Assessing NCALT

What is the issue?

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The National Company Law Appellate Tribunal seems to be lacking the specifics to ensure the purposeful functioning of the competition adjudications in India.

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What are the legal mechanisms in place?

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- The Indian competition adjudicatory structure consists of -
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i. Competition Commission of India (CCI)
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ii. National Company Law Appellate Tribunal (NCLAT)
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- **CCI** - The Competition Commission of India is a statutory body responsible for enforcing The Competition Act, 2002.
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- It is tasked with preventing activities that have an adverse effect on competition among companies in India.
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- The commission is entrusted with regulatory powers for effective regulation.
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- **NCALT** - NCLAT serves as the appellate authority for hearing appeals against the decisions, directions or orders passed by -
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i. National Company Law Tribunal(s) (NCLT)

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ii. Insolvency and Bankruptcy Board of India
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iii. Competition Commission of India (CCI)
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Are tribunals effective?

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- Tribunals were envisioned as ad-hoc mechanisms to address the problem of judicial delays.
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- They are a tool to harness cost-effectiveness, accessibility, expedited functioning and expert knowledge.
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- Nevertheless, reality with the state of competition appeals in India is not appreciable, with some inherent shortfalls in the system.
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What are the concerns?

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- **Delays** - The appellate authority is required to dispose of appeals expeditiously; possibly within six months from the date of receipt of appeal.
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- However, data suggests that such a deadline is not complied with.
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- Resultantly, the average disposal rate per year of competition appeals falls between only 40-50%.
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- **Procedure** - In addition to the delay caused at the appellate stage, there lies further scope of appeal at the Supreme Court level.
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- The absence of detailed, stage-wise timelines governing the appellate process adds to the problem.
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- Resultantly, the numerous layers of judicial procedures largely undermine the very purpose of these adjudicatory mechanisms in place for ensuring fair competition.
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- **Capacity** - The maximum permissible strength of the NCLAT is 11 members.
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- However, it currently comprises only three, leading to limited capacity at the tribunal.
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- **Composition** - NCLAT also does not comprise of any technical members on board.
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- There is lack of specific expertise in competition law and policy, for a professional handling of the company cases.
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What should be done?

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- There is an urgent need to appoint more members in NCALT to ensure that the pending-appeals do not pile up as huge burden.
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- In its 272nd Report, the Law Commission of India has recommended that specialised tribunals should comprise of technical persons.
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- This may include persons with special knowledge and professional experience or expertise of not less than 15 years in the particular field.
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- E.g. in the UK, the Competition Appellate Tribunal (CAT) comprises a combination of industry experts, economists and legal practitioners, etc.
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- Case-management techniques such as setting stage-wise timelines, arranging case-management conferences, etc should be adopted.
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Source: Financial Express

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