



INDO LEGAL SERVICES
ADVOCATES & SOLICITORS

..... *Redefining Legal Assistance*

LEGAL '*KISSE*' OF LAST WEEK

32nd Edition



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📍 Mayur Vihar Phase 1

Legal 'Kisse' of Last Week

INSOLVENCY BANKRUPTCY CODE, 2016

- ✚ **The law of limitation shall start from the date of repeal of SICA if the case was previously filed under the SICA Act, 1985: NCLAT New Delhi.**
 - ◆ **Citation:** *Export-Import Bank of India & Ors. Vs. Maneesh Pharmaceuticals Ltd.* || *Company Appeal (AT) (Ins.) No. 579 of 2022* || 09.05.2023 || Para 31.

- ✚ **Unless the section 9 Petition is not admitted by the adjudicating authority, there is no occasion to issue any direction for depositing the fee of IRP: NCLAT New Delhi.**
 - ◆ **Citation:** *SPJ Cargo Pvt. Ltd. Vs. Blossom Grocery & Foods India Pvt. Ltd* || *Company Appeal (AT) (Ins.) No. 1374 of 2022* || 11.05.2023 || Para 6.

- ✚ **If parties are in talks of settlement then plea of non-supply of goods is dishonest and moonshine defence: NCLAT New Delhi.**
 - ◆ **Citation:** *Ashok Kumar Bhasin Vs. ABB Power Products and Systems India Limited & Anr.* || *Company Appeal (AT) (Ins.) No. 414 of 2023* || NCLAT New Delhi || 11.05.2023 || Para 22-23.

- ✚ **Agreement and balance sheets on their own will not provide the basis to the contention of the parties: NCLAT New Delhi.**
 - ◆ **Citation:** *Sahyog Infrastructures Pvt. Ltd. Vs. Anju Agarwal* || *Company Appeal (AT) (Ins.) No. 1367 of 2022* || NCLAT New Delhi || 09.05.2023 || Para 26.

- ✚ **Booking advance given will be in the nature of operational debt / other liabilities owed by the Corporate Debtor: NCLAT New Delhi.**
 - ◆ **Citation:** *Gem Marketing Pvt. Ltd. & Anr. Vs. Anju Agarwal* || *Company Appeal (AT) (Ins.) No. 1370 of 2022* || NCLAT New Delhi || 09.05.2023 || Para 33.

- ✚ **Refund of booking advance will not be considered as 'Ordinary Course of Business' unless supported by proper documents and communication: NCLAT New Delhi.**
 - ◆ **Citation:** *Gem Marketing Pvt. Ltd. & Anr. (Supra)* || Para 34.



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- ✚ **AA is empowered to verify whether a default has occurred or not and must then either admit or reject an application: Supreme Court.**
 - ◆ **Citation:** *M. Suresh Kumar Reddy Vs. Canara Bank & Ors.* || *Civil Appeal No. 7121 of 2022* || *Supreme Court* || *11.05.2023* || *Para 9-10.*

- ✚ **Facts of the case and conduct of the Corporate Debtor must be considered while applying *Vidharbha Industries*: Supreme Court.**
 - ◆ **Citation:** *M. Suresh Kumar Reddy (Supra)* || *Para 13 & 17.*

- ✚ **Creation of mortgage is a preferential transaction if such mortgage is done for the benefit of the related parties of the Corporate Debtor: NCLAT New Delhi.**
 - ◆ **Citation:** *Arun Chadha Vs. Ramesh Kumar Suneja & Ors* || *Company Appeal (AT) (Ins.) No. 747 of 2021* || *NCLAT New Delhi* || *09.05.2023* || *Para 26 & 29.*

- ✚ **Look back period under Section 43 is two years from the date of initiation of CIRP: NCLAT New Delhi.**
 - ◆ **Citation:** *Arun Chadha (Supra)* || *Para 36.*

