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LEGAL '*KISSE*' OF LAST WEEK

30th Edition



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📍 Mayur Vihar Phase 1

INSOLVENCY BANKRUPTCY CODE, 2016

- ✚ **One Time Settlement (OTS) proposal is acknowledgement of debt in terms of Section 18 of Limitation Act, 1963: NCLAT New Delhi.**
 - ◆ **Citation:** *M/s State Bank of India Vs. M/s Hackbridge Hewittic and Easun Limited* // *Company Appeal (AT) (CH) (Ins.) No. 05 of 2021* // *NCLAT Chennai* // 10.04.2023 // Para 38.

- ✚ **One Time Settlement (OTS) proposal by principal borrowers would be deemed acknowledgment on behalf of Guarantor as well in terms of section 18 of Limitation Act, 1963: NCLAT New Delhi.**
 - ◆ **Citation:** *M/s State Bank of India (Supra)* // Para 39.

- ✚ **Liquidator has power to forfeit the EMD Amount if the Bidder is unable to pay the balance amount within time limit: NCLAT New Delhi.**
 - ◆ **Citation:** *Westcoast Infraprojects Private Limited Vs. Mr. Ram Chandra Dallaram Choudhary* // *Company Appeal (AT) (Ins.) No. 1258 of 2022* // *NCLAT New Delhi* // 28.04.2023 // Para 21 & 22.

- ✚ **Settlement arrived between the parties during pre-CIRP proceedings, if CD defaults to comply terms of settlement, CIRP can be initiated: NCLAT New Delhi.**
 - ◆ **Citation:** *Vinay Gupta Vs. Oswal Minerals Ltd. & Anr.* // *Company Appeal (AT) (Ins.) No. 320 of 2023* // *NCLAT New Delhi* // 27.04.2023 // Para 6.

- ✚ **Application seeking discovery and inspection of documents cannot be allowed in Section 9 Proceedings: NCLAT New Delhi.**
 - ◆ **Citation:** *Baba Baidnath Spinners Pvt. Ltd. Vs. Textile Solutions* // *Company Appeal (AT) (Ins.) No. 426 of 2023* // *NCLAT New Delhi* // 19.04.2023 // Para 6.

- ✚ **Intent of CD is irrelevant for considering whether the transaction is preferential or not: NCLAT New Delhi.**
 - ◆ **Citation:** *GVR Consulting Services Pvt. Ltd. & Anr. Vs. Pooja Bahry & Ors.* // *Company Appeal (AT) (Ins.) No. 405 of 2022* // *NCLAT New Delhi* // 24.04.2023 // Para 45.



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- ✦ **Whether payment/transaction made voluntary or not is insignificant while deciding preferential transaction: NCLAT New Delhi.**
 - ◆ **Citation:** *GVR Consulting Services Pvt. Ltd. || Para 45.*

- ✦ **Any transaction made by the Corporate Debtor in pursuance of court order or in response to demand notice or threat for initiating any legal proceedings can also fall under preferential transaction: NCLAT New Delhi.**
 - ◆ **Citation:** *GVR Consulting Services Pvt. Ltd || Para 46 & 52.*

- ✦ **Mere allegations that IRP/RP has not conducted the CIRP in accordance with law, the order approving the Plan cannot be interfered with: NCLAT New Delhi.**
 - ◆ **Citation:** *Brijesh Singh Bhadauriya Vs. Pinakin Shah || Company Appeal (AT) (Ins.) No. 456 of 2023 || NCLAT New Delhi || 25.04.2023 || Para 5.*

- ✦ **Date of NPA cannot be taken to be the date of default for the purpose of limitation: NCLAT New Delhi.**
 - ◆ **Citation:** *Ramdas Dutta Vs. IDBI Bank Limited & Anr. || Company Appeal (AT) (Ins.) No. 1285 of 20222 || NCLAT New Delhi || 26.04.2023 || Para 19.*

- ✦ **OTS occurred after the expiry of period of limitation cannot be taken acknowledgment under Section 18 of Limitation Act: NCLAT New Delhi.**
 - ◆ **Citation:** *Ramdas Dutta (Supra) || Para 22.*

