



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

## 40th Edition



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📍 Mayur Vihar Phase 1

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## INSOLVENCY BANKRUPTCY CODE, 2016

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- ✚ **Adjudicating Authority (AA) has all the powers to direct statutory authorities to release assets, which were under attachment of statutory authorities: NCLAT New Delhi.**
  - ◆ **Citation:** *Pradeep Kumar Kabra Vs. Assistant Commissioner of CGST & Central Excise || Company Appeal (AT) (Ins.) No. 409 of 2023 || NCLAT New Delhi || 04.07.2023 || Para 18.*
  
- ✚ **It is settled law that commercial wisdom of the CoC is not subjected to unnecessarily judicious scrutiny or judicial interference: NCLAT New Delhi.**
  - ◆ **Citation:** *Manesh Agarwal Vs. Pramod Kumar Sharma & Ors. || Company Appeal At (Ins.) No. 621 of 2023 || NCLAT New Delhi || 04.07.2023 || Para 26.*
  
- ✚ **In Section 7 Application AA needs not to look into any dispute or allegation: NCLAT New Delhi.**
  - ◆ **Citation:** *Mr. Vipin Sharmar VS. Kaliber Associates Private Limited & Anr. || Company Appeal (AT) (Ins.) No. 113 of 2023 || 04.07.2023 || Para 17-18.*
  
- ✚ **A successful bidder of sale as going concern can seek relief/concession/directions from the Adjudicating Authority as per liquidation process documents: NCLAT New Delhi.**
  - ◆ **Citation:** *Jasamrit Designers Private Limited Vs. Mr. Gian Chand Narang & Anr. || Company Appeal (AT) (Ins.) No. || 04.07.2023 || Para 12.*
  
- ✚ **When the demand notice is in Form-3 no need to attach invoices with it : NCLAT New Delhi.**
  - ◆ **Citation:** *Tejinder Pal Setia VS. Kone Elevator India Pvt. Ltd. || Company Appeal (AT) (Ins.) No. 262 of 2023 || NCLAT New Delhi || 04.07.2023|| Para 13.*
  
- ✚ **Claim of the homebuyers cannot be admitted at the belated stage when the Resolution Plan of the Corporate Debtor has been approved by the adjudicating authority: NCLAT New Delhi.**
  - ◆ **Citation:** *Sunil Chauhan Vs. Rabindra Kumar Mintri || Company Appeal (AT) (Ins.) No. 407 of 2023 || NCLAT New Delhi || 04.07.2023 || Para 9.*



Legal 'Kisse' of Last Week

- ✦ **Extension under Regulation 2-B of the Liquidation Process Regulations, 2016, cannot be granted without any concrete evidence on the preparation of scheme: NCLAT New Delhi.**
  - ◆ **Citation:** *Harish Sharma VS. M/s C & C Constructions Limited & Ors. || Company Appeal (AT) (Ins.) No. 368 of 2023 || NCLAT New Delhi || 05.07.2023 || Para 22.*
  
- ✦ **Bid that is more than the liquidation value cannot be rejected due to typographical error in E-auction Notice: NCLAT New Delhi.**
  - ◆ **Citation:** *Naren Seth Vs. Sunrise Industries & Ors. || Company Appeal (AT) (Ins.) No. 401 of 2023 || NCLAT New Delhi || 04.07.2023 || Para 34.*
  
- ✦ **It is a settled principle of law that the commercial wisdom of the CoC is paramount and the legislature has consciously not provided any ground to challenge the commercial wisdom: NCLAT New Delhi.**
  - ◆ **Citation:** *Epitome Components Pvt Ltd. Vs. Divyesh Desai & Anr. || Company Appeal (AT) (Ins.) No. 565 of 2023 || NCLAT New Delhi || 07.07.2023 || Para 34.*
  
- ✦ **Admission of an application under Section 7 is a rule, if fulfills certain criteria, however, rejection of such application is an exception: NCLAT New Delhi.**
  - ◆ **Citation:** *Mukesh Kumar VS. Ambrane India Pvt. Ltd. & Anr. || Company Appeal (AT) (Ins.) No. 659 of 2022 || NCLAT New Delhi || 05.07.2023 || Para 26.*
  
- ✦ **Outstanding debt arising out of deed of continuing guarantee can be invoked under Section 7: NCLAT New Delhi.**
  - ◆ **Citation:** *Ajay Shivajirao Jhadav Vs. Netafim Agricultural Financing Agency Private Limited & Anr. || Company Appeal (AT) (Ins.) No. 338 of 2023 || NCLAT New Delhi || 04.07.2023 || Para 27-29.*
  
- ✦ **Financial Statements filed with the ROC have greater evidentiary value than that of a 'ledger statement' which is an 'internal document: NCLAT Chennai.**
  - ◆ **Citation:** *M/s SMS Foundation & Investment LLP Vs. M/s Harsha Exito Engineering Private Limited || Company Appeal (AT) (Ins.) No. 364 of 2022 || NCLAT Chennai || 04.07.2023 || Para 12.*



## Legal 'Kisse' of Last Week

- ✦ **The existence of an Arbitration clause does not prevent the Parties from initiating Insolvency Proceedings under Section 7 of the Code: NCLAT Chennai.**
  - ◆ **Citation:** *Koshy Varghese Vs. India Resurgence ARC Private Limited & Anr. || Company Appeal (AT) (Ins.) No. 167 of 2023 || NCLAT Chennai || 07.07.2023 || Para 8.*

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### ARBITRATION AND CONCILIATION ACT, 1996

