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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE ROLE AND SIGNIFICANCE OF NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT)

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ABSTRACT

National Company Law Tribunal (NCLT) is a quasi-judicial body which takes care of the disputes arising out of a company. The integral function of the tribunal lies towards maintaining the peacefulness of the company by settling the dispute. Since the industrial revolution and after independence, the growth of the Indian economy as well as its approach towards company has gained importance and India is on the stage of being a developed country. Under Companies Act 2013, the National Company Law Tribunal was established by the Central Government with the view of settling down the companies' dispute within a limited time frame and is also estimated to be less expensive while compared to others. The judgement framed by the National Company Law Tribunal can be appealed to National Company Law Appellate Tribunal (NCLAT). It is an appellate body which has the power to appeal the decision of NCLT. The National Company Law Tribunal has replaced Company Law Board. Under Companies' Act, 1956 the Company Law Board was established to take care of the company disputes as it was said to be less sufficient. Section 408 of Companies' Act, 2013 is a virtue under which National Company Law Tribunal was formed by the Central Government.

The aim of this study is to analyse the role of National Company Law Tribunal and National Company Law Appellate Tribunal in India and to find out the importance of the same.

INTRODUCTION

National Company Law Tribunal (NCLT) is a quasi-judicial body which takes care of the disputes arising out of a company. The integral function of the tribunal lies towards maintaining the peacefulness of the company by settling the dispute.

Under Companies act 1956, Section 10(f)¹ company law board was formed in order to resolve the company disputes which was later replaced by the National Company Law Tribunal in India. As the individuals approach toward the company is vast it needs its standard of own jurisdiction to resolve the dispute effectively within a limited frame time and less expensive. The national company law board is very beneficial to the shareholders, partners of the company and even to general people as if the dispute is arisen it is easily settled down. Section 408² of companies act 2013 is a virtue under which National Company Law Tribunal was formed by the central government.³

Where the National Company Law Tribunal stands to be more speedier and simpler and raises its own standards to resolve the dispute within a farmed time. The main aim of the National Company Law Tribunal is to dissolve the corporate dispute. The national company law Tribunal is said to give instant remedy to maintain peace in the company and to have an efficient free flow of company management. Inspite of several advantages of the national company law Tribunal there are also some mere disadvantages which were concluded by the authors as the NCLT is not efficient to close the dispute within a limited frame time but some other authors also have given their opinion that the effective administration of NCLT and NCLAT may lead to effective settlement of Company disputes within a limited frame time⁴.

As the companies act as undergone several changes right from the date it formed till now, so this denotes that the government is playing prior role in developing the companies standard by resolving its dispute. Authors around the world has suggested that the National Company Law Tribunal needs to play more role in the resolution of the corporate dispute this means NCLT is on the verge of being more effective when compared with Company Law board . NCLT is not effective to the core as still there are many cases – matter relating to disputes are still pending in national Company Law Tribunal and national Company Law appellate tribunal⁵.

In the recent year, 2015, the Supreme Court issued the **National Company Law Tribunal (NCLT)** and **National Company Law Appellate Tribunal (NCLAT)** as valid. This decree thus formed the foundation of the constitutionalized NCLT & NCLAT, by the Central

¹ Section 10 (f) of Companies Act, 2013.

² Section 408 of Companies Act, 2013.

³ DIGNAM. A & LOWRY, J , INTRODUCTION TO COMPANY LAW (9th ed. Oxford University Press, 2016).

⁴ TYAGI M. & KUMAR, COMPANY LAW, (Altantic Publishers & Dist, 2003).

⁵ SAHARAY H.K, COMPANY LAW (5th ed., New Central Book Agency 2008).

Government on June 1st, 2016⁶.

EVOLUTION OF THE NCLT AND NCLAT

National Company Law Tribunal (NCLT), is a quasi-judicial structure to regulate and resolve civil corporate disputes. Whereas, NCLAT is the higher forum where appeals from the Tribunal are dealt with, i.e. Appellate Tribunal. The power to establish NCLT and NCLAT has been derived from Article 245⁷ of the Constitution of India.

