

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper and a black leather watch with a silver face are also visible. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

## ABOUT WHITE BLACK LEGAL

*White Black Legal – The Law Journal* is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

## AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

# **INDIAN LEGAL FRAMEWORK AND THE ARBITRATION-INSOLVENCY CONFLICT**

AUTHORED BY - RUTU C. ASTIK

## **1.1. Introduction: The Policy Conflict:**

The situation with arbitration and insolvency cross in India is a conflict of near-polar extremes, which presents a severe legal challenge. Chapter 1 dealt with the overall theoretical advantages of arbitration, and social character of insolvency, Chapter 2 dealt with the specific case statutory and judicial tug-of-war that occurs in the Indian legal system.

### **The Collision between Philosophy:**

The clash is caused by different purposes of the two regimes. Arbitration is a decentralized and private model of dispute resolution that relies on party autonomy and is intended to resolve a dispute at the in personam (personal/contractual) level. IBC, 2016, on the one hand, is an irresistible push towards the centralized, collective approach that is planned to protect even a greater number of stakeholders, including creditors, investors, employees.<sup>1</sup>

### **The Paradox of Forum Selection:**

via this interface, there arises a disagreement as to jurisdiction; shall a dispute remain within a privately chosen arbitral tribunal, or shall it be handed over to the central jurisdiction of the National Company Law Tribunal (NCLT)?<sup>2</sup>

### **Theoretical Tension:**

The IBC attempts to secure creditor interests by means of one time-limited resolution framework, but a corporate debtor can apply arbitration in order to appeal a bankruptcy petition and retain the assets.

---

<sup>1</sup> Alipak Banerjee and Payel Chatterjee, 'The arbitration and insolvency collision: the Indian perspective' (International Bar Association, 3 June 2021) <https://www.ibanet.org/arb-insol-india> accessed 29 March 2026

<sup>2</sup> Injila Khan and Utkarsh Mishra, 'Insolvency or Arbitration: A Fight Between Special Statutes' (CBCL, 16 May 2021) <https://cbcl.nliu.ac.in/arbitration-law/insolvency-or-arbitration-a-fight-between-special-statutes/> accessed 29 March 2026

The aim of the chapter is to deconstruct the factors that underlie the Indian system of primacy of IBC over arbitral independence. This analysis characterises the Indian "Hard Stop" strategy based on interesting tests of arbitrability and the Section 238 (the overriding clause). This forms a level of comparison between Singapore and the UK in subsequent chapters.<sup>3</sup>

## **1.2. Evolution of Insolvency Law and The Rise of The IBC:**

A purposeful and drastic change in the law led to the current state of Indian law, which is typified by the predominance of insolvency proceedings over arbitral autonomy. Tracing the shift from a dispersed, debtor-friendly system to the centralized, creditor-centric structure of the Insolvency and Bankruptcy Code (IBC), 2016<sup>4</sup> is crucial to understanding the "Hard Stop" strategy.

### **1.2.1. The Pre-2016 Framework: SICA and SARFAESI Limitations:**

An intentional and radical shift of the law resulted in the contemporary position of the Indian law, which is characterized by the dominance of bankruptcy over the arbitral liberty. To understand the Hard Stop strategy, it is vital to trace how the current system has transformed to a centralized, creditor-centric system of the Insolvency and Bankruptcy Code (IBC), 2016, as it has evolved over the years to achieve a Hard Stop approach.

The two key overlapping laws that constituted the insolvency regime in India prior to 2016 included the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act of 2002, and the Sick Industrial Companies Act 1985, (SICA).<sup>5</sup>

The concept, known as the Debtor-in-Possession that determined this age was incredibly damaging to the nature of arbitration and debt collection. Afflicted enterprises would utilize the unwell status in Section 22 of SICA<sup>6</sup> under which legal proceedings were

---

<sup>3</sup> Abeer Sharma and Priya Sharma, 'The Limitations of Section 238 & 14 of the IBC: A Comparative Analysis of Arbitration and Conciliation Alternatives in India and Globally' (The Concords, 5 November 2024) <https://www.theconcords.com/post/the-limitations-of-section-238-14-of-the-ibc-a-comparative-analysis-of-arbitration-and-conciliati> accessed 29 March 2026

