

Analysing the workload of the NCLT: A sample study

Varun Marwah, Aditi Nayak and Bhargavi Zaveri
Finance Research Group, IGIDR

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Recap and motivation

- ▶ Enactment of the IBC has focused the discourse on judicial capacity on tribunals, and in particular the NCLT.
- ▶ Question is: how do we build capacity in the NCLT?
- ▶ Limited empirical work on the NCLT done so far:
 1. Does the NCLT have enough judges? (Damle and Regy 2017)
 2. Watching India's insolvency reforms: a new dataset of insolvency cases (Chatterjee, Shaikh, and Zaveri Forthcoming 2018)
 3. Insolvency And Bankruptcy Code: One-Year Report Card. (Bhatia et al. 2018)
- ▶ No research on overall workload of NCLT.

What does our study do?

Ongoing work on studying the workload of the NCLT.

1. Attempt to understand the composition of the workload of the NCLT.
2. Narrow down focus on kind of case workload - compounding applications.

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- ▶ Review of all final orders passed by the Mumbai bench from February 22, 2017 to February 22, 2018
 - ▶ Categorise them into a typology based on kind of cause of action.
- ▶ Review of a sample of compounding cases disposed of by the Mumbai bench.
 - ▶ Relevant period: March 6, 2016 and February 22, 2018 (Relevant Period)

Understanding adjudication role of NCLT

- ▶ NCLT presently adjudicates matters under Companies Act and the IBC.
- ▶ In addition to new matters, case-load includes:
 1. matters transitioned from the Company Law Board (following its dissolution in 2016);
 2. winding up petitions handled by High Courts and matters before the erstwhile BIFR under SICA transitioned upon enactment of the IBC; and
 3. other non-IBC matters transitioned from High Courts.

Findings

Workload of all benches of the NCLT (contd.)

- ▶ 11,080 final orders passed by various benches of the NCLT during the Relevant Period.

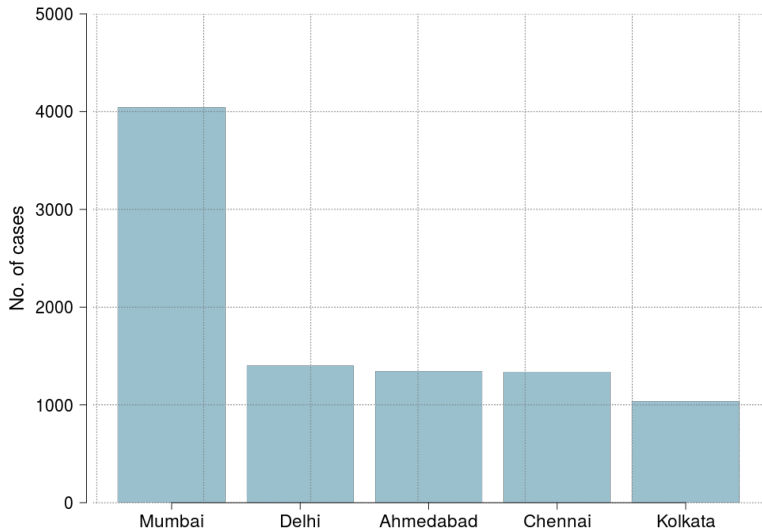
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- ▶ Mumbai bench accounts for 36%, largest proportion of orders passed.
 - ▶ For the Relevant Period, disposal rate per judicial member in Mumbai bench is little over 879 cases.