The Tribunal, the outcome of the *Eradi Committee*, is institutionalized under the Constitution and practices both authority and power like that of the court of law. At its centre, the Tribunal is required to be objective and pass orders based on natural justice by close scrutiny of facts provided in the cases that are heard⁸.

The transfer of authority from CLB to NCLT was the first among the many steps towards the independent jurisdiction of the latter. Further procedures to forward the transfer included the pending cases under the CLB to be shifted to the NCLT, under Section 434⁹ of the Companies Act. The Central Government passed legal proceedings by which the powers of the High Court, the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) and Board of Industrial and Financial Reconstruction (BIFR) to be vested upon the Tribunal along with other new powers and functions. Thereby encompassing the governance of every company registered under the Companies Act, except for banking institutions. Thus NCLT became legally active on June 1st, 2016 with ten benches and one principle bench.

JURISDICTION OF THE NCLT

Both the Tribunal and Appellate Tribunal follow the Code of Civil Procedure and are subject to any rules formed by the Central Government. The former two entities hold the authority to direct and make-do their own procedural methods.

⁶ Rose Mathew, *The Jurisdiction Of The NCLT & NCLAT*, INTELLIGENT LEGAL SOLUTION (last accessed Oct 24, 2019) <https://blog.ipleaders.in/jurisdiction-nclt-nclat/>.

⁷ The Constitution of India: Article 245.

⁸ M.P JAIN, *THE CONSTITUTIONAL LAW OF INDIA* (7th Ed, Lexis Nexis, 2014).

⁹ Section 434 of The Companies Act, 2013.

The jurisdiction of NCLT includes the following:

- **Class Action**

Class Action comes under *Section 245¹⁰* of the Indian Companies Act, takes action against frauds and improprieties where the shareholders and depositors are the main victims. There has been a long chain of cheating where the companies registered under the law drain dry the investments and savings of their investors and shareholders. The *Companies Act, 2013* has presented measures to effectively bring down the offenders by subjecting the guilty to punishment, wherein they ought to give compensations to the victims for the losses on account of the fraudulent practices.

One or more plaintiffs can file a lawsuit on behalf of a large group and accelerate the procedure. Thereby representing a whole group of, perhaps, geologically dispersed class of people: shareholders or depositors, who are being wronged. *Section 245¹¹* has brought great relief to the investors, protecting their assets and safeguarding their rights. Class Action can be filed against both private and public run companies with an exception for banking companies.

- **Refusal to Transfer Shares**

Under *Sections 58 and 59¹²*, if a company refuses to register a transfer or does any malpractices leading to dissatisfaction of the transferor or transferee, the latter is entitled to appeal to the National Company Law Tribunal, after a period of two months. The two *Sections*, in effect, give importance to contracts or arrangements for transferring securities entered into by two or more people with respect to valid conditions.

- **Oppression and Management**

Under *Section 397¹³* of the *Companies Act, 1956* a member could file a complaint only about ongoing instances of oppression and mismanagement. Unlike its predecessor, the Tribunal, under *Section 241¹⁴* grants any member permission to find justice for past and present instances of oppression and mismanagement. Thus, setting forth remedies for any member or ex-member of a company or Central Government subjected to the crime

¹⁰ Section 245 of The Companies Act, 2013.

¹¹ Ibid.

¹² Section 58 & 59 of The Companies Act, 2013

¹³ Section 397 of The Companies Act, 2013

¹⁴ Section 241 of The Companies Act, 2013

under scrutiny¹⁵. A member can file an application to the Tribunal upon the grounds that the affairs of the company are run in a way prejudicial to public interest, prejudicial and oppressive towards members of the company or prejudicial to the very interest of the company. *Section 397*¹⁶ permits the dissolving of the eligibility criteria the condoning of the Tribunal, thus a member not within the eligibility criteria can apply in deserving cases.

