

# Insolvency & Bankruptcy Code, 16

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**“NCLT & NCLAT – Practical aspects for  
Professionals”**

# Corporate Jurisdiction

- Jurisdiction & Scope
- Grievance Redressal Mechanism
- Nuances of Drafting
- Art of Appearance & Court Craft
- Handling of Clients & Practice Setup

- Expeditious Disposal – Three months time frame for disposal of petition & application – Sec. 422
- Power of Contempt now with Tribunal – Sec. 425
- Only Tribunal for Corporate Matters – Sec. 430
- Limitation Act to apply – Sec. 433
- NCLAT as Appellate Tribunal – Sec. 421
- Appeal from order of NCLAT to Supreme Court

# Procedural Matters

- Change of Financial year - Sec-2(41);
  - In Re: Adva Optical Networking India Pvt. Ltd. (C.P. No. 2/36/16) (04.08.2016-NCLT-ND); Haier Appliance (India) Pvt. Ltd. (C.P. No. 02/10/15) (21.11.2016 - NCLT - New Delhi) - *Change of financial year because of being a subsidiary of a company having different financial year*
  
- Defend Companies against Removal of Name [proviso (i) to Cl.7(7)];
  - In Re: Hamilton Estates Pvt. Ltd. (C.P. No. 561/2016) (19.04.2017-NCLT-ND) – *Defend that due steps were taken before striking off its name proved to be good*

- Rahul Rice Mills Pvt. Ltd. (C.P. No. 171/2016) (21.04.2017 - NCLT - New Delhi) – *Merely because directors are now in position to infuse funds in the company would not be sufficient ground to restore the company's name*
- Conversion of Company from Public to Private; Sec-18
- Radiant Chemical Co. Ltd., (1943) 13 Com Cases 186,188; AIR 1943 Pat 278 - *This section doesn't prevent conversion of public company into a private company by alteration of its articles*

- Variation of Right of Members; Sec-48;
  - Hindustan General Electric Corporation, (1959) 29 Com Cases 144 : AIR 1959 Cal 679 – *A variation which merely affects the enjoyment of a right without modifying the right itself doesn't come within the section*
  - Sitarama Reddy v. bellary Spinning & Weaving Co. Ltd., (1984) 56 Com Cases 28 1 (Kar) – *Articles shall be followed to alter the class rights*

- ❑ Rollover of Preference Shares – Consent of 75% holders;
  - Mangalore Chemicals and Fertilizers Ltd. (C.P. No. 60/80A/SRB/93) (CLB) – *Consent was accorded to issue further redeemable preference shares in lieu of the unredeemed preference shares*
- ❑ Consolidation and division which results in changes in the voting percentage of shareholders; Members' application for calling AGM/EGM by Company;
- ❑ Appeal against refusal to allow inspection of minutes of AGM;

- ❑ Approval for voluntary revision of financial statements or DR
  - Promark Technologies Pvt. Ltd. (C.P. No. 03/131/2007) (03.07.2017-NCLT-ND) ; Glaze Trading India Pvt. Ltd. (C.P. No. 04/131/2007) (03.07.2017-NCLT-ND) – *Filing of revised financial statements was permitted*
- ❑ Compounding of offences
  - Shri Subhinder Singh Prem Vs. Union of India Through ROC [CA (AT) No.101 to105/2017] – *The compounding of offence as made above will not come in the way of investigation by SFIO and other proceedings pending against Appellant*



*under the Indian Penal Code, 1908 or under any other law.*

- *Gopala Polyplast Ltd. & Ors. Vs. Registrar of Companies, Ahmedabad, Gujarat [CA (AT) No.33/2016] – The Tribunal while passing the order of compounding shall notice different factors and grounds apart from nature of offence. In view of the same, the compounding fees was settled at a lesser amount*
- *Goyal Achal Sampatti Vikas and Niyojan Nigam Limited (C.P. No. 16/100/17) (11.08.2017-NCLT-ND) – Compounding of offence u/s 137 of Companies Act, 1956 read with AS-29 was allowed*
- *Dharampal Satyapal Limited (C.P. No. 16/162(ND)17) (29.08.2017-NCLT-ND) – Compounding of offence u/s 211 read with Schedule VI of Companies Act, 1956 was allowed*

