



# LEGAL *'KISSE'* OF THE WEEK

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**20<sup>TH</sup> EDITION**

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**Authored by:  
INDO LEGAL SERVICES, LLP  
Advocates & Solicitors**

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**INSOLVENCY BANKRUPTCY CODE, 2016**

- ✚ **Ex-promoters are ineligible to file Resolution Plan, if Corporate Debtor is registered as MSME after issuance of FORM G: NCLAT New Delhi.**
  - ◆ **Citation:** *Govind Prasad Todi & Anr. Vs. Satya Narayan Guddeti & Ors. //Company Appeal (AT) (Ins.) No. 1125 of 2022// NCLAT New Delhi// Para 2 & 12.*
  
- ✚ **NCLAT gave a new lifeline of 90 days to a Corporate Debtor, wherein 330 days expired on 18.06.2021, as liquidation being the last resort and ex-promoters & financial creditors were willing to file Resolution Plan: NCLAT New Delhi.**
  - ◆ **Citation:** *Govind Prasad (Supra) //Para 8, 12 & 13.*
  
- ✚ **Consent of shareholders is not required for approval of the Resolution Plan: NCLAT New Delhi.**
  - ◆ **Citation:** *K K Sarachandra Bose Vs. M/s Sel Manufacturing Company Ltd. & Ors. //Company Appeal (AT) (Ins.) No. 1068 of 2022// NCLAT New Delhi// Para 6 & 7.*
  
- ✚ **CIRP Regulation 35-A is not mandatory and RP can approach the Adjudicating Authority after 135<sup>th</sup> Day of the ICD: NCLAT New Delhi.**
  - ◆ **Citation:** *Jagdish Kumar Parulkar Vs. Vinod Agarwal & Ors. //Company Appeal (AT) (Ins.) No. 483 of 2022// NCLAT New Delhi// Para 24.*
  
- ✚ **Transactions done neither for profit motive nor related to normal flow of business of CD suffer from the vice of preferential/ fraudulent transactions: NCLAT New Delhi.**
  - ◆ **Citation:** *Jagdish Kumar Parulkar Vs. Vinod Agarwal & Ors. (Supra) // Para 30 & 31.*
  
- ✚ **A business tour for promotion or expansion without any document and specifically when CD was under stress is not justifiable: NCLAT New Delhi.**
  - ◆ **Citation:** *Jagdish Kumar Parulkar Vs. Vinod Agarwal & Ors. (Supra)// Para 32.*
  
- ✚ **Preferential transaction can be one which is not part of undistinguished and undisputed common flow of business: NCLAT New Delhi.**
  - ◆ **Citation:** *Jagdish Kumar Parulkar Vs. Vinod Agarwal & Ors. (Supra) // Para 34.*



## Legal 'Kisse' of Last Week

### ARBITRATION AND CONCILATION ACT, 1996

- ✚ **Unilateral appointment is not per se impermissible in the law unless the arbitrator so appointed falls within 7<sup>th</sup> Schedule: Calcutta High Court.**
  - ◆ **Citation:** *McLeod Russel India Limited & Anr. Vs. Aditya Birla Finance Limited & Ors.* // A.P. No. 106 of 2020 // Calcutta High Court // Para 44 & 49.
- ✚ **Parties by 'express agreement in writing' may waive disqualification provided under 7<sup>th</sup> Schedule: Calcutta High Court.**
  - ◆ **Citation:** *McLeod Russel India Limited (Supra)* // Para 44.
- ✚ **Participation and filing of Statement of Defence without raising objection of disqualification amount to 'express agreement in writing' as required under proviso to Section 12(5): Calcutta High Court.**
  - ◆ **Citation:** *McLeod Russel India Limited (Supra)* // Para 49.
- ✚ **Existence of dispute cannot be a ground for issuing injunction to restrain the enforcement of bank guarantee: Delhi High Court.**
  - ◆ **Citation:** *Hindustan Construction Co. Limited Vs. National Hydro Electric Power Corporation Limited* // Neutral Citation: 2023/DHC/001006 // Delhi High Court // Para 45.
  - ◆ **Link to Citation:** [http://164.100.69.66/jupload/dhc/CDS/judgement/13-02-2023/CDS13022023OMPICOMM392020\\_182635.pdf](http://164.100.69.66/jupload/dhc/CDS/judgement/13-02-2023/CDS13022023OMPICOMM392020_182635.pdf)
- ✚ **Court cannot interfere with the enforcement of a bank guarantee, unless fraud or irretrievable harm/ injustice or special equity is prima facie established: Delhi High Court.**
  - ◆ **Citation:** *Hindustan Construction Co. Limited (Supra)* // Para 49.
  - ◆ **Link to Citation:** [http://164.100.69.66/jupload/dhc/CDS/judgement/13-02-2023/CDS13022023OMPICOMM392020\\_182635.pdf](http://164.100.69.66/jupload/dhc/CDS/judgement/13-02-2023/CDS13022023OMPICOMM392020_182635.pdf)
- ✚ **Power of Arbitrator under Section 17 is not inferior to the power of Court under Section 9: Delhi High Court.**
  - ◆ **Citation:** *Asad Mueed & Anr. Vs. Hammad Ahmed & Ors.* // Neutral Citation: 2023/DHC/001008 // Delhi High Court // Para 23.
  - ◆ **Link to Citation:** [http://164.100.69.66/jupload/dhc/YVA/judgement/14-02-2023/YVA14022023OI12023\\_121731.pdf](http://164.100.69.66/jupload/dhc/YVA/judgement/14-02-2023/YVA14022023OI12023_121731.pdf)