- **Reopening of Accounts and Revision of Financial Statements**

The one too many cases of falsification of books of accounts in plain sight during the Companies Act, 1956 led to the addition of several procedures to counter this malfunctioning in the Companies Act, 2013. *Section 130* and *131*¹⁷ read along with *Section 447* and *448*¹⁸ in the new Act is a measure taken against this menace. These Sections act as provisions that refrain companies from *suomuto* opening their accounts and revising their financial statements. *Section 130*¹⁹ gives the Tribunal power to hold the authority to direct a particular company to reopen its accounts under certain given circumstances. The company is allowed to revise its financial statement under *Section 131*²⁰ but not allowed the reopening of any accounts.

- **Deregistration of Companies**

*Section 7(7)*²¹ under the new Act preserves power upon the Tribunal to deregister or dissolve companies that are found to have attained 'registered' status through illegal and wrongful manner. In essence, the procedural errors of registration of companies can be investigated or questioned by the Tribunal, if found suspicious. Also, the court can declare the liability of members unlimited.

- **Deposits**

Deposits under the Companies Act, 2013 includes any receipt of money in the form of loan or deposit in any other form by a company. It is also to be noticed that deposits are not inclusive of such categories of amounts that may be prescribed in consultation with

¹⁵SAHARAY, *Supra* note 6.

¹⁶*Id.*

¹⁷ Section 130 & 131 of The Companies Act, 2013

¹⁸ Section 447 & 448 of The Companies Act, 2013

¹⁹Section 130 of The Companies Act, 2013

²⁰Section 131 of The Companies Act, 2013

²¹Section 7(7) of The Companies Act, 2013

the Reserve Bank of India (RBI). Chapter V of the 2013 Act and the Companies (Acceptance of Deposits) Rules, 2014²² deals with deposits and defines the regulations of deposits. Deposit Rules provide aggrieved depositors with the remedy of class actions so that they can seek justice for the omissions of the companies which hurt their depositor rights.

- **Power to Investigate**

Chapter XIV²³ of the Companies Act, 2013 instills upon the Tribunal the power of investigation. The Tribunal can authorize an investigation into the affairs of any company if or when an application is filed against the particular company by 100 members. The investigation can be extended to the ownership of companies. Also, if a person outside the company is able to provide conditions acceptable to NCLT, the latter holds power to authorize an investigation. The court can in course of action freeze company assets under given conditions and place restriction orders on securities, unlike before²⁴.

- **Conversion of Public Company to Private Company**

The Tribunal in accordance with *Section 13-18*²⁵ has a say in the conversion of public companies to private companies. This authority not only includes the consent and confirmation for the conversion, it goes further. *Section 459*²⁶ of the Act maintains that NCLT can impose certain terms and restrictions or grand approval along with certain conditions.

- **Tribunal Convened General Meetings**

‘Annual general meetings’ (AGM) or ‘extraordinary general meetings’ (EOGM) are to be held to revise the opinions of shareholders and provide a general outline of the company workings. These meetings ought to follow procedures provided under the Companies Act, 2013. If for some extraordinary reasons the AGM or EOGM cannot be

²²Chapter V Of The Companies Act, 2013 & The Companies (Acceptance of Deposits) Rules, 2014.

²³ Chapter XIV Of The Companies Act, 2013 & The Companies (Acceptance of Deposits) Rules, 2014.

²⁴Aashih Aryan, *Can We Pass an Arrest Order Under Insolvency law, NCLAT asks Centre*, BUSINESS STANDARDS, (last accessed Oct 24, 2019) https://www.business-standard.com/article/economy-policy/can-we-pass-an-arrest-order-under-insolvency-law-nclat-asks-centre-119072100671_1.html.

²⁵ Section 13-18 of The Companies Act, 2013

²⁶ Section 459 of The Companies Act, 2013

called, the Tribunal under the provisions of *Sections 97 and 98*²⁷ is empowered to convene a general meeting.

- **Financial Year**

NCLT exercises power to change the financial year of companies registered in India. Under *Section 2 (41)*²⁸ the companies in existence should have a uniform financial year ending on 31st of March.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT):

The National Company Law Appellate Tribunal (NCLAT) was constituted under *Section 410*²⁹ of the Companies Act, 2013 for hearing appeals against the orders of National Company Law Tribunals (NCLT), with effect from 1, 2016.

