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IMPACT OF INSOLVENCY ON ARBITRATION: A CRITICAL REVIEW OF THE LEGAL FRAMEWORK IN INDIA

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Abstract

The relationship between insolvency proceedings and arbitration presents a significant challenge to commercial dispute resolution in India. Arbitration is founded on party autonomy, contractual freedom, and the efficient resolution of private disputes, whereas insolvency law seeks to maximise the value of a financially distressed debtor's assets, protect creditors collectively, and facilitate corporate resolution or liquidation. These objectives may conflict when arbitration proceedings are pending against a corporate debtor, an arbitral award is challenged or remains unpaid, or a creditor invokes insolvency proceedings despite an existing arbitration agreement. This paper critically examines the interaction between the Insolvency and Bankruptcy Code, 2016 (IBC), and the Arbitration and Conciliation Act, 1996. It analyses the statutory framework, particularly Sections 14, 33, 60(5), and 238 of the IBC, alongside Sections 8, 11, 16, 34, and 36 of the Arbitration Act. Important judicial decisions, including *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund*, *K. Kishan v. Vijay Nirman Company Private Limited*, *P. Mohanraj v. Shah Brothers Ispat Private Limited*, and *Gujarat Urja Vikas Nigam Limited v. Amit Gupta*, are critically evaluated. The paper identifies uncertainties concerning moratoriums, arbitrability, creditor claims, jurisdictional boundaries, and enforcement of arbitral awards. It recommends clearer statutory guidance, coordinated judicial approaches, and procedural safeguards to balance arbitration autonomy with the collective objectives of insolvency law.

Keywords: Insolvency, Arbitration, Insolvency and Bankruptcy Code, 2016, Moratorium, Corporate Insolvency Resolution Process, Arbitral Award, Non-Arbitrability, Creditor Rights, India.

1. Introduction

Insolvency and arbitration are two important mechanisms within India's commercial legal framework, but they serve different purposes. Arbitration provides a private and generally consensual mechanism for resolving disputes arising from contractual and other legally arbitrable relationships. Insolvency law, in contrast, addresses financial distress through a collective process intended to preserve the value of assets, facilitate resolution where possible, and distribute assets according to legally prescribed priorities when resolution fails. The interaction between these mechanisms becomes particularly complex when a company subject to arbitration enters the Corporate Insolvency Resolution Process (CIRP).

Commercial contracts frequently contain arbitration clauses covering disputes relating to payments, contractual breaches, termination, construction projects, infrastructure agreements, shareholder arrangements, and supply contracts. If one party subsequently becomes insolvent, questions arise as to whether arbitration can continue, whether an arbitral tribunal can determine the debtor's liability, whether an award can be enforced, and whether an arbitration agreement can prevent or delay the commencement of insolvency proceedings.

The Insolvency and Bankruptcy Code, 2016, introduced a structured statutory regime for corporate insolvency resolution and liquidation. Section 14 establishes a moratorium following admission of a CIRP application, expressly covering specified proceedings against the corporate debtor, including proceedings before an arbitration panel. Section 238 provides that the IBC prevails over inconsistent provisions in other laws. These provisions may restrict the continuation of arbitration even where the parties have previously agreed to arbitrate their disputes.

However, the existence of an arbitration agreement does not automatically make insolvency proceedings impermissible. In *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund*, the Supreme Court distinguished between the filing of an insolvency application and its admission. It held that insolvency proceedings assume an in-rem character upon admission, following the adjudicating authority's determination of default, and that this distinction is relevant to arbitrability.¹

Similarly, in *K. Kishan v. Vijay Nirman Company Private Limited*, the Supreme Court cautioned against using the IBC as a substitute for ordinary debt recovery where an arbitral award remained subject to challenge and a genuine pre-existing dispute existed.² These decisions demonstrate that the relationship between insolvency and arbitration requires a careful distinction between adjudicating private contractual rights and administering a collective insolvency process.

