



INDO LEGAL SERVICES
ADVOCATES & SOLICITORS

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LEGAL '*KISSE*' OF LAST WEEK

31st Edition



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📍 Mayur Vihar Phase 1

Legal 'Kisse' of Last Week

INSOLVENCY BANKRUPTCY CODE, 2016

- ✚ **Operational Creditors must be paid equivalent to the amount to which they would have been entitled to in case of liquidation: SC.**
 - ◆ Citation: *M/s Vistra ITCL (India) Ltd & Ors. Vs. Mr. Dinkar Venkatasubramanian & Anr* || Civil Appeal No. 3606 of 2020 || Supreme Court || 04.05.2023 || Para 9.

- ✚ **Security creditors will fall under the definition of Financial Creditors: Supreme Court.**
 - ◆ Citation: *M/s Vistra ITCL (India) Ltd (Supra)* || Para 9.

- ✚ **Waterfall mechanism under Section 53 has to be followed in case of liquidation under IBC. No priority for workers due after liquidation of Company under IBC: Supreme Court: Supreme Court.**
 - ◆ Citation: *Moser Baer Karamchhari Union Vs. Union of India & Ors.* || Writ Petition (C) No. 421 of 2019 || Supreme Court || 02.05.2023 || Para 16.

- ✚ **Workers due in liquidation of Company under IBC has to follow route under Section 53 of IBC instead Section 326 of CA, 2013: Supreme Court.**
 - ◆ Citation: *Moser Baer Karamchhari Union (Supra)* || Para 18.

- ✚ **Legal notices from the DLSA to appear before them, does not fall within the 'suit' or 'proceedings' as mentioned under Section 8(2): NCLT New Delhi.**
 - ◆ Citation: *Supernova Tech Craft Engineering Overseas Limited Vs. Valtrom Technologies Private Limited* || Company Petition IN (IBC)334/(ND)/ 2020 || NCLT New Delhi || 20.04.2023 || Para 13 and 14.

- ✚ **By a subsequent MOU nature of original transaction cannot changed from operational debt to financial debt: NCLT Chennai.**
 - ◆ Citation: *Step Stone Infrass Private Limited Vs. Yes and Yes Infracon (P) Ltd.* || IBA/403/2020 || NCLT Chennai || 24.04.2023 || Para 19.

- ✚ **'Disbursement' and 'time value of money' are sine qua non to fit in financial debt: NCLT Chennai.**
 - ◆ Citation: *Step Stone Infrass Private Limited (Supra)* || Para 22-24.



Legal 'Kisse' of Last Week

- ✚ **Once the resolution plan has been approved by the Adjudicating Authority the issue of any claim could not be agitated or brought up at this late stage: NCLAT New Delhi.**
 - ◆ **Citation:** *BNK Power Solution Pvt. Ltd. Vs. Rajkumar Poddar & Ors.* || *Company Appeal (AT) (Ins.) No. 59 of 2022* || *NCLAT New Delhi* || 02.05.2023 || *Para 19.*

- ✚ **Violation of the RBI Guidelines on 'Priority Sector Landing' cannot be allowed to affect the fate of the application filed under Section 7: NCLAT New Delhi.**
 - ◆ **Citation:** *Manas Sarkar Vs. Indian Overseas Bank* || *Company Appeal (AT) (Ins.) no. 701 of 2022* || *NCLAT New Delhi* || 02.05.2023 || *Para 36.*

- ✚ **Any pending adjudication does not come in a way of deciding application filed under Section 7: NCLAT New Delhi.**
 - ◆ **Citation:** *Manas Sarkar (Supra)* || *Para 38.*

- ✚ **Approval of Resolution Plan does not absolve Guarantor: NCLT Mumbai.**
 - ◆ **Citation:** *Anchor Leasing Private Limited Vs. Sejal Reality and Infrastructure Limited* || *Company Petition No. 889 (IB)-MB-V/2021* || *NCLT Mumbai* || 20.04.2023 || *Para 36.*