The NCLAT is also the Appellate Tribunal for hearing appeals against the orders passed by NCLTs under *Section 61*³⁰ of the Insolvency and Bankruptcy Code, 2016 (IBC), with effect from 1, 2016 and also Appellate Tribunal for hearing appeals against the orders passed by Insolvency and Bankruptcy Board of India under *Section 202 and Section 211*³¹ of IBC.

The NCLAT is also the Appellate Tribunal to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India (CCI), as per the amendment brought to *Section 410*³² of the Companies Act, 2013 by *Section 172*³³ of the Finance Act, 2017³⁴.

COMPOSITION OF APPELLATE TRIBUNAL:

The president and member of the appellate tribunal shall pose following qualifications:

1. The **chairperson** shall be a person who is or has been; a. Judge of the Supreme Court; or The Chief Justice of a High Court.
2. A **Judicial Member** shall be a person who is or has been; a. Judge of a High Court; or

²⁷ Section 97 & 98 of The Companies Act, 2013

²⁸ Section 2(41) of The Companies Act, 2013

²⁹ Section 410 of The Companies Act, 2013

³⁰ Section 61 of Insolvency and Bankruptcy Code, 2016

³¹ Section 202 & 211 of Insolvency and Bankruptcy Code, 2016.

³² *Supra* n.29.

³³ Section 172 of the Finance Act, 2017.

³⁴ *Supra* n.6.

Judicial Member of the **Tribunal for five years**³⁵.

3. A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience, of **not less than twenty-five years**, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

CHAIRPERSON & OTHER MEMBERS OF APPELLATE TRIBUNAL:

The tenure of office of chairperson & others members shall be;

1. The **chairperson** or a **Member** of the Appellate Tribunal shall hold office as such for a **term of five years** from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years.
2. A Member of the Appellate Tribunal shall hold office as such until he attains-
 - a. in the case of the Chairperson, the age of seventy years;
 - b. in the case of any other Member, the age of sixty-seven years;
 - c. a person **who has not completed fifty years of age shall not be eligible** for appointment as Member³⁶

POWER OF PRESIDENT – NCLT

President of National Company Law Tribunal has several powers in different sections of the Companies Act, 2013³⁷ and National Company Law Tribunal Rules, 2016. In addition of these powers, rule 16 specifically provides certain powers to President of the Tribunal.

According to Rule 16³⁸ of National Company Law Tribunal Rules, 2016, President shall have following powers –

- preside over the consideration of cases by the Tribunal;
- direct the Registry in the performance of its functions;
- prepare an annual report on the activities of the Tribunal;
- transfer any case from one Bench to other Bench when the circumstances so warrant;
- to withdraw the work or case from the court of a member.

³⁵Section 411 & 412 of The Companies Act, 2013.

³⁶ Ibid.

³⁷ The Companies Act, 2013.

³⁸Rule 16 of National Company Law Tribunal Rules, 2016.

- perform the functions entrusted to the President under these rules and such other powers as may be relevant to carry out his duties as head of the Tribunal while exercising the general superintendence and control over the administrative functions of the Members, Registrar, Secretary and other staff of the Tribunal.

FUNCTIONS OF REGISTRAR – NCLT /NCLAT

According to sub – rule (1) of rule 17³⁹ of National Company Law Tribunal Rules 2016, Registrar of National Company Law Tribunal and according to rule 16 of National Company Law Appellate Tribunal Rules 2016 shall have following functions –

- registration of appeals, petitions and applications;
- receive applications for amendment of appeal or the petition or application or subsequent proceedings.
- receive applications for fresh summons or notices and regarding services thereof;
- receive applications for fresh summons or notices and for short date summons and notices;
- receive applications for substituted service of summons or notices;
- receive applications for seeking orders concerning the admission and inspection of documents;
- transmission of a direction or order to the civil court as directed by Tribunal with the prescribed certificates for execution etc., and
- such other incidental or matters as the President/Chairperson may direct from time to time.

Power of Adjournment

According to sub – rule (2) of rule 17⁴⁰ of the National Company Law Tribunal Rules 2016 and according to rule 17 of the National Company Law Appellate Tribunal Rules 2016, all adjournments shall normally be sought before the concerned Bench in court and in extraordinary circumstances, the Registrar may, if so directed by the Tribunal in chambers, at any time adjourn any matter and lay the same before the Tribunal in chambers⁴¹.