This paper critically examines the statutory framework and judicial developments governing that relationship. It argues that Indian law must preserve arbitration as an effective means of resolving private disputes without permitting arbitration agreements to undermine the collective, time-sensitive, and value-preserving objectives of insolvency law.

2. Conceptual and Theoretical Framework

Arbitration is a consensual dispute-resolution mechanism in which parties submit eligible disputes to an independent arbitral tribunal. The Arbitration and Conciliation Act, 1996, provides the principal statutory framework governing domestic arbitration and international commercial arbitration seated in India. The Act recognises party autonomy, limits unnecessary judicial intervention, and establishes procedures for the appointment of arbitrators, determination of jurisdiction, setting aside of awards, and enforcement.

Section 5 restricts judicial intervention in matters governed by Part I of the Act except where intervention is provided for by the statute. Section 8 addresses referral to arbitration where an action is brought before a judicial authority in a matter covered by an arbitration agreement. Section 16 recognises the tribunal's competence to rule on its own jurisdiction, while Sections 34 and 36 regulate the setting aside and enforcement of arbitral awards.

The underlying rationale is that commercial parties should ordinarily be able to resolve arbitrable disputes through their chosen forum without unnecessary delay. Nevertheless, party autonomy operates within statutory limits. It cannot independently confer jurisdiction over matters that the law reserves for public authorities or collective statutory processes.

Nature and objectives of insolvency law

The IBC was enacted to consolidate and amend laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals within the scope of the Code. Its objectives include maximisation of asset value, promotion of entrepreneurship and availability of credit, balancing stakeholder interests, and establishing a time-bound insolvency resolution framework.

The CIRP is not merely a bilateral mechanism for determining whether one creditor is owed money. Once admitted, it engages a collective process involving the resolution professional, the committee of creditors, eligible claimants, and the adjudicating authority. The interests of creditors who are not parties to an arbitration agreement may be directly affected by the insolvency outcome.

Consequently, insolvency proceedings possess characteristics that distinguish them

from ordinary private litigation. A bilateral arbitration generally determines the rights and obligations of the parties before the tribunal; an insolvency resolution process may affect the treatment of claims and the future of the corporate debtor as a whole.

The conflict between party autonomy and collective insolvency

The principal theoretical conflict arises between contractual autonomy and collective creditor protection. Arbitration gives effect to the parties' agreement to resolve disputes privately, whereas insolvency law prevents individual creditors from pursuing remedies in ways that undermine a collective resolution process.

For example, if a creditor continues arbitration and obtains an enforceable award against a company after the commencement of CIRP, individual enforcement could undermine the statutory moratorium and disrupt the collective process. Conversely, if every contractual dispute involving a financially distressed company is immediately excluded from arbitration, parties may lose an efficient means of determining disputed contractual liabilities.

The appropriate approach is therefore not to treat arbitration and insolvency as mutually exclusive in every circumstance. Instead, the law must distinguish between determining an underlying contractual dispute and enforcing individual rights in a manner that interferes with an admitted insolvency process.

3. Statutory Framework Governing Insolvency and Arbitration in India

Insolvency and Bankruptcy Code, 2016

The IBC contains several provisions that directly or indirectly affect arbitration. Section 7 enables a financial creditor to initiate CIRP in accordance with the statutory requirements relating to financial debt and default. Sections 8 and 9 establish the demand-notice and application procedures through which an operational creditor may initiate insolvency proceedings. These provisions must be applied according to the statutory conditions and the judicial interpretation of debt, default, and pre-existing disputes.

Section 14: Moratorium. Section 14(1)(a) prohibits, during the moratorium, the institution of suits or continuation of pending suits or proceedings against the corporate debtor, including execution of judgments, decrees, or orders in a court, tribunal, arbitration panel, or other authority. The express reference to arbitration panels makes the provision central to the relationship between insolvency and arbitration.

The moratorium is designed to preserve the corporate debtor's assets and prevent individual proceedings from interfering with the insolvency process. It does not, however,

automatically determine the substantive merits of every contractual dispute or extinguish every underlying claim. The precise effect on a particular proceeding depends on its nature, direction, parties, and the applicable statutory provisions.