# Art of Appearance



A woman was found guilty in traffic court. When the judge asked for her occupation, she said she was a schoolteacher. The judge rose from the bench. “Madam, I have waited years for this moment

# Scope of Litigating matters

- ❑ Appeal against refusal to register transfer – Sec-58;
- ❑ Rectification of Register of Members – Sec-59;
- ❑ Reduction of Capital; Sec-66;
- ❑ Extension of time for re-payment of deposits; Sec-74(2) & Application by Depositors for payment S.73 ;
- ❑ Application by members for Investigation of affairs ; (100 members or 10%); Sec-213;
- ❑ Removal of Auditors; Sec-140;
- ❑ Oppression and Mismanagement / Class Action Suits - Sec-241-246

# Compounding of Offences

## □ **Viavi Solutions India Pvt. Ltd. vs. Registrar of Companies, NCT Delhi and Haryana[CA (AT) 49,50,51,52 & 53 of 2016]**

NCLAT held that the Tribunal is required to notice the relevant factors while compounding any offence, such as –

- The gravity of the offence;
- The act is intentional or unintentional;
- The maximum punishment prescribed for such

- offence, such as fine or imprisonment or both fine and imprisonment;
- The report of the ROC;
- The period of default;
- Whether the petition for compounding is suo-moto before or after notice from ROC or after imposition of the punishment or during the pendency of a proceeding;
- The defaulter has made good of the default;
- Financial condition of the company and other defaulters;

- Offence is continuous or one-time;
- Similar offence earlier committed or not;
- The act of defaulters is prejudicial to the interest of the members or company or public interest or not
- Share value of the company etc.

