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## ARBITRABILITY OF DISPUTES INVOLVING CORPORATE DEBTORS: RECONCILING THE ARBITRATION AND CONCILIATION ACT, 1996 WITH THE MORATORIUM UNDER SECTION 14 OF THE IBC

~ *Anshika Mishra*

### ABSTRACT

The intersection of the Arbitration and Conciliation Act, 1996 and the Insolvency and Bankruptcy Code, 2016 (IBC) presents one of the most intriguing statutory conflicts in modern Indian commercial jurisprudence. While arbitration is founded on party autonomy, consensual dispute resolution, and private adjudication, the IBC is driven by a collective, time-bound, and creditor-centric insolvency resolution framework. At the core of this statutory friction lies Section 14 of the IBC, which triggers an automatic statutory moratorium upon the admission of a Corporate Insolvency Resolution Process (CIRP). This article examines the jurisdictional tug-of-war between private arbitration and the public interest mechanism of the IBC. It provides a comprehensive analysis of the legal nature of disputes (*rights in rem* versus *rights in personam*), the scope and extent of the statutory moratorium under Section 14, and judicial precedents navigating this clash. Furthermore, the article examines judicial approaches concerning proceedings benefiting the corporate debtor and analyses the implications of the clean slate doctrine under Section 31 of the IBC for pending arbitral claims.

### 1. INTRODUCTION

In recent years, Indian commercial law has undergone a dramatic transformation, largely spearheaded by two key legislative pillars: the Arbitration and Conciliation Act, 1996 (hereinafter “Arbitration Act”) and the Insolvency and Bankruptcy Code, 2016 (hereinafter “IBC”). Both statutes were enacted to promote economic growth, streamline dispute resolution, and enhance the ease of doing business in India. However, they operate on fundamentally opposing philosophies.

The Arbitration Act prioritizes party autonomy, allowing private parties to bypass public courts and settle contractual disputes through mutually chosen arbitrators. The resulting award is binding primarily on the contracting parties. Conversely, the IBC is a comprehensive, public-law statute designed to revive distressed corporate entities, maximize asset value, and protect the collective interests of all creditors.

The primary collision point between these two regimes arises when a company undergoing arbitration enters the Corporate Insolvency Resolution Process (CIRP). Section 14 of the IBC introduces a statutory moratorium, which prohibits the institution or continuation of suits and legal proceedings against the Corporate Debtor.<sup>1</sup> This creates a severe dilemma: Can an arbitration proceeding continue once a moratorium is declared? Does the statutory mandate of the IBC override an arbitral tribunal's jurisdiction? This article reconciles this legislative overlap through a study of statutory provisions and judicial jurisprudence.

## 2. THE LEGAL FOUNDATIONS: IN REM VS. IN PERSONAM

To understand why arbitration and insolvency proceedings conflict, one must examine the legal nature of the rights involved. Courts in India have consistently maintained a distinction between rights *in rem* and rights *in personam*:

- **Rights In Personam:** These are rights exercisable against specific individuals or entities, arising out of private contractual relationships (e.g., breach of contract, non-payment of debts, or damages). Disputes involving rights *in personam* are generally arbitrable.
- **Rights In Rem:** These are rights exercisable against the world at large (e.g., land ownership, citizenship, insolvency, and matrimonial status). Disputes involving rights *in rem* affect public interest and the status of an entity; therefore, they are non-arbitrable and reserved exclusively for public courts or specialised statutory tribunals.<sup>2</sup>

In the landmark case of *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, the Supreme Court established that insolvency and winding-up matters inherently involve rights *in rem*. When a corporate debtor defaults on its financial obligations, the insolvency process does not merely affect a single creditor; it impacts all operational creditors, financial creditors,

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<sup>1</sup> Insolvency and Bankruptcy Code, 2016, No. 31, § 14(1)(a), Acts of Parliament, 2016 (India).