- ✦ **Interest would be considered while calculating threshold of 1 crore, if Corporate Debtor has admitted interest component, though parties have no formal agreement qua it: NCLAT New Delhi.**
 - ◆ **Citation:** *Bhotika Trade & Services Pvt. Ltd. Vs. Avinash EM Projects Pvt. Ltd. || Company Appeal (AT) (Ins.) No. 83 of 2023 || NCLAT New Delhi || 24.04.2023 || Para 2 & 6.*

- ✦ **Once a property was part of the liquidation state of the Corporate Debtor under liquidation, the provisions of IBC have to be applied: NCLAT New Delhi.**
 - ◆ **Citation:** *Adinath Jewellery Exports Vs. Brijendra Kumar Mishra & Anr. || Company Appeal (AT) (Ins.) NO. 748 of 2022 || NCLAT New Delhi || 24.04.2023|| Para 48.*



Legal 'Kisse' of Last Week

- ✚ **NCLT possesses jurisdiction to decide the tenancy i.r.t. Liquidation Estate and pass eviction order thereof: NCLAT New Delhi.**

◆ **Citation:** *Adinath Jewellery Exports (Supra)* // 24.04.2023// Para 61-62.

ARBITRATION AND CONCILIATION ACT, 1996

- ✚ **A document, containing an Arbitration clause, if unstamped or insufficiently stamped is enforceable in law: Supreme Court.**

◆ **Citation:** *M/s N.N. Global Mercantile Private Limited Vs. M/s Indo Unique Flame Limited & Ors.* // Civil Appeal No(s) 3802-3803 of 2020 // Supreme Court // 25.04.2023 // Para 110.

- ✚ **If the claim of insufficiently stamped is foundationless, same can be referred to the arbitrator to decide the same: Supreme Court.**

◆ **Citation:** *M/s N.N. Global Mercantile Private Limited (Supra)* // Supreme Court // Para (v) page 129.

- ✚ **Certified copy of the arbitration agreement shall not be acted upon, if same fails to show proper stamp duty payment: Supreme Court.**

◆ **Citation:** *M/s N.N. Global Mercantile Private Limited (Supra)* // Supreme Court // Para 18 and Page 297.

- ✚ **Court under Section 37 cannot re-examine evidence or other material before arbitrator: Delhi High Court.**

◆ **Citation:** *Jayanta Kumar Ghosh Outdoor Catering Private Limited Vs. The State of Maharashtra* // Neutral Citation: 2023:DHC:2887 // Delhi High Court // Para 42.

- ✚ **Enforcement of the foreign award is the rule and while refusal /denial to the enforcement is exception: Bombay High Court.**

◆ **Citation:** *HSBC PI Holdings (Mauritius) Limited Vs. Avitel Post Studioz Limited and Others* // Arbitration Petition No. 833 of 2015 // Bombay High Court // 25.04.2023 // Para 16.

- ✚ **Contrary to the public policy is the sole ground available to challenge enforcement of the foreign award: Bombay High Court.**

◆ **Citation:** *HSBC PI Holdings (Mauritius) Limited (Supra)* // Para 16.



Legal 'Kisse' of Last Week

- ✦ **Court should not apply subjective approach while adjudicating the allegation of bias against the award: Bombay High Court.**
 - ◆ **Citation:** *HSBC PI Holdings (Mauritius) Limited (Supra) // Para 27.*

- ✦ **Under Section 34, the Courts shall refrain from conducting a roving inquiry into the facts and supporting evidences of the case: Delhi High Court.**
 - ◆ **Citation:** *Hughes Communications India Private Limited Vs. Imaging Solutions Private Limited // Neutral Citation: 2023:DHC:2814 // Delhi High Court // Para 45 - 46.*

- ✦ **Under Section 34, the Courts need not examine the validity of the findings or reasoning behind the findings given by an Arbitrator: Delhi High Court.**
 - ◆ **Citation:** *Hughes Communications India Private Limited (Supra) // Para 45 – 46*