# NCLT Rules : Key Features

165 Rules

29 Definitions

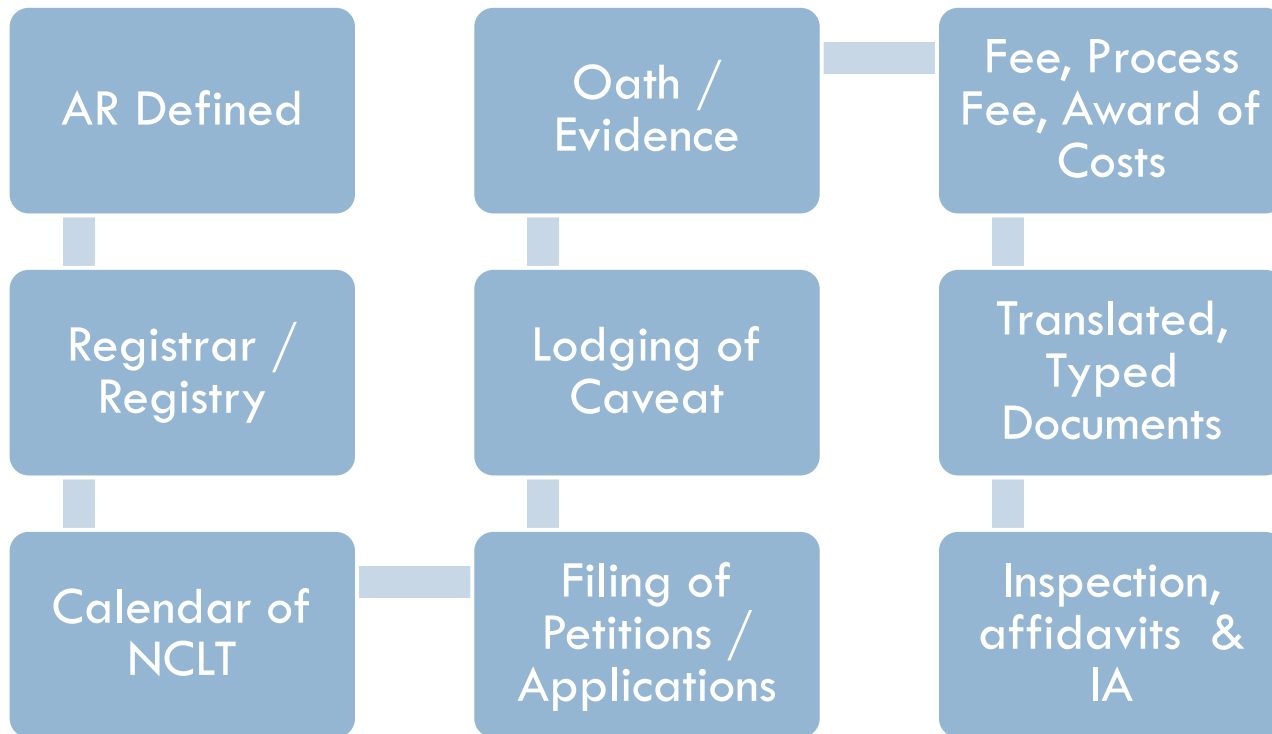
20 Parts

Schedule  
of Fees -31

Forms - 20

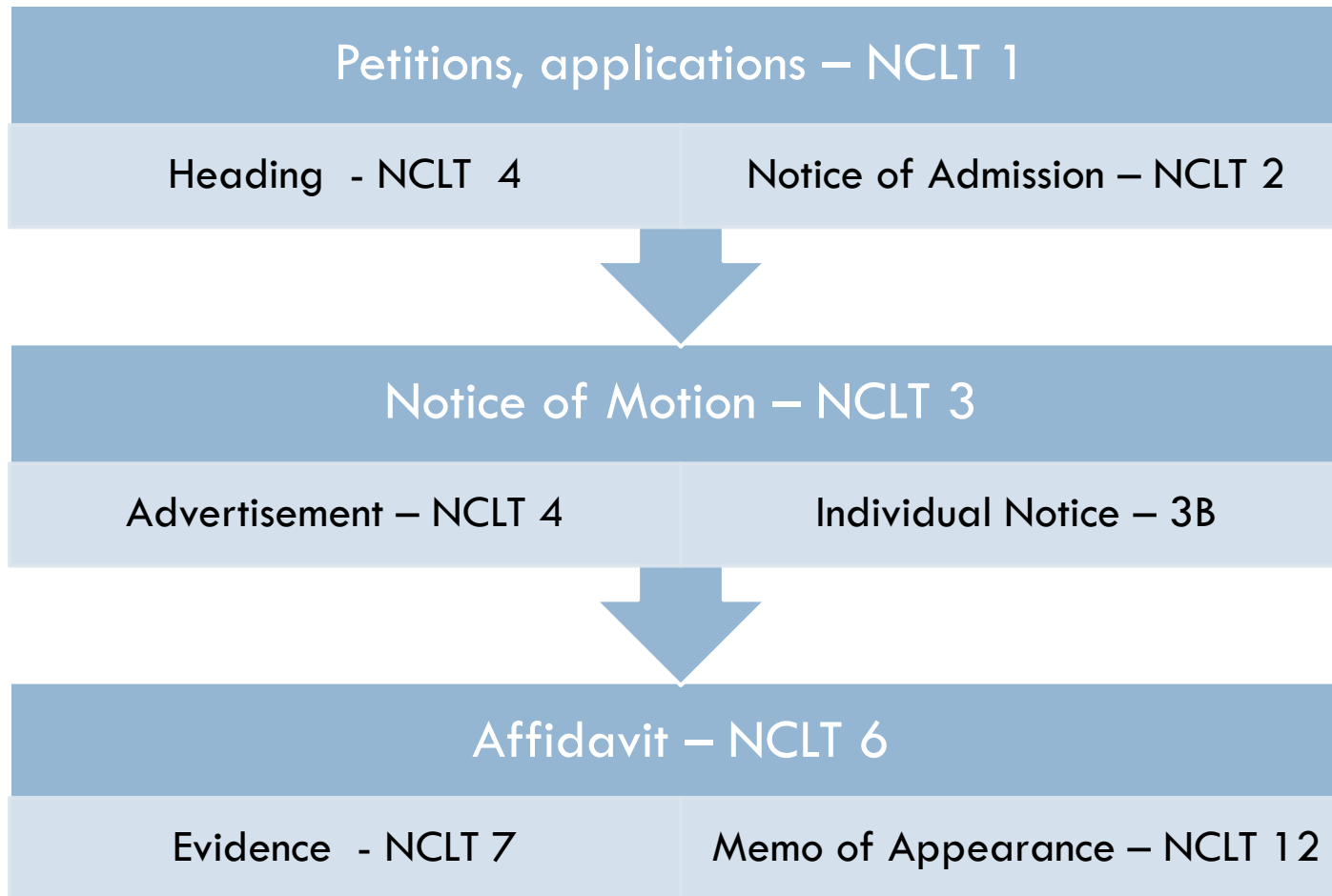
List of  
Enclosures

# NCLT Rules : Highlights





# NCLT Rules : Filing



# NCLAT Rules : Key Features

104 Rules

10 Definitions

16 Parts

Schedule  
of Fees

Forms

List of  
Enclosures

# Nuances of Drafting



CAN YOU JUST LEAVE ME ENOUGH MONEY  
SO I CAN FLEE THE COUNTRY?