<sup>4</sup> Insolvency and Bankruptcy Code 2016

<sup>5</sup> Arth Doshi, 'Has the Creditor in Control Model Helped to Achieve the Objectives of the IBC' (IRCCL, 16 December 2023) <https://www.ircl.in/post/has-the-creditor-in-control-model-helped-to-achieve-the-objectives-of-the-ibc> accessed 29 March 2026

<sup>6</sup> Sick Industrial Companies (Special Provisions) Act 1985, s 22

instantly suspended, including pending arbitrations. The Bankruptcy Law Reforms Committee (BLRC) noted that this structure was actively used by the management to extend the recovery period and preserve the ability to control the assets, which led to the endless delays and value siphoning (BLRC Report, 2015).<sup>7</sup> Lack of a single forum meant that creditors had to sue under various courts such as the Civil Courts, Debt Recovery Tribunal (DRT) and the Board of Industrial and Financial Reconstruction (BIFR) because of the unavailability of one single court.

### **1.2.2. The BLRC Report and The Paradigm Shift:**

The enactment of the IBC was preceded by the findings of the Bankruptcy Law Reforms Committee (BLRC) Report (2015)<sup>8</sup> stating that the key cause behind the survival of the increasing Non-Performing Assets (NPAs) in India was the lack of a timely mechanism that would see it shut down.

The BLRC proposed a fundamental change to a Creditor-in-Control system. The committee stated that the main purpose of the new law should be the time-limited maximization of the value of assets (BLRC, 2015). The effect of this change was that the personal claim of a debtor to arbitrate a dispute could no longer serve as an obstacle to the collective right of the creditors to a timely settlement in the relationship of the arbitration-insolvency conflict. Accordingly, the IBC was supposed to be a special, self-contained code that replaced a shared, homogenous process under the National Company Law Tribunal (NCLT) with a unified lawsuit.<sup>9</sup>

### **1.2.3. The Statutory Nuclear Option: Section 238 And The IBC Supremacy:**

The most powerful clause that defines the connection of the IBC with other laws is section 238.<sup>10</sup> Since it includes a non-obstante provision, this is often known in the legal literature as the “Nuclear Option”. In simple terms, it translates to the fact that the IBC dominates even in case of a conflict with the rest of the laws including the Arbitration Act. To avoid

---

<sup>7</sup> Bankruptcy Law Reforms Committee, *The Report of the Bankruptcy Law Reforms Committee: Volume I – Rationale and Design* (Ministry of Finance 2015) [https://ibbi.gov.in/BLRCReportVol1\\_04112015.pdf](https://ibbi.gov.in/BLRCReportVol1_04112015.pdf) accessed 29 March 2026

<sup>8</sup> Ibid

<sup>9</sup> Sudhanva Bharadwaj, ‘Creditor in Control vs Debtor in Possession – An Evaluation and Exploration of their Efficiency’ (IBC Laws Blog, 16 December 2024) <https://ibclaw.blog/creditor-in-control-vs-debtor-in-possession-an-evaluation-and-exploration-of-their-efficiency-by-sudhanva-bharadwaj/> accessed 29 March 2026

<sup>10</sup> Insolvency and Bankruptcy Code 2016, s 238

conflict of interests resulting in the collective goal of insolvency, Section 238 acts as a safeguard in statute.

*Innoventive Industries Ltd. Vs. ICICI Bank:*

The Supreme Court in their landmark ruling of *Innoventive industries Ltd. vs ICIC Bank & Anr. (2017)*<sup>11</sup> first demystified how such authority can be used. After reviewing the Code, the Court identified a seismic change in Indian law in its original major ruling on the Code. The Court concluded that the IBC has to override other laws because of two major reasons:

As it was observed by the Court, speed of the process of resolution is very crucial to the effectiveness of the Code. The process of arbitration is often a time consuming confidential procedure which takes several years. The property of a company would be undervalued in case it had the freedom to defer filing the bankruptcy through arbitration. As such, to fit IBC accelerated schedule (180 to 330 days) under Section 238, the right of the privatized arbitration should be compromised.<sup>12</sup>

**A Complete Code** It was decided that the IBC was a, self-governing law. This implies that it can use whatever it has to pay the debt of a business within its parameters. The NCLT would only have to ensure that there is a default which occurred, the Court decided, despite one having a disputed claim which one wants to arbitrate over. The IBC process starts when a default is proved already, and Section 238 eliminates further diversions in the legal process.