- ✚ **When the Balance Sheet of the Corporate Debtor has mentioned the amount as unsecured loan, the argument that it was not a loan and it was investment shall not be accepted: NCLAT New Delhi.**
 - ◆ **Citation:** *Mohd Shadab Vs. Colorcity Homes Pvt. Ltd. & Anr.* || *Company Appeal (AT) (Ins.) No. 577 of 2023* || *NCLAT New Delhi* || *09.05.2023* || *Para 3.*

- ✚ **OTS Proposal will be considered as acknowledgement under Section 18 of the Limitation Act: NCLAT New Delhi.**
 - ◆ **Citation:** *Apporva Joshi Vs. Union Bank of India* || *Company Appeal (AT) (Ins.) No. 500 of 2023* || *NCLAT New Delhi* || *11.05.2023* || *Para 11.*

- ✚ **Any proposal for re-structuring cannot be treated to be the proposal u/s 12A: NCLAT New Delhi.**
 - ◆ **Citation:** *Venugopal Dhoot Vs. Divyesh Desai* || *Company Appeal (AT) (Ins.) No. 540 of 2023* || *NCLAT New Delhi* || *10.05.2023* || *Para 7.*



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- ✚ **Consent of 90% of the Committee of Creditors is a necessary condition for triggering Section 12A: NCLAT New Delhi.**
 - ◆ **Citation:** *Venugopal Dhoot (Supra)* || Para 7.

- ✚ **Discounting of invoices of the Corporate Debtor would make the financiers step into the shoes of operational creditor: NCLAT New Delhi.**
 - ◆ **Citation:** *Manish Kumar Vs. BNH Infra Projects (India) Pvt. Ltd* || CP. (IB) No. 95/BB/ 2021 || NCLT Bengaluru || 13.04.2023 || Para 7 & 8.

- ✚ **If the modified resolution plan, carrying however minor modification/revision, is not finally approved by CoC, then presentation of such modified plan before the Adjudicating Authority for approval is an incurable material irregularity: Supreme Court.**
 - ◆ **Citation:** *M. K. Rajagopalan Vs. Periasamy Palani Gounder* || Civil Appeal No. 1682-1683 of 2022 || Supreme Court || 03.05.2023 || 48.2.

ARBITRATION AND CONCILIATION ACT, 1996

- ✚ **Arbitrator is not obliged to frame issue on each and every fact pleaded or disputed. Supreme Court.**
 - ◆ **Citation:** *Reliance Infrastructure Ltd Vs. State of Goa* || Civil Appeal No. 3615 of 2023 || Supreme Court || 10.05.2023 || Para 16.4.

- ✚ **Arbitral award is not an ordinary adjudicatory order and Court must lightly interfere it under Sections 34 or 37: Supreme Court.**
 - ◆ **Citation:** *Reliance Infrastructure Ltd (Supra)* || Para 18.

- ✚ **Not every illegality would call for interference by Court but it has to be 'patent illegality': Supreme Court.**
 - ◆ **Citation:** *Reliance Infrastructure Ltd (Supra)* || Para 18.



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- ✚ **When the terms and conditions of the agreement governing the parties are completely ignored, the award would be hit by Section 28(3) : Supreme Court.**
 - ◆ **Citation:** *Reliance Infrastructure Ltd (Supra) || Para 18.*

- ✚ **Interference by court could be invited if the construction by Arbitrator could not be made by any fairminded and reasonable person: Supreme Court.**
 - ◆ **Citation:** *Reliance Infrastructure Ltd (Supra) || Para 18.*

- ✚ **Submission of drawing adverse inference will not fall under Section 34/37: Supreme Court.**
 - ◆ **Citation:** *Reliance Infrastructure Ltd (Supra) || Para 25.*

- ✚ **If the notice invoking arbitration is issued prior to the amendment act, 2015 then the provisions of the pre amendment Act shall be maintainable: Supreme Court.**
 - ◆ **Citation:** *M/s Shree Vishnu Constructions Vs. The Engineer in chief Military Engineering Services & Ors. || Civil Appeal No. 3461 of 2023 || Supreme Court || Para 10.*