<sup>2</sup> *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 S.C.C. 532, ¶¶ 35–38 (India).

employees, and statutory authorities. Consequently, an insolvency petition cannot be referred to private arbitration.<sup>3</sup>

This principle was reinforced in *Vidya Drolia v. Durga Trading Corporation*, where the Supreme Court formulated a four-fold test to determine non-arbitrability. The Court expressly ruled that disputes involving actions *in rem*, or those that have an *erga omnes* effect (affecting third-party rights), are non-arbitrable. Because the IBC alters the corporate status of a company and creates a collective recovery process for all creditors, insolvency proceedings fall strictly outside the purview of the Arbitration Act.<sup>4</sup>

### 3. THE SCHEME OF SECTION 14 OF THE IBC: THE MORATORIUM UMBRELLA

The central mechanism created to preserve a distressed company during the resolution process is the moratorium under Section 14 of the IBC.

#### 3.1. PURPOSE AND SCOPE OF MORATORIUM

Upon admitting a Section 7, 9, or 10 petition under the IBC, the Adjudicating Authority (National Company Law Tribunal - NCLT) issues an order declaring a moratorium. Under Section 14(1)(a) of the IBC, this order strictly prohibits:

*“The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.”*<sup>5</sup>

The underlying legislative objective of Section 14 is to provide the Corporate Debtor with a temporary “calm period” or “breathing space.” During this time, the Resolution Professional (RP) can consolidate the company's assets, assess its liabilities, and attempt a successful restructuring without the constant threat of asset depletion, litigation costs, or execution actions by individual creditors.<sup>6</sup>

#### 3.2. IMPACT ON PENDING AND FRESH ARBITRATIONS

Section 14(1)(a) expressly includes proceedings before an arbitration panel within the scope of the moratorium where such proceedings are instituted or continued against the corporate debtor. Consequently, arbitration initiated or continued against the corporate debtor after

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<sup>3</sup> *Id.* ¶ 36.

<sup>4</sup> *Vidya Drolia v. Durga Trading Corp.*, (2021) 2 S.C.C. 1, ¶¶ 45–55, 76 (India).

<sup>5</sup> Insolvency and Bankruptcy Code, 2016, No. 31, § 14(1)(a), Acts of Parliament, 2016 (India).

<sup>6</sup> *P. Mohanraj v. Shah Bros. Ispat (P) Ltd.*, (2021) 6 S.C.C. 258 (India).

commencement of the moratorium is ordinarily prohibited, subject to the statutory scope of Section 14.

- **Fresh Arbitrations:** In *Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan Pvt. Ltd.*,<sup>7</sup> the Supreme Court held that any arbitration proceedings instituted after the imposition of a moratorium under Section 14 are *non-est* in law (legally non-existent).
- **Pending Arbitrations:** Similarly, ongoing arbitration proceedings where claims are asserted against the Corporate Debtor are immediately suspended or stayed upon the declaration of a moratorium. The claimant creditor cannot proceed before the arbitral tribunal; instead, the creditor must submit its claim to the Interim Resolution Professional (IRP) or Resolution Professional (RP) in accordance with the applicable CIRP Regulations.<sup>8</sup>

#### 4. JUDICIAL HARMONISATION AND EXCEPTIONS

While the prohibition under Section 14 appears absolute, Indian courts have recognised that a rigid application could occasionally harm the Corporate Debtor or defeat the ultimate purpose of the IBC, which is asset maximisation. As a result, courts have examined the scope and limits of the moratorium.

##### 4.1. PROCEEDINGS BENEFITING THE CORPORATE DEBTOR

The Delhi High Court in *Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd.* examined whether a petition filed by the corporate debtor under Section 34 of the Arbitration and Conciliation Act, 1996, challenging an arbitral award against it, was prohibited by the moratorium under Section 14 of the IBC. The Court adopted a purposive interpretation of the moratorium, emphasising that its objective was to prevent the depletion of the corporate debtor's assets rather than obstruct proceedings capable of benefiting its insolvency estate.<sup>9</sup>

However, the decision must be considered in light of the subsequent ruling in *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*, which adopted a broader interpretation of proceedings covered by Section 14(1)(a) and expressly disapproved the restrictive interpretation in *Power Grid*. Accordingly, *Power Grid* should not be relied upon as an unqualified authority for allowing

<sup>7</sup> *Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan Pvt. Ltd.*, AIR 2017 SC 5124.