**The Effect: A Hard Stop of an Arbitration.**

The decision of the *Innoventive* case was very clear that party autonomy is not unqualified. Parties are free to choose their own under the Arbitration Act, but the IBC serves a more elevated purpose to the people. The business is not two parties anymore, but every stakeholder, employee, and creditor is included when a business is in a dire situation.<sup>13</sup>

Another tactic made by the Indian judiciary through the use of Section 238 is the Hard Stop. To protect the overall interests of the economy, the right to arbitrate in the contract legally

---

<sup>11</sup> *Innoventive Industries Ltd v ICICI Bank* (2018) 1 SCC 407

<sup>12</sup> Yash Patel, '*Innoventive Industries Ltd v ICICI Bank*' (Law Mantra, vol 4, issue 10–11)

<sup>13</sup> Aviral Jain, 'Arbitration and IBC: The Indian Perspective on Overlapping Laws' (2023) SSRN

through the course of the unavoidable dismantles such that the default is demonstrated.

### **1.3. Arbitration Law and the Modern Arbitral Landscape in India:**

One should also recognize that in order to understand the conflict, India has been trying to be a pro-arbitration jurisdiction within the last decade. The legislators desired to offload business disputes on to the private tribunals instead of the traditional courts that were overwhelmed. This pro-arbitration position, however, led to the IBC being in direct opposition to its pro-creditor position.

#### **1.3.1. Framework Autonomy: 5, 8 and 16 (Competence-Competence):**

The prime focus of the Arbitration and Conciliation Act, 1996 (the "Arbitration Act" was to establish a system of judicial practice that was pro choice, pro party autonomy in India. They accomplished this by the means of Sections 5, 8, and 16, primarily, establishing a "provision of protection around arbitration created by the legislatures. On the scale of statutory powers of the IBC, these clauses indicate the attitude of lack of interference that the Indian judiciary should adopt, which is promoting acute conflict.<sup>14</sup>

##### **I. Minimal Intervention of the Judiciary Principle (Section 5).**

The key to the Indian arbitration is section 5,<sup>15</sup> which serves as a restrictive requirement to the judiciary. It provides that there shall be no judicial authority interference with a case covered by an arbitration contract unless it is so indicated in this Part.

The Importance of Jurisprudence This is a departure compared to the previous 1940 Act in which the judges had a wide measure of discretion to interfere. Section 5 ensures that people waive their rights to access a civil court in case there is a private agreement on using arbitration to resolve disputes. This is the primary obstacle of the IBC to the dissertation context since it poses the question whether a court, the NCLT, can intervene in a dispute that by agreement the parties have decided to remain confidential.<sup>16</sup>

##### **II. In section 8 on the list of mandatory referral mechanisms, the following is inscribed:**

---

<sup>14</sup> Lawcurb, 'Role of Party Autonomy under the Arbitration Act: Limits and Possibilities' (28 October 2025) <https://www.lawcurb.in/post/role-of-party-autonomy-under-the-arbitration-act-limits-and-possibilities> accessed 29 March 2026

<sup>15</sup> Arbitration and Conciliation Act 1996, s 5

<sup>16</sup> Shafaq Uraizee-Sapre and Gautam Dembla, 'Now Arbitration Friendly?' (2010) IFLR

Section 8<sup>17</sup> compels the court to intervene by supporting arbitration and does not allow the court to get involved as it is banned by Section 5. It provides that the court shall arrange the parties to arbitration in the event an action is presented before it in an issue that is regulated by an arbitration agreement.<sup>18</sup>

The Must of the Legislature: The word shortly shall. It implies that, in case of the existence of an effective arbitration deal, the referral is automatic and the court, having nothing to do with it.

The Conflict Point: This language of Section 8, conflicts with the language of the IBC which is also one mandate language (Sections 7, 9). This brings us to the Policy Paradox that has been stated in the introduction of this chapter: two other laws, both declaring jurisdiction over the same dispute using the word shall, in their text.

### **III. Doctrine of Competence-Competence (Section 16)**

Finally, the theory of Competence-Competence (Kompetenz -Kompetenz) which has been widely recognized throughout the world is found in Section 16<sup>19</sup>. This gives the arbitral tribunal authority to make a case that falls within its own jurisdiction, such as the cases that question the existence or validity of the arbitration contract.<sup>20</sup>

The Authority of the Tribunal: It ensures that a party does not force an arbitration to be discontinued by going to the court and claiming that the agreement is invalid. In Section 16, it is an arbitrator not judge who decides on the hearing of a case or not.

