



**INDO LEGAL SERVICES**  
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# LEGAL '*KISSE*' OF LAST WEEK

## 47th Edition



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 Mayur Vihar Phase 1

Legal 'Kisse' of Last Week

**INSOLVENCY BANKRUPTCY CODE, 2016**

- ✚ **The decision of the CoC to accept the value for relinquishment of personal guarantee is a commercial decision of the CoC : NCLAT New Delhi**
  - ◆ **Citation:** *SVA Family Welfare Trust & Anr. Vs. Ujaas Energy Ltd. & Ors. || Company Appeal (AT) (Ins.) No. 266 of 2023 || NCLAT New Delhi || 21.08.2023 || Para 28.*
  
- ✚ **Plan can contain a provision for extinguishment of personal guarantee of the personal guarantors and same would be binding on dissenting CoC member as well: NCLAT New Delhi.**
  - ◆ **Citation:** *SVA Family Welfare Trust (Supra) || Para 29.*
  
- ✚ **Avoidance application to be decided by the Adjudicating Authority shall not affect the proceedings of the CIRP: NCLAT New Delhi.**
  - ◆ **Citation:** *Vinay Jain Vs. AVJ Developers (India) Pvt. Ltd. || Company Appeal (AT) (Ins.) No. 846 of 2023 || NCLAT New Delhi || 23.08.2023 || Para 19.*
  
- ✚ **There is no impediment in considering the Plan Approval Application as well as PUFEE Application together and therefore it is open for Adjudicating Authority to decide both the application simultaneously: NCLAT New Delhi.**
  - ◆ **Citation:** *Vinay Jain (Supra) || Para 20.*
  
- ✚ **Assets attached by Sales Tax Department cannot be considered the owner of the assets and said assets continue to be part of the Liquidation Estate: NCLAT New Delhi.**
  - ◆ **Citation:** *Tapadia Polyesters Pvt. Ltd. Vs. Sales Tax Officer & Ors || Company Appeal (AT) (Ins) No. 366 of 2023 || NCLAT New Delhi || 22.08.2023 || Para 14.*
  
- ✚ **Dissenting Homebuyers and Financial Creditors have no right to challenge a Plan approved by Adjudicating Authority: NCLAT New Delhi.**
  - ◆ **Citation:** *Ashok Gosavi & Ors. Vs. Manoj Kumar Agarwal & Ors || Company Appeal (AT) (Ins) No. 1094 of 2023 || NCLAT New Delhi || 24.08.2023 || Para 6.*



## Legal 'Kisse' of Last Week

- ✚ **Ground of fraud and limitation u/s 3 and 17 of the Limitation Acts are the issues must be considered in an appropriate suit or legal proceeding initiated by the liquidator: NCLAT New Delhi.**
  - ◆ **Citation:** *M/s Mangalore Refinery and Petrochemicals Ltd. Vs. Tecpro Systems Ltd. || Company Appeal (AT) (Ins) No. 597 of 2023 || NCLAT New Delhi || 21.08.2023 || Para 2-4.*
  
- ✚ **The deposit of EMD in pursuance of the tender notice is not an operational debt: NCLAT New Delhi.**
  - ◆ **Citation:** *Supreme Transport Organization Pvt. Ltd. Vs. Maharashtra Airport Development Company Ltd. || Company Appeal (AT) (Ins) No. 1056 of 2023 & I.A. No. 3646 of 2023 || NCLAT New Delhi || 23.08.2023 || Para 8.*
  
- ✚ **Adjudicating Authority cannot modify the initiation of CIRP by confining the CIRP to one Project: NCLAT New Delhi.**
  - ◆ **Citation:** *Kotak Mahindra Bank Ltd. Vs. Resolution Professional of Universal Buildwell Pvt. Ltd. || Company Appeal (AT) (Ins) No. 1000 of 2021 || NCLAT New Delhi || 23.08.2023 || Para 10.*
  
- ✚ **Once the plan having been approved, distribution mechanism stated in the Plan has to be accepted by the CoC: NCLAT New Delhi.**
  - ◆ **Citation:** *Ganesh Ores Pvt. Ltd. Vs. Vijaykumar V. Iyer & Anr. || Company Appeal (AT) (Ins.) No. 830 of 2023 || NCLAT New Delhi || 24.08.2023 || Para 4.*

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## ARBITRATION AND CONCILIATION ACT, 1996

