



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

41st Edition



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 Mayur Vihar Phase 1

## INSOLVENCY BANKRUPTCY CODE, 2016

- ✦ **Performance-linked incentive fee is not a right of the RP, it is subject to discretionary power vested with the CoC under Regulation 34B: NCLAT New Delhi.**
  - ◆ **Citation:** *Ravindra Kumar Goyal Vs. Committee of Creditors of Yashasvi Yarns Limited & Anr. // Company Appeal (AT) (Ins.) No. 809 of 2023 // NCLAT New Delhi // 14.07.2023 // Para 18.*
  
- ✦ **Resolution Plan cannot discriminate between two creditors of the same class: NCLAT New Delhi.**
  - ◆ **Citation:** *Akashganga Processors Pvt. Ltd. Vs. Shri Ravindra Kumar Goyal & Ors. // Company Appeal (AT) (Ins.) No. 1148 of 2022 // NCLAT New Delhi // 13.07.2023 // Para 7.*
  
- ✦ **Violation of a provision of Section 295 of the Companies Act, 2013 in itself not a ground to reject Section 7 application, where debt and default is proved: NCLAT New Delhi.**
  - ◆ **Citation:** *Kalpesh Ramniklal Shah Vs. Mundara Estate Developers Limited & Anr. // Company Appeal (AT) (Ins.) No. 71 of 2023 // NCLAT New Delhi // 14.07.2023 // Para 10.*
  
- ✦ **Relinquishment of the interest under Section 52 is inconsequential if the asset was handed back to the liquidator under the order of AA: NCLAT New Delhi.**
  - ◆ **Citation:** *Dhanlaxmi Bank Ltd. Vs. Hrishikesh Dasgupta, Liquidator M/s Technofab Manufacturing Ltd. & Ors. // Company Appeal (AT) (Ins.) No. 680 of 2023 // NCLAT New Delhi // 10.07.2023 // Para 8.*
  
- ✦ **Mere fact that an Appeal is pending in the Supreme Court, against the impugned Order, is not a ground to adjourn the proceedings before the AA: NCLAT New Delhi.**
  - ◆ **Citation:** *Dhanlaxmi Bank Ltd (Supra) // Para 8.*



Legal 'Kisse' of Last Week

- ✦ **An entry made in a balance-sheet of a Corporate Debtor would amount to an acknowledgment of liability under Section 18 of the Limitation Act: NCLAT New Delhi.**
  - ◆ **Citation:** *Asset Reconstruction Company (Ina) Limited Vs. Uniworth Textiles Limited // Company Appeal (AT) (Ins.) No. 991 of 2020 // NCLAT New Delhi // 10.07.2023 // Page 32 & 35.*
  
- ✦ **Pendency of proceedings in DRT does not debar the right the Appellant in pursuing legal remedy under Section 7 of the Code: NCLAT New Delhi.**
  - ◆ **Citation:** *Asset Reconstruction Company (Supra) // Page 32.*



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## ARBITRATION AND CONCILIATION ACT, 1996

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- ✦ **Court under Section 37 cannot substitute its views unless the discretion under Section 17 is exercised, arbitrarily, capriciously or order suffer from perversity: Delhi High Court.**
  - ◆ **Citation:** *Handicraft and handlooms Exports Co of India Vs. ANS Comtrade Limited* || ARB.A.(COMM.) 19/2023 || Neutral Citation: 2023:DHC:4588 || Delhi High Court || 10.07.2023 || Para 30.
  
- ✦ **Section 37(2)(b) mandates Court circumspective approach, considering legislation's object and purpose under Section 5: Delhi High Court.**
  - ◆ **Citation:** *Handicraft and handlooms Exports Co of India (Supra)* || Para 35.
  
- ✦ **Protection under Section 17 is available to a party during the arbitral proceedings or after the award is reached but before it is enforced: Delhi High Court.**
  - ◆ **Citation:** *Handicraft and handlooms Exports Co of India (Supra)* || Para 36.
  
- ✦ **Panel of arbitrators maintained by a contracting party must be line with Voestalpine judgment of Supreme Court otherwise court has to follow mandate of Section 11: Delhi High Court.**
  - ◆ **Citation:** *Margo Networks Private Limited & Anr. Vs. Railtel Corporation of India Ltd.* || ARB.P. 400/2022 || Neutral Citation: 2023:DHC:4596 || Delhi High Court || 10.07.2023 || Para 35.
  