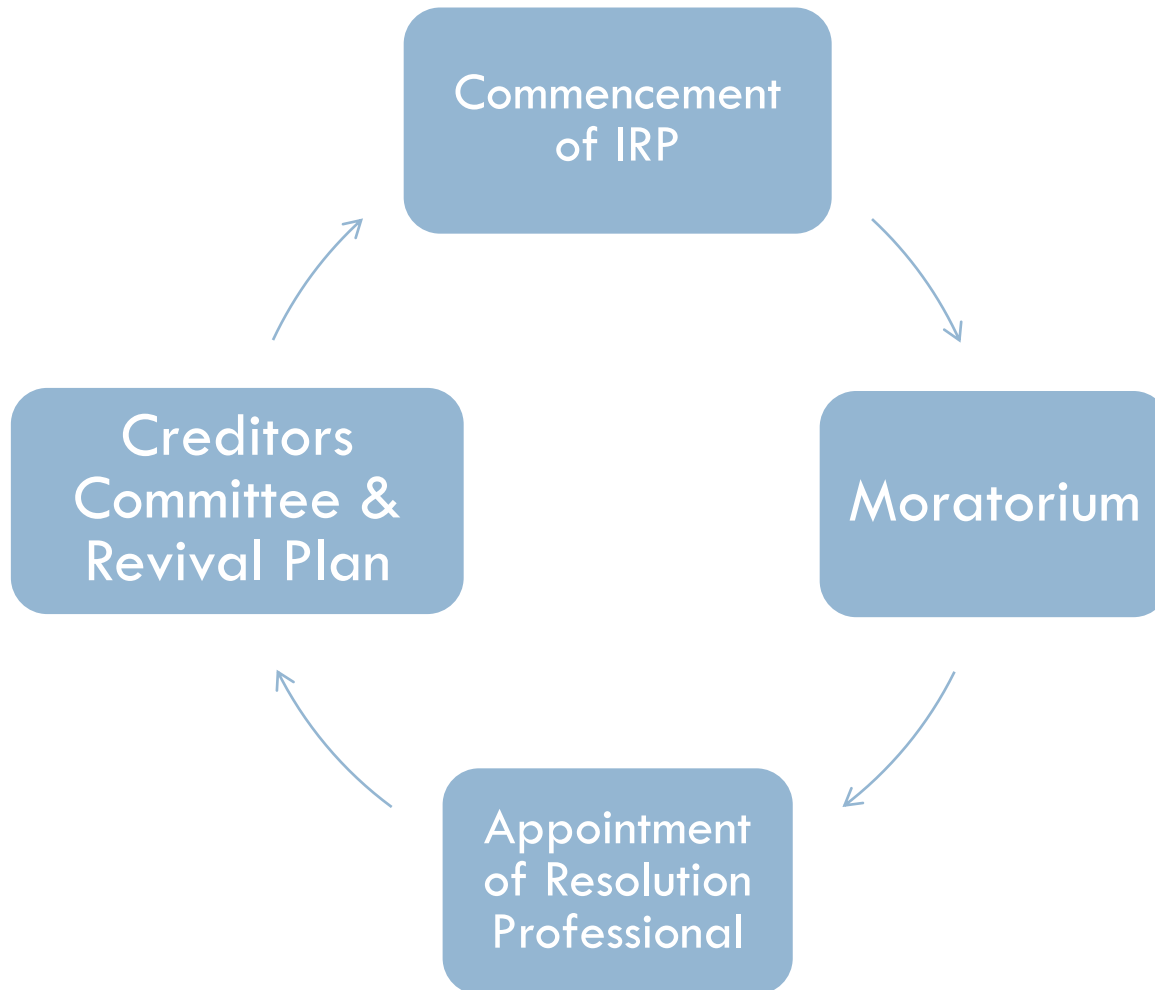
# Nuances of Drafting

- NCLT Rules
- Contents of Applications / Petitions
- Forms thereunder
- Facts to be narrated clearly & unambiguous
- Relevancy of other laws :
  - ▣ Limitation Act
  - ▣ Evidence Act
  - ▣ CPC
  - ▣ Law of Contempt
  - ▣ Other relevant laws

# INSOLVENCY & BANKRUPTCY CODE

- The **Insolvency and Bankruptcy Code, 2016 (IBC)** is the bankruptcy law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy. The Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha in December 2015. It was passed by Lok Sabha on 5 May 2016. The Code was passed by parliament in May 2016 and became effective in December 2016. It aimed to repeal the Presidency Towns Insolvency Act, 1909 and Sick Industrial Companies (Special Provisions) Repeal Act, 2003, among others.