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- ✚ **Section 42 of the Act states that a court alone has jurisdiction over arbitral proceedings and subsequent applications arising from an arbitration agreement, regardless of other laws: Delhi High Court.**
  - ◆ **Citation:** *Liberty Footwear Company Vs. Liberty Shoes Limited || O.M.P.(I) (COMM) 155/2023 || Neutral Citation: 2023:DHC:5945 || Delhi High Court || 21.08.2023 || Para 25 & 31.*



Legal 'Kisse' of Last Week

- ✚ **Court can partially set aside an award under Section 34 subject to the rest of the award remaining sustainable: Delhi High Court.**
  - ◆ **Citation:** *National Highways Authority of India Vs. Trichy Thanjavur Expressway Limited* || O.M.P. (COMM) 95/2023 || Neutral Citation: 2023:DHC:5834 || Delhi High Court || 21.08.2023 || Para 63.
  
- ✚ **Under proviso (b) to Section 33 (2) of the Stamp Act, it is permissible for this Court to delegate the task of examining and impounding any unstamped/insufficiently stamped instrument to an officer as may be appointed by the Court: Delhi High Court.**
  - ◆ **Citation:** *Splendor Landbase Limited Vs. Aparna Ashram Society & Anr.* || ARB.P. 366/2021 || Neutral Citation: 2023:DHC:5989 || Delhi High Court || 22.08.2023 || Para 8.
  
- ✚ **Petitioners filing under Section 11 must file the original instrument if an unstamped arbitration agreement is executed. However, duly stamped agreements can be omitted if a true copy or certified copy clearly indicates proper stamping and is accompanied by a clear statement: Delhi High Court.**
  - ◆ **Citation:** *Splendor Landbase Limited (Supra)* || Delhi High Court || 22.08.2023 || Para 10.
  
- ✚ **The rule of *audi alteram partem* is crucial in arbitration proceedings, as outlined in Section 34(2) (a) (iii) of the Act: Delhi High Court.**
  - ◆ **Citation:** *Casa 2 Stays Private Limited Vs. BBH Communications India Private Limited* || FAO(COMM) 48/2022 || Neutral Citation: 2023:DHC:6034-DB || Delhi High Court || 23.08.2023 || Para 19.
  
- ✚ **Merely because the oral arguments were not addressed, does not lead to inevitable denial of principles of natural justice: Delhi High Court.**
  - ◆ **Citation:** *Casa 2 Stays Private Limited (Supra)* || Delhi High Court || 23.08.2023 || Para 23.
  
- ✚ **Period of limitation for filing an application under Section 34 would commence only after valid delivery of the Award under Section 31(5): Delhi High Court.**
  - ◆ **Citation:** *Ministry of Youth Affairs and Sports, Department of Ports, Government of India Vs. Ernst and Young Private Limited (now known as Ernst and Young LLP)* || O.M.P. (COMM) 377/2018 || Neutral Citation: 2023:DHC:6055 || Delhi High Court || 23.08.2023 || Para 40.



## Legal 'Kisse' of Last Week

- ✚ **Delivery of scanned copy of award through email is valid service of award in terms of Section 31(5): Delhi High Court.**
  - ◆ **Citation:** *Ministry of Youth Affairs and Sports, Department of Ports, Government of India Vs. Ernst and Young Private Limited (Supra) || Para 47.*
  
- ✚ **Filing of Section 34 without award, attested statement of truth is non-est filing and cannot be considered by the Court: Delhi High Court.**
  - ◆ **Citation:** *Ministry of Youth Affairs and Sports, Department of Ports, Government of India Vs. Ernst and Young Private Limited (Supra) || Para 51.*
  
- ✚ **A dissenting opinion cannot be treated as an award if the majority award is set aside. The conversion of the dissenting opinion into a tribunal's findings and elevation as an award would be inappropriate and improper: Supreme Court.**
  - ◆ **Citation:** *M/s Hindustan Construction Company Limited Vs. M/s National Highways Authority of India || Civil Appeal No(s). 4659 of 2023 || Neutral Citation : 2023INSC768 || Supreme Court || 24.08.2023 || Para 27.*
  
- ✚ **A comprehensive analysis of Section 34 is essential for a holistic understanding of the provisions' implications on the authoritative powers and jurisdictional scope of the Court: Delhi High Court.**
  - ◆ **Citation:** *Dedicated Freight Corridor Corporation of India Limited (DFCCIL) Vs. Tata Aldesa JV || O.M.P. (COMM) 105/2021 || Neutral Citation: 2023:DHC:6070 || Delhi High Court || 24.08.2023 || Para 37 & 38.*

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