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- ✦ **Pro-Tem security cannot be equated with injunction order under Order 39 Rule 1 and 2: Delhi High Court.**
  - ◆ **Citation:** *Nokia Technologies OY Vs. Guangdong Oppo Mobile Telecommunications Corp Limited & Ors. || FAO (OS) (Comm) 321/2022 || Neutral Citation: 2023:DHC:4465-DB || Delhi High Court || 03.07.2023 || Para 59.*
- ✦ **Consent of party cannot confer jurisdiction on the court which it does not possess: Delhi High Court.**
  - ◆ **Citation:** *Nokia Technologies OY (Supra) || Para 80.*
- ✦ **Arbitral award can be set aside due to conflict with public policy or patent illegality, but not all errors committed by the tribunal fall under patent illegality under Section 34 (2A): Delhi High Court.**
  - ◆ **Citation:** *National Highways Authority of India Vs. IRB Pathankot Amritsar Toll Road Limited || FAO (OS) (Comm.) 129/2022 || Neutral Citation: 2023:DHC:4352-DB || Delhi High Court || 03.07.2023 || Para 45.*
- ✦ **Award in contradiction to the case set up by Claimant and understanding between parties shall be hit by Section 34: Delhi High Court.**
  - ◆ **Citation:** *National Highways Authority of India (Supra) || Para 45.*
- ✦ **If interpretation given by the Tribunal is unreasonable or such that no fair minded person would accept it then same can be impeachable under Section 34: Delhi High Court.**
  - ◆ **Citation:** *National Highways Authority of India (Supra) || Para 108.*



## Legal 'Kisse' of Last Week

- ✦ **An award can be set aside due to apparent bias, which is determined by reasonableness and the affected party's perspective: Delhi High Court.**
  - ◆ **Citation:** *Microsoft Corporation Vs. Zoai Founder* || O.M.P. (Comm) 188/2019 || Neutral Citation: 2023:DHC:4348 || Delhi High Court || 03.07.2023 || Para 13.
  
- ✦ **The purpose of the award is to reflect "the thought process leading to a particular conclusion," not comprehensive or exhaustive justifications: Delhi High Court.**
  - ◆ **Citation:** *M/s Crest Education (P) Ltd. Vs. M/s Career Launcher (I) Ltd.* || OMP (Comm) 57/2017 || Neutral Citation: 2023:DHC:4342 || Delhi High Court || 03.07.2023 || Para 30.
  
- ✦ **A Court's power under Section 37 is constrained to the power granted under Section 34: Delhi High Court.**
  - ◆ **Citation:** *National Highways Authority of India Vs. GVK Jaipur Expressway Private Limited* || FAO (OS) (COMM) 32/2022 || Neutral Citation: 2023:DHC:4401-DB || Delhi High Court || 03.07.2023 || Para 13.
  
- ✦ **The Court exercising jurisdiction under Section 34 is limited, and even a contravention of a statute, that is not linked to public policy cannot set aside an Arbitral Award under Section 34: Delhi High Court.**
  - ◆ **Citation:** *ARG Outlier Media Private Limited Vs. HT Media Limited* || OMP (Comm) 161/2023 || Neutral Citation: 2023:DHC:4366 || Delhi High Court || 04.07.2023 || Para 19.
  
- ✦ **Any error made by the sole arbitrator in interpreting the amount of stamp duty to be paid cannot be used as a justification for overturning the arbitral decision when exercising the jurisdiction under Section 34: Delhi High Court.**
  - ◆ **Citation:** *ARG Outlier Media Private Limited (Supra)* || Para 21.
  
- ✦ **'Seat' of the arbitration would have an exclusive jurisdiction over all proceedings arising out of arbitration: Delhi High Court.**
  - ◆ **Citation:** *Samsung India Electronics Private Limited Vs. ENN ENN Corp Limited* || ARB.P. 847/2022 || Neutral Citation: 2023:DHC:4469 || Delhi High Court || 04.07.2023 || Para 23.



## Legal 'Kisse' of Last Week

- ✦ **Indian law's fundamental policy is a rule or principle that is core to its jurisprudence and its violation would be considered unacceptable. Challenges to awards based on violation would be countenanced if enforcement contradicts established legal tenets: Delhi High Court.**

◆ **Citation:** *Raffles Education Investment (India) PTE Limited & Anr. Vs. Educomp Professional Education Limited* // OMP (EFA) (COMM) 6/2017 // Neutral Citation: 2023:DHC:4507 // Delhi High Court // 07.07.2023 // Para 70.

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### COMMERCIAL COURTS ACT, 2015

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- ✦ **Any person aggrieved by an order made by Registrar under Rule 3 of the said Chapter can file an appeal against the same to the “Judge in Chambers: Delhi High Court.**

◆ **Citation:** *Odeon Builders Pvt. Ltd. Vs. NBCC (India) Ltd. Formerly Known as National Building Construction Corporation Ltd.* // Neutral Citation No. 2023:DHC:4382 // Delhi High Court // 03.07.2023 // Para 17.

- ✦ **Mandatory compliances under Section 12 A is not applicable prior to 20.8.2022 : Delhi High Court.**

◆ **Citation:** *Santosh Kumar Aggarwal Vs. M/s Aluco Panel Ltd.* // Neutral Citation No. 2023:DHC:4554-DB // Delhi High Court // 05.07.2023 // Para 8.



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## COMPANIES ACT, 2013

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✚ **Since there are no assets available with the Company, Company can be dissolved directly without inviting claims from the Creditor: Delhi High Court.**

◆ **Citation:** *Delfin Expo Mart Vs. Royal Regency Fassions Pvt Ltd. & Ors* // Neutral Citation No.: 2023:DHC:4525 // Delhi High Court // 05.07.2023 // Para 6-8.

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