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# LEGAL '*KISSE*' OF LAST WEEK

34th Edition



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## INSOLVENCY & BANKRUPTCY CODE, 2016

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- ✚ **In section 9 application Adjudicating Authority needs not to investigate all related contractual disputes: NCLAT New Delhi.**
  - ◆ **Citation:** *Shree Durga Iron & Steel Company Limited Vs. Rawalwasia Textile Industries Private Limited || Company Appeal AT) (Ins.) No. 1343 of 2022 || New Delhi || 26.05.2023 || Para 15.*
  
- ✚ **In section 9 application Adjudicating Authority only needs to look into merits as long as it suffice to identify plausible defence is raised: NCLAT New Delhi.**
  - ◆ **Citation:** *Shree Durga Iron & Steel Company Limited (Supra) || Para 15 .*
  
- ✚ **As remedy against third party is not available under Section 66 of IBC, hence, Resolution Professional can sought civil remedies against third parties for the recovery of dues payable to Corporate Debtor: Supreme Court.**
  - ◆ **Citation:** *Gluckrich Capital Private Limited Vs. The state of West Bengal & Ors. || Special Leave Petition Diary No. 6732 of 2023 || Supreme Court || 19.05.2023 || Para 10.*
  
- ✚ **In Section 10 application creditors are not required to be issued notice but if an intervening application comes in between then an opportunity of hearing shall be given : NCLAT New Delhi.**
  - ◆ **Citation:** *SMBC Aviation Capital Limited VS. IRP of Go Airlines (India) Ltd., Abhilash Lal || Company Appeal (AT) (Ins.) No. 593 of 2023 || NCLAT New Delhi || 22.05.2023 || Para 19.*
  
- ✚ **There is no requirement for intervention of any Directors or shareholders of the 'Financial Creditor' or any other party before admission of Application under Section 7 of IBC: NCLAT New Delhi.**
  - ◆ **Citation:** *Vikash Kumar Mishra & Ors. Vs. Orbis Trusteeship Service Pvt. Ltd. & Anr. || Company Appeal (AT) (Ins.) No. 246 of 2023 || NCLAT New Delhi || 22.05.2023 || Para 12.*



## Legal 'Kisse' of Last Week

- ✚ **If the Resolution Plan has been approved by the adjudicating authority and which approval has been approved by the Hon'ble Supreme Court, it is obligatory on all stake holders to initiate the implementation of the Plan: NCLAT New Delhi.**
  - ◆ **Citation:** *State Bank of India VS. MBL Infrastructure Limited & Anr. // Company Appeal (AT) (Ins.) no. 539 of 2022 // NCLAT New Delhi // 23.05.2023 // Para 14.*

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### ARBITRATION AND CONCILIATION ACT, 1996

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- ✚ **Time barred claims or the claims which are barred by limitation cannot be referred to arbitration: Supreme Court.**
  - ◆ **Citation:** *M/s B and T AG Vs. Ministry of Defense // Arbitration Petition (C) No. 13 of 2023 // Supreme Court // 18.05.2023 // Para 66.*
- ✚ **Mere negotiations will not postpone the “cause of action” for the purpose of limitation: Supreme Court.**
  - ◆ **Citation:** *M/s B and T AG (Supra) // Para 63.*
- ✚ **The arbitration clause which authorizes the secretary of Ministry of Home Affairs to nominate arbitrator, clearly falls within Schedule VII, read with Section 12(5) of the Act: Supreme Court.**
  - ◆ **Citation:** *M/s Glock Asia-Pacific Limited VS. Union of India // Arbitration Petition No. 51 of 2022 // Supreme Court // 19.05.2023 // Para 19.*

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### COMPANIES ACT, 2013

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- ✚ **NCLT has the power to execute an order under Section 424(3) of the Companies Act, 2013: NCLAT New Delhi.**
  - ◆ **Citation:** *Cotmac Electronics Pvt Ltd and Ors Vs. Mukund Muley & Anr // Company Appeal (AT) No. 62-63-64 of 2023 // NCLAT New Delhi // 25.05.2023 // Para 26.*



Legal 'Kisse' of Last Week

- ✚ **The word 'person concerned' as mentioned in the proviso to Section 252(1) may not be widen to create such right to a person who is not connected with the affairs of a struck off company: NCLAT New Delhi.**
  - ◆ **Citation:** *Think Gas Ludhiana Pvt Ltd Vs. Jay Madhok Energy Pvt. Ltd. & Anr. || Company Appeal (AT) No. 76 of 2023 || 22.05.2023 || Para 14.*

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**COMMERCIAL COURTS ACT, 2015**

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- ✚ **The Court has the power to review the judgment under Section 114 and Order XLVII of the CPC is evidently settled: Delhi High Court.**
  - ◆ **Citation:** *M/s Trade International Vs. M/s Avon Healthcare Pvt Ltd || Neutral Citation No. 2023: DH: 3737 || Delhi High Court || 23.05.2023 || Para 15.*
- ✚ **The only errors pertaining to mistake or error apparent on the fact of record, and do not require any long drawn process of reasoning, would invite a review of the judgment in question.: Delhi High Court**
  - ◆ **Citation:** *M/s Trade International Vs. (Supra) || Para 21.*

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