




**INDO LEGAL SERVICES**  
ADVOCATES & SOLICITORS

# LEGAL '*KISSE*' OF LAST WEEK

28th Edition



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 Mayur Vihar Phase 1

## INSOLVENCY BANKRUPTCY CODE, 2016

- ✚ **When certified copy has been applied after expiry of the period of limitation, the applicant cannot be allowed to take benefit of Section 12(2) of the Limitation Act: NCLAT New Delhi.**
  - ◆ **Citation:** *Jindal Power Limited Vs. Dushyant C. Dave* // *Company Appeal (AT) (Ins.) No. 11 of 2023* // *NCLAT New Delhi* // 11.04.2023 // *Para 11.*
  
- ✚ **After the implementation of the 'Resolution Plan', no subsequent claim can be entertained: NCLAT New Delhi.**
  - ◆ **Citation:** *Madhya Pradesh Paschim Vs. Jagdish Kumar & Anr.* // *Company Appeal (AT) (Ins.) No. 1113 of 2020* // *NCLAT New Delhi* // 10.04.2023 // *Para 41.*
  
- ✚ **IBC will supersede Section 66 of the Electricity Act, 2003 and Regulation 4.12 of the Madhya Pradesh Electricity Supply Code : NCLAT New Delhi.**
  - ◆ **Citation:** *Madhya Pradesh Paschim (Supra)* // *Para 47.*
  
- ✚ **Land owner's claim cannot be accepted as a financial debt : NCLAT New Delhi.**
  - ◆ **Citation:** *Kaveri Sahakri Awas Samiti Ltd. Vs. Sanjay Gupta* // *Company Appeal (AT) (Ins.) No. 949 of 2022* // *NCLAT New Delhi* // 10.04.2023 // *Para 7 & 8.*
  
- ✚ **Notwithstanding Section 29A (c) and (h) of MSME Act, the Ex-Directors of CD are eligible to submit a resolution plan : NCLAT New Delhi.**
  - ◆ **Citation:** *Kanoria Chemical & Industries Ltd. Vs. Mr. Vijendra Kumar Jain & Ors.* // *Company Appeal (AT) (Ins.) No. 618 of 2021* // *NCLAT New Delhi* // 11.04.2023 // *Para 29.*
  
- ✚ **Prejudicial Comments in the Plan on 'Award' passed by Arbitrator can not be allowed : NCLAT New Delhi.**
  - ◆ **Citation:** *Kanoria Chemical & Industries Ltd. (Supra)* // *Para 23.*
  
- ✚ **Different classes of creditors is allowed, but there should be a rational basis for the differentiation of classes : NCLAT New Delhi.**
  - ◆ **Citation:** *Kanoria Chemical & Industries Ltd. (Supra)* // *Para 21, 24.*



## Legal 'Kisse' of Last Week

- ✚ **Claim filed in pursuant to the arbitral award should be paid equal to the amount permissible to the operational creditor, provided same has not been stayed or varies or quashed by any competent court: NCLAT New Delhi.**
  - ◆ **Citation:** *Kanoria Chemical & Industries Ltd (Supra) // Para 25, 30.*
  
- ✚ **Liquidation value found by the Registered Valuers cannot be allowed to be changed by the CoC: NCLAT New Delhi.**
  - ◆ **Citation:** *Kotak Mahindra Bank & Anr. Vs. Resolution Professional of Buildwell Private Limited & Anr. // Company Appeal (AT) (Ins.) No. 661 of 2021 // NCLAT New Delhi // 11.04.2023 // Para 30.*
  
- ✚ **Petition would be hit by Section 10 A of the Code if the date of default is after 25th March 2020 : NCLT Mumbai.**
  - ◆ **Citation:** *Nanz Med Science Pharma Private Limited Vs. Elder Projects Limited // CP (IB) 245/MB/C-I/2022 // NCLT Mumbai // 31.03.2023 // Para 49.*
  
- ✚ **Entries made in balance sheet amounts to acknowledgment of debt as per section 18 of Limitation Act: NCLT New Delhi.**
  - ◆ **Citation:** *M/s SKC Infratech Pvt. Ltd. Vs M/s EOS Hospitality Pvt. Ltd. // IB-365/(ND)/2020 // NCLT Delhi // 28.03.2023 // Para 7.*

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## ARBITRATION AND CONCILATION ACT, 1996

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- ✚ **The benefit of Section 4 of the Limitation Act will not be applicable on “further period” provided under proviso to Section 34(3) of the Act: Supreme Court.**
  - ◆ **Citation:** *Bhimashankar Sahakari Sakkare Karkhane Niyamita Vs. Walchandnagar Industries Limited // Civil Appeal No. 6810 of 2022 [SLP (C) No. 11216 of 2022] // Supreme Court // 10.04.2023 // Para 5.4.*
  
