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LEGAL '*KISSE*' OF LAST WEEK

45th Edition



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INSOLVENCY BANKRUPTCY CODE, 2016

- ✚ **There should be a legitimate dispute that is not hypothetical, illusory or moonshine, and it should have arisen before the issuance of demand notice under Section 8: NCLAT New Delhi.**
 - ◆ **Citation:** *Feng Ji Vs. Giesecke & Devrient MS India Private Limited & Anr. // Company Appeal (AT) (Insolvency) No. 213 of 2023 // NCLAT New Delhi // 11.08.2023 // Para 23.*

- ✚ **Adjudicating Authority is not required to go into merit of the dispute, it is only required to see whether a dispute exists prior to the issue of Section 8 demand notice: NCLAT New Delhi.**
 - ◆ **Citation:** *Feng Ji Vs. Giesecke & Devrient MS India Private Limited & Anr. (Supra) // Para 23.*

- ✚ **270 days of CIRP expired with no resolution plan and sole CoC member intends to withdraw the CIRP- NCLAT can order the closure of CIRP under Rule 11 of NCLAT Rules: NCLAT New Delhi.**
 - ◆ **Citation:** *Laxman Singh (Ex-Director) of Divinesear Logistics Private Limited Vs. Kerry Indev Logistics Private Limited // Company Appeal (AT) (Insolvency) No. 1002 of 2022 // NCLAT New Delhi // 10.08.2023 // Para 31-32.*

- ✚ **The power under Section 28(1)(j) is vested with the CoC with regard to the change in the management of the subsidiary: NCLAT New Delhi.**
 - ◆ **Citation:** *Amit Goel Vs. Piyush Colonizers Limited & Anr. // Comp. App. (AT) (Ins.) No. 981 of 2023 // NCLAT New Delhi // 07.08.2023 // Para 4.*

- ✚ **Pendency of proceedings under other statute will not bar the initiation of CIRP under the Code: NCLAT Chennai.**
 - ◆ **Citation:** *Mr. A.L Sundershan Vs. Syndicate Bank & Anr. // Company Appeal (AT) (CH)(INS.) No. 261 of 2022 // NCLAT Chennai // 07.08.2023 // Para 42.*

- ✚ **Section 14 of the Code does not specify any 'interest waiver' during the period of moratorium: NCLAT Chennai.**
 - ◆ **Citation:** *Mr. Arun Kumar Vs, Ms. Sripriya Kumar & Ors. // Company Appeal*



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(AT) (CH) (INS.) no. 431/2022 || NCLAT Chennai || 08.08.2023 || Para 19.

- ✚ **Interest and penal interest under a contract keep on running and accumulated till repayment is done as per the wisdom of the COC: NCLAT Chennai.**
 - ◆ **Citation:** *Mr. Arun Kumar Vs, Ms. Sripriya Kumar & Ors. (Supra) || Para 19-24.*

- ✚ **Any kind of settlement is between the parties and no settlement can be directed by way of any order under the provisions of the IBC : NCLAT Chennai.**
 - ◆ **Citation:** *Mr. Arun Kumar Vs, Ms. Sripriya Kumar & Ors. (Supra) || Para 33.*

- ✚ **Adjudicating Authority has the authority to adjudicate all issues arising out of the insolvency resolution process, including issue relating to breach of confidentiality: NCLAT Chennai.**
 - ◆ **Citation:** *Mr. Ramneek Goel Vs. Mr. Sunil Bajaj & Ors. || Company Appeal (AT) (Insolvency) No. 845 of 2023|| NCLAT Chennai || 08.08.2023 || Para 19.*

- ✚ **RP act as a bridge of balance between COC and other stakeholder of CD and also an officer of Court: NCLAT New Delhi.**
 - ◆ **Citation:** *India Resurgence ARC Pvt. Ltd. Vs. Rohit J. Vora || Company Appeal (AT)(Insolvency) No. 100 of 2023 || NCLAT New Delhi || 09.08.2023 || Para 19 & 20.*

ARBITRATION AND CONCILIATION ACT, 1996

- ✚ **Court is powerless under Section 34/37 to modify the award and can only set aside partially, or wholly an award on a condition spelled under Section 34: Supreme Court.**
 - ◆ **Citation:** *M/s Larsen Air Conditioning and Refrigeration Company Vs. UOI & Ors. || Neutral Citation: 2023 INSC 708 || Supreme Court || 11.08.2023 || Para 13.*

- ✚ **Once an Arbitral Award has been confirmed under Section 34, appellate court must use extreme caution when overturning concurrent findings of fact and law : Delhi High Court.**
 - ◆ **Citation:** *National Highways Authority of India Vs. Punjab National bank & Anr. || FAO (OS) (COMM) 27/2021 || Neutral Citation: 2023:DHC:5686-DB || Delhi High Court || 10.08.2023 || Para 6.*



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- ✚ **The scope of petition filed under Section 9 is quite different at pre-award stage from the post-award stage: Delhi High Court.**
 - ◆ **Citation:** *National Highways Authority of India (Supra) || Para 11.*
- ✚ **Because the contracts are 'back-to-back', a contractor cannot refuse to pay the subcontractors solely because it hasn't received payment from the primary employer: Delhi High Court.**
 - ◆ **Citation:** *Gannon Dunkerley and Co limited Vs. M/s Zillion Infraprojects Private Limited || O.M.P. (COMM) 234/2023 || Neutral Citation:2023:DHC:5632 || Delhi High Court || 10.08.2023 || Para 40.*

COMMERCIAL COURTS ACT, 2015

- ✚ **NCLT has the limited power to decide the issue of rectification of the register of members: Delhi High Court.**
 - ◆ **Citation:** *Ms. Shazia Rehman Vs. Mr. Anwar Elahi & Ors. || Neutral Citation No. 2023:DHC:5563 || Delhi High Court || 09.08.2023 || Para 16.*
- ✚ **NCLT cannot adjudicate the complex question of a seriously disputed title or grant of declaratory/ injunctive reliefs: Delhi High Court.**
 - ◆ **Citation:** *Ms. Shazia Rehman Vs. Mr. Anwar Elahi & Ors. (Supra)|| Para 16.*
- ✚ **Dispute regarding right, title and interest in share can only be determined in Civil Suit: Delhi High Court.**
 - ◆ **Citation:** *Ms. Shazia Rehman Vs. Mr. Anwar Elahi & Ors. || Neutral Citation No. 2023:DHC:5563 || Delhi High Court || 09.08.2023 || Para 22.*

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