



LEGAL *'KISSE'* OF LAST WEEK

OCTOBER 2 – OCTOBER 8

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Legal 'Kisse' of Last Week

INSOLVENCY BANKRUPTCY CODE, 2016

- ❖ **Personal Guarantor is entitled to recover the repayment of loan done by him on behalf of Corporate Debtor, but not as a secured creditor;**
- ❖ **Dispute relating to SARFAESI Act against the personal guarantor are independent and any dispute in respect to same will not fall under Section 60(5)(c) of Code;**
- ❖ **Imposition of moratorium is not a bar to proceeding against the guarantor, since the agreement of guarantee is an independent contract; and**

- ❖ **The provisions of IBC will override the provisions of Indian Contract Act: NCLAT.**

Case title – K.V. Jayaprakash Vs. SBI & Anr. / Company Appeal (AT) (Insolvency) No. 362 of 2022

Link to Judgment:

https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzIwMjItMDktMzAvY291cnRzLzEvZGFpbHkvMTY2NDU2Mjc4MDU3NzY3MDM0NjYzMzcwNjVjMDUyMTUucGRm

- ❖ **Member of COC, even if it is government department, can't be exempted to bear CIRP cost: NCLAT.**

Case title – Commissioner Central Goods & Service Tax vs. East India Transport Agency & ors. / Company Appeal (AT) (Insolvency) No. 1119 of 2022.

Link to Judgment:

https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzIwMjItMDktMzAvY291cnRzLzEvZGFpbHkvMTY2NDU2MDU3NTM4OTE3MzIzNTYzMzcwZGJmZDhjNzUucGRm

- ❖ **Completion of Liquidation Process within one year in terms of Regulation 32A(4) is not mandatory : NCLAT.**

Case Title – Raj Singhania Vs. Chinar Steels Segment Centre Pvt. Ltd. and ors./ COMPANY APPEAL (AT) (INSOLVENCY) NO. 465 of 2022.

Link to Judgment:

https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzIwMjItMDktMzAvY291cnRzLzEvZGFpbHkvMTY2NDYwMjU3NjE3MzA5OTM5MDI2MzM3ZDFkMGEyZjhjLnBkZg



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❖ **Order without any reason is no order in the eye of law : NCLAT**

Case Title: *Gandhar Oil Refinery (India) Ltd. vs City Oil Pvt Ltd. / Company Appeal (AT) (Ins.) No. 915 of 2022.*

Link to Judgment:

<https://ibbi.gov.in/uploads/order/f7c90892fe3f270fd81978654bbd826f.pdf>

ARBITRATION AND CONCILIATION ACT, 1996

❖ **Arbitral Tribunal must give reasons while awarding interest as to how it deems the rate of interest to be reasonable; and**

❖ **Award Holder Not Entitled To Interest For Delay Caused By It : Supreme Court**

Case Title: *Executive Engineer (Rand B) and Ors. Vs. Gokul Chandra Kanungo (Dead) Through his Lrs. / Civil Appeal No. 8990 of 2017.*

Link to Judgment:

https://main.sci.gov.in/supremecourt/2012/25573/25573_2012_12_1503_38711_Judgement_30-Sep-2022.pdf

❖ **High Court shall conduct preliminary inquiry on whether the dispute is arbitrable or not, before referring parties to arbitration or appointing Arbitrator under Section 11 of the Act respectively: Supreme Court**

Case Title: *M/s Emaar India Ltd Vs. Tarun Aggarwal Projects LLP And Anr. / CIVIL APPEAL NO. 6774 OF 2022.*

Link to Judgment:

https://main.sci.gov.in/supremecourt/2022/4364/4364_2022_7_1505_38707_Judgement_30-Sep-2022.pdf

❖ **If claim is time barred then court may decline to make reference to Arbitration under Section 11 of the Act: Delhi High Court.**

Case Title: *V K Dewan & Co. Vs. Delhi Jal Board & Anr. / ARB.P. 866/2019*

Link to Judgment:

http://164.100.69.66/jupload/dhc/592/judgement/06-10-2022/59206102022AA8662019_160011.pdf

❖ **Petitioner not being a party to the arbitration agreement in its individual capacity, cannot take recourse to the arbitration clause in its individual capacity, or approach the Court in individual capacity: Delhi High Court**



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Case Title: *Consulting Engineers Group Limited Vs National Highways Authority of India. / O.M.P.(I) (COMM.) 244/2022 & I.A. 12741/2022*

Link to Judgment:

http://164.100.69.66/jupload/dhc/592/judgement/06-10-2022/59206102022OMPICOMM2442022_160250.pdf

COMPANIES ACT, 2013

❖ **Denial of right to file counter to IA seeking vacation of interim stay/injunction is violation of principle of Natural Justice and would vitiate the order passed thereto; and**

❖ **Unreasoned order is bad in the eye of law and liable to be set aside: NCLAT**
Case Details: *Aveek Kumar Sarkar & Ors. V. ABP Private Limited & Ors. / Comp. App. (AT) No. 176 of 2022*

Link to Judgment

https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzIwMjItMDktMzAvY291cnRzLzIvZGFpbHkvMTY2NDUyMTg0NzUwMTEzNTkxMTYzMzY5Njc3MzI2MjQucGRm

INDIAN CONTRACT ACT

❖ **A contractual relationship is premised on the prospect of mutual benefit of both parties and unjust enrichment by one party at the cost of other shall be prevented: Delhi High Court**

Case Title: *South Delhi Municipal Corporation Vs Pioneer Publicity Corporation Private Limited./ LPA 389/2021 & CM APPLs. 37695-97/2021*

Link to Judgment:

http://164.100.69.66/jupload/dhc/599/judgement/06-10-2022/59906102022LPA3892021_144812.pdf

