advocate for at least ten years.

Explanation for the purpose of (a) above:

(i) In computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;

(ii) In computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(b) ACCOUNTANT MEMBER: A person shall not be qualified for appointment as an Accountant Member unless; (i) he has for at least ten years been in the practice of accountancy (a) as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949); or (b) as a registered accountant under any law formerly in force; or partly as such registered accountant and partly as chartered accountant; or (ii) he has been a member of the Indian Revenue Service (Income-tax Service Group 'A') and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.

#6. AGE: As on 20.08.2018 should be between 35 and 50 years. Upper age limit is relaxable upto 5 years for Government servants, persons belonging to the Scheduled Castes/Scheduled Tribes, or to any special category specified by the Central Government to such extent as may be specified by the Central Government regarding recruitment of such persons to Government service.

#7. As per the directions of the Hon'ble Supreme Court in Order dated 20.03.2018 in W.P. (Civil) No. 279/2017:-

"(iii) The tenure of the Chairperson and the Judicial/Administrative/Expert/Technical Members of all the Tribunals shall be for a period of five years or the maximum age that was fixed/determined under the old Acts and Rules."

The appointment of Members of the ITAT will be for a period of five years or till the maximum age that was a fixed under the old Act/Rules.

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#8. **PROBATION PERIOD:** Two years - liable to be reduced or extended at the discretion of the Central Government. Service is liable to termination without any reason being assigned during probation.

9. **DUTIES:** As prescribed in the Income Tax Act, 1961 and the rules made thereunder.

Selected candidates will have to serve anywhere in India. Candidates who are desirous of initial posting in a particular place or area need not apply. Selected candidates will have to join duty as and when required by the Government.

[#](This would be subject to any clarification or order passed by the Supreme Court in this case including W.P. (Civil) No. 279/2017 or decision of the Government at later stage. Further, the other conditions will be governed by the orders passed by the Supreme Court on 09.02.2018 and 22.02.2018 in the above case.)

10. The above cut-off date will be treated as the date of reckoning for OBC status of the candidate and also, for assuming that the candidate does not fall in the creamy layer.

11. Candidate should note that the date of birth as recorded in the Matriculation/ Secondary Examination Certificate or an equivalent certificate submitted with the application form shall be accepted for determining the age eligibility and no subsequent request for its change will be considered or granted.

12. HOW TO APPLY

- (i) Eligible candidates have to apply for the above posts strictly in the prescribed format. The format of the application can be downloaded from the website www.legalaffairs.gov.in under the link 'Vacancy Circular'.
- (ii) Applications which are illegible, not conforming to the prescribed application format and the instructions given in the Advertisement will be summarily rejected.
- (iii) Applicants should affix one self-attested recent passport size photograph on the application form. In addition, please attach one more identical photograph with the application form.
- (iv) Candidates in Government service should submit their application(s) through proper channel only.
- (v) Application in the following format, duly completed and signed by the candidates, (in the case of Government servants through proper channel with up-to-date CR dossiers, cadre clearance and vigilance clearance) should reach Shri Suneel Sachdeva, Under Secretary to the Govt. of India, Ministry of Law and Justice, Department of Legal Affairs, Dr. Rajendra Prasad Road, Shastri Bhawan, New Delhi-110 001 by **20.08.2018** at the latest.
- (vi) Incomplete applications and applications received after the last date will not be entertained.



(Suneel Sachdeva)

Under Secretary to the Government of India

Dated: the 6th July, 2018

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E No.: G/1121/2010

VAKALATNAMA

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
DISTRICT: AHMEDABAD

(EXTRAORDINARY ORIGINAL JURISDICTION)

WRIT PETITION NO. ____ OF 2021 (P.I.L.)

Vikash Jain

...Petitioner

Versus

Union of India & Ors.

...Respondents

I/ We undersigned do hereby appoint and retain **VISHAL.J.DAVE**
, **HIRAL U MEHTA** Advocate(s)

To, act, appear and plead in the above noted matter in this court or any other court where the same matter be tried or heard in the appellate courts.

To sign file and present pleadings applications appeals cross-objection or petitions for execution review revision restoration withdrawal compromise or other petitions replies objections or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said at all stages.

To file and take back documents.

To appoint instruct ant other legal practitioner authorizing him to exercise the power and authorities hereby confirmed the advocates.

And I/We agree to ratify all acts done by aforesaid advocates in pursuance of this authority.

Vishal J.Dave | Hiral U Mehta


For Petitioner

Vikash Jain

Vishal J Dave ,Hiral U Mehta
Advocates
B 305, Hare Krishna complex, Behind
City Gold Cinema
Ahmedabad 380 014
M :+91 9898154535, 99799 02930 :
advocatevj-dave@gmail.com,

High Court Chamber:
Chamber 215,
Advocate building,
Gujarat high Court,
Sola, Ahmedabad

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 135 of 2021

=====

VIKASH JAIN
Versus
UNION OF INDIA

=====

Appearance:

MR.VISHAL J DAVE(6515) for the Applicant(s) No. 1
MS. HIRAL U MEHTA(7003) for the Applicant(s) No. 1
for the Opponent(s) No. 1,2

=====

CORAM: **HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
ARAVIND KUMAR**
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 25/11/2021

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)

Issue **NOTICE**.

Petitioner's counsel is permitted to serve copy on learned
Assistant Solicitor General of India Mr. Devang Vyas.

Registry to print the name of Mr. Devang Vyas as counsel
appearing for respondents.

Post along with W.P. (PIL) No.131 of 2021.

(ARAVIND KUMAR,CJ)

(ASHUTOSH J. SHASTRI, J)

OMKAR