- ✦ **Court under Section 34 must limit itself to examining whether the award and the conclusion are supported by findings or not: Delhi High Court.**
 - ◆ **Citation:** *Hughes Communications India Private Limited (Supra) // Para 45 – 46.*

- ✦ **Court under Section 34 shall not examine whether the findings in the award are erroneous or sound: Delhi High Court.**
 - ◆ **Citation:** *Hughes Communications India Private Limited (Supra) // Para 45 – 46.*

- ✦ **Specific performance cannot be granted in a contract which is determinable in nature: Delhi High Court.**
 - ◆ **Citation:** *Hughes Communications India Private Limited (Supra) // Para 53.*

- ✦ **Doctrine of Group Companies can be invoked if non-signatory is alter ego of the signatory party: Delhi High Court.**
 - ◆ **Citation:** *M/s Trade International Vs. M/s Avon Healthcare Private Limited // Neutral Citation: 2023:DHC:2820 // Delhi High Court // 26.04.2023 // Para 59.*

- ✦ **Arbitrator cannot deviate from the express admission under contract on the rate of interest: Delhi High Court.**
 - ◆ **Citation:** *Tehri Hydro Development Corporation India Limited Vs. M/s C.E.C. Limited // Neutral Citation: 2023:DHC:2817 // Delhi High Court // Para 75.*



Legal 'Kisse' of Last Week

- ✦ **Under Section 9 (3) court can only intervene in exceptional circumstances and when relief under Section 17 is inefficacious: Delhi High Court.**
 - ◆ **Citation:** *Fedders Electric and Engineering Limited Vs. Srishti Constructions* // Neutral Citation: 2023:DHC:2819 // Delhi High Court // Para 28 & 29.
- ✦ **Court under Section 37 can interfere with Section 17 order but only in extreme and rare cases: Delhi High Court.**
 - ◆ **Citation:** *Medipol Pharmaceutical India Private Limited Vs. Union of India & Ors.*// Neutral Citation: 2023:DHC:2875 // Delhi High Court // Para 31 & 32.

COMPANIES ACT, 2013

- ✦ **Company's financial condition and health are relevant factors while hearing an application under section 71(10) : NCLAT New Delhi**
 - ◆ **Citation:** *Bank of Baroda As lead bank and on behalf of the ICA Lenders of Reliance Housing Finance Ltd. Vs. IDBI Trusteeship Services Ltd. & Anr.*// Company Appeal (AT) No. 69 of 2021 // NCLAT New Delhi // 26.04.2023 // Para 31.
- ✦ **Lenders are also important parties while hearing application under Section 71(10): NCLAT New Delhi.**
 - ◆ **Citation:** *Bank of Baroda (Supra)* // Para 31.
- ✦ **Section 420(2) is to be applied only when there are 'clerical' or 'arithmetical errors': NCLAT Chennai.**
 - ◆ **Citation:** *M/s RBG Trading Corporation Pvt Ltd & Ors Vs. Sulochana Gupta* // Company Appeal (AT) (CH) No. 18 of 2022 // NCLAT Chennai // 27.04.2023 // Para 40.
- ✦ **NCLT cannot recall or review its own orders as there is no provision which vest such power on it: NCLAT Chennai.**
 - ◆ **Citation:** *M/s RBG Trading Corporation Pvt Ltd & Ors (Supra)* // Para 41.



COMMERCIAL COURTS ACT, 2015

- ✦ **The Statutory compulsion to file written statement within 120 days is applicable to the UT of Jammu and Kashmir as well: Jammu and Kashmir High Court.**
 - ◆ **Citation:** *Rajinder Singh Manhas Vs. Anil Gaind & Anr* // CM(M) No. 47/ 2023 // Jammu and Kashmir High Court // 25.04.2023 // Para 14.

- ✦ **Where the personal insolvency have commenced against the Defendant, Plaintiff can seek refund of Court fees under Section 16 of the Court Fees Act: Delhi High Court.**
 - ◆ **Citation:** *Proud Securities and Credits Private Limited Vs. Urrshila Kerkar & Anr.* // CS (COMM) 469/2019 // Delhi High Court // 17.04.2023 // Para 2 & 4.

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