

# Seminar – Jalandhar Chapter of NIRC of ICSI

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

# New Horizon in 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*

# 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

# NCLT Rules : Key Features

165 Rules

29 Definitions

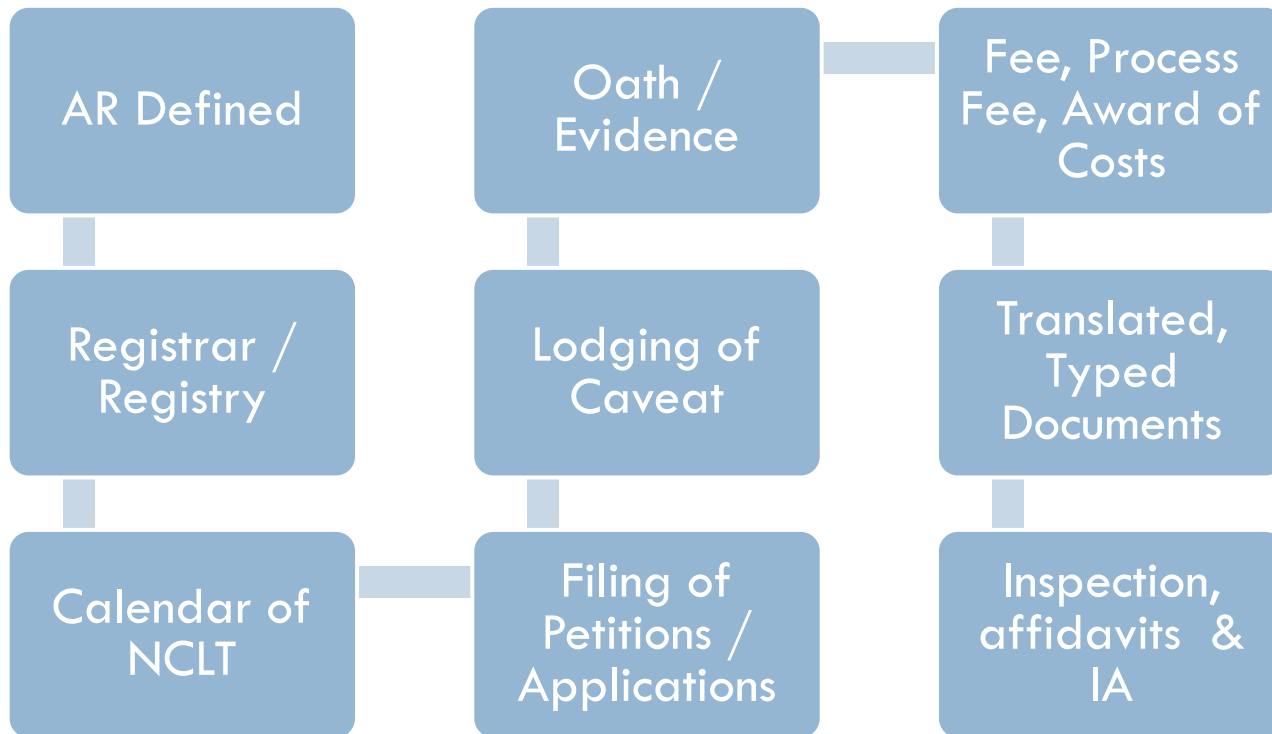
20 Parts

Schedule  
of Fees -31

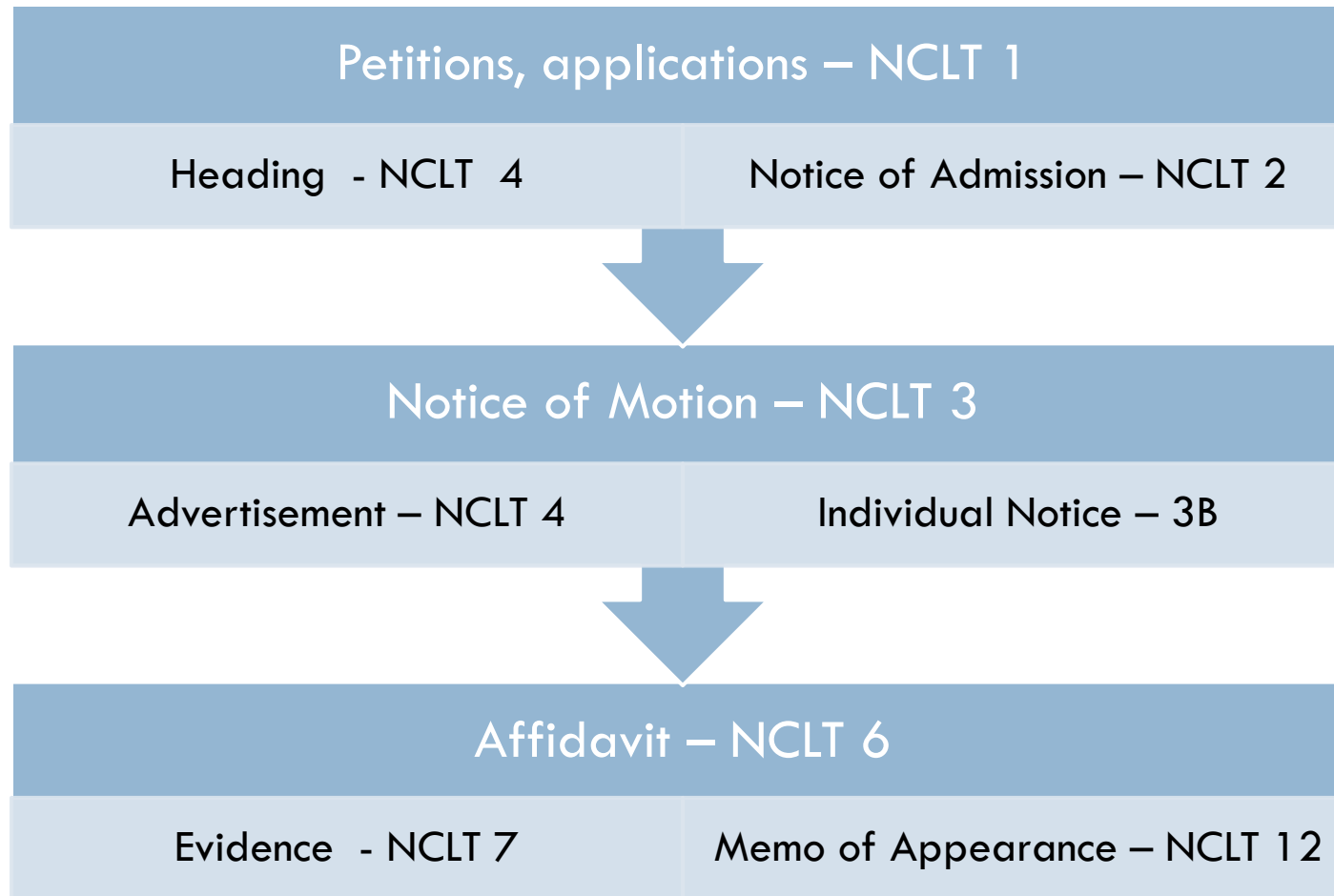
Forms - 20

List of  
Enclosures

# NCLT Rules : Highlights



# NCLT Rules : Filing



# Proceedings of CLB, BIFR, District Court or High Court

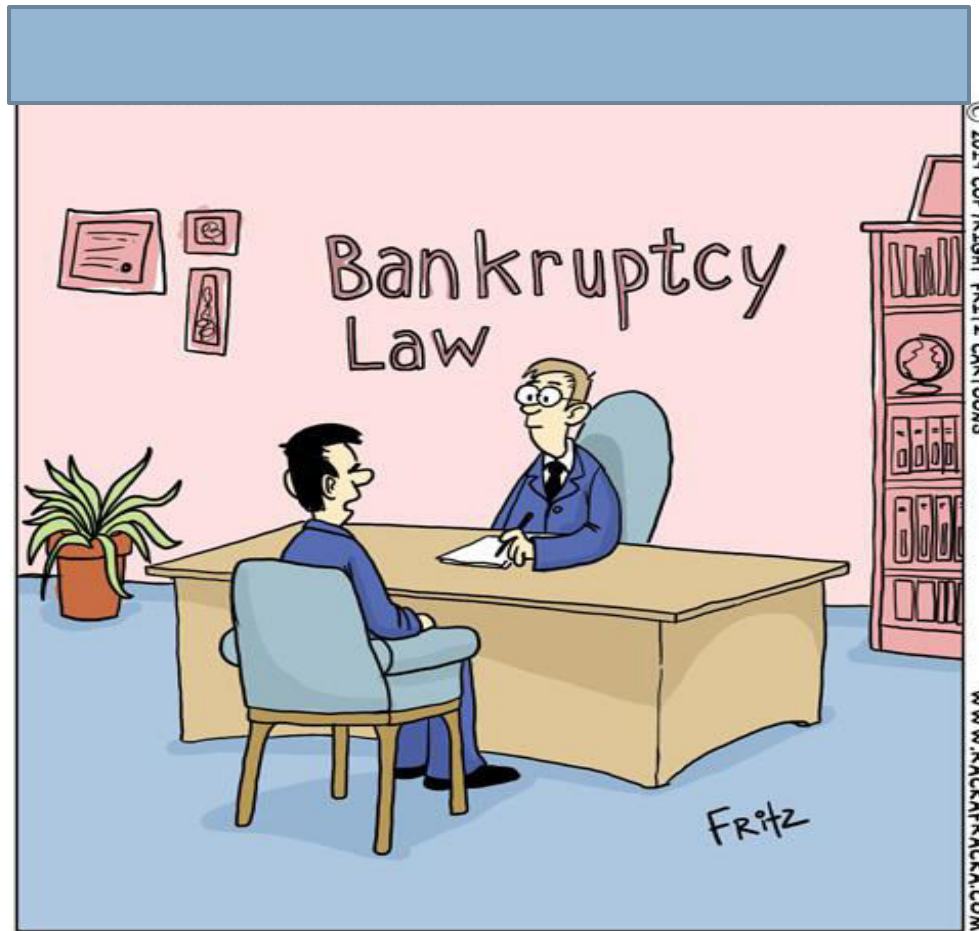
- CLB - All matters to be Transferred to respective territorial Bench
  - ▣ In case order was reserved, case to be re-heard
  - ▣ Bench can call for further pleadings
  - ▣ A fresh petition or application can also be filed with consent of parties
- BIFR - All reference or appeal to be Abated
  - ▣ However, company within 180 days can file such appeal, reference or enquiry
  - ▣ No Additional fee to be paid
- District Court or High Court – All matters transferred to NCLT except winding up matters where compliance of Rule 26 not made

# 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 year

# 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

# Restoration of the name of the Company

- Section 252 of Companies Act, 2013  