Influence on Insolvency: Among the judgments reached by the Supreme Court of India, we can mention *Vidya Drolia v. Durga Trading Corp* (2021)<sup>21</sup> that the tribunal is competent to decide its jurisdiction, but it cannot do so in cases where the subject being Insolvency is non-arbitrable by law.

---

<sup>17</sup> Arbitration and Conciliation Act 1996, s 8

<sup>18</sup> M V Sundararaman, 'Scope of Enquiry of Civil Courts under Section 8 of the Arbitration and Conciliation Act, 1996' (2004) June PL (Jour) 13

<sup>19</sup> Arbitration and Conciliation Act 1996, s 16

<sup>20</sup> Vasanth Rajasekaran and Harshvardhan Korada, 'Competence-Competence Doctrine in Indian Arbitration Law Jurisprudence: An In-Depth Analysis' (SCC Online Blog, 1 November 2023) <https://www.sconline.com/blog/post/2023/11/01/competence-competence-doctrine-indian-arbitration-law-jurisprudence-in-depth-analysis/> accessed 29 March 2026

<sup>21</sup> *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1

#### **1.4. The Arbitrability Doctrine in India:**

Not only is there an underlying distinction regarding the legal nature of the conflict between the Insolvency and Bankruptcy Code (IBC) and Arbitration Act but also a legislative overlap. The "Doctrine of Arbitrability" is a kind of filter used to determine which cases can be resolved through the use of the personal arbitration mechanism and which must be retained in the legal system of the State in case of Indian courts.

##### **1.4.1. The Distinction between In Personam and In Rem.**

The difference between rights in rem and rights in personam is the foundation of the principle of arbitrability which is central to India. This disparity is the primary source of the lawful foundations of the primacy of insolvency procedures over the autonomy of arbitral methods.

*Rights in Personam:* Generally, the outcomes of the personal contractual agreement; such rights indicate the interests of people who are protected against specific individuals. The given conflict is viewed as an intrinsically fitting argument inside the scope of the private arbitration since its outcome solely involves the parties that are directly involved in the agreement.

*Rights in Rem:* These associate to the status of an entity, and can be enforced against the whole world due to their erga omnes nature. Since a declaration of bankruptcy has a significant impact on many stakeholders, numerous of whom form different types of creditors, employees, shareholders, and the revenue authorities of the State, insolvency is considered to be the action *in rem*.<sup>22</sup>

##### **1.4.2. Booz Allen (2011) Analysis: Landmark Tests.**

The standards of judicial evolution of deciding whether a dispute is or not arbitrable is a matter that has experienced a heavy judicial development in India. A descriptive list of non-arbitrable issues replaces with this change an analytical, principled framework that directly stresses the issue of bankruptcy procedures as a political issue.

Subject-Matter Test within Booz Allen Foundation.

---

<sup>22</sup> Vasanth Rajasekaran, 'Decoding Arbitrability and Determining the Boundaries of Arbitration in Indian Jurisprudence' (SCC Online Blog, 7 July 2023) <https://www.sconline.com/blog/post/2023/07/07/decoding-arbitrability-and-determining-the-boundaries-of-arbitration-in-indian-jurisprudence/> accessed 29 March 2026

In the famous case of *Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd.* (2011)<sup>23</sup>, the Supreme Court of India has been charged with defining the boundaries of an arbitrators authority. The Court concluded that the principal determinant concerning the arbitrability of a dispute is whether the dispute involves a right in personam or right in rem.<sup>24</sup>

## II. The Existing Standard: The Vidya Drolia Four-Pronged Test.

A decade following this, in *Vidya Drolia Case* The Supreme Court presented a more advanced and trustworthy analysis methodology (Durga Trading Corp, 2021). This decision suggested a more advanced four-pronged test to determine whether or not a subject matter is non-arbitrable, as opposed to the approach of *Booz Allen* which relies on the use of a list. According to this test, a disagreement is not arbitrable in the event that:

- Nature of the Right: Subordinate in personam rights have no relation to the cause of action, which has to do with an action in rem.
- Third-Party Impact: Third-party rights should be centralized when the activity impacts on a third-party, or is an erga omnes activity.
- Sovereign Function: Functions that are beyond challenge by alienation are sovereign or public (e.g. criminal law, taxes or marital status).
- Statutory Implication: Curative to a given statute, the issue is either explicitly or implicitly non-arbitrable.<sup>25</sup>

Applicability to the IBC Conflict:

The Hard Stop of the law that is considered in this chapter is derived through obtaining the *Vidya Drolia* formula of Insolvency and Bankruptcy Code (IBC). satisfies all four requirements:

Since it changes the corporate status of the debtor, it is in rem.

