




INDO LEGAL SERVICES
ADVOCATES & SOLICITORS

LEGAL '*KISSE*' OF LAST WEEK

26th Edition



Authored By:
Indo Legal Services, LLP

 +91- 9871433339

 info@indolegalservices.com

 Mayur Vihar Phase 1

INSOLVENCY BANKRUPTCY CODE, 2016

- ✚ **Debt arising out of 'Invoice Factoring Services' is not financial debt: NCLAT New Delhi.**
 - ◆ **Citation:** *Minions Ventures Private Limited Vs TDT Copper Limited // Company Appeal (AT) (Ins.) No. 572 of 2022// 28.03.2023 // Para 13.*

- ✚ **Section 18 of the Limitation Act would come into play if Corporate Debtor failed to abide by direction given by Tribunal to settle within 6 months: NCLAT Chennai.**
 - ◆ **Citation:** *Air Travel Enterprises India Limited & Anr. Vs Union Bank of India & Anr.// NCLAT Chennai // 29.03.2023 // Para 9 & 10.*

- ✚ **Application under section 12A, filed prior to constitution of COC, cannot be kept pending for constitution of CoC: Supreme Court.**
 - ◆ **Citation:** *Abhishek Singh Vs. Huhtamaki PPL Ltd. & Anr. //Civil Appeal No. (s). 2241 of 2023// Supreme Court// 28.03.2023 // Para 35.*

- ✚ **Regulations framed by IBBI though subordinate in character but still be binding on NCLT: Supreme Court.**
 - ◆ **Citation:** *Abhishek Singh (Supra) // Para 34.*

- ✚ **If two Section 95 Applications are filed against the same corporate Debtor, then Application filed prior in time has to be considered irrespective which one is numbered prior in time: NCLAT Chennai.**
 - ◆ **Citation:** *Union Bank of India VS Mr. P.K. Balasubramanian// NCLAT Chennai // 29.03.2023// Para 10.*

- ✚ **Any dispute raised by the Corporate Debtor after service of the Demand Notice shall not be construed to be an existing dispute: NCLT Delhi.**
 - ◆ **Citation:** *S.L. Plastics Vs Aditya Chemtec Pvt. Ltd. // IB-280/ND/2020 // NCLT Delhi // 28.03.2023// Para 9.*



Legal 'Kisse' of Last Week

✚ **A genuine/pure pre-existing dispute must exist in rejecting an application Section 9 of the code: NCLAT New Delhi.**

◆ **Citation:** *Deepak Modi Vs Shalfeyo Industries Private Limited & Anr. // Company Appeal (AT) (Ins.) No. 1019 of 2022 // NCLAT New Delhi // 31.03.2023 // Para 13.*

✚ **In case of home buyers/ allottees, the cause of action for filing a petition continues to run till the actual delivery is given: NCLAT New Delhi.**

◆ **Citation:** *Amit Joshi Vs Gayatri Infra Planner Private Limited// CP (IB) 3509PB)/ 2021 // 28.03.2023 // Para 23.*



Legal 'Kisse' of Last Week

ARBITRATION AND CONCILATION ACT, 1996

- ✚ **Jurisdiction of MSME Council will only determine the 'Venue' and not the 'seat' of Arbitration: Delhi High Court.**
 - ◆ **Citation:** *Ircon International Limited Vs. Pioneer Fabricators Private Limited* // *Neutral Citation: 2023:DHC:2153-DB* // *Delhi High Court* // 27.03.2023 // Para 11.

- ✚ **MSMED Act despite being the Special Legislation would not eclipse and nullify the jurisdiction clause agreed upon between the parties: Delhi High Court.**
 - ◆ **Citation:** *Ircon International Limited (Supra)* // Para 11.

- ✚ **Territorial jurisdiction of the Court under Section 34 will be determined by agreement between parties not MSMED Act: Delhi High Court.**
 - ◆ **Citation:** *Ircon International Limited (Supra)* // Para 11-12.

- ✚ **Application for amendment or supplement of claims or defence can be rejected by the Tribunal on the ground of delay: Delhi High Court.**
 - ◆ **Citation:** *NTPC Limited Vs. Larsen and Turbo Limited & Anr.* // *Neutral Citation: 2023:DHC:2154* // *Delhi High Court* // 27.03.2023 // Para 46-50.

- ✚ **Decision whether order is award or interim award is to be based on nature of order not the title of application: Delhi High Court.**
 - ◆ **Citation:** *NTPC Limited (Supra)* // Para 53.

- ✚ **Order dismissing an application for amendment on the ground of delay, without adjudication of question of limitation, is neither an interim nor a final award: Delhi High Court.**
 - ◆ **Citation:** *NTPC Limited (Supra)* // Para 53-54.

- ✚ **For a valid arbitration agreement, parties must have agreed that the arbitral tribunal will decide the parties' rights fairly and impartially, with the tribunal owing equal obligations to both sides: Delhi High Court.**
 - ◆ **Citation:** *M/s Super Ads Vs. All India Radio (Akashvani) & Ors.* // *Neutral Citation: 2023:DHC:2127* // *Delhi High Court* // 27.03.2023 // Para 18.