(Notified on 26.12.2016)
  - Appeal to the Tribunal by any person – 3 years
  - Application to the Tribunal by ROC – 3 years
  - Application to the Tribunal by member, creditor, workman or company – 20 years
- After restoration, all the statutory returns of the company shall be filed along with the applicable additional fee

**Section 252(3)** - Grounds for the application by a company, or any member or creditor or workman for restoration of the name of the company within a period of **twenty years** from the publication in the Official Gazette of the notice under sub-section (5) of section 248 -

- The company was, at the time of its name being struck off, carrying on business, or
- in operation, or
- otherwise it is just that the name of the company be restored to the register of companies

- The Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the **same position** as nearly as may be as if the name of the company had not been struck off from the register of companies

## □ Few Judgments under Sec.252

- S.K Bajaj Rubber Pvt. Ltd. Vs. Registrar of Companies, NCT of Delhi & Haryana [CP-73(ND)2017] - The application by the company was dismissed with a cost of Rs.10,000/- payable by the director to ROC, NCT of Delhi & Haryana as it was not able to prove that the company at the time of being struck off by the ROC was carrying any business and there was no record found that the company had filed annual return since 1999. Moreover, the present address of the director was different than the one available in the records of ROC.

- **Rainbow Real Estates Private Limited Vs. Registrar of Companies, NCT of Delhi & Haryana [CA-421/2014]**
  - The application by the company was dismissed with a cost of Rs.20,000/- payable to ROC, NCT of Delhi & Haryana as there was no record found that the company had filed annual return for a continuous period of 8 years. The person responsible for the management of the company shall see that all statutory compliances be complied within time limit prescribed by the Law.

- **P.K.D Securities Limited Vs. Registrar of Companies, Shillong [C.P NO. 10/252/GB/2017]** – The petition was allowed on considering the fact that at the time of striking off the company, the India Sensex Stock Market, an indicator of the pulse of capital markets, was 3000. However, its index rose to 30,000 in 2016 which indicates huge boom in the business concerned. Also, the Government Policies stand in favor for business of the company and the petitioner company can take advantage of the changed policies.