Section 60(5): Jurisdiction of the NCLT. Section 60(5)(c) gives the National Company Law Tribunal jurisdiction over questions of law or fact arising out of or in relation to insolvency resolution or liquidation, subject to the statutory framework and judicial interpretation. This jurisdiction enables the NCLT to address insolvency-related questions, but it does not turn the tribunal into a general forum for deciding every contractual or public-law dispute connected in some way with a corporate debtor.

Section 238: Overriding effect. Section 238 provides that the IBC prevails over inconsistent provisions in other laws. Where an arbitration-related remedy conflicts with the operation of the IBC, the inconsistency must be examined in light of the Code's statutory purpose and applicable judicial decisions. Section 238 should not, however, be treated as automatically invalidating all arbitration clauses involving companies that may become insolvent.

Section 33(5): Proceedings during liquidation. After a liquidation order, Section 33(5) restricts the institution of suits or other legal proceedings by or against the corporate debtor, subject to its statutory exceptions and the prior approval requirement applicable to proceedings instituted by the liquidator on behalf of the corporate debtor. The provision requires separate consideration from the CIRP moratorium under Section 14.

Arbitration and Conciliation Act, 1996

The Arbitration Act supports the enforcement of valid arbitration agreements and the resolution of eligible disputes through arbitration. Its provisions become relevant when insolvency proceedings are initiated despite the existence of such an agreement.

Section 8 addresses judicial referral to arbitration; Section 11 concerns the appointment of arbitrators; and Section 16 empowers the arbitral tribunal to rule on its jurisdiction. Section 34 permits applications to set aside arbitral awards on specified grounds, while Section 36 governs enforcement of awards.

The existence of these provisions does not mean that arbitration can override a statutory insolvency moratorium. Equally, the IBC should not be used indiscriminately to displace arbitration where the issue is merely a private contractual dispute and the statutory conditions for insolvency admission have not been satisfied.

Relationship between the two statutes

The two statutes must be interpreted harmoniously to the extent possible. The Arbitration Act governs the resolution of arbitrable disputes; the IBC governs insolvency resolution and liquidation within its scope. Where a dispute remains bilateral and the insolvency application has not been admitted, arbitration may remain available, depending on the circumstances. Once CIRP is admitted, however, the collective statutory process and the moratorium may restrict proceedings against the corporate debtor.

The decisive question is therefore not simply whether an arbitration clause exists. It is whether the matter concerns a private dispute capable of arbitration, whether insolvency has been admitted, whether a moratorium is in force, and whether the requested relief would interfere with the statutory insolvency process.

4. Impact of Insolvency on Arbitration Proceedings

Arbitration before admission of CIRP

Before an insolvency application is admitted, a valid arbitration agreement may continue to govern a dispute between the parties. The filing of an application under Section 7 or Section 9 of the IBC does not, by itself, establish that the corporate debtor is insolvent in the legal sense required for commencement of CIRP.

The adjudicating authority must examine the applicable statutory requirements, including the existence of debt and default. In a dispute involving a financial creditor and an arbitration clause, the tribunal must consider whether the alleged default has occurred and whether the insolvency application satisfies the Code's requirements.

The principle in *Indus Biotech* is particularly significant in this context. It prevents a creditor from treating the mere filing of an insolvency application as automatically eliminating arbitration. At the same time, it prevents a corporate debtor from invoking arbitration as a device to defeat a valid insolvency application where the adjudicating authority finds the requisite default and admits the application.

Arbitration after admission of CIRP

Admission of CIRP changes the legal position substantially. Section 14(1)(a) expressly restricts the institution or continuation of proceedings against the corporate debtor, including proceedings before an arbitration panel. This restriction protects the debtor's assets and prevents individual enforcement measures from undermining the collective process.

For instance, if a supplier commences arbitration against a company after CIRP has

been admitted, the supplier cannot simply disregard the moratorium because its contract contains an arbitration clause. Likewise, where arbitration is already pending against the corporate debtor, its continuation during the moratorium must be assessed in accordance with Section 14 and the applicable judicial interpretation.

