



**INDO LEGAL SERVICES**  
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# LEGAL '*KISSE*' OF LAST WEEK

35th Edition



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📍 Mayur Vihar Phase 1

Legal 'Kisse' of Last Week

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**INSOLVENCY & BANKRUPTCY CODE, 2016**

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- ✚ **Interest crystallised after filing of Section 9 petition cannot formed part of operational debt: NCLAT New Delhi.**
  - ◆ **Citation:** *Hindustan Zinc Limited Vs. Mahindra Susten Pvt. Ltd.* || *Company Appeal (AT) (Ins.) No. 34 of 2023* || *NCLAT New Delhi* || 29.05.2023 || *Para 11.*
  
- ✚ **If the entire Operational Debt having been paid by the Corporate Debtor, there is no useful purpose in continuing the Section 9 proceeding any further: NCLAT New Delhi.**
  - ◆ **Citation:** *Hindustan Zinc Limited Vs. Mahindra Susten Pvt. Ltd.* || *Company Appeal (AT) (Ins.) No. 34 of 2023* || *NCLAT New Delhi* || 29.05.2023 || *Para 20.*
  
- ✚ **Decisions taken by the CoC are not invalidated by a subsequent change in the composition of the COC: NCLAT New Delhi.**
  - ◆ **Citation:** *Jatinder Pal Builders Private Limited Vs. Sandeep Goel* || *Company Appeal (AT) (Ins.) No. 613 & 614 of 2023* || 31.05.2023 || *Para 29.*
  
- ✚ **If the person is not aggrieved by an order of the adjudicating authority, then he has no right to file an appeal against the order of the adjudicating authority: NCLAT New Delhi.**
  - ◆ **Citation:** *Rajesh Kumar Tripathi Vs. Era Housing & Developers (P) Ltd. & Ors.* || *Company Appeal (AT) (Ins.) No. 357 of 2020* || *NCLAT New Delhi* || 01.06.2023 || *Para 25 and 27.*
  
- ✚ **One time settlement of a live claim made within a period of limitation should be construed as an acknowledgement to attract Section 18 of the Limitation Act: NCLAT New Delhi.**
  - ◆ **Citation:** *Sunder Nagar Co-Operative Housing Societies Union Limited Vs. State Bank of India* || *Company Appeal (AT) (Ins.) No. 1526 of 2022* || *NCLAT New Delhi* || 31.05.2023 || *Para 19.*



## Legal 'Kisse' of Last Week

- ✚ **Once the threshold is crossed, the Adjudicating Authority is not to decide the exact Quantum of Debt, but what has to be examined is whether there is a 'Debt' and 'Default': NCLAT Chennai.**
  - ◆ **Citation:** *Mr. Guruprasad V Hishobkar Vs. Shree Aashraya Souhard Credit Society Limited & Anr.* || *Company Appeal (AT) (CH) (Ins.) No. 51 of 2021* || *NCLAT Chennai* || 02.06.2023 || Para 10.

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### ARBITRATION AND CONCILIATION ACT, 1996

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- ✚ **Where one Party claimed the agreement is forged, then the onus to prove its authenticity is on other Party: Delhi High Court.**
  - ◆ **Citation:** *Indian Railway Catering & Tourism Corp. Ltd. Vs. M/s Goel & Goel* || *Neutral Citation No. 2023: DHC:3959* || *Delhi High Court* || 01.06.2023 || Para 52.
- ✚ **A conceivable interpretation of the facts by the arbitrator must inevitably pass muster because the arbitrator is the ultimate arbiter of the quantity and quality of evidence to be considered when issuing his arbitral ruling: Delhi High Court.**
  - ◆ **Citation:** *Indian Railway Catering & Tourism Corp. Ltd. (Supra)* || Para 61-62.
- ✚ **Even an error in interpretation cannot be interfered with as it is an error within the jurisdiction of the Tribunal: Delhi High Court.**
  - ◆ **Citation:** *Indian Railway Catering & Tourism Corp. Ltd. (Supra)* || Para 66.
- ✚ **Even if there is a stipulation by way of liquidated damages, a party complaining of breach of contract can recover only reasonable compensation for the injury sustained by him and what is stipulated in the contract is the outer limit beyond which he cannot claim: Delhi High Court.**
  - ◆ **Citation:** *DAG Pvt. Ltd. Vs. Ravi Shankar Institute for Music and Performing Arts* || *Neutral Citation No. 2023: DHC:3861* || *Delhi High Court* || 29.05.2023 || Para 117.



## Legal 'Kisse' of Last Week

- ✚ **The powers of the courts to award costs in a trial would have no relevance for determining whether the awarded amount can be recovered from a person who is not a party to the arbitral proceedings or the arbitral award. Delhi High Court.**
  - ◆ **Citation:** *Tomorrow Sales Agency Pvt Ltd Vs. SBS Holding, INC & Ors* || *Neutral Citation No. 2023: DHC:3830-DB* || *Delhi High Court* || 29.05.2023 || *Para 69.*
  
- ✚ **Permitting enforcement of an arbitral award against a non-party which has not accepted any such risk, is neither desirable nor permissible: Delhi High Court.**
  - ◆ **Citation:** *Tomorrow Sales Agency Pvt Ltd (Supra)* || 75.
  
- ✚ **The arbitration clause which authorizes serving employee of one of the party as arbitrator, clearly falls with para 1 of Schedule VII, read with Section 12(5) of the Act: Supreme Court.**
  - ◆ **Citation:** *M/s Glock Asia-Pacific Limited VS. Union of India* || *Arbitration Petition No. 51 of 2022* || *Supreme Court* || 19.05.2023 || *Para 19 and 21.*

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### COMPANIES ACT, 2013

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- ✚ **Voting by proxy is allowed by Section 230(4) & (6) of the Companies Act, 2013 and Rule 9, 10 & 13 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2013: NCLAT New Delhi**
  - ◆ **Citation:** *TCR Trading Pvt Ltd & Anr. Vs. Tridev Advisory Services (P) Ltd* || *Company Appeal (AT) No. 16 of 2022* || *NCLAT New Delhi* || 02.06.2023 || *Para 11.*
  
- ✚ **Issues of fraud, manipulation and coercion cannot be decided in a summary jurisdiction: NCLAT New Delhi**
  - ◆ **Citation:** *Satori Global Ltd & Anr. Vs. Ms. Shailja Krishna & Ors* || *Company Appeal (AT) 379-395 of 2018* || *NCLAT New Delhi* || 02.06.2023 || *Para 12 & 15.*



## Legal 'Kisse' of Last Week

- ✚ **Cancellation of a Gift Deed is to be sought for under Section 31/34 of the Specific Relief Act, 1963 before the Civil Court and cannot be done by NCLT under summary jurisdiction: NCLAT New Delhi**
  - ◆ Citation: *Satori Global Ltd & Ors (Supra)* || Para 12 & 15.

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