



**LEGAL ‘*KISSE*’
OF LAST WEEK**

NOVEMBER 27 – DECEMBER 03

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Legal 'Kisse' of Last Week

INSOLVENCY AND BANKRUPTCY CODE, 2016

- **Plea of pre-existing dispute has to co-relate with the amount claimed by the Operational Creditor: NCLAT.**
 - **Citation:** *Aroon Kumar Aggarwal Vs ABC Consultants Private Limited //Company Appeal (AT) (Ins) No. 409 of 2020// NCLAT // 01.12.2022.*

- **Interim - Moratorium under Section 96(1)(B) of IBC will not stay proceedings under Sections 19(2), 66, and 67 of the Code: NCLAT.**
 - **Citation:** *Ashok Mahindru & Anr. Vs. Vivek Parti // Company Appeal (AT) (Ins) No. 1324 of 2022 // NCLAT // 29.11.2022.*

- **Interim - Moratorium under Section 96(1)(B) of IBC will only apply to proceedings germane from debt/obligation due as on date and not to future liability or obligation: NCLAT.**
 - **Citation:** *Ashok Mahindru & Anr. Vs. Vivek Parti // Company Appeal (AT) (Ins) No. 1324 of 2022 // NCLAT // 29.11.2022.*

- **COC can classify operational creditors into different classes for deciding the way in which money is to be distributed amongst them: NCLAT.**
 - **Citation:** *Excel Engineering & Ors. Vs. Vivek Murlidhar Dabhade & Anr. // Cop. Apps. (AT) (Ins.) No. 85-86 of 2020 // NCLAT // 16.11.2022.*

- **Farmers are an integral part of the industry dependent on agriculture and can be treated as a separate creditor's class from other operational creditors: NCLAT.**
 - **Citation:** *Excel Engineering & Ors. Vs. Vivek Murlidhar Dabhade & Anr. // Cop. Apps. (AT) (Ins.) No. 85-86 of 2020 // NCLAT // 16.11.2022.*

- **NCLT cannot assume power to declare IBC provisions, or regulations made thereunder as illegal or ultra vires: Delhi High Court.**
 - **Citation:** *Insolvency and Bankruptcy Board of India Vs State Bank of India &Ors. //W.P.(C) 10189/2018 & CM APPL. 39715/2018 // Delhi High Court.*



Legal 'Kisse' of Last Week

- **Link to Citation:** http://164.100.69.66/jupload/dhc/PMS/judgement/02-12-2022/PMS28112022CW101892018_115604.pdf
- **There is no provision in the Code to implead any creditor in insolvency proceedings before Adjudicating Authority other than those who trigger the CIRP: NCLAT.**
- **Citation:** *Vitol S. A. Vs Abhishek Nagori & Ors. //Company Appeal (AT) (Ins) No. 792 of 2020// NCLAT.*
- **Link to Citation:** <https://ibbi.gov.in/uploads/order/eceeeeb6153a6ae2766ad49819e66857.pdf>

ARBITRATION AND CONCILIATION, 1996

- **Sec 8 application in Arbitration Act cannot be construed as Sec 21 notice i.e. commencement of arbitral proceedings: Delhi High Court.**
- **Citation:** *Web Overseas Limited v. Universal Industrial Plants Manufacturing Company Private Limited // FAO(COMM) 8/2021 // 2022/DHC/005184 // Delhi High Court.*
- **Link to Citation:** http://164.100.69.66/jupload/dhc/VIB/judgement/28-11-2022/VIB28112022FAOC82021_170806.pdf

- **Arbitration would commence in respect to 'a particular Dispute' when the request for referring said dispute to arbitration is received by respondent: Delhi High Court.**
- **Citation:** *Web Overseas Limited (Supra).*
- **Link to Citation:** http://164.100.69.66/jupload/dhc/VIB/judgement/28-11-2022/VIB28112022FAOC82021_170806.pdf

- **Application under Section 8 would not amount to invoking of arbitration clause, therefore same will not stop limitation: Delhi High Court.**
- **Citation:** *Web Overseas Limited (Supra).*
- **Link to Citation:** http://164.100.69.66/jupload/dhc/VIB/judgement/28-11-2022/VIB28112022FAOC82021_170806.pdf



Legal 'Kisse' of Last Week

- **'Notice' to take legal shelter before 'the competent court of jurisdiction' will not be considered as 'Notice' invoking Arbitration clause: Delhi High Court.**
 - **Citation:** *Web Overseas Limited (Supra)*.
 - **Link to Citation:** http://164.100.69.66/jupload/dhc/VIB/judgement/28-11-2022/VIB28112022FAOC82021_170806.pdf

- **2015 Amendment to Section 12 and the Seventh Schedule will also apply to contract entered prior to said amendment: Bombay High Court.**
 - **Citation:** *Naresh Kanayalal Rajwani & Ors. Vs Kotak Mahindra Bank Limited & Anr. || Comm. Arbitration Petition (L) No. 1444 of 2019 || Bombay High Court || 23.11.2022.*

- **Merely participation in arbitration proceedings will not waive party's right to challenge the unilateral appointment of arbitrator: Bombay High Court.**
 - **Citation:** *Naresh Kanayalal Rajwani & Ors. (Supra)*.

- **Section 9, being a provision in aid of the arbitration, applies to foreign seated arbitration as well, unless specifically excluded: Calcutta High Court.**
 - **Citation:** *Chemex Oil Private Limited Vs. Seastarr International Private Limited & Ors. || AP 707 of 2022 || Calcutta High Court.*
 - **Link to Citation :**
https://hcservices.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=zDLovBVSUw02H8XukOjXfINKv6JuxRMvvTmF%2BL715y75%2B4FNaIsxQ4Yxjo5z4Wmv&caseno=AP/707/2022&cCode=1&appFlag=

COMMERCIAL COURT ACT, 2015

- **Defendant cannot be allowed to file additional documents for reason that written statement was filed in extreme urgency: Delhi High Court.**
 - **Citation:** *Aap Ki Pasand & Anr v Himalayan Leaf Pvt Ltd || CS(COMM) 1130/2016 || Delhi High Court || 2022/DHC/005214.*
 - **Link to citation :** http://164.100.69.66/jupload/dhc/NAC/judgement/01-12-2022/NAC30112022SC11302016_155844.pdf