- ✦ **'Counter Balancing' as contemplated in perkins by Supreme Court cannot achieved if 2/3 of the arbitrator are stated to be appointed one of contracting party: Delhi High Court.**
  - ◆ **Citation:** *Margo Networks Private Limited (Supra)* || Para 41-42.
  
- ✦ **A Court applying the "Public policy" test to an arbitral award cannot act as a Court of appeal: Delhi High Court.**
  - ◆ **Citation:** *Satluj Jal Vidyut Nigam Vs. M/s Jaiprakash Hyundai Consortium & Ors.* || O.M.P. (COMM) 170/2017 || Neutral Citation: 2023:DHC:4692 || Delhi High Court || 12.07.2023 || Para 28.



## Legal 'Kisse' of Last Week

- ✦ **The arbitrator's view on facts must pass muster, as they are the ultimate master of the evidence used in an arbitral award: Delhi High Court.**
  - ◆ **Citation:** *Satluj Jal Vidyut Nigam (Supra)* || *Delhi High Court* || 12.07.2023 || Para 28 and 31.
  
- ✦ **A perverse decision occurs when a finding is based on no evidence, an arbitral tribunal considers irrelevant information, or vital evidence is ignored: Delhi High Court.**
  - ◆ **Citation:** *Satluj Jal Vidyut Nigam (Supra)* || *Delhi High Court* || 12.07.2023 || Para 29.
  
- ✦ **Section 77 of the Act allows parties to initiate arbitral or judicial proceedings during conciliation proceedings: Madras High Court.**
  - ◆ **Citation:** *M. Rajkumar Vs. The Superintending Engineer & Anr.* || *ARB.O.P. (Comm. Div.) No. 50 of 2023* || *Madras High Court* || 11.07.2023 || Para 7.
  
- ✦ **Pre-condition of conciliation in Arbitration clause becomes directory, if proposal for appointment of conciliator by one party is ignored by other: Madras High Court.**
  - ◆ **Citation:** *M. Rajkumar (Supra)* || *Madras High Court* || 11.07.2023 || Para 8.

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## COMMERCIAL COURTS ACT, 2015

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- ✦ **A summary judgment under Order XIII A CPC can be passed when there is no real prospect of successfully defending the claim: Delhi High Court**
  - ◆ **Citation:** *Pramendra Kumar Khokher Vs. HDFC Ergo General Insurance Company Ltd.* || *Neutral Citation: 2023:DHC:4822-DB* || *Delhi High Court* || 13.07.2023 || Para 7.
  
- ✦ **Section 3 of the Interest Act shall be applicable if the agreement is silent about interest and does not expressly bar the grant of interest: Madras High Court**
  - ◆ **Citation:** *White SRL Unipersonale Vs. Rajesh Patel* || *C.S.(Comm. Div) No. 201 of 2020* || *Madras High Court* || 11.07.2023 || Para 8.6.



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## COMPANIES ACT, 2013

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- ✦ **If the Demerged Company is wholly owned subsidiary of the Resulting Company and there is no reorganization of the share capital of Resulting Company and the creditors and shareholders of the Resulting Company are not affected by the implementation of the Scheme as the assets of the Resulting Company and the Demerged Company far exceed their liabilities, the requirement for holding meetings of the shareholders, secured and unsecured may be dispensed with: NCLAT New Delhi.**

- ◆ **Citation:** *Reliance Industries Ltd. Vs. Registrar of Companies // Company Appeal (AT) No. 109 of 2023 // NCLAT New Delhi // 14.07.2023 // Para 24.*

- ✦ **That sale pursuant to a public auction cannot be set aside unless there is some material on record that the property has been sold at a throwaway price, or there is some fraud, collusion or material irregularity: Delhi High Court**

- ◆ **Citation:** *Sh. Naresh Jain Vs. M/s Shaurya Housing Ltd & Anr. // Neutral Citation No. 2023:DHC:4704 // Delhi High Court // 10.07.2023 // Para 21 & 22.*

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