³⁹Rule 17(1) of National Company Law Tribunal Rules, 2016.

⁴⁰Rule 17(2) of National Company Law Tribunal Rules, 2016

⁴¹Ibid.

FUNCTION OF SECRETARY

According to sub – rule (1) of rule 18⁴² of National Company Law Tribunal Rule 2016, there shall be a secretary at Principal Bench, New Delhi.

According to sub – rule (2) of rule 18 of National Company Law Tribunal Rules 2016, the Secretary shall, under the general superintendence and control of the President, discharge such duties, functions and exercise such powers as are prescribed under these rules and as assigned by the President from time to time⁴³.

According to sub – rule (3) of rule 18⁴⁴ of National Company Law Tribunal Rules 2016, the Secretary shall –

- be in charge of the long term projects and initiatives of the Tribunal;
- supervise the divisions and sections of the Human Resources;
- prepare, monitor and manage budgetary allocations and financial managements of the Tribunal and the Benches;
- provide all necessary support in the day
- to day operations of the Tribunal;
- manage and supervise the facilities and administrative services of the Tribunal;
- manage and administer the public grievances mechanism of the Tribunal;
- coordinate with authorised representatives and other professionals in the smooth functioning of the Tribunal;
- oversee information and communication technology and other technological facilities in the Tribunal;
- manage and facilitate communication and services of the Tribunal;
- manage, monitor and administer the public affairs and public safety provisions within the premises of the Tribunal; and
- supervise library and research wings of the Tribunal.

⁴²Rule 18(1) of National Company Law Tribunal Rules, 2016

⁴³ Ibid.

⁴⁴Rule 18(3) of National Company Law Tribunal Rules, 2016

DELEGATION OF POWERS BY THE PRESIDENT/CHAIRPERSON

According to rule 19⁴⁵ of National Company Law Tribunal Rules 2016 and according to rule 18 of National Company Law Appellate Tribunal, the President/chairperson may assign or delegate to any suitable officer all or some of the functions required by these rules to be exercised by the Registrar⁴⁶.

JURISDICTION OF NATIONAL COMPANY APPELLATE TRIBUNAL (NCLAT).

The National Company Law Appellate Tribunal is headed by the Chairperson and consists of not more than eleven members. It is a higher law governing forum than NCLT. The Appellate Tribunal hears appeals filed against the Tribunal court orders⁴⁷. The appeal can be placed within 45 days from the date on which NCLT announces its decisions. The Appellate Tribunal court goes through the evidence transferred from the Tribunal, making changes or confirming the order given by the latter. This process happens within a time span of six months⁴⁸.

If a group or an individual is to be dissatisfied with the orders passed by the Tribunal Court it is obvious to move on to the next, only, option, that is filing an appeal to the Appellate Court where the decisions of NCLT are reviewed and checked from the point of law and facts. The Tribunal Court is in charge of finding and gathering evidence while the Appellate Court decides cases based on the already collected evidence. If the outcome is not satisfactory even then, one should approach the Supreme Court⁴⁹.

In a decided Supreme Court Case *Union of India v. R Gandhi*⁵⁰ this case the constitutional validity of the national company law tribunal and national company law appellate tribunal was challenged as the absolute power of solving the dispute was given to high court. Hence the formation of NCLT and NCLAT violates the basic structure of constitution as it is against the concept of separation of powers.

⁴⁵Rule 19 of National Company Law Tribunal Rules, 2016

⁴⁶Section 426 of The Companies Act, 2013

⁴⁷Section 111 of The Companies Act, 2013

⁴⁸Aishwarya Mohan Gahrana, POWER AND FUNCTIONS OF REGISTRAR OF NCLT/NCLAT (last accessed on Oct 24, 2019), <https://aishmghrana.me/2016/09/02/power-and-functions-of-registrar-nclt-nclat/>.

⁴⁹Section 421 of The Companies Act, 2013

⁵⁰Union of India v. R Gandhi, 2010 11 S.C.C.

