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# LEGAL '*KISSE*' OF LAST WEEK

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**Authored By:**  
Indo Legal Services, LLP

 +91- 9871433339

 [www.indolegalservices.com](http://www.indolegalservices.com)

 [info@indolegalservices.com](mailto:info@indolegalservices.com)

 Mayur Vihar Phase 1

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## INSOLVENCY BANKRUPTCY CODE, 2016

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- ✦ **If the Secured creditor has relinquished their right in liquidation then their priority is ranked high in water fall mechanism: Supreme Court.**
  - ◆ **Citation:** *Paschimanchal Vidyut Vitran Nigam Ltd. VS. Raman Ispat Private Limited & Ors. || Civil Appeal No. 7976 of 2019 || Supreme Court || 17.07.2023 || Para 35 & 36.*
  
- ✦ **Dues payable to the government are placed below the secured creditors and even unsecured and operational creditors : Supreme Court.**
  - ◆ **Citation:** *Paschimanchal Vidyut Vitran Nigam Ltd (Supra) || Para 49.*
  
- ✦ **Section 238 of the IBC overrides the provision of Electricity Act, 2003: Supreme Court.**
  - ◆ **Citation:** *Paschimanchal Vidyut Vitran Nigam Ltd (Supra) || Para 47.*
  
- ✦ **If company failed to register charge against its property the charge holder can do so under Section 3(31) of Code: Supreme Court.**
  - ◆ **Citation:** *Paschimanchal Vidyut Vitran Nigam Ltd (Supra) || Para 55.*
  
- ✦ **SRA can seek substitution in place of the administrator in avoidance application filed after approval of Resolution Plan: NCLAT New Delhi.**
  - ◆ **Citation:** *Nippon Life India Asset Management Ltd. VS. Piramal Capital & Housing Ltd. & Ors. || Company Appeal (AT) (Ins.) No. 475 & 476 of 2023 || NCLAT New Delhi || 20.07.2023 || Para 7-8.*
  
- ✦ **Where the debt and default has been admitted, the adjudicating authority ought to have admitted Section 7 application: NCLAT New Delhi.**
  - ◆ **Citation:** *Karina Healthcare Pvt. Ltd. Vs. H N Reacon Pvt. Ltd. || Company Appeal (AT) (Ins.) No. 450 of 2023 || 21.07.2023 || Para 10.*



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- ✚ **In an application under Section 9, the total amount for maintainability of claim will include both principal debt amount as well as interest on the delayed payment: NCLAT New Delhi.**
  - ◆ **Citation:** *Delta Total Facilities Pvt. Ltd. Vs. Jyoti Structures Ltd. // Company Appeal (AT) (Ins.) No. 1512 of 2022 // NCLAT New Delhi // 20.7.2023 // Para 4.*
  
- ✚ **NCLAT allowed breathing period of 60 days to Corporate Debtor to arrive at OTS with financial creditors seeing net worth and work force of 7000 in CD: NCLAT New Delhi.**
  - ◆ **Citation:** *Ashok Kumar Tyagi Vs. UCO Bank & Anr. // Company Appeal (AT) (Ins.) No. 1323 of 2022 // NCLAT New Delhi // 21.07.2023 // Para 20 & 24.*
  
- ✚ **An application relating to insolvency resolution or liquidation of corporate guarantor of a corporate debtor shall be filed before 'such' NCLT, where a CIRP or liquidation proceedings of the 'same' corporate debtor is pending: NCLAT New Delhi.**
  - ◆ **Citation:** *Monica Jajoo vs PHL Fininvest Pvt. Ltd. & Anr. // Company Appeal (AT) (Ins.) No. 1344 & 1345 of 2022 // NCLAT New Delhi // 21.07.2023 // Para 23.*
  
- ✚ **Discounts given by Corporate Debtor not falling under 'ordinary course of business' would be hit by Section 46(1)(i): NCLAT New Delhi.**
  - ◆ **Citation:** *Technico Industries Ltd. Vs. Debashis Nanda & Ors. // Company Appeal (AT) (Ins.) No. 1166 of 2022 // NCLAT New Delhi // 19.07.2023 // Para 18.*
  