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- ✚ **Court under Section 9 will exercise its power if the remedy provided by Section 17 would not be efficacious: Delhi High Court.**
  - ◆ **Citation:** *Asad Mueed & Anr. (Supra) || Para 23.*
  - ◆ **Link to Citation:** [http://164.100.69.66/jupload/dhc/YVA/judgement/14-02-2023/YVA14022023OII2023\\_121731.pdf](http://164.100.69.66/jupload/dhc/YVA/judgement/14-02-2023/YVA14022023OII2023_121731.pdf)
  
- ✚ **Tribunal under Section 17 is vested with the power to pass injunction against the third parties to protect the subject matter of arbitration: Delhi High Court.**
  - ◆ **Citation:** *Asad Mueed & Anr. (Supra) || Para 26.*
  - ◆ **Link to Citation:** [http://164.100.69.66/jupload/dhc/YVA/judgement/14-02-2023/YVA14022023OII2023\\_121731.pdf](http://164.100.69.66/jupload/dhc/YVA/judgement/14-02-2023/YVA14022023OII2023_121731.pdf)
  
- ✚ **Appreciation or re-appreciation cannot be ground to challenge award under Section 34 and 37: Delhi High Court.**
  - ◆ **Citation:** *Municipal Corporation of Delhi Vs. M/s Sweka Powertech Engineers Private Limited || Neutral Citation: 2023/DHC/001058|| Delhi High Court || Para 40-42.*
  - ◆ **Link to Citation:** [http://164.100.69.66/jupload/dhc/NBK/judgement/15-02-2023/NBK15022023FAOC1492022\\_111745.pdf](http://164.100.69.66/jupload/dhc/NBK/judgement/15-02-2023/NBK15022023FAOC1492022_111745.pdf)
  
- ✚ **The parties even though participated in the Arbitral Proceedings can challenge the unilateral appointment of Arbitrator under Section 34: Madras High Court.**
  - ◆ **Citation:** *Hina Suneet Sharma & Ors. Vs. M/s Nissan Renault Financial Services India Private Limited || ARB.OP (Comm. Div.) no. 159 of 2022 || Madras High Court || Para 16 & 18.*
  - ◆ **Link to Citation:** <https://www.mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/1019951>



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**CONTACT US:**

**📍 DELHI:**

121, Tower 11, Supreme Enclave,  
Mayur Vihar Phase-1,  
New Delhi- 110091.

**📍 DELHI:**

S 137, Lower Ground Floor,  
GK-2, New Delhi – 110091.

**📍 CHANDIGARH:**

345, 3<sup>rd</sup> Floor, Tricity Plaza  
Peer Muchalla Road, Zirakpur,  
Chandigarh 140603.

**📍 BANGALORE:**

Japna Choudhary No.14,  
2<sup>nd</sup> Floor , "Arihant" Shanti Road,  
Shantinagar,  
Bangalore – 560027.

**📍 KOLKATA:**

**A.S & CO**

Lords Building, 8, Stand Road, 4th  
floor, Opposite to City Civil Court  
Kolkata- 700001.

**📍 PRAYAGRAJ:**

18, Patrika Marg, Civil Lines,  
Allahabad - 211001  
Uttar Pradesh.

**📍 MUMBAI:**

3 Neelkanth Arcade, Opp. Fine Arts  
Society Monorail Station, Chembur  
Mumbai – 400071.

**📍 AHMEDABAD:**

1, Silver Nine Apartment,  
Nr. Gopu Complex, Bhaikaka  
Nagar, Thaltej, Ahmedabad.

