



# **LEGAL *'KISSE'* OF THE WEEK**

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**18<sup>TH</sup> EDITION**

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Legal 'Kisse' of Last Week

**INSOLVENCY BANKRUPTCY CODE, 2016**

- ✚ **COC is only bound to consider Resolution plan submitted within prescribed timeline: NCLAT New Delhi.**
  - ◆ **Citation:** *Nikunj Udhyog Vs Anshul Gupta & Anr. // Company Appeal (AT) (Ins.) No. 737 of 2022 // 02.02.2023 // NCLAT New Delhi// Para 12.*
  
- ✚ **If only component of interest is pending out of operational debt even then CIRP can be initiated: NCLAT New Delhi.**
  - ◆ **Citation:** *Nileshbhai Shantilal Patel Vs. Westin Resins and Polymers Pvt. Ltd. & Anr. //Company Appeal (AT) (Ins.) no. 627 of 2022// 31.01.2023 // NCLAT New Delhi// Para 8.*
  
- ✚ **Threshold limit has to be seen at the time of filing of the Section 9 Petition: NCLAT New Delhi.**
  - ◆ **Citation:** *Nileshbhai Shantilal Patel (Supra) // NCLAT New Delhi// Para 8.*
  
- ✚ **Nature of Debt does not change on account of breach of consent terms: NCLAT New Delhi.**
  - ◆ **Citation:** *Priya Kantilal Patel Vs. IREP Credit Capital Pvt. Ltd. & Anr. //Company Appeal (AT) (Ins.) No. 1423 of 2022 // 01.02.2023 // NCLAT New Delhi// Para 12.*
  
- ✚ **Reliance on filing of a Suit by the Corporate Debtor not relevant for rejecting Section 7 Application: NCLAT New Delhi.**
  - ◆ **Citation:** *State Bank of India Vs N.S. Engineering Projects Pvt. Ltd. //Company Appeal (AT) (Ins.) No. 978 of 2022// 03.02.2023 // NCLAT New Delhi// Para 29 & 31.*
  
- ✚ **Even in absence of notice of dispute, the Adjudicating Authority can reject the Section 9 Application if there is a record of dispute: NCLAT New Delhi.**
  - ◆ **Citation:** *Ashish Gupta Vs Delagua Health India Pvt. Ltd. & Ors. //Company Appeal (AT) (Ins.) No. 17 of 2022// NCLAT New Delhi// Para 18 & 19.*



## ARBITRATION AND CONCILATION ACT, 1996

- ✚ **If a party has failed to nominate an arbitrator, the same will not render court powerless to appoint an appropriate arbitral tribunal in the interest of justice: Bombay High Court.**
  - ◆ **Citation:** *PSP Projects Limited Vs. Bhiwandi Nizampur City Municipal Corporation through Municipal Commissioner || Arbitration Petition No. 89 of 2021 || 27.01.2023 || Bombay High Court || Para 35 & 36.*
  
- ✚ **Section 34 Petition filed without having petitioner sign on each page, statement of truth, and award, is a *non-est* filing and cannot stop limitation: Delhi High Court.**
  - ◆ **Citation:** *National Highway Authority of India Vs. KNR Construction Limited || OMP (COMM) 7/2019 || Neutral Citation: 2023/DHC/000623 || Delhi High Court || Para 32.*
  - ◆ **Link to Citation:** [http://164.100.69.66/jupload/dhc/NBK/judgement/30-01-2023/NBK30012023OMPCOMM72019\\_145624.pdf](http://164.100.69.66/jupload/dhc/NBK/judgement/30-01-2023/NBK30012023OMPCOMM72019_145624.pdf)
  
- ✚ **Section 34 Petition filed without award suffer from fundamental defect and render said filing as *non-est* filing: Delhi High Court.**
  - ◆ **Citation:** *Brahmaputra Cracker and Polymer Limited Vs. Rajshekar Construction Private Limited || O.M.P. (COMM) 289/2022 || Neutral Citation: 2023/DHC/000642 || Delhi High Court || Para 15 & 17.*
  - ◆ **Link to Citation:** [http://164.100.69.66/jupload/dhc/YVA/judgement/01-02-2023/YVA30012023OMPCOMM2892022\\_102945.pdf](http://164.100.69.66/jupload/dhc/YVA/judgement/01-02-2023/YVA30012023OMPCOMM2892022_102945.pdf)
  
- ✚ **“Patent Illegality” must go to the root of the matter but excludes the erroneous application of the law by an arbitral tribunal or re-appreciation of evidence: Delhi High Court.**
  - ◆ **Citation:** *Flowmore Limited v. M/s Skipper Limited || OMP (Comm) 391 of 2022 || Neutral Citation: 2023/DHC/000741 || Delhi High Court || Para 48.*
  - ◆ **Link to Citation:** [http://164.100.69.66/jupload/dhc/CDS/judgement/02-02-2023/CDS02022023OMPCOMM3912022\\_180950.pdf](http://164.100.69.66/jupload/dhc/CDS/judgement/02-02-2023/CDS02022023OMPCOMM3912022_180950.pdf)



Legal 'Kisse' of Last Week

✚ **A court acting under Section 11 cannot decide the "Accord and Satisfaction" issue: Calcutta High Court.**

◆ **Citation:** *Jhajjar K.T. Transco Private Limited Vs. Oriental Insurance Company Limited* || AP 449 of 2021 || 31.01.2023 || Calcutta High Court || Para 21.

◆ **Link to Citation:**

[https://hcservices.ecourts.gov.in/ecourtindiaHC/cases/display\\_pdf.php?filename=QnBUxJ6a3gIx%2B5SFrUiAoKhInz3UDip2DquNEySuuJTaHjSmPZC6k0pQRTMp0kyZ&caseno=AP/449/2021&cCode=1&appFlag=](https://hcservices.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3gIx%2B5SFrUiAoKhInz3UDip2DquNEySuuJTaHjSmPZC6k0pQRTMp0kyZ&caseno=AP/449/2021&cCode=1&appFlag=)

✚ **In accordance with Section 9, the arbitrator's authority to order interim measures is *pari passu* to that of the Court: Calcutta High Court.**

◆ **Citation:** *Jagrati Trade Services Private Limited Vs. Deepak Bhargava & Ors.* || APO 108 of 2022 || Calcutta High Court || Para 24 & 41.

◆ **Link to Citation:**

[https://hcservices.ecourts.gov.in/ecourtindiaHC/cases/display\\_pdf.php?filename=zDLovBVSUw02H8XukOjXfCUTobkRjkJTzST9WorO%2FTIhO2IOjPyGzS3WxvUvrrji&caseno=APO/108/2022&cCode=1&appFlag=](https://hcservices.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=zDLovBVSUw02H8XukOjXfCUTobkRjkJTzST9WorO%2FTIhO2IOjPyGzS3WxvUvrrji&caseno=APO/108/2022&cCode=1&appFlag=)

