




INDO LEGAL SERVICES
ADVOCATES & SOLICITORS

LEGAL '*KISSE*' OF LAST WEEK

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 Mayur Vihar Phase 1

INSOLVENCY BANKRUPTCY CODE, 2016

- ✚ **Claims of Related Party are not entitled to receive any amount in terms of Section 53 of the Code: NCLAT New Delhi.**
 - ◆ **Citation:** *Ashvinkumar Jayantilal Patel Vs. Shri Sanjay Jitendralal Shah & Ors.* // *Company Appeal (AT) (Ins.) No. 417 of 2023* // *NCLAT New Delhi* // 18.04.2023 // Para 2 & 4.

- ✚ **No need to enter into final adjudication with regard to existence of dispute between parties in Section 9 proceeding: NCLAT New Delhi.**
 - ◆ **Citation:** *Continuous Dyeing & Printing Mills Vs. Bhavika Apparels Pvt. Ltd.* // *Company Appeal (AT) (Ins.) No. 301 of 2022* // *NCLAT New Delhi* // 18.04.2023 // Para 20.

- ✚ **Ex-Directors/Promoters have locus standi to settle with the creditors in liquidation proceedings in contrast to CIRP: NCLAT New Delhi.**
 - ◆ **Citation:** *T.S. Murali Vs. Mr. Sarvesh Kashyap & Anr.* // *Company Appeal (AT) (Ins.) No. 275 of 2023* // *NCLAT New Delhi* // 21.04.2023 // Para 28.

- ✚ **Liquidator must assume a positive approach in resolving the distressed position of the Corporate Debtor: NCLAT New Delhi.**
 - ◆ **Citation:** *T.S. Murali (Supra)* // Para 30.

- ✚ **Claim filed post approval of a plan by Committee of Creditors cannot be allowed: NCLAT New Delhi.**
 - ◆ **Citation:** *Regional P.F. Commissioner Vs. Vivek Raheja & Anr.* // *Company Appeal (AT) (Ins.) No. 429 of 2023* // *NCLAT New Delhi* // 19.04.2023 // Para 7.

- ✚ **Merely not participating in COC meeting will not lead to the conclusion that the Application filed by Operational Creditor was filed with fraudulent and malicious intent as provided under Section 65: NCLAT New Delhi.**
 - ◆ **Citation:** *OM Logistics Ltd* // *Company Appeal (AT) (Ins.) No. 880 of 2022* // *NCLAT New Delhi* // 17.04.2023 // Para 4.



Legal 'Kisse' of Last Week

- ✚ **Merely nonpayment of IRP fees will not tantamount to fraudulent and malicious intent at the part of Operational Creditors while filing Application to initiate CIRP: NCLAT New Delhi.**
 - ◆ **Citation:** *OM Logistics Ltd // Company Appeal (AT) (Ins.) No. 880 of 2022 // NCLAT New Delhi // 17.04.2023 // Para 4.*

- ✚ **In absence of acknowledgment of debt on the part of CD Section 9 will not be maintainable: NCLAT New Delhi.**
 - ◆ **Citation:** *Oyster Steel and Iron Pvt. Ltd. Vs. Brilliant Metals Private Limited // Company Appeal (AT) (Ins.) No. 1089 of 2022 // NCLAT New Delhi // 18.04.2023 // Para 20.*

- ✚ **In the case of running account between parties, the crystallization of debt due is an essential ingredient for invoking CIRP under Section 9: NCLAT New Delhi.**
 - ◆ **Citation:** *Oyster Steel and Iron Pvt. Ltd. (Supra) // Para 22.*

- ✚ **It is the duty of the RP to serve notice of each meeting of the CoC to the Operational Creditors or their representatives if the amount of the aggregated due is not less than 10% of the debt: NCLAT New Delhi.**
 - ◆ **Citation:** *Bhushan Shringarpure & Ors. Vs Mr. B. K. Mishra & Ors. // Company Appeal (AT) (Ins.) No. 1504 of 2022 // NCLAT New Delhi // 20.04.2023 // Para 15.*

- ✚ **After constitution of the CoC, settlement if any, needs to be approved by the CoC with 90% of vote share as per Section 12A read with CIRP Regulation 30A: NCLAT New Delhi.**
 - ◆ **Citation:** *Rajendra Pandurang Barde Vs. Amit Steels & Ors. // Company Appeal N(AT) (Ins.) No. 1503 of 2022 // NCLAT New Delhi // 19.04.2023// Para14.*

- ✚ **Adjudicating Authority is not required to ascertain the correct amount of Debt at admission stage: NCLAT New Delhi.**
 - ◆ **Citation:** *Manmohan Gupta Vs. MDS Digital Media Pvt. Ltd. & Anr. // Company Appeal (AT) (Ins.) No. 202 of 2023 // NCLAT New Delhi // 18.04.2023 // Para 4.*



Legal 'Kisse' of Last Week

ARBITRATION AND CONCILIATION ACT, 1996

- ✚ **Only when there is not even a vestige of doubt that the claim is non-arbitrable, the court will refuse to refer the parties to arbitration: Delhi High Court.**
 - ◆ **Citation:** *Gaurav Dhanuka & Anr. Vs. Surya Maintenance Agency Private Limited & Ors.* // Neutral Citation: 2023:DHC:2582 // Delhi High Court // 17.04.2023 // Para 33.