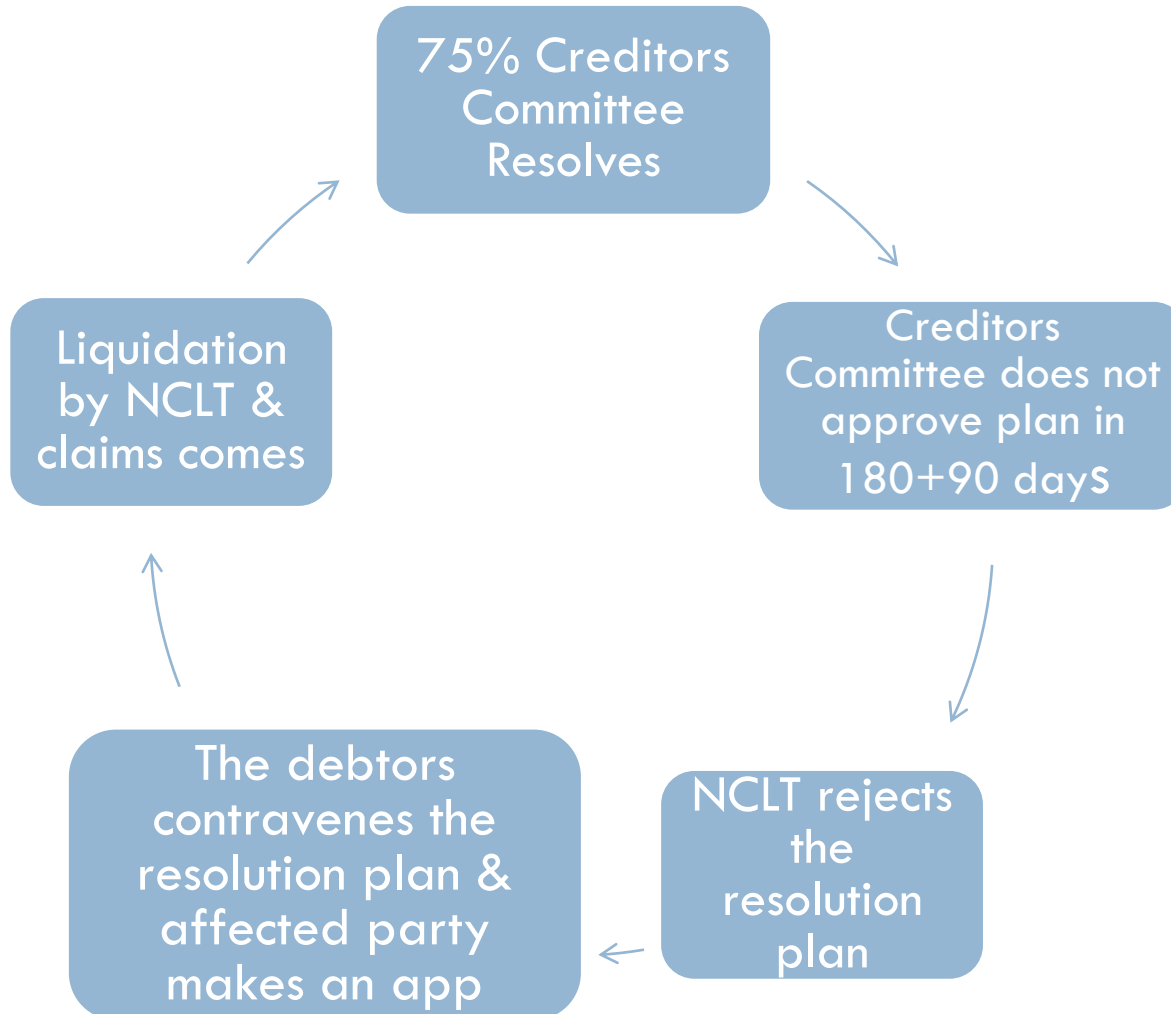
# A. Insolvency Resolution Process



# INSOLVENCY & BANKRUPTCY CODE

- The first insolvency resolution order under this code was passed by National Company Law Tribunal (NCLT) in the case of Synergies-Dooray Automotive Ltd on 14 August, 2017. The plea for insolvency was submitted by company on 23 January 2017. The resolution plan was submitted to NCLT within a period of 180-day period as required by the code, and the approval for the same was received on 2 August, 2017 from the tribunal

