




LEGAL ‘*KISSE*’ OF LAST WEEK

16TH EDITION


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Legal 'Kisse' of Last Week


ARBITRATION AND CONCILATION ACT, 1996

-  **Time limit of 12 months as prescribed in Section 29A is a directory for International Commercial Arbitration and mandatory for domestic arbitration: Supreme Court.**


 - ◆ **Citation:** *TATA Sons Pvt Ltd Vs. Siva Industries and Holdings Ltd* || MA 2680 of 2019 in Arbitration Case (Civil) No 38 of 2017 || Supreme Court || Para 25.
 - ◆ **Link to Citation:**
https://main.sci.gov.in/supremecourt/2019/43763/43763_2019_1_31_40844_Judgment_05-Jan-2023.pdf

-  **'Limitation' cannot be a ground to set aside award on the basis of "Basic notions of Morality or Justice": Bombay High Court.**


 - ◆ **Citation:** *Thomas Cook (India) Limited Vs. Red Apple Chandrarat Travel* || Commercial Arbitration Petition No. 332 of 2021 || Bombay High Court || 13.01.2023 || Para 47.

-  **Issue of limitation has to be decided by Arbitrator, unless claim is ex-facie deadwood/hopelessly barred by limitation: Bombay High Court.**

 - ◆ **Citation:** *TLG India Private Limited Vs. Rebel Foods Private Limited* || Commercial Arbitration Application (L) No. 28026 of 2021 || Bombay High Court || 09.01.2023 || Para 15.

-  **Awarding of cost in award must be reasonable and divided in different heads: Delhi High Court.**

 - ◆ **Citation:** *Union of India & Anr. Vs. Alcon Builders and Engineer Private Limited* || O.M.P. 146 of 2008 || Neutral Citation No: 2023/DHC/000304 || Delhi High Court || Para 28.
 - ◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/AJB/judgement/17-01-2023/AJB17012023OMP1462008_113214.pdf

-  **Reference to conciliation process has to be mutual and cannot be unilateral in nature: Delhi High Court.**

 - ◆ **Citation:** *Bikanervala Foods Private Limited Vs. M/s Saatvik Foods & Ors.* ||



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ARB.P. 1106/2022 || *Neutral Citation: 2023/DHC/000322* || *Delhi High Court* ||
Para 5.

◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/NAC/judgement/18-01-2023/NAC16012023AA11062022_162750.pdf

✚ **All applications brought under Part-I of the Act must be heard by the court having jurisdiction over the seat of arbitration: Delhi High Court.**

◆ **Citation:** *Gujarat JHM Hotels Ltd Vs. Rajasthali Resorts & Studios Limited* || *OMP (ENF.) (COMM.) 227/2022* || *Neutral Citation: 2023/DHC/000323* || *Delhi High Court* || *Para 33.*

◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/YVA/judgement/17-01-2023/YVA17012023OMPENFCOMM2272022_141355.pdf

✚ **Execution proceedings can also be initiated before Court having jurisdiction over the properties of the Judgement Debtor: Delhi High Court.**

◆ **Citation:** *Gujarat JHM Hotels Ltd Vs. Rajasthali Resorts & Studios Limited* || *OMP (ENF.) (COMM.) 227/2022* || *Neutral Citation: 2023/DHC/000323* || *Delhi High Court* || *Para 36.*

◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/YVA/judgement/17-01-2023/YVA17012023OMPENFCOMM2272022_141355.pdf

✚ **Court is not empowered to excuse any delay that goes beyond the statutory time limit provided under Section 34(3) : Delhi High Court.**

◆ **Citation:** *Monika Oli Vs. M/s CL Educate Ltd.* || *O.M.P. (COMM) 370/2022* || *Neutral Citation: 2023/DHC/000371* || *Delhi High Court* || *Para 34.*

◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/CDS/judgement/18-01-2023/CDS18012023OMPCOMM3702022_164714.pdf

✚ **In International Arbitration Rules applicable to the seat of arbitration has to be followed not Indian Laws : Delhi High Court.**

◆ **Citation:** *Monika Oli (Supra)* || *Delhi High Court* || *Para 62.*


◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/CDS/judgement/18-01-2023/CDS18012023OMPCOMM3702022_164714.pdf

✚ **Delivery of Arbitration Award to an employee of an entity, who is not a party to the dispute is not a valid delivery under the Act: Delhi High Court.**




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- ◆ **Citation:** *Monika Oli (Supra)* || *Delhi High Court* || *Para 41 and 45.*
- ◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/CDS/judgement/18-01-2023/CDS18012023OMPCOMM3702022_164714.pdf