- ✚ **Monies advanced by the directors or shareholders of the Company to improve its financial health may be financial debt: NCLAT New Delhi.**
  - ◆ **Citation:** *Ishap Sharma Vs SMID Infrastructure Pvt. Ltd. // Company Appeal (AT) (Ins.) No. 863 of 2023 // NCLAT New Delhi // 20.07.2023 // Para 8.*
  
- ✚ **If financial creditor and person in control of corporate debtor are same then application cannot be construed as *bonafide* and deserve dismissal: NCLAT New Delhi.**
  - ◆ **Citation:** *Ishap Sharma (Supra) // Para 6 and 8.*



## Legal 'Kisse' of Last Week

- ✚ **The adjudicating authority has all jurisdictions to issue notice if it feels it is appropriate to hear parties before granting reliefs and concessions to SRA: NCLAT New Delhi.**
  - ◆ **Citation:** *RMY Industries LLP Vs. Apple Industries Pvt. Ltd. || Company Appeal (AT) (Ins.) No. 9004 of 2023 || NCLAT New Delhi || 21.07.2023 || Para 4.*
  
- ✚ **RP and SRA both have locus to file avoidance Application even after the approval of the Resolution Plan: NCLAT Chennai.**
  - ◆ **Citation:** *Madhavi Edible Bran Oils Pvt. Ltd. Vs. Immaneni Eswara Rao & Ors. || Company Appeal (AT) (Ins.) (CH) No. 401 of 2022 || NCLAT Chennai || 17.07.2023 || Para 5.*

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## ARBITRATION AND CONCILIATION ACT, 1996

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- ✚ **Courts cannot review *lis* on merit if award is challenged under Section 34(2)(b) : Delhi High Court.**
  - ◆ **Citation:** *NTPC Ltd. Vs. L And T – MHPS Boilers Private Limited || FAO (OS) (COMM) 45/2022 & CM APPL. 9296/2022 || Neutral Citation: 2023:DHC:4985-DB || Delhi High Court || 18.07.2023 || Para 31.*
  
- ✚ **Section 34(2A) prohibits that the award set-aside solely due to erroneous application or evidence reappreciation: Delhi High Court.**
  - ◆ **Citation:** *NTPC Ltd. (Supra) || Delhi High Court || 18.07.2023 || Para 33.*
  
- ✚ **Court under Section 37 cannot sit in appeal qua award, jurisdiction court under section 37 is even more restrictive the section 34 : Delhi High Court**
  - ◆ **Citation:** *NTPC Ltd. (Supra) || Delhi High Court || 18.07.2023 || Para 38.*
  
- ✚ **Conclusion of an arbitrator on facts, even if erroneous, cannot be interfered by court under Section 34 : Delhi High Court**
  - ◆ **Citation:** *Union of India Vs. M/s J&S Construction || O.M.P. (COMM) 31/2020 || Neutral Citation:2023:DHC:5026 || Delhi High Court || 19.07.2023 || Para 41.*



Legal 'Kisse' of Last Week

- ✚ **Where the arbitrator's opinion is tenable and cannot be deemed impossible, courts under Section 34 shouldn't substitute their own viewpoint: Delhi High Court.**
  - ◆ **Citation:** *Union of India (Supra) || Para 41.*
  
- ✚ **Violation of Statute or disregarding any superior courts in India, would be violative of the Fundamental Policy of India Laws: Delhi High Court.**
  - ◆ **Citation:** *Union of India (Supra) || Para 54.*
  
- ✚ **Patent Illegality noticed in the award would also fall under Section 34(2)(b)(ii) : Delhi High Court.**
  - ◆ **Citation:** *Union of India (Supra) || Para 54.*
  
- ✚ **Debts barred by the law of limitation are subject to liability even after the remedy perishes. This principle is based on ethical principles that debts do not extinguish, and facts can stop or revive debts barred by the law: Madras High Court.**
  - ◆ **Citation:** *M/s Saravana Global Holdings Limited Vs. N. Jayamurugan || O.P. No. 595 of 2019 and A. No. 5367 of 2019 || Madras High Court || 21.07.2023 || Para 20.*
  
- ✚ **Promise under Section 25(3) of Indian Contract Act for paying time barred debt shall be express, in writing, clear and unconditional: Madras High Court.**
  - ◆ **Citation:** *M/s Saravana Global Holdings Limited (Supra) || Para 35.*
  
