



**LEGAL ‘*KISSE*’
OF LAST WEEK**

NOVEMBER 06 – NOVEMBER 12

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Legal 'Kisse' of Last Week

INSOLVENCY BANKRUPTCY CODE, 2016

- 1. Appeal challenging CIRP would become infructuous if COC recommended for Liquidation of the Corporates Debtor: NCLAT.**
 - **Citation:** *Mr. Rakshit Dhirajlal Doshi Vs IDBI Bank Limited // Company Appeal (AT) (Ins) No. 296 of 2022 // NCLAT.*
 - **Link to Citation:**
<https://ibbi.gov.in/uploads/order/8d4b879955d73fee9db7d5790ea4a500.pdf>

- 2. Rule 11 of NCLT Rules, 2016 cannot be invoked for replacement of the Resolution Professional: NCLAT.**
 - **Citation:** *Canara Bank Vs Megha Engineering and Infrastructure Ltd //Company. Appeal (AT) (Ins) 391/CN/2022//NCLAT.*
 - **Link to Citation:**
<https://ibbi.gov.in/uploads/order/e2ad868a5de23ae4de4235b59bfe449c.pdf>

- 3. Exact amount of Debt is immaterial as long as amount admitted by CD is more than minimum threshold under Section 4(1) of Code: NCLAT.**
 - **Citation:** *Suzlon Synthetics Ltd. Vs Stressed Asset Stabilization Fund & Anr. //Company Appeal (AT) (Insolvency) No. 662-663 of 2022// NCLAT // 11.11.2022.*

- 4. Advance payment for goods and services is covered within the definition of Operational Debt: NCLAT.**
 - **Citation:** *Chipsan Aviation Private Limited Vs Punj Llyod Aviation Limited //Company Appeal (AT) (Insolvency) No. 261 of 2022// NCLAT // 10.11.2022.*

ARBITRATION AND CONCILIATION ACT, 1996

- 1. An agreement, the meaning of which not certain or capable being made certain is void: Madras High Court.**
 - **Citation:** *Union of India v. M/s Mahalaxmi Trading Corporation // Arb.O.P.(Comm.Div.) No. 612 of 2022 // Madras High Court.*



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○ **Link to Citation:**

<https://www.mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/699292>

2. Petition under section 11 of the act cannot be rejected on the ground of the Section 21 Notice is vague: Madras High Court.

○ **Citation:** *A.R. Shridharan v. M/s VAK Engineering Pvt. Ltd. & Anr.* || *Arb.O.P.(Comm. Div.) No. 363 of 2022* || Madras High Court.

○ **Link to Citation:**

<https://www.mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/699291>

3. Arbitration Clause is distinct agreement and survives notwithstanding conclusions that the contract containing such clause is invalid: Madras High Court.

○ **Citation:** *S.Sudhakar & Ors. v. S. Giridharan* || *Arb. O.P. (Comm. Div.) No. 583 of 2022* || Madras High Court.

○ **Link to Citation:**

<https://www.mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/699692>

COMMERCIAL COURT ACT, 2015

1. Suit for Eviction of Commercial Property lies before Commercial Court: Calcutta High Court.

○ **Citation:** *Maharshi Commerce Limited v. Rajiv R. Balani & Ors.*, CS 3 of 2019 || Calcutta High Court.

○ **Link to Citation:**

https://hcservices.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filenam=%2FE3WiyNUWFIaR1oBGE62WsKrKSK7pOBHj28KCZ6UQiFSkZPcRnWQyTBr24eZsOeS&caseno=CS/3/2019&cCode=1&appFlag

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2. Time limit to file Written Statement not mandatory if the Case is transferred from Civil Court to Commercial Court after expiry of 120 days: Supreme Court.

○ **Citation -** *Raj Process Equipments and Systems Pvt Ltd. & Ors. vs Honest Derivatives Pvt. Ltd* || CA 8089 OF 2022 || Supreme Court.

○ **Link to Citation:**



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https://main.sci.gov.in/supremecourt/2019/43133/43133_2019_4_16_39439_Order_03-Nov-2022.pdf

3. Time limit to file written statement in Commercial Court can't be deferred merely because earlier application for rejection of Plaintiff is pending: Calcutta High Court.

○ **Citation** - *M/s. Neo Carbons Pvt. Ltd. v. National Insurance Company Limited CS 45 of 2022 ||CS 45 OF 2022|| Calcutta High Court.*

○ **Link to Citation:**

https://hcservices.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=zDLovBVSUw02H8XukOjXfHiUEJK6bjofXO1270mA43%2BoNVhv%2Fc2wjz4GdhAEWcPU&caseno=CS/45/2022&cCode=1&appFlag=

PMLA & BENAMI TRANSACTIONS

1. If the Accused is discharged from the Scheduled offences, PMLA Prosecution will not continue : Supreme Court.

○ **Citation** - *Indrani Patnaik & Anr vs Enforcement Directorate & Ors || Writ Petition (civil) no. 368 of 2021 || Supreme Court||*

○ **Link To Citation:**

https://main.sci.gov.in/supremecourt/2021/7421/7421_2021_8_16_39444_Order_03-Nov-2022.pdf

2. ED's powers to attach the property under PMLA will not limit by Moratorium under IBC: Delhi High Court.

○ **Citation** – *Rajiv Chakraborty Resolution Professional of EIEL Vs Directorate of Enforcement || W.P. (C) 9351 of 2020|| Delhi High Court.*

○ **Link to Citation:**

http://164.100.69.66/jupload/dhc/YVA/judgement/11-11-2022/YVA11112022CW95312020_155414.pdf