<sup>8</sup> Insolvency and Bankruptcy Code, 2016, No. 31, §§ 14(1)(a), 18(1)(b), Acts of Parliament, 2016 (India); Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 7–9A, 12(1) (India).

<sup>9</sup> *Power Grid Corp. of India Ltd. v. Jyoti Structures Ltd.*, 2017 S.C.C. OnLine Del. 12189 (India).

proceedings merely because they may benefit the corporate debtor. The relevant distinction is whether the proceedings are against the corporate debtor and fall within the statutory moratorium.<sup>10</sup>

#### **4.2. COUNTERCLAIMS IN ARBITRAL PROCEEDINGS**

A complex situation arises when arbitral proceedings involve a claim advanced by the corporate debtor and a counterclaim raised by the opposing party. In *Jharkhand Bijli Vitran Nigam Ltd. v. IVRCL Ltd.*, the National Company Law Appellate Tribunal held that where the corporate debtor's claim and the opposing party's counterclaim are interconnected, both may be heard and determined together by the arbitral tribunal. The Tribunal clarified, however, that if the determination establishes any liability of the corporate debtor, recovery of that amount cannot be effected during the moratorium. Thus, the decision distinguishes adjudication of interconnected claims from enforcement of monetary liability against the corporate debtor.<sup>11</sup>

#### **4.3. SCOPE OF THE MORATORIUM IN RELATION TO NATURAL PERSONS**

In *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*, the Supreme Court examined whether the moratorium under Section 14 extends to proceedings under Section 138 of the Negotiable Instruments Act, 1881. The Court held that such proceedings are covered by the moratorium insofar as they concern the corporate debtor. However, the protection does not automatically extend to natural persons, including directors and other individuals liable under the Negotiable Instruments Act. This distinction demonstrates that the statutory moratorium protects the corporate debtor without necessarily extinguishing the independent liabilities of other persons. The applicability of any separate insolvency moratorium to personal guarantors must be assessed under the relevant provisions of the IBC.<sup>12</sup>

### **5. SECTION 8 APPLICATIONS VS. INSOLVENCY PETITIONS**

Another area of statutory conflict occurs when an operational or financial creditor files an insolvency petition before the NCLT, and the Corporate Debtor responds by filing an application under Section 8 of the Arbitration Act, seeking a reference of the dispute to arbitration.

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<sup>10</sup> *P. Mohanraj v. Shah Bros. Ispat (P) Ltd.*, (2021) 6 S.C.C. 258 (India).

<sup>11</sup> *Jharkhand Bijli Vitran Nigam Ltd. v. IVRCL Ltd.*, 2018 S.C.C. OnLine NCLAT 891, ¶¶ 3–4 (India).

<sup>12</sup> *P. Mohanraj v. Shah Bros. Ispat (P) Ltd.*, (2021) 6 S.C.C. 258 (India).

Section 8 of the Arbitration Act mandates that a judicial authority *shall* refer parties to arbitration if there exists a valid arbitration agreement covering the subject matter. On the other hand, the IBC contains a non-obstante clause under Section 238, which gives the Code overriding effect over any other conflicting law.<sup>13</sup>

In *Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund*, the Supreme Court examined the relationship between an application under Section 7 of the IBC and a request for reference to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. The Court held that the NCLT must first determine whether a financial default warranting admission of the Section 7 application has occurred. If the application is admitted, the insolvency proceedings acquire a collective character in rem, rendering reference of the insolvency dispute to arbitration impermissible.<sup>14</sup>

- Conversely, if the NCLT finds no default or dismisses the IBC petition prior to admission, the dispute remains a private commercial disagreement (*in personam*). Where the insolvency application is rejected and no CIRP is commenced, the parties may pursue arbitration in accordance with their arbitration agreement and the applicable provisions of the Arbitration Act.

