




**INDO LEGAL SERVICES**  
ADVOCATES & SOLICITORS

# LEGAL '*KISSE*' OF LAST WEEK

24th Edition



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 Mayur Vihar Phase 1

Legal 'Kisse' of Last Week

**INSOLVENCY BANKRUPTCY CODE, 2016**

- ✚ **RP shall take control & custody over the Corporate Debtor's Right and interest in a property under Section 18 & 25 of the Code: Supreme Court.**
  - ◆ **Citation:** *Victory Iron Works Ltd. Vs Jitendra Lohia & Anr.* //Civil Appeal No. 1743 of 2021// Supreme Court // 14.03.2023 // Para 35-37.
  
- ✚ **In case there is a tie in the e-auction process then the Liquidator shall consider the bid of those bidders who have opted to purchase the Corporate Debtor as a going concern: NCLAT New Delhi.**
  - ◆ **Citation:** *Torrecid India Pvt. Ltd. Vs Arrhum Tradelink Private Limited & Ors.* //Company Appeal (AT) (Ins.) No. 943 of 2022// NCLAT New Delhi // 15.03.2023 // Para 12.
  
- ✚ **It is the duty of the liquidator to protect the existence of the Corporate Debtor as far as possible and avoid its dissolution: NCLAT New Delhi.**
  - ◆ **Citation:** *Torrecid India (Supra)* // 15.03.2023 // Para 12.
  
- ✚ **If the term of the Lease Deed under which the land was leased out is being violated and the said land is sought to be dealt within the Resolution Plans, Adjudicating Authority had every jurisdiction to direct that composite Plan be not considered: NCLAT New Delhi.**
  - ◆ **Citation:** *E-Homes Infrastructure Private Limited Vs New Okhla Industrial Development Authority & Anr.* //Company Appeal (AT) (Ins.) No. 424 of 2022// NCLAT New Delhi // 15.03.2023 // Para 18.
  
- ✚ **If SOC had accepted the proposal for sale of for CD as a going concern, then no intervention application can be allowed by the Adjudicating Authority: NCLAT New Delhi.**
  - ◆ **Citation:** *M/s Mohan Fabtex Limited Vs Rajesh Jhunjunwala & Anr.* Of //Company Appeal (AT) (Ins.) No.670 of 2022// NCLAT New Delhi // 15.03.2023 // Para 14.



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- ✚ **Application under Section 65 would be maintainable after the application is filed either under Section 7, 9 or 10: NCLAT New Delhi.**
  - ◆ **Citation:** *Ashmeet Singh Bhatia Vs Sundrm Consultants Pvt. Ltd. & Anr. //Company Appeal (AT) (Ins.) No. 557 of 2021// NCLAT New Delhi // 13.03.2023 // Para 16.*
  
- ✚ **Dissenting Secured Creditors cannot be treated higher than other creditors U/s 53 just because they enjoy security interest: NCLT Kolkata.**
  - ◆ **Citation:** *ICICI Bank Limited Vs Mr. Pratim Bayal & Anr. // IA (IB) NO. 471/KB/2022 in C.P. (IB) No.2078/KB/2019// NCLT Kolkata // 15.03.2023 // Para 23.*
  
- ✚ **Criminal prosecution initiated against the Directors of CD under Section 138 would not stand terminated by commencement of CIRP : Supreme Court.**
  - ◆ **Citation:** *Ajay Kumar Radheyshyam Goenka Vs Tourism Finance Corporation of India Ltd. //Criminal Appeal No. 172 of 2023// Supreme Court // 15.03.2023 // Para 47.*
  
- ✚ **No provision of the IBC bars the continuation of the criminal prosecution initiated against the directors and officials: Supreme Court.**
  - ◆ **Citation:** *Ajay Kumar Radheyshyam Goenka (Supra) // 15.03.2023 // Para 49.*
  
- ✚ **Complainant under Section 138 NI Act is bound by the approved resolution plan, even though he was or not member of COC or given his consent to it or not: Supreme Court.**
  - ◆ **Citation:** *Ajay Kumar Radheyshyam Goenka (Supra) // 15.03.2023 // Para 64.*

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## ARBITRATION AND CONCILATION ACT, 1996

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- ✚ **Section 21 will be considered as complied even if notice invoking arbitration is not directly marked to the party: Delhi High Court.**
  - ◆ **Citation:** *Amazing Research Laboratories Limited Vs. Krishna Pharma // Neutral Citation: 2023/DHC/001786 // Delhi High Court // 13.03.2023 // Para 29.*



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- ✚ **Subsequent admission of due amount even if barred by limitation would give fresh lease to the limitation in terms of Section 25(3) of the Contract Act: Delhi High Court.**
  - ◆ **Citation:** *Amazing Research Laboratories Limited (Supra) // Delhi High Court // 13.03.2023 // Para 43.*
  
- ✚ **An arbitral award passed by a unilaterally appointed arbitrator cannot be considered as it would be regarded as *non est* in the eyes of law: Calcutta High Court.**
  - ◆ **Citation:** *Cholamandalam Investment and Finance Company Limited Vs. Amrapali Enterprises & Anr. // EC 122 of 2022 // Calcutta High Court // 14.03.2023 // Para 19.*
  
- ✚ **A waiver under proviso to Section 12(5) has to be express and has to be very strictly construed in terms of its explicitness: Calcutta High Court.**
  - ◆ **Citation:** *Cholamandalam Investment and Finance Company Limited (Supra) // 14.03.2023 // Para 19.*
  
- ✚ **Not filing a counterclaim in arbitration proceedings will not bar party's right to assert its claims on future date before any other forum: Delhi High Court.**
  - ◆ **Citation:** *Prime Interglobe Private Limited Vs. Super Milk Products Private Limited // Neutral Citation: 2023/DHC/001798 // Delhi High Court // 14.03.2023 // Para 27.*
  
- ✚ **The refusal of the arbitrator, to entertain the counter-claims on account of delay ought not to bar it from availing of independent remedies: Delhi High Court.**
  - ◆ **Citation:** *Prime Interglobe Private Limited (supra) // 14.03.2023 // Para 29-31.*
  
- ✚ **The scope of Section 9 does not envisage the restoration of the contract which stands terminated: Delhi High Court.**
  - ◆ **Citation:** *Yassh Deep Builders LLP Vs. Sushil Kumar Singh & Anr. // Neutral Citation: 2023/DHC/001809 // Delhi High Court // 14.03.2023 // Para 64.*
  
- ✚ **No interim relief under Section 9 can be granted if petitioner is statutorily bar to seek such relief: Delhi High Court.**
  - ◆ **Citation:** *Yassh Deep Builders LLP Vs. Sushil Kumar Singh & Anr. // Neutral Citation: 2023/DHC/001809 // Delhi High Court // 14.03.2023 // Para 64.*



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## COMMERCIAL COURTS ACT, 2015

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✚ Application for grant of leave under Clause 12 of the Letters Patent will definitely fall within the jurisdiction of a Commercial Division in terms of Section 7 of the Act: Madras High Court.

◆ **Citation:** *Surajlal Vs Pradeep Stainless India Pvt Ltd. and Ors. // Original Side Appeal No. 26 to 29 of 2020 // Madras High Court // 02.03.2023 // Para 20.*

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