- **International Security Printers Pvt. Ltd. Vs. Registrar of Companies, NCT of Delhi & Haryana [C.P. No. 1/252/2017]** – The ROC failed to prove that it had followed the due procedure u/s 560 of Companies Act, 1956 before striking off the name of the petitioner company. Accordingly, the petition was allowed subject to the payment of Rs.25,000/- to the Prime Minister Relief Fund
- **Rahul Rice Mills Pvt. Ltd. (C.P. No. 171/2016) (21.04.2017-NCLT-ND)** – Merely because directors are now in position to infuse funds in the company would not be sufficient ground to restore the company's name



# Sec.560 of 1956 Act **Vs.** Sec.252 of 2013 Act

Application shall be made to Court	Application shall be made to NCLT
Only company, member or creditor could file the application	Company, or its member, or its creditor, or its workman or any other aggrieved person, or the ROC itself may file the application
Time limit for filing the application— max 20 years	Time limit for filing the application by the

# Sec.560 of 1956 Act **Vs.** Sec.252 of 2013 Act

	company, member, creditor, or workman is 20 years and Time limit for filing the application by ROC or any aggrieved person is 3 years
No Reasonable opportunity of being heard is given to ROC	Reasonable opportunity of being heard is given to ROC

# Sec.560 of 1956 Act Vs. Sec.252 of 2013 Act

<b>No time limit to deliver the copy of order to ROC</b>	<b>Copy of order shall be delivered to ROC within 30 days by the company</b>
After delivery of the copy of the order to ROC, it shall be deemed that the company has been restored	ROC shall cause the name of the company to be restored
No fresh Certificate of Incorporation is issued	Fresh Certificate of Incorporation shall be issued