## B . Liquidation





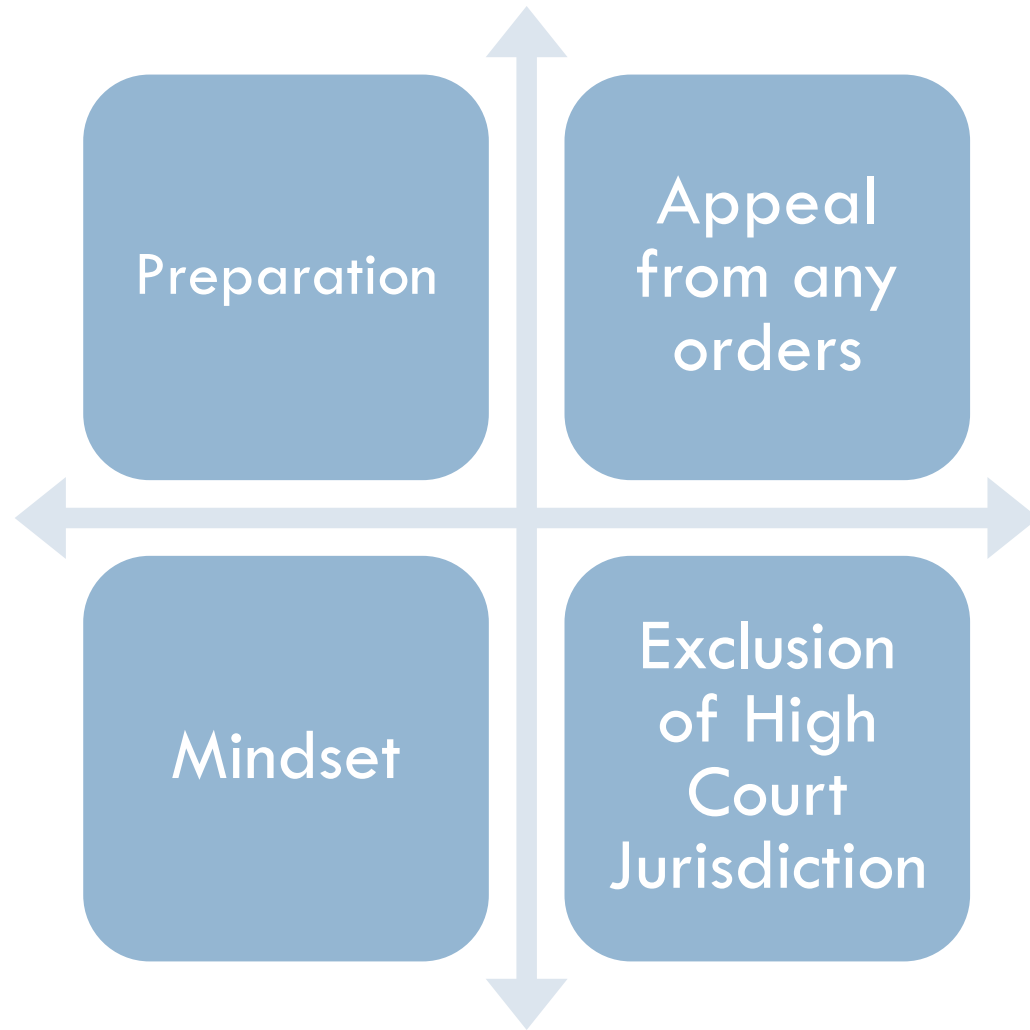
# Client Handling



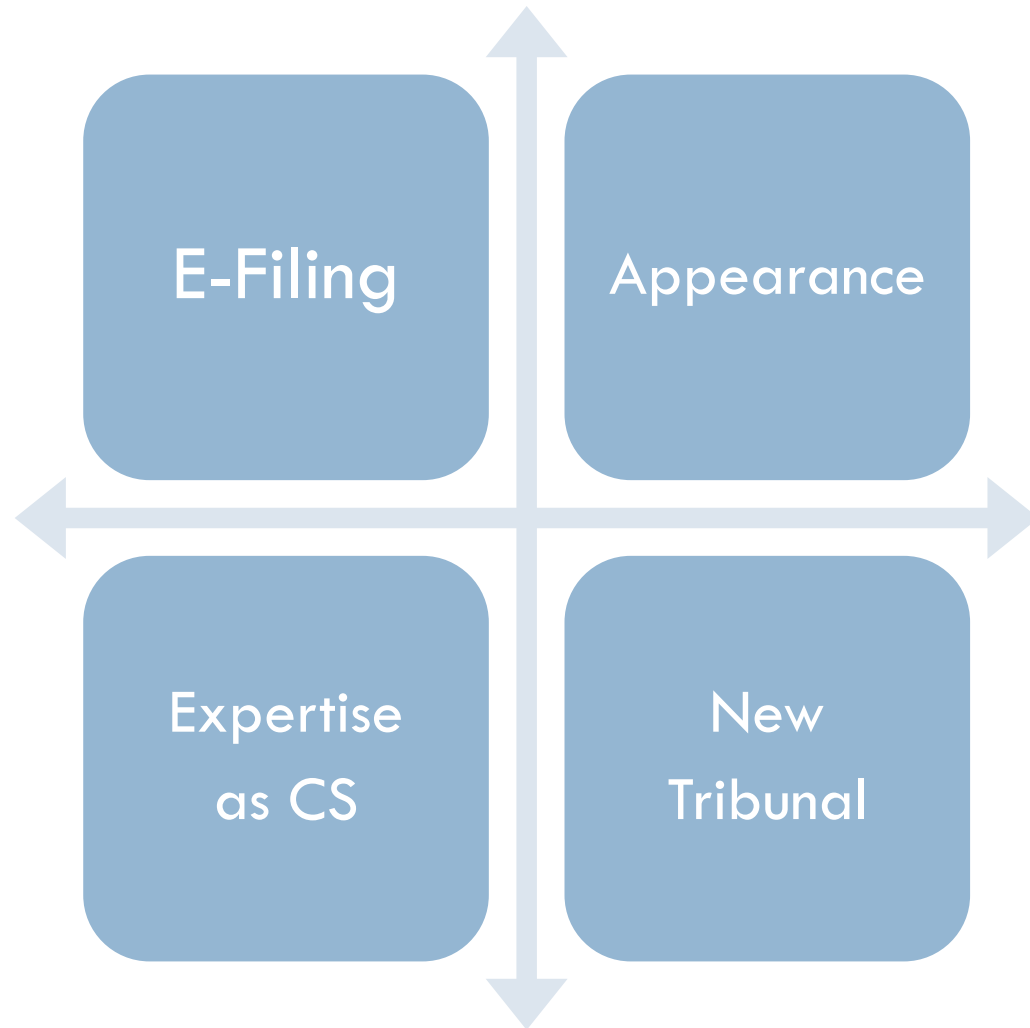
# Client handling



# Challenges ?



# Opportunity ?





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