



**LEGAL ‘*KISSE*’
OF LAST WEEK**

OCTOBER 30 – NOVEMBER 05

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Legal 'Kisse' of Last Week

INSOLVENCY & BANKRUPTCY CODE, 2016

- **Insolvency proceeding against personal guarantor of Corporate Debtor has to be filed before NCLT having jurisdiction over Corporate Debtor, irrespective of fact that CIRP against Corporate Debtor is pending or not : Delhi High Court.**
 - Citation - *Axis Trustee Services Limited Vs, Brij Bhushan Singal & Anr. 2022/DHC/004656.*
 - Link to Citation - http://164.100.69.66/jupload/dhc/ABL/judgement/04-11-2022/ABL04112022SC202021_150315.pdf

- **Interim moratorium under Section 96 of Code shall start from filing of the Application under Section 94/95 of the Code and not from registration of said applications: Delhi High Court.**
 - Citation - *Axis Trustee Services Limited (Supra).*

- **Interim moratorium under Section 96 of the Code will also be applicable on the proceedings wherein the judgement is reserved but not pronounced, before filing of application under Section 94/95 of the Code: Delhi High Court.**
 - Citation - *Axis Trustee Services Limited (Supra).*

- **Interim moratorium under Section 96 of the Code will not be applicable on co-guarantor: Delhi High Court.**
 - Citation - *Axis Trustee Services Limited (Supra).*

- **Benefits under Section 4 of the Limitation Act is only applicable in respect to 30 days limitation provided under Section 61(2) of the Code and not to the 15 days extension provided under proviso to Section 61(2) of the Code: NCLAT.**
 - Citation - *Isolux Corsan India Engineering & Construction Pvt Ltd vs Shailesh Verma and Ors || Company Appeal (AT)(Insolvency) No. 1124 of 2022|| NCLAT New Delhi || 04.11.2022.*

- **Section 14 of the Limitation Act is not strictly applicable to proceedings under the Code, but the principle underlying Section 14 can be invoked: NCLAT.**



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- **Citation - *Isolux Corsan India Engineering and Construction Pvt Ltd (Supra).***
- **Benefit under Section 14 of the Limitation Act can be invoked when remedy in wrong court is pursued by Appellant not before same court: NCLAT.**
 - **Citation - *Isolux Corsan India Engineering and Construction Pvt Ltd (Supra).***
- **Acknowledgement of debt will not change the date of default, as date of default is not dependent upon its acknowledgement: NCLAT.**
 - **Citation - *SLB Welfare Association Vs. M/S PSA IMPEX Pvt. Ltd and Anr. || Company Appeal (AT) (Insolvency) No. 905 of 2022|| NCLAT New Delhi || 04.11.2022.***
- **For Application under Section 43, 45, 50 and 66 of the Code thorough investigation and conclusive opinion are must: NCLAT.**
 - **Citation- *Birla Financial Distribution Ltd. vs Shri Jagdish Singh Nain || Company Appeal (AT) (Insolvency) No. 545 of 2022 || NCLAT New Delhi || 02.11.2022.***
- **"Compliance of regulations 2(EA), 2-A, 21-A and 37 of the Liquidation Process Regulations and Section 52/53 of the IBC are absolutely necessary even if the secured creditor proceeds to realize its security interest: NCLAT.**
 - **Citation - *Small Industries Development Bank of India vs Shri Vijender Sharma || Company Appeal (AT) (Insolvency) No. 1027 of 2021|| NCLAT New Delhi|| 02.11.2022.***
- **Date of dishonour of cheques, given for meeting the liability, can be considered as date of default: NCLAT.**
 - **Citation - *Shantilal Javerchand Jain vs Varsha Corporation Limited & Anr. || Company Appeal (AT) (Insolvency) No. 719 of 2022 || NCLAT New Delhi || 02.11.2022.***
- **NCLAT reiterates that Decree or judgment in favour of financial creditor would give rise to a fresh cause of action to initiate proceedings under Code.**
 - **Citation - *Mr. Shubh Gautam vs Anjani Technoplast Ltd.|| Company Appeal (AT) (INS) No. 904 of 2022|| NCLAT New Delhi || 01.11.2022.***



