




INDO LEGAL SERVICES
ADVOCATES & SOLICITORS

LEGAL '*KISSE*' OF LAST WEEK

21st Edition



Authored By:
Indo Legal Services

 +91- 9871433339

 info@indolegalservices.com

 Mayur Vihar Phase 1

Legal 'Kisse' of Last Week

INSOLVENCY BANKRUPTCY CODE, 2016

- ✚ **Operational Creditors are entitled to inspect records of the adjudicating authority as per NCLT Rules, 2016: NCLAT New Delhi.**
 - ◆ **Citation:** *D. P. Industries Vs. Deepak Thukral* //Company Appeal (AT) (Ins.) No. 143/2023// NCLAT New Delhi// Para 8.

- ✚ **If CD failed to raise pre-existence dispute before the Adjudicating Authority, it cannot be allowed to raise it for the first time before the Appellate Tribunal: NCLAT New Delhi.**
 - ◆ **Citation:** *Kishore Shanker Signapurkar Vs. Prime Soles & Anr.* //Company Appeal (AT) (Ins.) No. 739 of 2018// Para 7.

- ✚ **If the Operational Creditor has failed to raise any complaint about any contravention or lapses or deficiency in the performance of duties by the IRP, then IRP is entitled to claim his fees: NCLAT New Delhi.**
 - ◆ **Citation:** *Shri Guru Containers Vs. Jitendra Palande* //Company Appeal (AT) (Ins.) No 106 of 2023// NCLAT New Delhi// Para 17.
 - ◆ **Link to Citation:**
<https://ibbi.gov.in/uploads/order/769a7073386674318687baf27d57b940.pdf>

- ✚ **Operational Creditor shall be liable to pay CIRP expenses in case COC is not constituted: NCLAT New Delhi.**
 - ◆ **Citation:** *Shri Guru Containers (Supra) Para 18.*
 - ◆ **Link to Citation:**
<https://ibbi.gov.in/uploads/order/769a7073386674318687baf27d57b940.pdf>

- ✚ **Fees incurred by the IRP should reasonably reflect the work necessarily and properly undertaken by IRP: NCLAT New Delhi.**
 - ◆ **Citation:** *Shri Guru Containers (Supra) Para 22*
 - ◆ **Link to Citation:**
<https://ibbi.gov.in/uploads/order/769a7073386674318687baf27d57b940.pdf>

- ✚ **In Section 19(2) Application Adjudicating Authority (AA) cannot pass any final order without issuing notice to erstwhile management of CD: NCLAT New Delhi.**
 - ◆ **Citation:** *Rajasthan State Mines & Minerals Limited Vs. Parag Sheth & Ors.* //Company Appeal (AT) (Ins.) No. 170 of 2023// NCLAT New Delhi// Para 7.



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✚ **Notice under Section 8 is not required in case the petition is transferred from Company Court in terms of Companies (Transfer of Pending Proceedings) Rules, 2016: NCLAT New Delhi.**

◆ **Citation:** *Rajeev Srivastava Vs. Ahluwalia Contract (India) Ltd. & Ors. ||Company Appeal (AT) (Ins.) No. 976 of 2022|| NCLAT New Delhi|| Para 15.*

✚ **The Adjudicating authority can order liquidation of the Corporate Debtor without the mandate of the Implementation and Monitoring Committee if the Resolution Applicant willfully failed to implement the Resolution Plan: NCLT Mumbai.**

◆ **Citation:** *BMW Financial Services Private Limited Vs. S.K. Wheels Private Limited ||IA NO. 2767 of 2022 in C.P. (I.B.) No. 4301 of 2018|| NCLT Mumbai|| Para 19.*

◆ **Link to Citation:**

https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138003072018/04/Order-Challenge/04_order-Challenge_004_167687704980174110563f31cf9f15e7.pdf

ARBITRATION AND CONCILATION ACT, 1996

✚ **Arbitral Tribunal has the authority to issue an interim award based on the admitted facts, and such an award cannot be faulted: Delhi High Court.**

