



LEGAL ‘*KISSE*’ OF LAST WEEK

DECEMBER 04 – DECEMBER 10

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Legal 'Kisse' of Last Week

INSOLVENCY AND BANKRUPTCY CODE, 2016

- **NCLAT reiterates that fresh period of limitation shall start from the day of the acknowledgement of debt by the Respondent in Balance Sheets: NCLAT Delhi.**
 - **Citation:** *R N Khemka Enterprise Private Limited & Anr. Vs Persuasive Realcon Private Limited* // Company Appeal (AT)(Insolvency) No. 548 of 2021 // NCLAT Delhi.
 - **Link to Citation:**
<https://ibbi.gov.in/uploads/order/0ed3646ecf3d6dae9e6b95c0f15f2c3a.pdf>

- **There is no specified look back period for fraudulent trading under Section 66 and RP is allowed to retrieve/repossess without any limitation of time and further correct all the wrong doings for any relevant point of time: NCLAT Chennai.**
 - **Citation:** *Mr. Thomas George Vs K. Easwara Pillai & Ors.* // Company Appeal (AT)(CH)(Insolvency) No. 293 of 2021 // NCLAT Chennai.
 - **Link to Citation:**
<https://ibbi.gov.in/uploads/order/d1fd52d07eb14e30644302a07cd72580.pdf>

- **NCLAT reiterates that the only question to be looked in Section 9 is whether objections raised by Corporate Debtor is a moonshine defence or not: NCLAT Delhi.**
 - **Citation:** *Krishna Hi-Tech Infrastructure Pvt. Ltd. Vs Bengal Shelter Housing Development Ltd.* // Company Appeal (AT)(Insolvency) No. 1375 of 2022 // NCLAT Delhi.
 - **Link to Citation:**
<https://ibbi.gov.in/uploads/order/ea170c902aa80d7bca5291586b1122c2.pdf>

- **Advance paid in accordance of Letter of Intent cannot be treated as Financial Debt: NCLAT Delhi.**
 - **Citation:** *M/s Spicejet Ltd. Vs M/s Affordable Infrastructure and Housing Projects* // Company Appeal (AT) (Insolvency) No. 1352 of 2022 // NCLAT Delhi.



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- **No Fetter, Embargo or Legal Impediment for a trust to be a Resolution Applicant: NCLAT Chennai.**
- **Citation:** *Aswathi Agencies Vs Bijoy Prabhakaran Pulipra &Ors. // Company Appeal (AT) (Ins.) No. 179 of 2021 // NCLAT Chennai.*

ARBITRATION AND CONCILIATION, 1996

- **It is mandatory for the Arbitrator to disclose information under Section 12, where in case of failure the whole arbitration proceedings would be vitiated: Delhi High Court.**
- **Citation:** *Ram Kumar and Anr v. Shriram Transport Finance Co. Ltd. // FAO (COMM) 60/2021 // Neutral Citation: 2022/DHC/005313 // Delhi High Court.*
- **Link to Citation:** http://164.100.69.66/jupload/dhc/VIB/judgement/06-12-2022/VIB05122022FAOC602021_153450.pdf

- **Arbitrator engaged in number of matters by either party would raise justifiable grounds qua independence and impartiality: Delhi High Court.**
- **Citation:** *Ram Kumar and Anr (Supra)*
- **Link to Citation:** http://164.100.69.66/jupload/dhc/VIB/judgement/06-12-2022/VIB05122022FAOC602021_153450.pdf

- **No provision under Act to review the judgement rendered under Section 11 of that Act: Delhi High Court.**
- **Citation:** *Mr. Kush Raj Bhatia v. M/s DLF Power & Services Ltd. // ARB.P. 869/2022 // Neutral Citation: 2022/DHC/005349 // Delhi High Court.*
- **Link to Citation:** http://164.100.69.66/jupload/dhc/NBK/judgement/06-12-2022/NBK06122022AA8692022_174227.pdf

- **A matter that solely concerns the parties' respective obligations under the GST is arbitrable: Delhi High Court.**



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- **Citation:** *Spectrum Power Generation Limited v. GAIL (India) Limited* // ARB.P. 746/2022 // Neutral Citation: 2022/DHC/005319 // Delhi High Court.
- **Link to Citation:** http://164.100.69.66/jupload/dhc/YVA/judgement/06-12-2022/YVA06122022AA7462022_170211.pdf

