

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

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

Nipun Praveen Singhvi

...Petitioner

Versus

Union of India & Ors.

...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 Member in the National Company Law Tribunal

Hence, this Petition...





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
Judicial 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:-

Nipun Praveen Singhvi

.Petitioner

Versus

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 Judicial Member in the National Company Law Tribunal (NCLT) which is *ultra*

vires to the Article 13, 14, 21 and 50 of the 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 an Advocate enrolled on the rolls of the Bar Council of Gujarat, and practicing before the Constitutional Courts, Subordinate Courts and Tribunals thereto. Apart from advocacy, the Petitioner is also a qualified Chartered Accountant (C.A.), Company Secretary (C.S.) and has also undertaken many specialized courses such as certified fraud detection and forensic accountant, International Financial reporting standards, Concurrent bank audit etc. The Petitioner being an expert as a part of resource person represented Insolvency Professional Agency (IPA) of Institute of

Chartered Accountants of India (ICAI) in Insolvency and Bankruptcy Board of India (IBBI)-World Bank program of 'Training the Trainers' (2018) and has trained more than 1000 Insolvency Professional in compulsory training program conducted by Insolvency Professional Agency (IPA) of Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and The Institute of Cost Accountants of India (ICAI). The Petitioner has also conducted and delivered more than 1000 lectures at various forums, conferences and programs conducted by the IBBI, IPA, ICAI, ICSI, financial institutions and management training institutions across India. The Petitioner has also been member of various committees of Institute of Chartered Accountants of India (ICAI) at national, regional and branch level of Corporate Law, Bank Audit and Accounting Standard Board etc. The Petitioner has been actively working for the interest of real estate laws. He is contributed and authored various books for instance "Gujarat RERA Manual" published by Taxmann, Maharashtra RERA Manual published by WIRC of ICAI, Guide to Insolvency and Bankruptcy Code, 2016 published by Bloomsbury.

2.1 The Petitioner being a public spirited person and RTI activist 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 structure has been passed against the Petitioner. The Petitioner has proactively filed following petition of public importance before the Hon'ble Supreme Court and before this Hon'ble Court which is listed herein below:

Sr. No.	Particulars
1.	Intervener in W.P. (C) NO. 916/2016 TITLED AS ADIL ALVI VS. UNION OF INDIA & ANR. for quashing and setting aside the Notification S.O. 3407 (E) dated 08.11.2016 as amended from time issued by the Ministry of Finance (Department of Economic Affairs), Govt. of India in the case of demonetization which is pending for adjudication before the Hon'ble Supreme Court.
2.	Writ Petition being Special Civil Application No.11996 of 2017 challenging the constitutional validity of Part XIV of the Finance Act, 2017 and of the rules framed in consonance, which empowers the Central

	<p>Government to frame rules relating to appointment and service conditions of members of various tribunals before this Hon'ble Court which is pending for adjudication. However, recently the Hon'ble Supreme Court in the case of <i>Roger Mathew VERSUS South Indian Bank Ltd. & Ors</i> in Civil Appeal No. 8588 of 2019 has struck down the rules.</p>
3.	<p>Writ Petition being Special Civil Application No.18030 of 2017 challenge to the constitutional validity of the constitution of the Authority of Advance Ruling (AAR) and the Appellate Authority of Advance Ruling (AAAR) under the Central Goods and Services Act and State Goods and Services Act which is pending for adjudication before this Hon'ble Court.</p>
4.	<p>Public Interest Litigation being WRIT PETITION (PIL) NO. 216 of 2017 for appointment of technical member at National Company Law Tribunal, Ahmedabad bench whereby this Hon'ble Court vide its order dated 11.10.17 granted liberty to make representation before the President of National Company Law Tribunal and in the event of further difficulty, liberty was granted to the Petitioner to approach this Hon'ble Court.</p>
5.	<p>Public Interest Litigation being WRIT PETITION (PIL) NO. 216 of 2017 seeking appropriate directions for enforcement/administration of the India-Korea Free</p>

	<p>Trade Agreement and investigation in to the Customs Duty Evasion taking place in Imports from South Korea whereby this Hon'ble Court vide order dated 19.12.18 granted permission to withdraw the petition with a view to make appropriate representation before the concerned authority/ forum etc. with regard to the subject-matter and the compilation of the present petition be treated as a representation by such authority.</p>
6.	<p>Public Interest Litigation being Writ Petition (PIL) NO. 208 of 2019 seeking appropriate directions for constitution of RERA Appellate Tribunal and appointment of members in the Tribunal. The PIL was disposed of with directions to do the appointments of members at earliest and also specific office space for Tribunal was granted. Thereafter, Tribunal appointments were made with strength of 3 members.</p>
7.	<p>Public Interest Litigation being Writ Petition (PIL) NO. 55 of 2021 seeking directions against RERA and RERA-Tribunal for streamlining the process of virtual hearing and restraining personal/physical hearing due to pandemic of Covid-19. The PIL has been disposed off in the light of guidelines issued for the virtual hearing.</p>
8.	<p>Public Interest Litigation being Writ Petition (PIL) NO. 13 of 2021 to extend the Companies Fresh Start Scheme, 2020 to 31.3.2021 as the benefit of the</p>

	Scheme could not be availed in view of long pandemic of Covid-19. The said PIL was disposed off vide order dated 28.01.21
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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, 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 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. That the facts of the case in brief are as follows:-

4.1 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:

4.2 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. 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.

4.3 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' 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 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 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."

4.4 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.

4.5 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.

4.6 It is submitted that, the 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 Judicial 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 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 Judicial

Member in the National Company Law Tribunal (NCLT) is annexed hereto and marked as **Annexure-P1**.

4.7 It is submitted that the advertisement dated 13.10.21 for filling up posts of Judicial Member in the National Company Law Tribunal fixes a minimum age limit of 50 years for appointment as Tribunal Members in view of 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. Also, when 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 for Tribunals.

4.8 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 judicial member in the National Company Law Tribunal in accordance with Section 412 of the Companies Act, 2013 since the appointment to the post of judicial member can be done only through Search-Cum-

Selection Committee. Copy of the advertisement dated 13.10.21 of NCLAT is annexed hereto and marked as **Annexure-P2**.

4.9 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".

4.10 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 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 Section 413 (2) of the Companies Act, 2013 and filling up of posts of judicial 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:-

GROUND 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* (Hereinafter the "NCLT judgment") [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 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.

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 Section 413 (2) of the Companies Act will debar young advocates with minimum 10 years of practice to be eligible for the post of judicial 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.



(b) It is submitted that impugned advertisement dated 13.10.2021 for the filling up of posts of judicial member in view 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 Judicial 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)

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 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 Judicial 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 Judicial 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 judicial 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);

(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: AHMEDABAD
Date: 20/10/2021

DRAWN & FILED BY
Advocates for the Petitioner

SR. NO.: 328 /2021,

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

AFFIDAVIT

I, Nipun Praveen Singhvi,

, 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 20 DAY OF October, 2021 AT AHMEDABAD.

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

Advocate

Annex: P1

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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://apptrbmembermca.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

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.

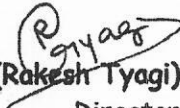
8. Selected candidates will be required to produce a medical fitness certificate before joining.

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://aptrbmembermca.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.