Workload of five benches of the NCLT

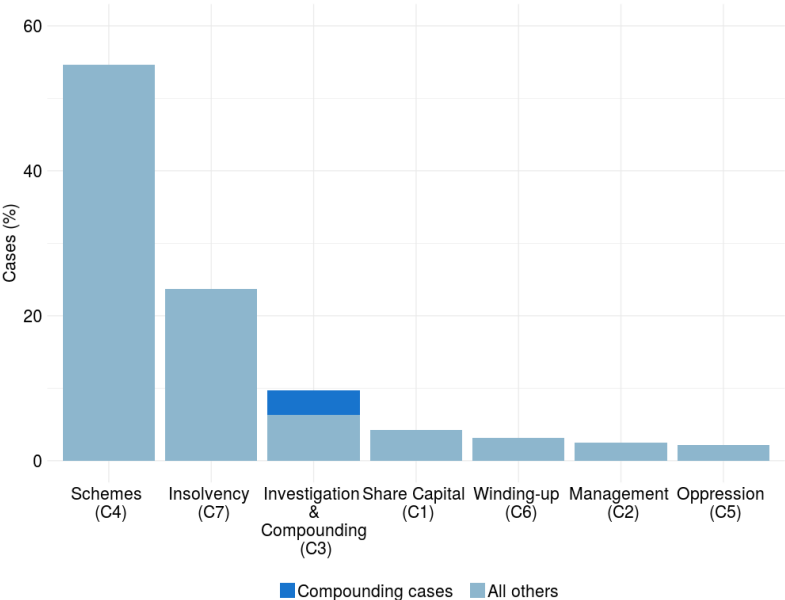


Composition of workload

Typology of cases adjudicated by the NCLT

Category	Description of the case
C1	Cases pertaining to share capital, debentures or repayment deposits taken by companies
C2	Cases pertaining to management of companies or board meetings
C3	Cases seeking the exercise of NCLT's powers to order investigation into and adjudicate upon, the affairs of companies. Compounding cases form a part of this class.
C4	Applications for sanction of schemes of arrangement, compromises, mergers and amalgamations of companies
C5	Cases pertaining to relief sought against oppression or mismanagement by shareholders of companies
C6	Winding-up cases
C7	IBC Cases

Composition of workload (contd.)



Composition of workload (contd.)

Bulk of final orders passed fall within three main classes:

1. C4 (schemes) - 55% of total orders passed
2. C7 (IBC cases) - 23% of total orders passed
3. C3 (Investigation and compounding) - 10% of total orders passed
 - ▶ Over 35% of orders passed pertained to compounding cases

Case study: Compounding Cases

- ▶ MCA constituted a committee on July 13, 2018 to review offences under Companies Act.
- ▶ Committee to focus on categorisation of offences as 'compoundable' or 'non-compoundable' to review adjudication mechanism for each.
- ▶ Presently, all violations classified as 'offences', prosecutable as a crime by the state

Case study: Compounding Cases

Kinds of penalties and compounding characteristics

Kind of Penalty	Whether or not Compoundable	Authority empowered to compound
Offences punishable with fine <i>only</i>	Compoundable	RD (if max fine is Rs. 5 lacs), or NCLT (all other cases)
Offences punishable with fine <i>or</i> imprisonment <i>or</i> both	Compoundable	Same as above but with permission of criminal court
Offences punishable with imprisonment <i>only</i>	Non-compoundable	NA
Offences punishable with fine <i>and</i> imprisonment	Non-compoundable	NA

Case study: Compounding Cases (contd.)

Compounding Process:

- ▶ Company or individual makes application to ROC

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Effect on Prosecution:

- ▶ If no prosecution has been initiated, acquittal of the applicant and no further prosecution to be initiated for such offence
- ▶ If there is on-going prosecution, discharge of applicant from such prosecution

Sample study of compounding cases

- ▶ Data-set: Random sample of 30 compounding cases disposed of by Mumbai during Relevant Period
- ▶ Hand collected data, such as:
 1. applicant
 2. type of offence
 3. provision of law violated
 4. relevant dates such as filing before ROC, ROC report to NCLT, hearings and disposal
 5. stage of filing i.e. pre or post prosecution
 6. whether or not compounded
 7. compounding fee levied

Sample study of compounding cases (contd.)

Disposal time for compounding cases

Stages in the life-cycle of a compounding case:

- ▶ T0 = Date of filing of compounding application before the ROC
- ▶ T1 = Date of comments/ recommendations of the ROC on the application
- ▶ T2 = Date on which ROC forwards the application to the NCLT
- ▶ T3 = Date of first hearing before the NCLT
- ▶ T4 = Date of compounding or dismissal

Sample study of compounding cases (contd.)

Disposal time for compounding cases

Duration of stages in life-cycle of a compounding application

Stage	No. of observations	Median (in days)
Entire lifecycle from date of applying to ROC till disposal	9	487

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Date of first hearing until disposal	25	201

Sample study of compounding cases (contd.)

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- ▶ Minimum time taken from date on which ROC forwards to NCLT till date of disposal: 30 days

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Disposal time for compounding cases

- ▶ Minimum time taken from date on which ROC forwards to NCLT till date of disposal: 30 days
- ▶ Maximum time taken from date on which ROC forwards to NCLT till date of disposal: 1025 days
- ▶ Atleast one hearing per case prior to disposal

Sample study of compounding cases (contd.)