- ✚ **A written declaration by a party may end the conciliation process in accordance with Section 76, and there is no legal restriction in this regard: Delhi High Court.**
 - ◆ **Citation:** *Subhash Infraengineers Private Limited Vs. NTPC Limited* // Neutral Citation: 2023:DHC:2584 // Delhi High Court // 17.04.2023 // Para 21.

- ✚ **The Court in exercise of its powers under Section 34 would not interfere with interpretation of the Contract made by the Arbitral Tribunal: Delhi High Court.**
 - ◆ **Citation:** *Union of India Vs. Glove Civil Projects Private Limited* // Neutral Citation: 2023:DHC:2578 // Delhi High Court // 18.04.2023 // Para 24.

- ✚ **“Patent illegality” is an illegality which goes to the root of the matter but excludes erroneous application of law by arbitral tribunal: Delhi High Court.**
 - ◆ **Citation:** *Bharat Sanchar Nigam Limited Vs. M/s Maverick Mobile Solution* // Neutral Citation: 2023:DHC:2618 // Delhi High Court // 18.04.2023 // Para 47-48.

- ✚ **Rule of *contra proferentem* i.e. interpreted against the party that drafted it, can be applied in case of doubt or ambiguity in contractual terms: Delhi High Court.**
 - ◆ **Citation:** *Bharat Sanchar Nigam Limited (Supra)* // Para 59-63.

- ✚ **Though Court's jurisdiction under Section 34 is limited if the Arbitral Tribunal's interpretation is incorrect on the face of it, it cannot be sustained: Delhi High Court.**
 - ◆ **Citation:** *M/s Telecommunications Consultants India Limited Vs. M/s Vista Information Systems Private Limited* // Neutral Citation: 2023:DHC:2616 // Delhi High Court // 18.04.2023 // Para 33.



Legal 'Kisse' of Last Week

- ✚ **The provisions governing arbitration, including Section 11, do not come into play during conciliation under MSEFC Act: Calcutta High Court.**
 - ◆ **Citation:** *Essar Oil and Gas Exploration and Production Limited (Supra) || Calcutta High Court || 20.04.2023 || Para 13.*

- ✚ **Stage of arbitration can only be reached after the termination of the conciliation proceeding: Calcutta High Court.**
 - ◆ **Citation:** *Essar Oil and Gas Exploration and Production Limited (Supra) || Para 16.*

- ✚ **No agreement entered into between the parties could be given primacy over the statutory provisions of Section 18 read with Section 24 of the MSME Act: Calcutta High Court.**
 - ◆ **Citation:** *Essar Oil and Gas Exploration and Production Limited (Supra) || Para 17.*

- ✚ **Having not reached the stage of arbitration under Section 18(3) of the MSME Act, it cannot be said that the bar under Section 24 of the said Act is attracted at all: Calcutta High Court.**
 - ◆ **Citation:** *Essar Oil and Gas Exploration and Production Limited (Supra) || Para 18.*

- ✚ **The provisions of Section 9 would apply once the conciliation between the parties terminates: Calcutta High Court.**
 - ◆ **Citation:** *Essar Oil and Gas Exploration and Production Limited (Supra) || Para 33.*



COMPANIES ACT, 2013

- ✚ **NCLT is not permitted to pass an order affecting the right of those person who are not arrayed as party in the petition: NCLAT New Delhi**
 - ◆ **Citation:** *Galaxy Enterprise Vs. Indiraben and Ors* // *Company Appeal (AT) No. 38 of 2023* // *NCLAT New Delhi* // 18.04.2023 // Page 40.

- ✚ **The benefit of Section 14 of the Limitation Act can not be availed for pursuing the Review petition before NCLT when there is no provision for 'Review' under Act: NCLAT Chennai**
 - ◆ **Citation:** *Nimisha Nihar Doctor & Anr Vs. Malabar Enviro Vision Pvt. Ltd. & 6 Ors* // *Company (AT) (CH) No. 38/2023* // *NCLAT Chennai* // 20.04.2023 // Para 12 & 13.

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