Legal 'Kisse' of Last Week

- ✚ **The arbitration Clause should be seen as a separate agreement and shall survive the termination, breach, and invalidity of the main contract: Delhi High Court.**
 - ◆ **Citation:** *Swift Securitas (P) Ltd. Vs. M/s Delhi MSW Solutions Limited* // Neutral Citation: 2023:DHC:2215 // Delhi High Court // 27.03.2023 // Para 20.

- ✚ **When an order resolves a substantive dispute or vital aspect of dispute between the parties, it is referred to as an award or interim award: Delhi High Court.**
 - ◆ **Citation:** *Goyal MG Gases Private Limited Vs. Panama Infrastructure Developers Private Limited & Ors.* // Neutral Citation: 2023:DHC:2276-DB // Delhi High Court // 29.03.2023 // Para 11.

- ✚ **A decision by an authority having no jurisdiction is *non est* in law and its invalidity can be set up whenever it is sought to be acted upon: Madras High Court.**
 - ◆ **Citation:** *Mr. P. Sivagurunathan Vs. M/s Dugar Finance & Investments Limited & Anr.* // Arb.O.P.(Comm. Div.) No. 592 of 2022 // Madras High Court // 28.03.2023 // Para 18.



COMMERCIAL COURTS ACT, 2015

- ✦ **A suit for specific performance can be initiated on the basis of an oral agreement to sell as well: Delhi High Court.**
 - ◆ Citation: *Raghubir Singh Chhabra Vs Holy Star Natural Resources Ltd & Ors* // Neutral Citation No.: 2023:DHC:2246 // Delhi High Court // 29.03.2023 // Para 50.
- ✦ **Protection under Section 53-A can be considered in a claim against a party seeking possession of the subject property: Delhi High Court.**
 - ◆ Citation: *Raghubir Singh Chhabra (Supra)* // Para 51.
- ✦ **It is a settled position of law that an amendment once incorporated, relates back to the date of the suit: Delhi High Court.**
 - ◆ Citation: *Raghubir Singh Chhabra (Supra)* // Para 55.
- ✦ **Amendment of suit will relate back to the original date of filing of suit, unless Court otherwise direct in order allowing amendment: Delhi High Court.**
 - ◆ Citation: *Raghubir Singh Chhabra (Supra)* // Para 55.
- ✦ **The Court cannot compel the contracting parties to accept the remortgaged or extension of mortgage to other loan agreement: Calcutta High Court.**
 - ◆ Citation: *Coronation Infrastructure Pvt. Ltd. & Ors Vs SREI Equipment Finance Limited* // APOT 135 OF 2022 // Calcutta High Court // 30.03.2023 // Page 5.
- ✦ **At the time of passing of the decree of Arrest, the judgment debtor must be present within the precincts of the court: Karnataka High Court.**
 - ◆ Citation: *The Principal Secretary & Anr. Vs Tejasco Techsoft Pvt Ltd* // W.P. No.4525 of 2023 // Karnataka High Court // 07.03.2023 // Para 4.



COMPANIES ACT, 2013

✦ **Issue of non-maintainability of Petition under Section 241-242 should not be decided at threshold when said issue itself is alleged as an act of Oppression: NCLAT New Delhi**

◆ **Citation:** *Yash Vardhan Mall Vs Indrapuri Studios Pvt. Ltd. and Ors // Company Appeal (AT) No. 321 of 2019 // NCLAT New Delhi // 28.03.2023 // Para 58-59.*

DISCLAIMER:

The accuracy of the information presented here have been carefully checked. ILS or there partner / associate is not accountable for any reliance that readers place in such information, nor is it responsible for any loss or damage resulting from any error in or omission of such information, or from their interpretation of such material.



CONTACT US:

📍 DELHI:

121, Tower 11, Supreme Enclave,
Mayur Vihar Phase-1,
New Delhi- 110091.

📍 DELHI:

S 137, Lower Ground Floor,
GK-2, New Delhi – 110091.

📍 CHANDIGARH:

345, 3rd Floor, Tricity Plaza
Peer Muchalla Road, Zirakpur,
Chandigarh 140603.

📍 BANGALORE:

Japna Choudhary No.14,
2nd Floor , "Arihant" Shanti Road,
Shantinagar,
Bangalore – 560027.

📍 KOLKATA:

A.S & CO

Lords Building, 8, Stand Road, 4th
floor, Opposite to City Civil Court
Kolkata- 700001.

📍 PRAYAGRAJ:

18, Patrika Marg, Civil Lines,
Allahabad - 211001
Uttar Pradesh.

📍 MUMBAI:

3 Neelkanth Arcade, Opp. Fine Arts
Society Monorail Station, Chembur
Mumbai – 400071.

📍 AHMEDABAD:

1, Silver Nine Apartment,
Nr. Gopu Complex, Bhaikaka
Nagar, Thaltej, Ahmedabad.