Types of offences for which compounding is sought

Types of offence (n = 30)

Non filing	Non filing	Non filing	AGM	AGM	AGM	Misc	Misc	RPT	NA
Non filing	Non filing	Non filing	AGM	AGM	AGM	Misc	Misc	RPT	NA
Non filing	Non filing	Non filing	Non filing	AGM	AGM	AGM	Misc	RPT	RPT

■ Non-filing accounts ■ AGM delay ■ Miscellaneous ■ Related Party Transactions ■ Not available

Sample study of compounding cases (contd.)

Types of offences for which compounding is sought

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 1. failure to appoint independent or female directors on the board,
 2. non-compliance with provisions relating to managerial remuneration,
 3. lapse in updating investment registers.

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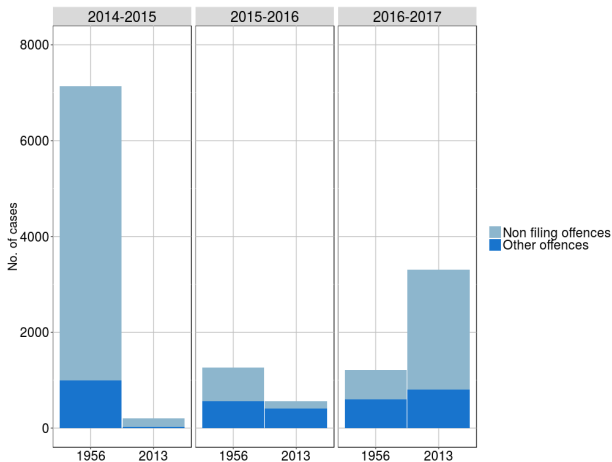
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- ▶ 30% pertained to corporate governance lapses:
 1. failure to appoint independent or female directors on the board,
 2. non-compliance with provisions relating to managerial remuneration,
 3. lapse in updating investment registers.
- ▶ 10% pertained to non-compliances while undertaking related party transactions

Sample study of compounding cases (contd.)

Types of offences for which compounding is sought

Findings on violations identified in sample data align with historic data on nature of defaults prosecuted:



Sample study of compounding cases (contd.)

Outcomes of the compounding application

- ▶ Compounding allowed in 86% of the applications

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- ▶ In 83% of the cases, the NCLT had proceeded to compound having relied on the ROC recommendations on the application.
 - ▶ No data available on ROC recommendation for the remaining 17%.

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- ▶ Compounding allowed in 86% of the applications
- ▶ 14% applications dismissed due to failure of applicants to attend hearings or withdrawal by applicants themselves.
- ▶ In 83% of the cases, the NCLT had proceeded to compound having relied on the ROC recommendations on the application.
 - ▶ No data available on ROC recommendation for the remaining 17%.
- ▶ Compounding fees levied in nearly all cases was half the maximum penalty prescribed for such offences.

Other insights from sample study

- ▶ Offences sought to be compounded are in the nature of delays in complying with statutory timelines and inaccuracies in filings.
 - ▶ On an average, NCLT takes over a year to dispose of compounding applications.
- ▶ Several applicants had proceeded to rectify violation before seeking compounding.
- ▶ Average compounding fee is half the penalty that would be levied if the applicant was prosecuted for the offence instead of compounding the same
- ▶ NCLT has relied on recommendations of ROC in admitting compounding.

Implications of case-study

- ▶ Compounding applications constitute a little less than 5% of the workload of the Mumbai bench during 2016-18.
 - ▶ If compoundable offences as a class were to be expanded, it has implications for NCLT workload.
 - ▶ To understand this, data on compounding workload of other benches needed.

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 - ▶ To understand this, data on compounding workload of other benches needed.
- ▶ Alternative approach involves revisiting system of sanctioning violations under Companies Act:
 - ▶ Law fails to distinguish b/w regulatory and criminal sanctions, Eg. delay in complying with reporting requirements, and reporting fraud on par in attracting criminal sanctions
 - ▶ Imposition of costs on the enforcement machinery due to higher evidentiary burden of criminal proceedings on prosecution

Problems previously recognised in 1978 by Sacher Committee and then in 2005 by Expert Group on Streamlining Prosecution Mechanism under Companies Act, 1956.

Thank you.

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