Affected are third-party rights (the right of the creditors, and not the one in arbitration).

As the IBC provides in Section 238 in the IBC, where the NCLT is already determined as the sole sitting that could manage the collective resolution process, it is non-arbitrable in implication.

In this establishment, it is evident that any dispute in the Indian setting which is in If

---

<sup>23</sup> *Booz Allen & Hamilton Inc v SBI Home Finance Ltd* (2011) 5 SCC 532

<sup>24</sup> Vikash Kumar Jha and Ena Kapur, '*Arbitrability of Disputes: Indian Jurisprudence (Part I)*' (Cyril Amarchand Mangaldas Blog, 25 June 2024) <https://disputeresolution.cyrilamarchandblogs.com/2024/06/arbitrability-of-disputes-indian-jurisprudence-part-i/> accessed 29 March 2026

<sup>25</sup> *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1

insolvency proceedings are initiated, NCLT will gain jurisdiction.<sup>26</sup>

### **1.5. The Judicial "Triage": Pre-admission vs. Post-admission:**

Although the Vidya Drolia test and the so-called Nuclear Option of Section 238 demonstrates the superiority of the IBC to the arbitration, it leaves out the important procedural issue of what happens after an arbitrable matter is no longer arbitrable. To deal with this the Indian judiciary has assumed a Triage approach whereby the formal recognition of the insolvency and the very filing of the insolvency petition have been distinguished.

#### **1.5.1. Indus Biotech v. Kotak India Venture Fund (2021):**

In the case of *Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund*,<sup>27</sup> the Supreme Court provided very important clarification concerning the timing of the dispute. The key issue of dispute was whether a Section 8 application (referral to arbitration) should be decided or not decided before the NCLT can look at a Section 7 insolvency petition.

The Court stated that the Hard Stop against arbitration only works in the event that the petition is admitted.

**Pre-Admission Stage:** This is considered as a pre-admission action *in personam* (a personal dispute creditor) before admission. By this time, in case a Section 8 application has been made, the NCLT between the debtor and the has to first determine whether a default exists.

**Post-Admission Stage:** When the NCLT admits the petition after finding that a default has taken place the petition, the case is turned into an action *in rem*. Through necessary implication, the question at this stage is no longer arbitrable, and any scheduled or ongoing arbitration has to cede way to the collective resolution procedure.<sup>28</sup>

#### **1.5.2. The Dress-up Judicial Gatekeeping Petition:**

The fact that creditors may attempt to mask an ordinary contractual dispute in insolvency claim to escape allowing a valid arbitration contract is a significant issue relating to the Indian Hard Stop strategy. The approach aims to leverage the rigorous schedules of the IBC

---

<sup>26</sup> Kingshuk Banerjee, 'Non-arbitrable Disputes – The Law in India' (International Bar Association, 3 June 2021)

<sup>27</sup> *Indus Biotech (P) Ltd v Kotak India Venture (Offshore) Fund* (2021) 6 SCC 436

<sup>28</sup> Akshita Totla, 'Supreme Court on Arbitrability of Insolvency Law Disputes: The Case of Indus Biotech' (CBCL Blog, 7 May 2021) <https://cbcl.nliu.ac.in/arbitration-law/supreme-court-on-arbitrability-of-insolvency-law-disputes-the-case-of-indus-biotech/> accessed 29 March 2026

in order to force a resolution.

The judiciary prevents this bullying in litigation as a gatekeeper. The Court emphasized in the case of Indus Biotech that the IBC petition should be dismissed in case the NCLT concludes that the debt is actually contested or that the petition is made simply to avoid arbitration without any proven default. It is the task of the NCLT to ensure that the Nuclear Option of Section 238<sup>29</sup> is not just used in the event of actual bankruptcy but is not a feature of weakening the party autonomy that the Arbitration Act secures.<sup>30</sup>

## **1.6. The Moratorium Ambiguity On the Effect On Arbitration (Section 14):**

Section 14 of the IBC is a so-called Moratorium which is automatically activated when an insolvency petition is admitted. This is an actual application of the so-called Hard Stop method due to the necessity to secure the assets of the debtor and allow the Resolution Professional to be at ease in order to reorganize the business without being bothered with a lawsuit in court.