- **Unilateral Appointment of arbitrator by a party or authority which is interested in the *Lis* is impermissible in law: Delhi High Court.**
Citation: *Atelier Automobiles Private Limited & ors. v. M/s Religare Finvest Limited* // O.M.P. (T) (Comm.) 92/2021 // Neutral Citation: 2022/DHC/005382 // Delhi High Court.
- **Link to Citation:** http://164.100.69.66/jupload/dhc/592/judgement/08-12-2022/59207122022OMPTCOMM922021_115455.pdf

- **Section 12-13 and 14 constitutes composite statutory scheme dealing with challenge to an arbitration but they construct separate mechanism for challenge: Delhi High Court.**
Citation: *Union of India Vs. Reliance Industries Limited & Ors.* // OMP (T) (Comm) 125 of 2022 // Neutral Citation: 2022/DHC/005381.
Link to Citation :
http://164.100.69.66/jupload/dhc/YVA/judgement/09-12-2022/YVA09122022OMPTCOMM1252022_133419.pdf

- **Challenge under Section 12 and 13 has to be instituted before Arbitral tribunal whereas one under Section 14 has to be instituted before Court : Delhi High Court.**
Citation: *Union of India Vs. Reliance Industries Limited (Supra).*
Link to Citation:
http://164.100.69.66/jupload/dhc/YVA/judgement/09-12-2022/YVA09122022OMPTCOMM1252022_133419.pdf

- **Allegation of 'bias' will not fall under Section 14 but has to be dealt with under Section 12 and 13 : Delhi High Court**
Citation: *Union of India Vs. Reliance Industries Limited (Supra).*
Link to Citation :



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http://164.100.69.66/jupload/dhc/YVA/judgement/09-12-2022/YVA09122022OMPTCOMM1252022_133419.pdf

COMPANIES ACT, 2013

- **The issue of 'Allotment of Shares' and 'Removal of Director', if alleged to be 'illegal' do fall within the ambit of the 'acts' of 'Oppression and Mismanagement': NCLAT Delhi.**
 - **Citation:** *Sri Dhanada Laboratories Private Limited and ors V Namireddy Raghu Ram Reddy and ors* // *Company Appeal (AT) No. 154 of 2020* // *NCLAT Delhi.*

- **Petition under Section 241-242 is not maintainable if the concerned Company is converted into LLP: NCLAT Delhi.**
 - **Citation:** *Ajit Mittal v Rekha Garg and ors* // *Company Appeal (AT) No. 122 of 2021* // *NCLAT Delhi.*

- **Consent of unsecured and secured Creditor is mandatory u/s 230(1) of the Act, even if the scheme of Arrangement is proposed between Company and its creditor: NCLAT Delhi.**
 - **Citation:** *Vedanta Ltd v Registrar of Companies* // *Company Appeal (AT) No.181-182 of 2022* // *NCLAT Delhi.*

- **Petition under Section 230-231 must be rejected if same is not backed by Fairness Opinion and Valuation report, even if the scheme of Arrangement is proposed between Company and its creditor: NCLAT Delhi.**
 - **Citation:** *Vedanta Ltd (Supra).*

- **Civil Court has jurisdiction to determine matters related to the 'Title of Shares' issued fraudulently: Calcutta High Court.**



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- **Citation:** *Mukesh Jaiswal v Phool Chand Gupta & ors* // CS 211 of 2019 // Calcutta High Court.
- **Link to Citation:**
https://hcservices.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=%2FE3WiyNUWFIaR1oBGE62WsAKAQ5iJz55OwfezclIDx8yEyuFYdHTOGLmzsj%2BNwpF&caseno=CS/211/2019&cCode=1&appFlag=
- **NCLT has no competence to enquire into the allegation of fraud: Calcutta High Court.**
- **Citation:** *Mukesh Jaiswal (Supra)*
- **Link to Citation:**
https://hcservices.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=%2FE3WiyNUWFIaR1oBGE62WsAKAQ5iJz55OwfezclIDx8yEyuFYdHTOGLmzsj%2BNwpF&caseno=CS/211/2019&cCode=1&appFlag=

