



# **LEGAL ‘*KISSE*’ OF LAST WEEK**

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**OCTOBER 9 – OCTOBER 15**

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Legal 'Kisse' of Last Week

**INSOLVENCY & BANKRUPTCY CODE, 2016**

- **Mere acceptance and/or consumption of the goods will not waive the right of the CD to raise 'Dispute' under IBC: Supreme Court.**
  - **Citation** – *Rajratan Babulal Agarwal V Solartex India Pvt. Ltd. & ors* || *Civil Appeal No. 2199 of 2021* || *Supreme Court*.
  - **Link to citation** –  
<https://ibbi.gov.in/uploads/order/644995ccb622e80708af4a3ce3932eb6.pdf>
  
- **Principle of 'preponderance of probability' which guides a civil court, cannot be applied in IBC to ascertain 'Dispute': Supreme Court.**
  - **Citation** – *Rajratan Babulal Agarwal (Supra)*.
  - **Link to citation** –  
<https://ibbi.gov.in/uploads/order/644995ccb622e80708af4a3ce3932eb6.pdf>
  
- **Mere non-issuance debit note by the CD cannot oblivate its right to raise 'Dispute' under IBC: Supreme Court.**
  - **Citation** – *Rajratan Babulal Agarwal (Supra)*.
  - **Link to citation** –  
<https://ibbi.gov.in/uploads/order/644995ccb622e80708af4a3ce3932eb6.pdf>
  
- **Adjudicating Authority needs not to be satisfied that the defense/ dispute raised under Section 9 is likely to succeed in Civil Court or not: Supreme Court.**
  - **Citation** – *Rajratan Babulal Agarwal (Supra)*.
  - **Link to citation** –  
<https://ibbi.gov.in/uploads/order/644995ccb622e80708af4a3ce3932eb6.pdf>
  
- **CoC can take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan : NCLAT.**
  - **Citation** – *Sreedhar Tripathy vs Gujarat State Financial Corporation and ors.* || *Company Appeal (AT) (INS) No. 1062 of 2022* || *NCLAT*.
  - **Link to citation** –  
<https://ibbi.gov.in/uploads/order/96c53e118e2766551ed23fab17a653ae.pdf>



## Legal 'Kisse' of Last Week

- **Dues pertaining to leave & license Agreement do not fall under Financial Debt: NCLAT.**
  - **Citation** - *National Agriculture Cooperative Marketing Federation Limited (NAFED) Vs. Synergy Petro Products Pvt Ltd. // Company Appeal (AT) (Insolvency) No. 862 of 2021 // NCLAT.*
  - **Link to citation** –  
<https://ibbi.gov.in/uploads/order/f1adb91a3a98753b436c9a4e476d2cd7.pdf>

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## ARBITRATION AND CONCILIATION

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- **Period of limitation for referring the disputes to arbitration cannot commence till the parties have exhausted the pre-reference procedure in build in the Arbitration Agreement: High Court of Delhi.**
  - **Citation** - *M/s Welspun Enterprises Ltd. Vs M/s NCC Ltd // FAO(OS)(COMM) No. 9/2019 & CM No. 2239/2019 // High Court of Delhi.*
  - **Link to Citation** - [http://164.100.69.66/jupload/dhc/VIB/judgement/11-10-2022/VIB10102022FAC92019\\_120903.pdf](http://164.100.69.66/jupload/dhc/VIB/judgement/11-10-2022/VIB10102022FAC92019_120903.pdf)
- **Reiterates question of Limitation is mixed question of fact and law and must be referred to Arbitration unless claim is ex-facie barred by law: High Court of Delhi.**
  - **Citation** - *Ansal Properties & Infrastructure Ltd. & Anr. Vs Dowager Maharanis Residential Accommodation Welfare & Amenities Trust & Anr. // ARB.P. 1050/2021 // High Court of Delhi.*
  - **Link to Citation** - [http://164.100.69.66/jupload/dhc/NBK/judgement/10-10-2022/NBK10102022AA10502021\\_123453.pdf](http://164.100.69.66/jupload/dhc/NBK/judgement/10-10-2022/NBK10102022AA10502021_123453.pdf)
- **Reiterates twin test, i.e. implied consent and alter ego, for impleading non-signatories to an arbitration clause to arbitration: High Court of Delhi.**
  - **Citation** - *Ansal Properties & Infrastructure Ltd. & Anr. (Supra).*
  - **Link to Citation** - [http://164.100.69.66/jupload/dhc/NBK/judgement/10-10-2022/NBK10102022AA10502021\\_123453.pdf](http://164.100.69.66/jupload/dhc/NBK/judgement/10-10-2022/NBK10102022AA10502021_123453.pdf)



## Legal 'Kisse' of Last Week

- **At the stage of referral, court needs to examine the existence of the arbitration clause / agreement and not the validity of the same: High Court of Delhi.**
  - **Case Title** - *M/s Singh Associates Vs Union of India* || ARB.P. 997/2021|| High Court of Delhi.
  - **Link to citation** - [http://164.100.69.66/jupload/dhc/VKR/judgement/14-10-2022/VKR11102022AA9972021\\_105201.pdf](http://164.100.69.66/jupload/dhc/VKR/judgement/14-10-2022/VKR11102022AA9972021_105201.pdf)
  
- **Whether 'claim' is hit by *res judicata* or not cannot be decided in Section 11 Petition: High Court of Delhi.**
  - **Case Title** - *M/s Diamond Entertainment Technologies Pvt. Ltd. & Ors. Vs Religare Finvest Limited* / ARB.P.62/2022 || High Court of Delhi.
  - **Link to Citation** - [http://164.100.69.66/jupload/dhc/NBK/judgement/14-10-2022/NBK14102022AA622022\\_155639.pdf](http://164.100.69.66/jupload/dhc/NBK/judgement/14-10-2022/NBK14102022AA622022_155639.pdf)
  
- **Remedy under SARFAESI is, in addition, to remedy under Arbitration & Conciliation Act, thus both can run simultaneously: High Court of Delhi.**
  - **Case Title** - *M/s Diamond Entertainment Technologies Pvt. Ltd. & Ors. (Supra)*.
  - **Link to Citation** - [http://164.100.69.66/jupload/dhc/NBK/judgement/14-10-2022/NBK14102022AA622022\\_155639.pdf](http://164.100.69.66/jupload/dhc/NBK/judgement/14-10-2022/NBK14102022AA622022_155639.pdf)

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## SECURITIES & EXCHANGE BOARD OF INDIA

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- **Stock Broker has to obtain a certificate of registration from SEBI for each of Stock Exchange where he operates and has to pay fee for each such registration: Supreme Court.**
  - **Case Title** - *Securities and Exchange Board of India v. National Stock Exchange Members Association and anr.*|| Civil Appeal No. 435 of 2017 || Supreme Court.
  - **Link to Citation** - [https://main.sci.gov.in/supremecourt/2006/975/975\\_2006\\_8\\_1501\\_38881\\_Judgement\\_13-Oct-2022.pdf](https://main.sci.gov.in/supremecourt/2006/975/975_2006_8_1501_38881_Judgement_13-Oct-2022.pdf)