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ARBITRATION AND CONCILIATION ACT

- **MSMED Act- Reference to facilitation council maintainable in spite of an independent Arbitration agreement existing between the parties: Supreme Court.**
 - **Citation:** *Gujarat State Civil Supplies Corporation Vs Mahakali Foods Pvt. Ltd. //SLP(C) No. 12284/2020// Supreme Court.*
 - **Link to Citation:**
https://main.sci.gov.in/supremecourt/2020/21518/21518_2020_1_1503_39396_Judgement_31-Oct-2022.pdf

- **Petition under Section 34 of the Act lies before a High Court only when it possesses original civil jurisdiction, irrespective of fact that where Section 11 Application was filed: Supreme Court.**
 - **Citation:** *Yashpal Chopra And Co. Vs. Union of India & Ors. // SLP(C) 18324/2022 // Supreme Court.*
 - **Link to Citation:**
https://main.sci.gov.in/supremecourt/2022/23197/23197_2022_6_10_39226_Order_31-Oct-2022.pdf

- **Pendency of oppression and mismanagement before NCLT will not ipso facto bar proceedings under Section 11 (6) of the Act, and Arbitrator will be the proper authority to decide its jurisdiction in such cases: Supreme Court.**
 - **Citation-** *VGP Marine Kingdom Pvt Ltd Vs Kay Ellen Arnold //Civil Appeal No. 6679 of 2022// Supreme Court.*
 - **Link to Citation:**
https://main.sci.gov.in/supremecourt/2022/669/669_2022_6_1506_39466_Judgement_04-Nov-2022.pdf

- **Procedure of forwarding panel of five names, from entire panel, to the other contracting party to choose its nominee arbitrator from amongst them is no longer a valid procedure: Delhi High Court.**



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- **Citation:** *L&T Hydrocarbon Engineering Limited Vs Indian Oil Corporation Limited* 2022/DHC/004531.
- **Link to Citation:** http://164.100.69.66/jupload/dhc/VKR/judgement/01-11-2022/VKR31102022AA3622019_160855.pdf
- **Arbitration agreement in writing has no meaning unless same is valid, legal and enforceable in law: Delhi High Court.**
 - **Citation:** *M/s Sequoia Fitness and Sports Technology Private Limited Vs GD Goenka Pvt. Ltd. & Ors* 2022/DHC/004530.
 - **Link to Citation:** http://164.100.69.66/jupload/dhc/VKR/judgement/01-11-2022/VKR31102022AA1942022_095346.pdf
- **Use of the word 'Mediation' in arbitration clause is immaterial, if arbitration clause possesses attributes of an arbitration agreement: Delhi High Court.**
 - **Citation:** *Consolidated Construction Consortium Limited Vs South Delhi Municipal Corporation* 2022/DHC/004619.
 - **Link to Citation:** http://164.100.69.66/jupload/dhc/PRJ/judgement/03-11-2022/PRJ02112022AA3192017_142309.pdf
- **If the arbitration agreement is not signed/ executed by both the parties, it will not bind the parties to refer the dispute to arbitration.**
 - **Citation:** *M/s Sequoia Fitness and Sports Technology Private Limited (Supra).*
 - **Link to Citation:** http://164.100.69.66/jupload/dhc/VKR/judgement/01-11-2022/VKR31102022AA1942022_095346.pdf
- **No injunctive relief can be granted under Order XXXIX CPC read with Section 9 of the Arbitration Act if applicant can be monetarily compensated: Madras High Court.**
 - **Citation:** *Axess Film Factory Vs Picture House Media Limited || O.A.No.671 of 2022|| Madras High Court.*
 - **Link to Citation:** <https://www.mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/696489>
- **Arbitration, invoked without authority, the defect can't be ratified with fresh authority: Bombay High Court.**