However, a distinction is necessary between proceedings against the corporate debtor and proceedings by the corporate debtor. The text of Section 14(1)(a) is directed towards proceedings against the debtor. An insolvency professional may need to pursue claims, recover receivables, or preserve assets for the benefit of the estate. Such proceedings are not automatically prohibited merely because CIRP has commenced; their permissibility depends on the relief sought, the statutory context, and any relevant orders.

Impact on arbitral awards

An arbitral award creates important legal consequences for the parties, but it does not automatically entitle the award-holder to disregard insolvency law. If an award is made against a corporate debtor before CIRP admission, the award-holder may still need to comply with the IBC once insolvency commences. Individual execution against the debtor may be prohibited during the Section 14 moratorium.

The position is more complex where an award has been challenged under Section 34 of the Arbitration Act. A pending challenge may be relevant to whether an operational debt is genuinely disputed and whether insolvency proceedings are being used as a substitute for debt recovery. In *K. Kishan*, the Supreme Court emphasised the importance of a genuine pre-existing dispute and the statutory scheme governing operational creditors.

Accordingly, the legal effect of an award depends on its status, the nature of the debt, the stage of insolvency proceedings, and the specific remedy being sought. An award may establish or support a claim, but the award-holder must follow the applicable insolvency claims process and cannot automatically obtain individual priority over other creditors.

Effect on creditor claims and the resolution process

When CIRP begins, creditors are required to submit their claims through the procedures prescribed by the IBC and applicable regulations. A creditor whose liability arises from an arbitration agreement or arbitral award must comply with those requirements rather than assume that arbitration alone will secure payment.

The resolution professional must examine claims in accordance with the Code and the applicable regulations. The existence of an arbitration clause does not, by itself, determine the

classification, amount, or priority of a claim. Similarly, a creditor cannot ordinarily insist on individual recovery in a manner inconsistent with an approved resolution plan or the collective insolvency process.

This creates a practical problem where liability remains disputed. The resolution professional must administer claims under the insolvency framework, while the parties may separately have contractual rights under an arbitration agreement. The law must therefore distinguish between establishing or verifying a claim for insolvency purposes and conducting arbitration or enforcement proceedings that are prohibited by the moratorium.

Insolvency of a party seeking arbitration

A corporate debtor may itself possess contractual claims against another party. These may include claims for unpaid invoices, defective performance, wrongful termination, or damages. If the company enters CIRP, the resolution professional may need to pursue such claims to preserve or increase the value of the insolvency estate.

The moratorium should not be interpreted mechanically to prevent every proceeding initiated by the corporate debtor. The distinction between proceedings against the debtor and proceedings brought to recover assets for the debtor's estate is important. Nevertheless, any arbitration pursued by the resolution professional must comply with the IBC, the Arbitration Act, the terms of the relevant agreement, and any applicable directions of the adjudicating authority.

The issue illustrates a wider principle: insolvency should protect the corporate debtor from individual enforcement while not unnecessarily disabling the estate from pursuing legitimate claims that may benefit creditors collectively.

6. Judicial Interpretation: Important Case Studies

The Supreme Court of India has developed a substantial body of jurisprudence concerning the intersection of insolvency, arbitration, and other dispute-resolution mechanisms. The following decisions are particularly significant.

Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund (2021)

Facts: The dispute arose from optionally convertible redeemable preference shares and disagreements concerning their conversion and redemption. Kotak India Venture sought to initiate CIRP under Section 7 of the IBC, while Indus Biotech sought referral to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. The dispute raised the question

of whether the pending insolvency application prevented arbitration.

Issue: Whether an insolvency application under Section 7 becomes non-arbitrable merely upon filing, or whether admission of the application is the decisive stage.

Decision: The Supreme Court held that mere filing of an insolvency application does not automatically make the proceedings in rem. Admission, following the adjudicating authority's examination of the relevant material and determination of default, changes the legal character of the proceedings. Once the insolvency application is admitted and CIRP commences, the collective insolvency process cannot be displaced by a private arbitration agreement.