Upon admission of an insolvency application, the collective insolvency process takes precedence over any inconsistent attempt to refer that insolvency dispute to arbitration by virtue of Section 238.

## **6. THE CLEAN SLATE DOCTRINE AND POST-CIRP ARBITRAL CLAIMS**

The final phase of reconciliation between arbitration and insolvency occurs upon the approval of a Resolution Plan under Section 31 of the IBC.

### **6.1. EXTINGUISHMENT OF CLAIMS OUTSIDE THE APPROVED RESOLUTION PLAN**

Under the clean slate doctrine articulated by the Supreme Court in *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, a successful resolution applicant is entitled to acquire the corporate debtor without being burdened by claims that do not form part of the approved resolution plan. Once a resolution plan is approved under Section 31(1) of the

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<sup>13</sup> Arbitration and Conciliation Act, 1996, No. 26, § 8, Acts of Parliament, 1996 (India); Insolvency and Bankruptcy Code, 2016, No. 31, § 238, Acts of Parliament, 2016 (India).

<sup>14</sup> *Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund*, (2021) 6 S.C.C. 436 (India).

IBC, claims not forming part of that plan stand extinguished, and creditors cannot independently pursue such claims against the corporate debtor after approval.<sup>15</sup>

Accordingly, an arbitral claimant whose pre-existing claim is not incorporated into the approved resolution plan cannot ordinarily revive or independently enforce that claim against the resolved corporate debtor. The binding effect of the resolution plan extends to creditors and other stakeholders covered by Section 31(1), irrespective of whether their claims were previously the subject of arbitral proceedings.<sup>16</sup>

## **6.2. CLAIMS INCLUDED IN THE RESOLUTION PLAN**

Where an arbitral claim forms part of an approved resolution plan, the creditor's entitlement against the resolved corporate debtor is governed by the terms of that plan. The creditor cannot subsequently execute an arbitral award for any amount exceeding what was allocated under the approved plan.<sup>17</sup>

## **7. CONCLUSION**

The relationship between the Arbitration and Conciliation Act, 1996 and Section 14 of the Insolvency and Bankruptcy Code, 2016 reflects a deliberate legislative decision to prioritise collective public interest over private commercial agreements. While arbitration provides an efficient mechanism for settling bilateral disputes, its individualistic nature cannot be permitted to undermine the collective resolution of an insolvent entity.

Through a series of authoritative rulings, Indian courts have successfully harmonised these two regimes. The rule of law is clear:

1. Section 14 of the IBC prohibits the institution or continuation of arbitral proceedings against the corporate debtor within the scope of the statutory moratorium, while Section 238 gives the IBC overriding effect in cases of inconsistency with other laws.
2. Arbitral proceedings initiated against the corporate debtor in contravention of Section 14(1)(a) after commencement of the moratorium are non est in law.

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<sup>15</sup> *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 S.C.C. 657, ¶ 102 (India).

<sup>16</sup> *Id.* ¶ 102.

<sup>17</sup> *Id.* ¶ 102; Insolvency and Bankruptcy Code, 2016, No. 31, § 31(1), Acts of Parliament, 2016 (India).

3. Proceedings initiated by the corporate debtor to recover assets or enforce its rights are not automatically prohibited merely because a moratorium is in force; their permissibility must be assessed by reference to the nature of the proceedings and the statutory restrictions.
4. Once a Resolution Plan is approved, the clean slate doctrine prevents claims extinguished by an approved resolution plan from resurfacing.

This balanced statutory framework safeguards party autonomy during solvent business operations while ensuring that when financial distress hits, the collective, time-bound mechanism of the IBC preserves the economic life of the enterprise.