- ✚ **Proviso to Section 34(3) excludes the power of court under Section 5 of the Limitation Act: Supreme Court.**
  - ◆ **Citation:** *Bhimashankar Sahakari Sakkare Karkhane Niyamita (Supra) // Para 5.10.*



Legal 'Kisse' of Last Week

- ✦ **It is no longer *res integra* that the Limitation Act applies to arbitrations and court proceedings arising out of the arbitrations in light of Section 41 of the Act: Supreme Court.**
  - ◆ **Citation:** *Bhimashankar Sahakari Sakkare Karkhane Niyamita (Supra) || Para 5.11.*
  
- ✦ **Application of Limitation Act on arbitration proceedings, specifically excludes the applicability of Section 10 of the General Clause Act on said proceedings: Supreme Court.**
  - ◆ **Citation:** *Bhimashankar Sahakari Sakkare Karkhane Niyamita (Supra) || Para 5.11*
  
- ✦ **The court while exercising jurisdiction under Section 11(6) is not expected to act mechanically, and the limited scrutiny through the “eye of the needle” is necessary and compelling: Supreme Court.**
  - ◆ **Citation:** *NTPC Limited Vs. M/s SPML Infra Limited || Civil Appeal No. 4778 of 2022 || Supreme Court || 10.04.2023 || Para 28.*
  
- ✦ **Court while exercising its power under Section 11(6) shall strike down the *ex-facie* meritless and dishonest litigation: Calcutta High Court.**
  - ◆ **Citation:** *NTPC Limited (Supra) || Para 49.*
  
- ✦ **The scope of examination under Section 11 is narrow and the Court can only refuse arbitration in cases of deadwood or where the claims are time-barred: Calcutta High Court.**
  - ◆ **Citation:** *M/s Zillon Infraprojects Private Limited Vs. Bharat Heavy Electricals Limited || AP 312 of 2021 || Calcutta High Court || 29.03.2023 || Para 26-27.*
  
- ✦ **If parties are under discussion to settle the disputes mutually then claim will remain ‘live claim’ and cause of action would be ‘continuous’ nature: Calcutta High Court.**
  - ◆ **Citation:** *M/s Zillon Infraprojects Private Limited (Supra) || Para 32.*



## Legal 'Kisse' of Last Week

- ✦ **If the consent is not in writing, no other inference can be drawn contrary to what is provided under the proviso to Section 12(5) of the Act: Madras High Court.**
  - ◆ **Citation:** *Ray Thomas Vs. Mahindra and Mahindra Financial Services Limited* // Arb. O.P. (Com. Div.) No. 137 of 2023 // Madras High Court // 05.04.2023 // Para 20.
  
- ✦ **The appointment of the Arbitrator can be questioned, not particularly under Section 13 but also under Section 34 of the Act: Madras High Court.**
  - ◆ **Citation:** *Ray Thomas (Supra)* // Para 21.
  
- ✦ **The applicability of 2015 Amendment Act is prospective, and will apply to those arbitral proceedings and court proceedings that have commenced, on or after the effective date: Calcutta High Court.**
  - ◆ **Citation:** *West Bengal Housing Board Vs. M/s Abhishek Construction* // AP 189 of 2019 // Calcutta High Court // 11.04.2023 // Para 22.
  
- ✦ **A statute which creates substantive rights and liabilities on the parties shall be construed to be prospective in operation: Calcutta High Court.**
  - ◆ **Citation:** *West Bengal Housing Board (Supra)* // Para 24.

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## COMPANIES ACT, 2013

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- ✦ **In view of the provision of Section 6 of the Companies Act, 2013, any provision contrary to Section 196(4) of the Companies Act, made either in any agreement or Article of Association would be non-est.: NCLT New Delhi.**
  - ◆ **Citation:** *Mr. Anil Agrawal Vs. Omega Icehill Private Limited & Ors* // Company Petition No. 102/241/242/ND/2019 // NCLT New Delhi // 11.04.2023 // Para 11.
  
- ✦ **In the proceedings under Section 241-242 of the Companies Act, the grievance qua violation of an agreement cannot be raised: NCLT New Delhi**
  - ◆ **Citation:** *Mr. Anil Agrawal (Supra)* // Para 12.



Legal 'Kisse' of Last Week

✚ In a petition filed under Section 241-242, NCLT cannot go into the issue of removal of the Petitioner as Managing Director of the Respondent Company:  
**NCLT**

◆ **Citation:** *Mr. Anil Agrawal (Supra) // Para 13.*

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