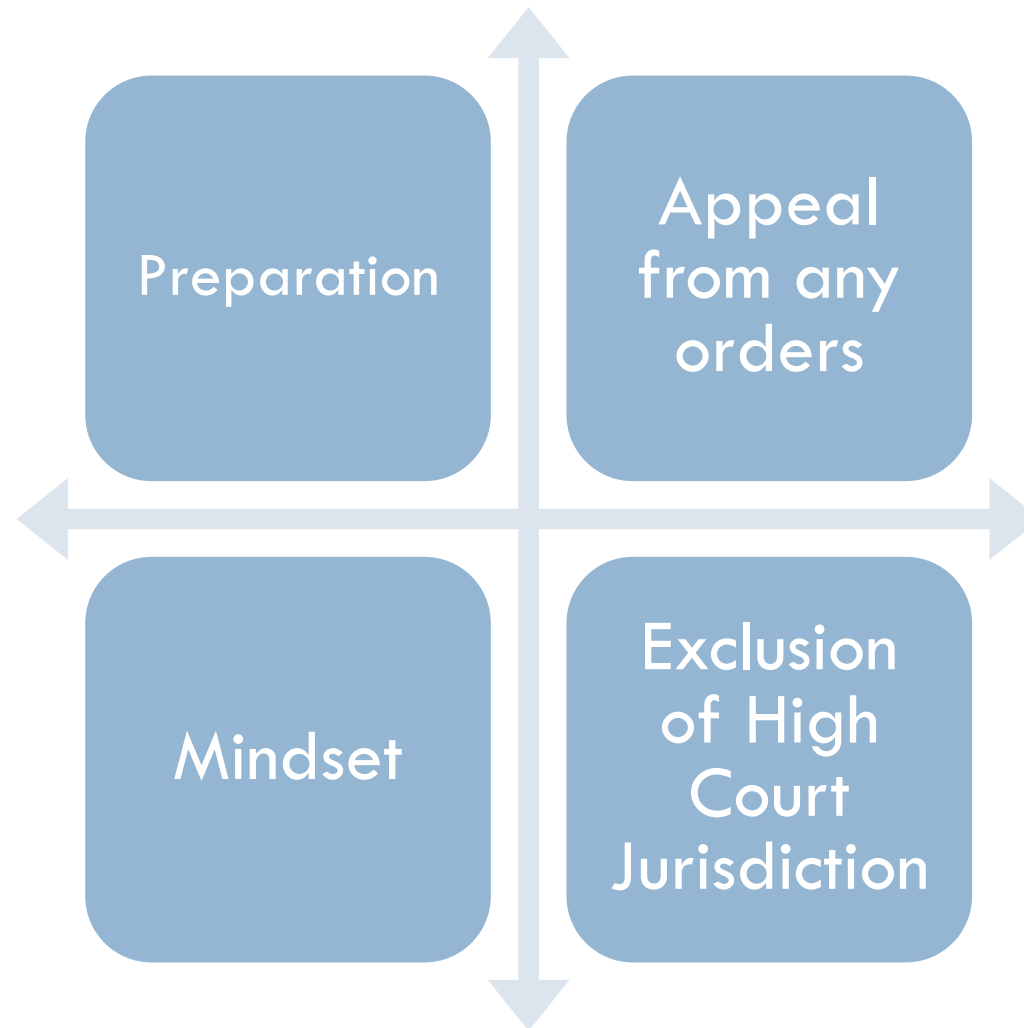
# Client Handling



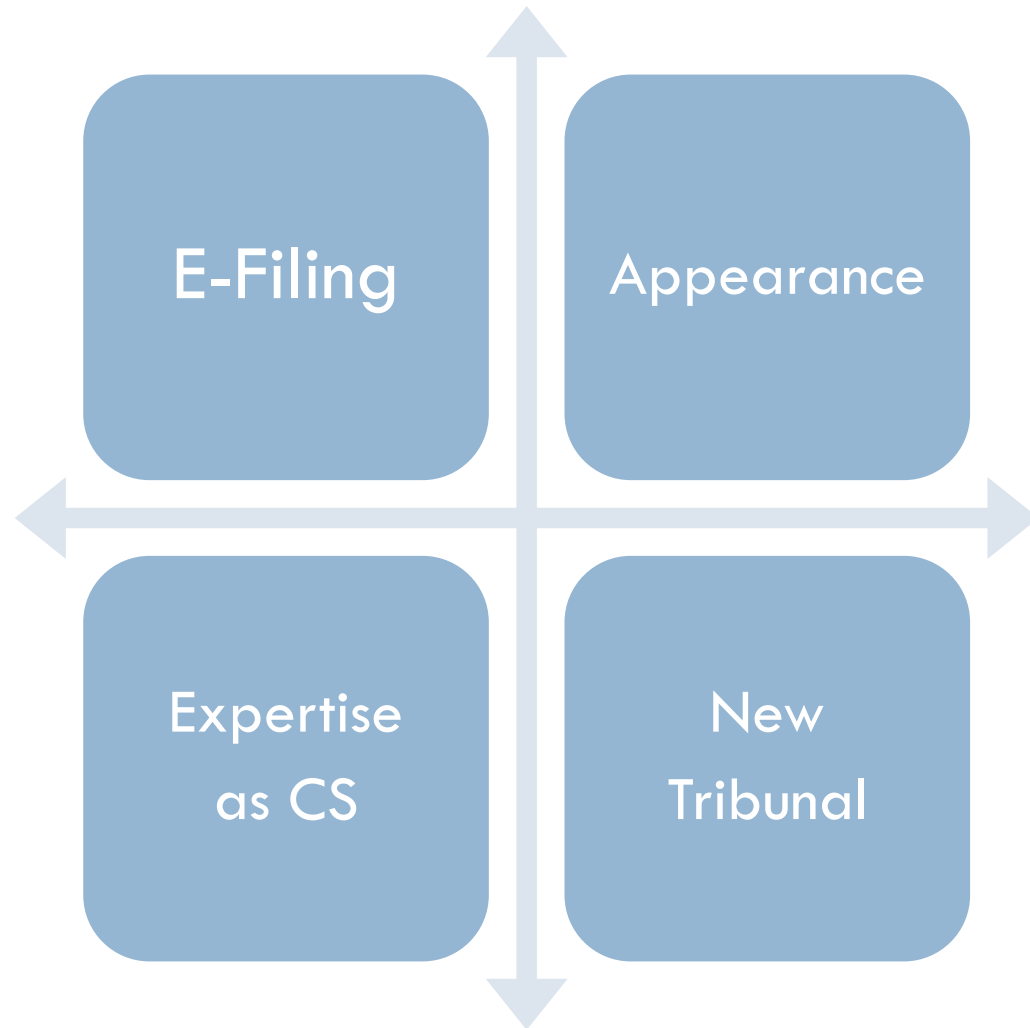
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# Challenges ?



# Opportunity ?





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