- ✚ **Agreement/ MOU containing arbitration clause if perishes or discharged or superseded, arbitration clause in it also ceases: Madras High Court.**
  - ◆ **Citation:** *M/s Saravana Global Holdings Limited (Supra) || Para 37 & 40.*
  
- ✚ **Any claim which is hopelessly barred by the law of limitation is certainly opposed to public policy and patently illegal: Madras High Court.**
  - ◆ **Citation:** *M/s Saravana Global Holdings Limited (Supra) || Para 42.*



## Legal 'Kisse' of Last Week

- ✦ **Procedure to appoint new arbitrator, in case of termination of arbitration under Section 14, shall be governed by Section 15 not by Section 11(5) : Calcutta High Court.**
  - ◆ **Citation:** *Srei Equipment Finance Limited Vs. Seirra Infraventure Private Limited* // AP 281 of 2023 with AP 283 of 2023 // Calcutta High Court // 18.07.2023 // Para 23-26.

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### COMMERCIAL COURTS ACT, 2015

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- ✦ **Liquidity crunch cannot be a sufficient cause as ensued in Order XXI Rule 26(1) CPC to grant stay: Delhi High Court.**
  - ◆ **Citation:** *B L Kashyap And Sons Ltd Vs. Emaar India Ltd* // Neutral Citation No: 2023:DHC:4898 // Delhi High Court // 18.07.2023 // Para 8.
- ✦ **Where the matter is seized by the Appellate Court the judgment debtor should approach only the Appellate Court for stay: Delhi High Court.**
  - ◆ **Citation:** *B L Kashyap & Sons Ltd (Supra)* // Para 10 & 11.
- ✦ **The doctrine of frustration and impossibility would apply if a party is prevented from performing the terms of the contract which are essential and strike at the root of the contract: Delhi High Court.**
  - ◆ **Citation:** *Mrs Sarawjeet Singh & Anr Vs. Asian Hotels (North) Ltd* // Neutral Citation No: 2023:DHC:5029 // Delhi High Court // 19.07.2023 // Para 64.

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### COMPANIES ACT, 2013

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- ✦ **The rights of a first charge holder take precedence over those of a second charge holder during liquidation according to Section 529 and 529A of the Companies Act, 1956: Delhi High Court.**
  - ◆ **Citation:** *M/s Tata Iron & Steel Co. Ltd Vs. M/s Jhalani Tools Indian Ltd* // Neutral Citation No: 2023:DHC:4980 // Delhi High Court // 19.07.2023 // Para 23 & 24.



## Legal 'Kisse' of Last Week

✦ **Interest payment for workmen during liquidation would only arise if there is a surplus, which triggers the application of Rule 179 of the Companies (Court) Rules, 1959: Delhi High Court.**

◆ **Citation:** *M/s Tata Iron & Steel Co. Ltd (Supra) // Para 34.*

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**CONTACT US:**

**📍 DELHI:**

121, Tower 11, Supreme Enclave,  
Mayur Vihar Phase-1,  
New Delhi- 110091.

**📍 DELHI:**

S 137, Lower Ground Floor,  
GK-2, New Delhi – 110091.

**📍 CHANDIGARH:**

345, 3<sup>rd</sup> Floor, Tricity Plaza  
Peer Muchalla Road, Zirakpur,  
Chandigarh 140603.

**📍 BANGALORE:**

Japna Choudhary No.14,  
2<sup>nd</sup> Floor , "Arihant" Shanti Road,  
Shantinagar,  
Bangalore – 560027.

**📍 KOLKATA:**

**A.S & CO**

Lords Building, 8, Stand Road, 4th  
floor, Opposite to City Civil Court  
Kolkata- 700001.

**📍 PRAYAGRAJ:**

18, Patrika Marg, Civil Lines,  
Allahabad - 211001  
Uttar Pradesh.

**📍 MUMBAI:**

3 Neelkanth Arcade, Opp. Fine Arts  
Society Monorail Station, Chembur  
Mumbai – 400071.

**📍 AHMEDABAD:**

1, Silver Nine Apartment,  
Nr. Gopi Complex, Bhaikaka  
Nagar, Thaltej, Ahmedabad.

