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LEGAL '*KISSE*' OF LAST WEEK

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 Mayur Vihar Phase 1

Legal 'Kisse' of Last Week

INSOLVENCY BANKRUPTCY CODE, 2016

- ✦ **Claim on the basis of forged documents is not maintainable: NCLAT New Delhi.**
 - ◆ **Citation:** *Sanjay Jain Vs. Mr. Nilesh Sharma* || *Company Appeal (AT) (Ins.) No. 425/2021* || *NCLAT New Delhi* || 02.08.2023 || *Para 8.*

- ✦ **Non-compliance to CIRP Regulations cannot annul the resolution process which had reached an advanced stage: NCLAT New Delhi.**
 - ◆ **Citation:** *Anil Kumar Vs. Jayesh Sanghrajaka & Ors.* || *Company Appeal (AT) (Ins.) No. 513 of 2023* || *NCLAT New Delhi* || 03.08.2023 || *Para 26.*

- ✦ **COC can recall its earlier decision for liquidation of the CD for considering a fresh resolution plan : NCLAT**
 - ◆ **Citation:** *Anil Kumar (Supra)* || *Para 33.*

- ✦ **Rejection of Section 9 application shall not preclude the parties to settle their inter-se dispute and rights under appropriate proceeding: NCLAT New Delhi.**
 - ◆ **Citation:** *Lomash Slurrytech Pvt. Ltd. Vs. DSC Engineering Pvt. Ltd.* || *Company Appeal (AT) (Ins.) No. 315 of 2022* || *NCLAT New Delhi* || 31.07.2023 || *Para 8.*

ARBITRATION AND CONCILIATION ACT, 1996

- ✦ **Section 34(4) cannot be claimed as a matter of right, it is a discretion court : Delhi High Court.**
 - ◆ **Citation:** *National Highway Authority of India Vs. M/s Jas Toll Road Company Limited* || *O.M.P. (COMM) 185/2021* || *Neutral Citation: 2023:DHC:5388* || *Delhi High Court* || 31.07.2023 || *Para 185.*

- ✦ **Section 34(4) allows correction of defect of procedure and cannot be viewed as the power of review upon Arbitrator: Delhi High Court.**
 - ◆ **Citation:** *National Highway Authority of India (Supra)* || *Para 186.*



Legal 'Kisse' of Last Week

- ✦ **Section 34 introduces "fundamental policy of Indian law" and cautions against reviewing dispute merits in determining award contravention: Delhi High Court.**
 - ◆ **Citation:** *National Highway Authority of India (Supra) || Para 67.*

- ✦ **Court under Section 34 of the Arbitration Act should consider the Act's objective, goal, purpose, and legislature's intention: Delhi High Court.**
 - ◆ **Citation:** *Spicejet Limited Vs. Kal Airways Private Limited & Ors. || O.M.P. (COMM) 42/2019 || Neutral Citation: 2023:DHC:5321 || Delhi High Court || 31.07.2023 || Para 37-40.*

- ✦ **Court under section 34 need not examine the validity of the finding given in the award: Delhi High Court.**
 - ◆ **Citation:** *Spicejet Limited (Supra) || 45.*

- ✦ **Court under section 34 may examine whether the conclusion drawn by the Arbitrator is supported by finding or not, and not whether the said finding is erroneous or sound: Delhi High Court.**
 - ◆ **Citation:** *Spicejet Limited (Supra) || 45.*

- ✦ **To challenge an Award under Section 34, petitioners must prove patent illegality, and not the illegality of trivial nature: Delhi High Court.**
 - ◆ **Citation:** *Spicejet Limited (Supra) || Delhi High Court || 31.07.2023 || Para 56, 60.*

- ✦ **Arbitrator is the master of facts and law : Delhi High Court.**
 - ◆ **Citation:** *Union of India Vs. BESCO Limited (Wagon Division) || O.M.P. (COM) 467/2019 || Neutral Citation: 2023:DHC:5326 || Delhi High Court || 31.07.2023 || Para 35.*

- ✦ **The lack of pre-deposit makes the Section 34 application 'stillborn', preventing the court from entertaining the application for stay of the award under section 36(2): Calcutta High Court.**
 - ◆ **Citation:** *The Board of Major Port Authority for the Shyama Prasad Mookerjee Port, Kolkata Vs. Marine Craft Engineers Private Limited || AP 252 of 2023 with AP 179 of 2023 || Calcutta High Court || 31.07.2023 || Para 17 & 18.*



Legal 'Kisse' of Last Week

- ✦ **A court applying the "public policy" test to an arbitration award cannot rectify mistakes of fact: Delhi High Court.**
 - ◆ **Citation:** *NTPC Ltd. Vs. Tata Projects Limited* ||O.M.P. (COMM) 59/2023 || Neutral Citation: 2023:DHC:5327 || Delhi High Court || 31.07.2023 || Para 76.

- ✦ **An arbitrator, being a contract-creator, must confine themselves to the provisions of the contract: Delhi High Court.**
 - ◆ **Citation:** *NTPC Ltd. (Supra)* | Para 76.

- ✦ **Under Section 31, Arbitration Tribunal can direct payment of interest for the period between the award date and the payment of specified amounts: Delhi High Court.**
 - ◆ **Citation:** *National Projects Constructions Corporation Limited Vs. M/s Interstate Construction* || FAO(OS)(COMM) 175/2021 || Neutral Citation: 2023:DHC:5312-DB || Delhi High Court || 01.08.2023 || Para 11 & 12.

- ✦ **Section 36(2) is not maintainable without, a pre-deposit, and a valid section 34 application: Calcutta High Court.**
 - ◆ **Citation:** *The Board of Major Port Authority for the Shyama Prasad Mookerjee Port, Kolkata Vs. Marine Craft Engineers Private Limited* || AP 252 of 2023 with AP 179 of 2023 || Calcutta High Court || 31.07.2023 || Para 17, 18 and 26.

COMMERCIAL COURTS ACT, 2015

- ✦ **Commercial suit cannot be dismissed under O7R11 merely on premise that mediation between parties has been closed being a non-starter: Delhi High Court**
 - ◆ **Citation:** *M/s Parashnath Paper Udog Vs. M/s Devika Packaging* || Neutral Citation No: 2023:DHC: 5501-DB || Delhi High Court || 01.08.2023 || Para 8.



COMPANIES ACT, 2013

✦ **Merely because of the Arbitration agreement the jurisdiction of NCLT & NCLAT under Sections 241 & 242 of the Act cannot be shackled: NCLAT New Delhi**

- ◆ **Citation:** *Indus Motor Company Pvt Ltd. & Ors Vs. Mr. T.P. Anil Kumar & Ors* // Company Appeal (AT) No. 204 of 2020 // NCLAT New Delhi // 31.07.2023 // Para 13.

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