Critical analysis: The judgment is a major authority on the timing of the interaction between arbitration and insolvency. It protects arbitration from being displaced merely because a creditor files an insolvency application. At the same time, it preserves the IBC's collective character after admission. Its practical value lies in identifying a legally significant dividing line between the pre-admission and post-admission stages.

However, the admission-stage distinction does not eliminate every difficulty. It still requires adjudicating authorities to examine whether the alleged default is genuine and whether arbitration is being invoked to resolve a legitimate contractual dispute or merely to delay a statutory insolvency process. The judgment therefore supports careful scrutiny rather than automatic preference for either arbitration or insolvency.

K. Kishan v. Vijay Nirman Company Private Limited (2018)

Facts: The dispute involved an operational debt arising from a construction contract. An arbitral award had been passed against the corporate debtor, but proceedings challenging the award remained pending. The creditor sought to initiate insolvency proceedings under Section 9 of the IBC.

Issue: Whether an arbitral award that remained subject to challenge could be used to initiate CIRP despite a genuine pre-existing dispute.

Decision: The Supreme Court held that the IBC could not be used as a substitute for ordinary debt recovery where the statutory requirements for initiating CIRP were not satisfied. The existence of a genuine pre-existing dispute was material under the operational-creditor framework, and the pending challenge to the award had to be considered in that context.⁶

Critical analysis: The decision protects the IBC from being converted into a general-purpose recovery mechanism. Insolvency is a collective statutory process, not simply an alternative forum for enforcing a disputed contractual claim. If every contested award could automatically trigger CIRP, companies might face disproportionate insolvency consequences arising from

disputes that remain subject to judicial determination.

At the same time, the judgment should not be read to mean that every challenge to an arbitral award automatically defeats an insolvency application. The nature of the dispute, the statutory requirements, and the stage of the challenge must be evaluated. A merely tactical or unsubstantiated objection should not be allowed to frustrate a legitimate insolvency process.

P. Mohanraj v. Shah Brothers Ispat Private Limited (2021)

Facts: The case concerned proceedings under Sections 138 and 141 of the Negotiable Instruments Act, 1881, relating to dishonoured cheques issued by a corporate debtor. CIRP had been admitted, and a moratorium under Section 14 of the IBC was in operation. The issue was whether the moratorium stayed the cheque-dishonour proceedings against the corporate debtor.

Decision: The Supreme Court held that Section 14's moratorium extended to the relevant Section 138 proceedings against the corporate debtor. It also clarified that the moratorium does not automatically protect natural persons, such as directors, who may remain liable under Section 141 of the Negotiable Instruments Act.

Critical analysis: Although the case did not directly concern the continuation of an arbitral tribunal, it is important to understanding the breadth and purpose of the Section 14 moratorium. The Court's reasoning reinforces the principle that individual proceedings against the corporate debtor may be restricted to protect the collective insolvency process.

The decision also illustrates that the moratorium's protection is not unlimited. The corporate debtor and other potentially liable persons must be considered separately. Applied to arbitration, this supports a careful examination of the identity of the parties, the relief claimed, and whether the proceeding is genuinely against the corporate debtor or independently against another person.

Gujarat Urja Vikas Nigam Limited v. Amit Gupta (2021)

Facts: The dispute arose from a power purchase agreement between Gujarat Urja Vikas Nigam Limited and a corporate debtor whose principal business depended on that agreement. Following commencement of CIRP, the counterparty sought to terminate the agreement on the ground that insolvency proceedings had been initiated.

Issue: Whether the NCLT could exercise jurisdiction under Section 60(5)(c) of the IBC to intervene in a contractual dispute connected with the insolvency process.

Decision: The Supreme Court upheld the exercise of jurisdiction in the particular circumstances because the termination dispute arose solely from the insolvency

commencement and threatened the survival of the corporate debtor's business. The judgment did not establish that the NCLT possesses general jurisdiction over every contractual dispute involving a company in CIRP.