◆ **Citation:** *Bharat Heavy Electricals Limited Vs. M/s Zillion Infraprojects Private Limited || Neutral Citation: 2023/DHC/001214 || Delhi High Court || Para 34, 36-38.*

◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/NBK/judgement/21-02-2023/NBK21022023FAOC662021_115420.pdf

✚ **No sale notice issued pursuant to Section 13(4) of the SARFAESI Act may be ousted by an arbitral tribunal: Delhi High Court.**

◆ **Citation:** *Indiabulls Housing Finance Limited & Anr. Vs. Shipra Estate Limited & Ors. || Neutral Citation: 2023/DHC/001221 || Delhi High Court || Para 15 to 18.*

◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/AJB/judgement/21-02-2023/AJB21022023ARBACOMM362022_143813.pdf

✚ **According to Section 11(6), the High Court may decide whether a petition is maintainable on the basis of territorial jurisdiction, *res judicata*, or other factors in performing its judicial duties: Delhi High Court.**

◆ **Citation:** *Antique Art Export Private Limited Vs. United India Insurance Company Limited || Neutral Citation: 2023/DHC/001376 || Delhi High Court || Para 76.*

◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/VKR/judgement/25-02-2023/VKR22022023AA1632022_140556.pdf



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- ✚ **Mere dismissal of the application under section 12 cannot give rise to any kind of bias on part of Arbitrator: Delhi High Court.**
 - ◆ **Citation:** *Elecon Engineering Company Limited Vs. The Indure Private Limited* // Neutral Citation: 2023/DHC/001264 // Delhi High Court // Para 48.
 - ◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/NBK/judgement/22-02-2023/NBK22022023OMPCOMM2362019_144657.pdf

- ✚ **Objection of non-completion of arbitral proceedings in terms of Section 29A, can be considered under Section 34: Delhi High Court.**
 - ◆ **Citation:** *Elecon Engineering Company Limited (Supra)* // Para 63.
 - ◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/NBK/judgement/22-02-2023/NBK22022023OMPCOMM2362019_144657.pdf

- ✚ **Acknowledgement of liability though made after expiry of limitation will create new cause of action and thereby starts fresh period of limitation: Delhi High Court.**
 - ◆ **Citation:** *Elecon Engineering Company Limited (Supra)* // Para 76-78.
 - ◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/NBK/judgement/22-02-2023/NBK22022023OMPCOMM2362019_144657.pdf

- ✚ **Court under Section 34 cannot re-appreciate facts and merit while considering the challenge to liquidated damage awarded: Delhi High Court.**
 - ◆ **Citation:** *Elecon Engineering Company Limited (Supra)* // Para 80 & 95.
 - Link to Citation:** http://164.100.69.66/jupload/dhc/NBK/judgement/22-02-2023/NBK22022023OMPCOMM2362019_144657.pdf

- ✚ **Arbitrator cannot pass direction or order which are contrary to the procedure decided by the parties for conducting Arbitral Proceedings: Delhi High Court.**
 - ◆ **Citation:** *M/s Ircon International Limited Vs. Union of India Railway Coach Factor* // Neutral Citation: 2023/DHC/001373 // Delhi High Court // Para 33 & 34.
 - ◆ **Link to Citation:** http://164.100.69.66/jupload/dhc/CDS/judgement/24-02-2023/CDS24022023OMPMISCCOMM3622019_182656.pdf

COMPANIES ACT, 2013

- ✚ **Appointment as Director can be set aside if there is no documentary proof to establish his valid appointment: NCLAT.**
 - ◆ **Citation:** *Ram Prakash Gupta Vs. Radhey Shyam Sharma & Ors.* // Company Appeal (AT) No. 183 of 2020 // NCLAT // Para 16.



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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, 3rd Floor, Tricity Plaza
Peer Muchalla Road, Zirakpur,
Chandigarh 140603.

📍 BANGALORE:

Japna Choudhary No.14,
2nd 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.