- ✚ **Acknowledgment of debt by the Principal Borrower is an acknowledgment of debt by the Guarantor as well: NCLT Mumbai.**
 - ◆ **Citation:** *Anchor Leasing Private Limited (Supra)* || *Para 28.*

ARBITRATION AND CONCILIATION ACT, 1996

- ✚ **Pendente lite interest awarded by the arbitrator not required to be interfered under Section 34 and 37: Delhi High Court.**
 - ◆ **Citation:** *M/s. Superb Minerals India Private Limited Vs. Union of India & Anr.* || *Neutral Citation: 2023: DHC: 2952 -DB* || *Delhi High Court* || 01.05.2023 || *Para 15.*

- ✚ **In case of arbitral tribunal consist of more than one arbitrator signatures of the majority of all members shall be sufficient: Delhi High Court.**



Legal 'Kisse' of Last Week

- ◆ **Citation:** *Medeor Hospital Limited Vs. Ernst and Young LLP* || *Neutral Citation: 2023: DHC: 2926* || *Delhi High Court* || 01.05.2023 || Para 47-49.
- ✚ **As per Section 34, the Court cannot substitute its view for the arbitrator's view on facts to assail an arbitral award: Delhi High Court.**
 - ◆ **Citation:** *Medeor Hospital Limited Formerly Rockland Hospitals Limited (Supra)* || *Delhi High Court* || 01.05.2023 || Para 59.
- ✚ **Public interest should not be allowed to be defeated on a simple technicality when lawsuits are brought or defended on behalf of a public enterprise: Bombay High Court.**
 - ◆ **Citation:** *Palmview Investments Overseas Limited Vs. Ravi Arya, & Ors.* || *Commercial Appeal (L) No.: 36947 of 2022* || *Bombay High Court* || 02.05.2023 || Para 22.
- ✚ **Technical error/ mistake regarding authority of officers can be cured by the Company subsequently: Delhi High Court.**
 - ◆ **Citation:** *Palmview Investments Overseas Limited (Supra)* || *Bombay High Court* || 02.05.2023 || Para 22.
- ✚ **Section 4 of limitation act benefit cannot be availed for extended period of 30 days beyond 60 days under Section 34: Calcutta High Court.**
 - ◆ **Citation:** *State of West Bengal and Ors. Vs. Rajpath Contractors and Engineers Limited* || *AP 737 of 2022* || *Calcutta High Court* || 04.05.2023 || Para 19.
- ✚ **Calcutta High Court refer to Supreme Court : If whole extended period of 30 days subsumed in vacation period whether benefit of Section 4 of the Limitation Act would be provided or not.**
 - ◆ : *State of West Bengal and Ors.* || Para 20-21.

COMPANIES ACT, 2013

- ✚ **The twin conditions contained in section 212(6) of the 2013 Act are in addition to the condition contained in section 439 Cr.P.C: Delhi High Court.**
 - ◆ **Citation:** *Ashish Mittal Vs. Serious Fraud Investigation Office* || *Neutral Citation No.2023:DHC:2994* || *Delhi High Court* || 03.05.2023 || Para 37.6



Legal 'Kisse' of Last Week

- ✦ **There is no deemed disqualification under Section 164(2)(b) of the Companies Act, 2013, it has to be supported categorical finding by competent forum : Supreme Court**
 - ◆ **Citation:** *M K Rajagopalan Vs Dr. Periasamy Palani Gounder & Anr.* || Civil Appeal Nos. 1682-1683 of 2022 || Supreme Court || 03.05.2023 || 43.1.

- ✦ **The application/proceedings under section 140(5) of the Act, 2013 is held to be maintainable even after the resignation of the concerned auditors: Supreme Court**
 - ◆ **Citation:** *Union of India and Ors Vs. Deloitte Haskins and Sells LLP & Anr* || Criminal Appeal No. 2305-2307 of 2022 || Supreme Court || Para 16.

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