 **Reference to Arbitration cannot be made if *prima facie* some parties to suit are non-signatories to Arbitration Agreement: Bombay High Court.**

- ◆ **Citation:** *Hungama Digital Media Entertainment Private Limited Vs. RBEP Entertainment Private Limited & Ors.* || *Interim Application (L) No. 23289 of 2022 In Commercial IP Suit No. 457 of 2022* || *Bombay High Court* || *18.01.2023* || *Para 46.*


INSOLVENCY BANKRUPTCY CODE, 2016

 **Approval of a Resolution Plan does not ipso facto discharge a Personal Guarantor of a Corporate Debtor: Allahabad High Court.**

- ◆ **Citation:** *Narendra Singh Panwar Vs. Pashchimanchal Vidyut Vitran Nigam Limited & Ors.* || *Writ-C No. 26355 of 2022*|| *Allahabad High Court*|| *Para 45.*
- ◆ **Link to Citation:**
<https://elegalix.allahabadhighcourt.in/elegalix/WebDownloadJudgmentDocument.do>

 **Section 17 of Limitation Act inapplicable in appeal under IBC, as limitation for filing of appeal prescribed under IBC not under Limitation Act: NCLAT New Delhi.**

- ◆ **Citation:** *Maharashtra State Distribution Company Ltd. Vs. NRC Ltd. & Anr.* ||*Company Appeal (AT) (Ins.) No. 13 of 2023*|| *NCLAT New Delhi*|| *17.01.2023* || *Para 10.*

 **Section 9 petition cannot be entertained, if filed in respect to balance amount of the interest : NCLAT New Delhi.**

- ◆ **Citation:** *Permali Wallace Pvt. Ltd. Vs. Narbada Forest Industries Pvt. Ltd.* ||*Company Appeal (AT) (Ins.) No. 36 of 2023*|| *17.01.2023* || *NCLAT New Delhi* || *Para 5.*

 **After adoption of Swiss Challenge Method Resolution Applicant cannot be allowed to submit a revised plan: NCLAT New Delhi.**



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◆ **Citation:** *Jindal Stainless Ltd. Vs. Mr. Shailendra Ajmera & Ors.* || *Company Appeal (AT) (Ins.) No. 1058 of 2022* || *NCLAT New Delhi* || *Para 24 & 25.*

◆ **Link to Citation:**

<https://ibbi.gov.in/uploads/order/1166424e29fabd80b9e11b70e7bc21fd.pdf>

◆ **Expression 'Asset size' in Notification dated 18.11.2019 cannot confine to loan receivables only : NCLAT New Delhi.**

◆ **Citation:** *Shapoorji Pallonji Finance Pvt. Ltd. Vs. Rekha Singh* || *Company Appeal (AT) (Ins.) No. 397, 398 and 399 of 2022* || *NCLAT New Delhi* || *18.01.2023* || *12.*

◆ **An application under section 95 can be filed against the Personal Guarantor of NBFC/FSP only when on the same date insolvency can be commenced against the said NBFC/FSP: NCLAT New Delhi.**

◆ **Citation:** *Shapoorji Pallonji Finance Pvt. Ltd. (Supra)* || *Para 29.*

◆ **'Asset size' criteria for initiating CIRP against the NBFC/FSP has to be assessed from last available audited Balance Sheet : NCLAT New Delhi.**

◆ **Citation:** *Shapoorji Pallonji Finance Pvt. Ltd. (Supra)* || *Para 33.*

◆ **Operational Creditors are only entitled for minimum of the liquidation value: NCLAT New Delhi.**

◆ **Citation:** *Dharmindra Constructions Pvt. Ltd. & Anr. Vs. Rajendra Kumar Jain & Ors.* || *Company Appeal (AT) (Ins.) No. 1477 of 2022* || *NCLAT New Delhi* || *18.01.2023* || *Para 11.*

Prevention of Money Laundering Act, 2002

◆ **The Offence of Money Laundering is not like conventional crime and the modus operandi involves three stages i.e. a) Placement; b) Layering and c) Integration: Jharkhand High Court**

◆ **Citation:** *Prem Prakash Vs Union of India through ED* || *B.A. No.12350 of 2022* || *10.01.2023* || *Jharkhand High Court* || *para 19*



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 **'Seizure' quashed as ED failed to record 'reason to believe' required under Section 17(1) of the PMLA Act: Jharkhand High Court**

◆ **Citation:** *M/s Musaddilal Gems and Jewels (India) Private Limited and Ors Vs Union of India and Ors || Writ Petition No. 39378 of 2022 || Telangana High Court*

◆ **Link to Citation:** http://tshcstatus.nic.in/hcorders/2022/206300393782022_4.pdf