- ✚ **The Court cannot after setting aside the award proceed to grant relief by modifying the award: Supreme Court.**
 - ◆ **Citation:** *Indian Oil Corporation Limited & Ors. Vs. M/s Sathyanarayana Service Station & Anr. || Civil Appeal No. 3533 of 2023 || Supreme Court || 09.05.2023 || Para 27.*

- ✚ **It is well settled that Court does not sit in appeal over the arbitral award : Delhi High Court.**
 - ◆ **Citation:** *Shiga Energy Private Limited Vs. GE Power India Ltd. || Neutral Citation No. 2023: DHC: 3103 || Delhi High Court || 08.05.2023 || Para 34 and 53.*

- ✚ **Non-Arbitrability would stand established where parties are essentially barred from waiving the adjudicatory mechanism as constructed by statutes: Delhi High Court.**



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◆ **Citation:** *S. S. Con-Build Pvt. Ltd. Vs. Delhi Development Authority* || *Neutral Citation: 2023: DHC:3092* || *Delhi High Court* || 09.05.2023 || 36 & 37.

✚ **Arbitration Proceedings shall not be entertained by the arbitrator if the moratorium has been declared by the Hon'ble Supreme Court: Delhi High Court.**

◆ **Citation:** *Arpit Projects Ltd. Vs. Gurgaon Recreation Park Limited* || *Neutral Citation: 2023: DHC: 3300* || *Delhi High Court* || 11.05.2023 || *Para 12 & 14.*

✚ **If from *prima facie*, existence of the arbitration agreement is established then the court has power under section 8 to refer the parties to arbitration: Delhi High Court.**

◆ **Citation:** *ITMA Hotels India Pvt. Ltd. Vs. AWA Lighting Designers INC & Anr.* || *Neutral Citation: 2023: DHC:3168* || 09.05.2023 || *Delhi High Court* || *Para 8.*

✚ **A Petition under section 11(6) for the appointment of the arbitrator is maintainable if there is a dispute in relation to the document in which the arbitration clause is mentioned: Delhi High Court.**

◆ **Citation:** *Radnik Exports Vs. Supertech Realtors Pvt. Ltd* || *Neutral Citation: 2023: DHC:3135* || *Delhi High Court* || 09.05.2023 || *Para 15.*

✚ **It is not permissible for a court to undertake a *merits review* of the decision taken by an arbitral tribunal: Delhi High Court.**

◆ **Citation:** *Union of India Vs. Reliance Industries Limited & Ors.* || *Neutral Citation: 2023: DHC:3137* || *Delhi High Court* || 09.05.2023 || *Para 30.*

COMMERCIAL COURTS ACT, 2015

✚ **Only the averments and the documents produced along with the plaint are required to be seen in Order VII Rule 11 Application: Delhi High Court.**

◆ **Citation:** *Delhi Metro Rail Corporation Ltd. Vs. MS Parasvnath Developers Ltd* || *Neutral Citation No. 2023: DHC:3095* || *Delhi High Court* || 09.05.2023 || *Para 20.*



Legal 'Kisse' of Last Week

- ✚ **For the purposes of Article 113 of the Limitation Act, 1963, it is when the right to sue accrues that the time for filing of the suit begins to run, and not when the right to sue “first” accrued: Delhi High Court.**
 - ◆ **Citation:** *Delhi Metro Rail Corporation Ltd (Supra)* || Para 23.

- ✚ **High Court reiterates that nature of the Suit would not change just because the suit is listed before the ADJ-1, District Court: Delhi High Court.**
 - ◆ **Citation:** *M/S AT Enterprises Vs. M/s Piccadily Hotels Pvt. Ltd. & Ors* || *Neutral Citation No. 2023: DHC:3310-DB* || *Delhi High Court* || 09.05.2023 || Para 2 & 3.

- ✚ **Court fees paid must be refunded if the Court is not competent to decide the *lis* raised before it: Delhi High Court.**
 - ◆ **Citation:** *Amit Jain Vs. Mahavir International Pvt Ltd & Ors* || *Neutral Citation No. 2023 : DHC:3090-DB* || *Delhi High Court* || 08.05.2023 || Para 10 & 12.

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