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LEGAL '*KISSE*' OF LAST WEEK

37th Edition



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INSOLVENCY BANKRUPTCY CODE, 2016

- ✚ **Dispute in existence means and includes raising a dispute before a court of law or an Arbitral Tribunal before receipt of notice under Section 8 of the IBC: NCLAT Chennai.**
 - ◆ **Citation:** *M/s KK Ropeways Limited. VS. M/s Billion Smiles Hospitality Private Limited* // *Company Appeal (AT) (CH) (INS.) No. 246 of 2021* // *NCLAT Chennai* // 12.06.2023 // *Para 23.*

- ✚ **Arbitration proceedings and insolvency proceedings cannot go on together: NCLAT Chennai.**
 - ◆ **Citation:** *M/s KK Ropeways Limited. (Supra)* // *Para 25.*

- ✚ **Prima facie pre-existing disputes exist if an appeal under Section 34 of the A&C Act, 1996 is pending against the 'Ex-Parte' award: NCLAT Chennai.**
 - ◆ **Citation:** *M/s KK Ropeways Limited. (Supra)* // *Para 31.*

- ✚ **Section 238 of the Code will prevail over any of the provisions of the SARFAESI Act, 2002: NCLAT Chennai.**
 - ◆ **Citation:** *Puissant Towers India Pvt. Ltd. VS Neueon Towers Limited & Ors.* // *Company Appeal (AT) (CH) (INS.) No. 181 of 2022* // *NCLAT Chennai* // 12.06.2023 // *Para 10.*

- ✚ **RP can keep the counterclaim in abeyance till the pending arbitration proceedings: NCLAT Chennai.**
 - ◆ **Citation:** *Anheuser Busch Inbev India India Limited VS Mr. Pradeep Kumar Sravanam* // *Company Appeal (AT) (CH) (INS.) No. 12 of 2023* // *NCLAT Chennai* // 12.06.2023 // *Para 40.*



ARBITRATION AND CONCILATION ACT, 1996

✚ **An arbitration clause arising out of the contract, would subsist even after the contract between the parties had expired: Delhi High Court.**

◆ **Citation:** *Pee Empro Exports Pvt. Ltd. Vs. United India Insurance Co. Ltd.* // *Neutral Citation:* 2023:DHC:4161 // *ARBV.P.* 1279/2022 // *Delhi High Court* // 12.06.2023 // *Para* 50.

✚ **Three test under 'Fundamental Policy) under Section 34(2) are Arbitrator must adopt judicial approach, uphold natural justice, and award not be perverse: Delhi High Court.**

◆ **Citation:** *Delhi Development Authority Vs. Sh. KR Anand & Anr.* // *Neutral Citation:* 2023:DHC:4156 // *O.M.P. (COMM)* 488/2020 // *Delhi High Court* // 12.06.2023 // *Para* 58.

✚ **Court cannot modify order while exercising jurisdiction under Section 34 : Delhi High Court.**

◆ **Citation:** *M/s A.G. Enviro Infra Projects Pvt. Ltd. Vs. m/s J.S. Enviro Service Pvt. Ltd.* // *Neutral Citation:* 2023:DHC:4159 // *Delhi High Court* // 12.06.2023 // *Para* 26.

✚ **Constitutional court do not possess the unbridled power to interfere unnecessarily with the award: Delhi High Court.**

◆ **Citation:** *M/s A.G. Enviro Infra Projects Pvt. Ltd. (Supra)* // *Para* 39.

✚ **The Arbitral Award may be irregular, but this cannot be used to set aside the Award unless the irregularity reaches to the heart of the case and shocks the Court's conscience, rendering the Award unconstitutional: Delhi High Court.**

◆ **Citation:** *MMTC Limited Vs. Aust Grain Exports Pvt. Ltd.* // *Neutral Citation:* 2023:DHC:4162 // *Delhi High Court* // 12.06.2023 // *Para* 47-50.



COMMERCIAL COURTS ACT, 2015

✚ Under Order 39 of the CPC, the Court is to be satisfied of the three well settled tests of strong *prima facie* and balance of convenience in favour of the applicant and irreparable injury likely to be caused to him: **Delhi High Court.**

◆ **Citation:** *FITJEE Ltd Vs. Allen Education and Management Services Pvt. Ltd & Ors.* || Neutral Citation No: 2023:DHC:4157 || Delhi High Court || 12.06.2023 || Para 19.

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