### **1.6.1. The Automatic Stay:**

Under section 14(1) (a) the institution of suits, or continuation of pending suits or proceedings against the corporate debtor are expressly prohibited at the commencement of the Corporate Insolvency Resolution Process (CIRP).

Spectrum of the Stay:<sup>31</sup>

All existing and active arbitration processes are prohibited. The pace of solution is important as approved in *Innoventive Industries Ltd. v. ICICI Bank*<sup>32</sup> since allowing many arbitrations to take place in different forums will drain the company in terms of resources and value.

Centralization:

Moving away fratricidal processes with a private arbitrator to resolve them, the moratorium ensures that all claims are presented in the NCLT and the Resolution Professional.<sup>33</sup>

---

<sup>29</sup> Insolvency and Bankruptcy Code 2016, s 238

<sup>30</sup> Aditya Bhattacharya and Abhijeet Sinha, '*Indus Biotech – Kotak Judgement: A Perspective*' (AZB & Partners, 2021) <https://www.azbpartners.com/bank/indus-biotech-kotak-judgement-a-perspective/> accessed 29 March 2026

<sup>31</sup> Abhijeet Patra, '*The Moratorium under Section 14 of the IBC: A Legal and Empirical Analysis of its Scope and Limitations*' (IBC Laws, 26 July 2025) <https://ibclaw.in/the-moratorium-under-section-14-of-the-ibc-a-legal-and-empirical-analysis-of-its-scope-and-limitations-by-abhijeet-patra/> accessed 29 March 2026

<sup>32</sup> *Innoventive Industries Ltd v ICICI Bank* (2018) 1 SCC 407

<sup>33</sup> Khyati Tuli and Daksh Mehta, '*Effect of Moratorium Period on Arbitration: Discontinuation or Not?*' (IBC Laws, 6 June 2021) <https://ibclaw.in/effect-of-moratorium-period-on-arbitration-discontinuation-or-not-by-ms-khyati-tuli-and-mr-daksh-mehta/> accessed 29 March 2026

### **1.6.2. The Power Rule on the Power Grid: Claims by vs. Claims against the Debtor:**

One who is initiating arbitration, it has a significant scholarly difference. In the landmark case of *Power grid corp of India v. jyoti structure*.<sup>34</sup> the Delhi High Court indicated clearly that the Section 14 moratorium does not entirely ban arbitrations.

Claims 'Against' the Debtor A claim arising by any form of arbitration where the creditor is seeking to reclaim remuneration against the bankrupt business is not permitted. In so doing, the siphoning of value that was the warning of the BLRC Report will be prevented.

Claims by the Debtor: An exemption against moratorium is that, where the soon becoming bankrupted business (the corporate debtor) asserts a claim in an arbitration, i.e., is seeking recovery of some funds against a third party, the claim is not subjugated by the moratorium. The rationale of this is that, as per the goal of the IBC which is to maximize its assets, such proceedings are beneficial to the creditors by potentially increasing the asset pool of the firm.<sup>35</sup>

### **1.6.3. The Moratorium Defense Counter-Claim Dilemma:**

The most complicated legal issue is observed when a corporate debtor could like to provide a counterclaim or defend himself against arbitration in a pending arbitration proceeding.

The General Rule Counterclaims against the debtor conform to the extent that they represent a separate claim to the debtor assets, and ought to be stayed.

The Netting Logic: Sometimes, courts have allowed the procedures to proceed where they are obliged to determine the overall value due to the debtor. The moratorium can be viewed more permissively when the arbitration has reached a stage where only the final netting of accounts is needed though without leading to the issue of a decree being executed on the assets of the debtor during the CIRP.