Critical analysis: The decision demonstrates that insolvency law sometimes requires intervention in contractual relationships to preserve the value of the corporate debtor and make resolution commercially viable. However, such intervention must remain connected to the insolvency process and within the statutory jurisdiction of the NCLT.

The case is relevant to arbitration because a contractual dispute may ordinarily fall within an arbitration clause but also raise an insolvency-specific question. The judgment supports a limited, context-sensitive approach: the existence of an arbitration clause is important, but it does not necessarily resolve the distinct question of whether the NCLT can address a matter arising directly from insolvency.

Vidya Drolia v. Durga Trading Corporation (2021)

Principle: The Supreme Court clarified the law governing arbitrability and the role of courts at the referral stage under Sections 8 and 11 of the Arbitration Act. It explained that certain disputes are unsuitable for arbitration because they involve rights in rem, affect third parties or the public at large, or are reserved for exclusive statutory adjudication.

Relevance to insolvency: The judgment provides a broader doctrinal framework for distinguishing arbitrable private disputes from matters that must be resolved through a collective statutory process. Insolvency proceedings, once admitted, affect creditors beyond the parties to a particular arbitration agreement. This supports the principle that the private consent of two parties cannot displace the statutory rights and interests of other creditors.

Critical assessment: The arbitrability framework is useful, but the relationship between the general law of non-arbitrability and the specific moratorium provisions of the IBC requires care. Not every dispute related to a financially distressed company becomes non-arbitrable merely because insolvency is possible or a petition has been filed. The stage and nature of the insolvency proceeding remain critical.

Embassy Property Developments Private Limited v. State of Karnataka (2019)

Principle: The Supreme Court examined the jurisdiction of the NCLT in relation to a dispute concerning a mining lease and a decision of a state government. It held that the NCLT's jurisdiction under the IBC does not extend to every dispute connected with a corporate debtor, particularly where the dispute concerns a public-law decision requiring judicial review by a

constitutional court.

Relevance to insolvency and arbitration: The decision clarifies the limits of insolvency adjudication. The NCLT cannot assume unlimited jurisdiction merely because a dispute has consequences for the corporate debtor or its assets. Similarly, an arbitration clause does not automatically displace the jurisdiction of a statutory authority or constitutional court where the law reserves the matter for another forum.

Critical assessment: The judgment reinforces the need to identify the source and nature of the legal right involved. Private contractual disputes, collective insolvency questions, and public-law challenges may require different forums. A coherent legal framework must respect these boundaries to avoid jurisdictional conflicts and parallel proceedings.

Synthesis of the Judicial Position

The decisions considered above establish several principles:

1. Filing an insolvency application does not, by itself, render every connected dispute non-arbitrable.
2. Admission of CIRP gives rise to a collective statutory process that cannot be displaced by a private arbitration agreement.
3. Section 14 restricts proceedings against the corporate debtor during the moratorium, including relevant arbitration proceedings and enforcement actions.
4. A disputed arbitral award does not automatically justify initiation of CIRP where the statutory requirements are not met.
5. The NCLT's jurisdiction under Section 60(5) must be connected to insolvency resolution or liquidation and cannot be treated as unlimited.
6. The operation of the moratorium must be distinguished from the independent liability of directors, guarantors, and other third parties under applicable law.

Taken together, these principles favour a functional approach that distinguishes private dispute resolution from the administration of a collective insolvency process.

7. Critical Evaluation of the Existing Legal Framework

Ambiguity concerning the continuation of arbitration

Although Section 14(1)(a) expressly includes proceedings before an arbitration panel, practical difficulties remain in determining the effect of the moratorium on different types of arbitral proceedings. Questions may arise where the arbitration concerns contractual liability, the quantification of a claim, a counterclaim, or recovery of assets beneficial to the corporate

debtor.