In this case the Supreme Court clearly states that

- i. the parliament has extreme power to vest the judicial power to the tribunal which was performed by the high court with the knowledge of the approval of high court for maintaining and solving certain disputes as upheld under the companies act.
- ii. Violation of separation of power has been raised due to transferring company disputes ultimately to the NCLT which was vested in high court⁵¹. The Supreme Court held that there no violation of separation of powers arising. The entire company jurisdiction of high court is given to the NCLT .In case law *Union of India v. Delhi High court bar association*⁵² the constitutional validity of the recovery of debts due to bank and financial institutions act was given to a tribunal to perform its function narrowly, therefore in the case of NCLT there arises no violation of separation of powers.
- iii. No difference between NCLT and Company Law board another contention arisen by the Madras Bar Association is that the formation of NCLT and NCLAT is useless because it is as same as the company law board and the NCLT's replacement of company law board was also useless. The Supreme Court held that the aim of both theses bodies may be same but their nature differs. The NCLT and NCLAT has extra beneficial qualities in it :
 - To reduce the prolonging period of disputes winding up process to 2 years
 - To reduce the litigation process of going to appeal in high court which prolongs the dispute.
 - NCLAT is given ultimate power to appeal so the victim can approach the NCLAT instead of going to appeal in high court. The high courts burden is reduced as the cases pending in Company Law board will be transferred to NCLT. Therefore there is a huge difference between CLB and NCLT.
- iv. Formation of NCLT and NCLAT is affecting the constitutional validity of chapter 1B and 1C of the companies act 1956.The appointment of technical members as said in the companies act under these Tribunal was said to be followed the corrective measures like their qualifications must be followed. The Union of India accepted that there were some defects in the mentioned provision – chapter 1B and 1C and the Supreme Court held that it would amend those defective parts to bring the constitutional validity of the NCLT. ⁵³

⁵¹Ibid.

⁵² Union of India v. Delhi High Court Bar Association, A.I.R. 1867 S.C.C. 324

⁵³Ibid

In *S.P. Sampath Kumar v. Union Of India*⁵⁴, AIR 1897 1 SCC 124 case the Supreme Court clearly held the difference between high court and tribunal. The high court of the state generally deals with every issues taking place in that state but whereas the tribunal is said to be established under certain statute deals with the particular issue which takes place under that statute.

The Supreme Court held that the formation of NCLT and NCLAT is constitutionally valid as there is no violation of separation of powers and it also held that the prescribed format of appointment of technical members should be followed and for the appointments of members, president, chairperson and vice chairperson the selection committee must be prescribed⁵⁵.

CONCLUSION

The formation of national company law tribunal and national company law appellate tribunal has been playing an important role in dissolving the corporate dispute. It has been denoted as beneficiary in the eyes of law to give some special protection and care to the corporate side as the countries, financial growth depends on the growth of the business⁵⁶. In order to have an healthier corporate governance the NCLT has been established⁵⁷.

There has been marked a change in the companies sector due to the formation and effective function of the NCLT and NCLAT⁵⁸. And it was also further held that there would be no violation in separation of powers as only a limited power has been given to the company as upheld in *Union of India V. R. Gandhi*. And the constitutional validity was given to the NCLT in this case for maintaining the inner and outer peace of the company sector⁵⁹.

The formation of NCLT would have played an important role in the settlement of company dispute if it was implemented effectively and administered properly. The main problem faced by the NCLT is its inefficiency to solve the corporate dispute within a framed time. For speedy disposal of case proper implementation must be done by the central government.

⁵⁴S.P. Sampath Kumar v. Union Of India , A.I.R. 1897 1 S.C.C. 12

⁵⁵*supra* n.54

⁵⁶ Bownman, W, "THE IMPORTANCE OF COPORATION LAW TO CIVIL SOCIETY", Non-profit Policy Forum, 2011.

⁵⁷Jones.L "COMPANY LAW II COMPANY OFFICERS & LIABILITIES", 17th Ed.2017

⁵⁸ Ibid.

⁵⁹*Supra* n.50