---

<sup>34</sup> *Power Grid Corporation of India Ltd v Jyoti Structures Ltd* 2017 SCC OnLine Del 12729

<sup>35</sup> 'Moratorium would not apply to the proceedings which are in the benefit of the Corporate Debtor – *Power Grid Corporation of India Ltd v Jyoti Structures Ltd*' (IBC Laws, 11 December 2017) <https://ibclaw.in/moratorium-would-not-apply-to-the-proceedings-which-are-in-the-benefit-of-the-corporate-debtor-power-grid-corporation-of-india-ltd-vs-jyoti-structures-ltd-delhi-high-court/> accessed 29 March 2026

## **1.7. Doctrinal Conflicts and Practical Difficulties:**

Although the Indian judiciary's "Hard Stop" method establishes a clear hierarchy, its actual implementation demonstrates substantial systemic friction. According to recent research, the junction of these laws represents a fundamental conflict between public policy goals rather than just a procedural overlap.

### **1.7.1. Party Autonomy Dilution:**

The loss of party autonomy is the issue raised by many researchers. The fundamental tenet of arbitration is that private parties are free to select the forum and the judges. However, this private agreement is essentially seen as a secondary issue due to the IBC's overriding nature. A generalist judicial tribunal replaces the parties' selection of a specialized arbitrator, typically picked for their technical or industry-specific expertise when the NCLT assumes control. This leads to a state-mandated paternalism in which the particular contractual commitments established between business entities are subordinated to the general welfare of creditors.<sup>36</sup>

### **1.7.2. NCLT Backlogs:**

Despite being promoted as a fast-track resolution mechanism, other academics point out that the IBC frequently results in a procedural vortex. An arbitration enters a state of legal limbo when it is stayed under Section 14.

#### **The Reality of Delay:**

Despite the law's requirement for a 330-day resolution term, the large number of cases at different NCLT benches frequently causes lengthy delays.

The outcome may be a multi-year insolvency process for a claimant who was just months away from an arbitral ruling. The evidence may have become stale and the initial disagreement may no longer be commercially relevant by the time the Hard Stop is removed or the resolution is finalized, which would be a denial of justice by delay.<sup>37</sup>

---

<sup>36</sup> Neelam Tyagi, 'Indian Perspective on Arbitrability of Insolvency Disputes: Intersection, Intervention and Interpretation for Synergy Among Both Regimes' (2023) 8(1) *Ramanujan International Journal of Business and Research* 70

<sup>37</sup> Ibid

### **1.7.3. Using Insolvency Strategically to Apply Pressure:**

A major issue is the deliberate abuse of Section 9 petitions, Operational creditors frequently use the IBC process as a bullying tactic to get around arbitration provisions for straightforward payment disputes since it is so aggressive threatening a company's very existence. The onus is frequently on the debtor to establish a “pre-existing dispute” with a high degree of confidence, even though the Mobilox test is designed to weed out these frivolous petitions. Because of the intense pressure this causes, a business may accept a weak claim in order to escape the stigma of declaring for bankruptcy, making their right to arbitrate meaningless.<sup>38</sup>

### **1.7.4. Resolution Professionals' Information Gap:**

The "lack of synergy" between the two forums once an arbitration is delayed presents a practical challenge. The technical background of the issue that was being discussed in the arbitral room is frequently absent when a Resolution Professional (RP) takes over.

**Claims Valuation:** In order to create a resolution plan, the RP must estimate the worth of a contested claim because the arbitration is frozen.

**The Conflict:** An unequal allocation of assets results if the RP undervalues a claim that was actually very strong during the arbitral process. The resolution plan is frequently predicated on insufficient legal information in the absence of a proper process for the RP to review the arbitral record or for the arbitrator to provide a preliminary finding.<sup>39</sup>

### **1.7.5. The Finality of Awards and the “Clean Slate” Doctrine:**

Lastly, the “Clean Slate” theory presents a problem. all previous claims that were not expressly covered by a resolution plan are extinguished in India after it is approved. Many arbitral awards suffer a legal death as a result. If a creditor does not successfully negotiate the intricate claim-filing procedure during the IBC timeframe, their years of earning an arbitration award could be worthless. This absence of security for award holders gives the impression that arbitration in India is a risky endeavor if there is even a remote possibility that the counterparty would experience financial difficulties.

---

<sup>38</sup> Ishaan Madaan and Christian Campbell (eds), *Crossroads of Insolvency and Arbitration* (Comparative Law Yearbook of International Business, Special Issue, Kluwer Law International 2022)

<sup>39</sup> Joseph Cyriac and Elizabeth P Mathai, ‘*Arbitration and Insolvency in India: Legal Conflicts and Practical Guidance*’ (7 May 2025) SSRN <https://ssrn.com/abstract=5247862> accessed 29 March 2026