The distinction between proceedings against the debtor and proceedings initiated by the debtor is particularly important. A broad interpretation that prevents every arbitration involving the corporate debtor could impair the resolution professional's ability to recover assets. Conversely, an unduly narrow interpretation could permit individual creditors to pursue remedies that undermine the moratorium.

The law would benefit from clearer guidance on how tribunals should proceed when CIRP is admitted during an ongoing arbitration, including the treatment of interim measures, counterclaims, procedural costs, and the preservation of evidence.

Risk of using insolvency as a debt-recovery mechanism

The IBC was designed to address insolvency and financial distress, rather than to replace ordinary civil proceedings or arbitration for every unpaid claim. Nevertheless, creditors may seek to use the threat of CIRP to secure payment of contested contractual debts.

K. Kishan addresses this concern by emphasising the importance of a genuine pre-existing dispute under the operational-creditor framework. However, the distinction between a legitimate dispute and a tactical objection can be difficult to apply consistently. Adjudicating authorities must therefore examine the relevant evidence without conducting an unnecessary full trial of the underlying contractual dispute.

Uncertainty over arbitral awards and claims

A creditor holding an arbitral award may reasonably expect that the award will support its claim. Yet an award does not necessarily guarantee individual payment once the debtor enters CIRP. The creditor must participate in the insolvency process and comply with the applicable statutory requirements.

Difficulties arise where the award is under challenge, where liability is only partly determined, or where a resolution plan is approved before the arbitration dispute is finally resolved. The existing framework requires careful coordination between the arbitration process and the verification and treatment of claims under insolvency law.

Jurisdictional overlap and inconsistent procedural approaches

The Arbitration Act, the IBC, and other applicable legislation may involve different courts, tribunals, and procedural requirements. The arbitral tribunal determines issues within its jurisdiction; the NCLT administers insolvency proceedings; and courts exercise their

respective statutory and constitutional functions.

Although the Supreme Court has clarified important principles, procedural uncertainty may persist in cases involving parallel proceedings, interim relief, jurisdictional objections, and the consequences of admission of CIRP. Delays in resolving these issues may increase costs and reduce the value of the insolvency estate.

Impact on Commercial Certainty

Businesses rely on arbitration clauses when entering into commercial contracts. If the operation of those clauses becomes unpredictable whenever a counterparty experiences financial difficulty, contractual risk assessment becomes more complicated. Equally, creditors and prospective resolution applicants require certainty that the insolvency process will not be undermined by individual enforcement actions.

The objective should therefore be to establish predictable rules that preserve legitimate arbitration rights while ensuring that arbitration does not become a means of evading insolvency law.

12. Conclusion

The impact of insolvency on arbitration represents a significant intersection between private commercial autonomy and collective statutory regulation. The Arbitration and Conciliation Act, 1996, supports the resolution of arbitrable disputes through a consensual mechanism, whereas the Insolvency and Bankruptcy Code, 2016, seeks to preserve asset value, protect creditor interests, and facilitate an orderly resolution of corporate financial distress. Conflicts arise when arbitration proceedings, arbitral awards, or individual enforcement actions threaten to interfere with the insolvency process.

The Supreme Court's decisions in *Indus Biotech*, *K. Kishan*, *P. Mohanraj*, and *Gujarat Urja Vikas Nigam* have clarified important aspects of this relationship. They establish that the stage of insolvency proceedings, the existence of a genuine dispute, the scope of the moratorium, and the jurisdiction of the NCLT must all be considered when determining the appropriate legal course.

Nevertheless, uncertainties remain concerning the continuation of pending arbitration, the treatment of disputed awards, the recovery of assets by resolution professionals, and the coordination of parallel proceedings. These difficulties can increase litigation costs and undermine commercial certainty.

India should therefore develop clearer statutory guidance and consistent procedural

mechanisms to reconcile arbitration with insolvency resolution. The objective should not be to subordinate arbitration in every insolvency-related dispute, but to ensure that private dispute resolution operates within the limits of collective insolvency law. A balanced framework would protect legitimate contractual rights, prevent misuse of insolvency proceedings, and strengthen the efficiency and credibility of India's commercial justice system.

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