

THE INTERSECTION OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016, AND THE ARBITRATION AND CONCILIATION ACT, 1996

1.1. INTRODUCTION

The legal landscape in India has been undergoing significant transformation, particularly with the introduction of the Insolvency and Bankruptcy Code, 2016 (IBC) and the Arbitration and Conciliation Act, 1996 (A&C). Although these two legislative instruments possess distinct aims, they often converge, resulting in numerous judicial analyses. The IBC's primary objective is to unify and revise the laws governing the insolvency resolution mechanism, while the A&C fosters and enables arbitration as an alternative dispute resolution (ADR) method. A comprehensive understanding of their interrelation is crucial for effectively navigating disputes within the realm of corporate and commercial law. This blog examines the interplay between the IBC and A&C, the challenges stemming from their convergence, and the ways in which Indian judiciary has resolved these disputes.

1.2. OBJECTIVES OF THE IBC AND A&C

Insolvency & Bankruptcy Code¹	Arbitration & Conciliation Act²
The IBC is a comprehensive legislation that seeks to resolve insolvency and bankruptcy matters in a time-bound manner. The Code provides mechanisms to revive failing businesses or liquidate them to protect stakeholders' interests. The overriding objective of IBC is the maximization of asset value, revival of businesses, and ensuring creditor confidence in the market.	The A&C provides a legal framework for arbitration and conciliation to settle disputes outside the conventional court system. The Act emphasizes party autonomy, procedural flexibility, and speedy resolution. It aligns with international best practices under the UNCITRAL Model Law ³ , ensuring that arbitration remains a preferred dispute resolution mechanism for commercial entities.

¹ Insolvency and Bankruptcy Code, 2016.

² Arbitration and Conciliation Act, 1996.

³ UNCITRAL Model Law [UN Doc A/40/17, Annex I] available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration accessed on 20th January 2025.

Both legal frameworks are designed to facilitate the resolution of conflicts through arbitration, mediation, and conciliation, ensuring swift, cost-effective, and equitable outcomes. They uphold the principle of party autonomy, empowering disputants to settle their disagreements outside the conventional court framework. Furthermore, the Act aligns with India's international commitments established by the New York Convention regarding the Recognition and Enforcement of Foreign Arbitral Awards. Although each statute serves its own unique purpose, they occasionally intersect in commercial disputes, particularly in matters involving contracts that contain arbitration clauses. This intersection frequently raises concerns regarding jurisdiction, applicability, and enforceability.

1.3. POINTS OF CONFLICT BETWEEN IBC AND A&C

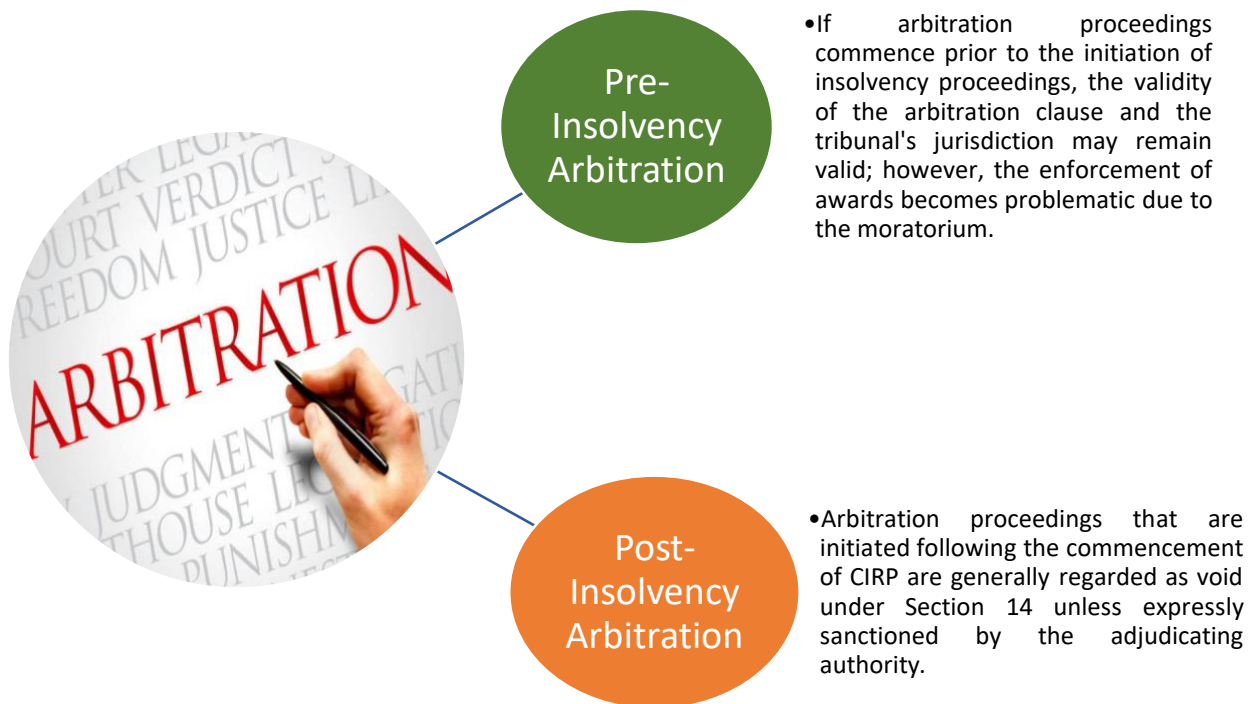
The primary contention between the IBC and A&C stems from their inherently divergent objectives. While the IBC seeks to centralize insolvency proceedings, the A&C emphasizes decentralization and the autonomy of the parties involved. Below are several significant domains where the two statutes interact:

- (i) Arbitration and Moratorium Under Section 14 of the IBC:** Upon the initiation of a corporate insolvency resolution process (CIRP) under the IBC, Section 14⁴ enforces a moratorium on all legal actions against the corporate debtor. This moratorium encompasses arbitration proceedings. Nevertheless, complexities arise in scenarios where arbitration is already in progress or where disputes subject to arbitration are integral to the resolution process. For example, in the case of *Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd.*⁵, the Supreme Court affirmed that the moratorium stipulated in Section 14 extends to arbitration proceedings as well. This provision ensures that the resolution professional can concentrate on the insolvency process without the interruption of concurrent litigation or arbitration.

⁴ Insolvency and Bankruptcy Code, 2016, §. 14

⁵ 2017 SCC OnLine SC 1362

- (ii) **Arbitration in Pre-Insolvency and Post-Insolvency Scenarios:** The timing of arbitration initiation significantly influences its treatment under the IBC:



- (iii) **Arbitrability of Disputes Under IBC:** The issue of arbitrability concerning disputes represents a significant domain of debate. Generally, insolvency proceedings are regarded as non-arbitrable due to their involvement with the collective rights of creditors and the public interest, which transcends the scope of private dispute resolution avenues such as arbitration. In the case of *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*⁶, the Supreme Court delineated disputes into arbitrable and non-arbitrable categories based on their inherent characteristics. Disputes related to insolvency, which necessitate a collective approach impacting various stakeholders, are predominantly classified as non-arbitrable. Nevertheless, disputes arising from contractual agreements during insolvency proceedings may still be amenable to arbitration.

- (iv) **Party Autonomy vs. Public Interest:** The Arbitration and Conciliation Act (A&C) places a strong emphasis on party autonomy, permitting parties the discretion to select arbitration as their preferred mechanism for dispute resolution. Conversely, the

⁶ 2011 (5) SCC 532

Insolvency and Bankruptcy Code (IBC) underscores the importance of public interest and the collective rights of creditors, which take precedence over individual contractual arrangements. This often results in the annulment or suspension of arbitration agreements during the Corporate Insolvency Resolution Process (CIRP).

- (v) **Recognition and Enforcement of Arbitral Awards:** The process of enforcing arbitral awards against a corporate debtor undergoing insolvency proceedings presents notable challenges. The moratorium established under Section 14 inhibits enforcement actions, and even after resolution, the enforcement of awards is contingent upon the stipulations of the resolution plan sanctioned by the adjudicatory authority.⁷

1.4. JUDICIAL INTERPRETATIONS OF THE IBC-A&C INTERFACE

The judiciary in India has been instrumental in elucidating the relationship between the IBC and A&C. Several pivotal cases include:

- (i) ***K. Kishan v. Vijay Nirman Company Pvt. Ltd.***⁸: In this case, the Supreme Court examined the issue of overlapping claims under the IBC and arbitration. The Court concluded that the mere initiation of CIRP does not invalidate an arbitration clause. However, once the moratorium prescribed by Section 14 is activated, arbitration proceedings cannot advance without the consent of the resolution professional or the adjudicating authority.
- (ii) ***Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund***⁹: This case addressed the arbitrability of disputes within the framework of the IBC. The Supreme Court clarified that the act of filing a petition under Section 7 or Section 9 of the IBC does not preclude the court from directing the matter to arbitration if the dispute is deemed arbitrable. Nonetheless, once insolvency is acknowledged, the IBC process takes precedence over arbitration proceedings.
- (iii) ***Essar Steel India Ltd. v. Satish Kumar Gupta***¹⁰: In this landmark judgment, the Supreme Court underscored the predominant nature of the IBC, asserting that the Code supersedes

⁷ Insolvency and Bankruptcy Code, 2016, §. 14

⁸ CIVIL APPEAL NO. 21824 OF 2017 with CIVIL APPEAL NO. 21825 OF 2017

⁹ AIR ONLINE 2021 SC 171

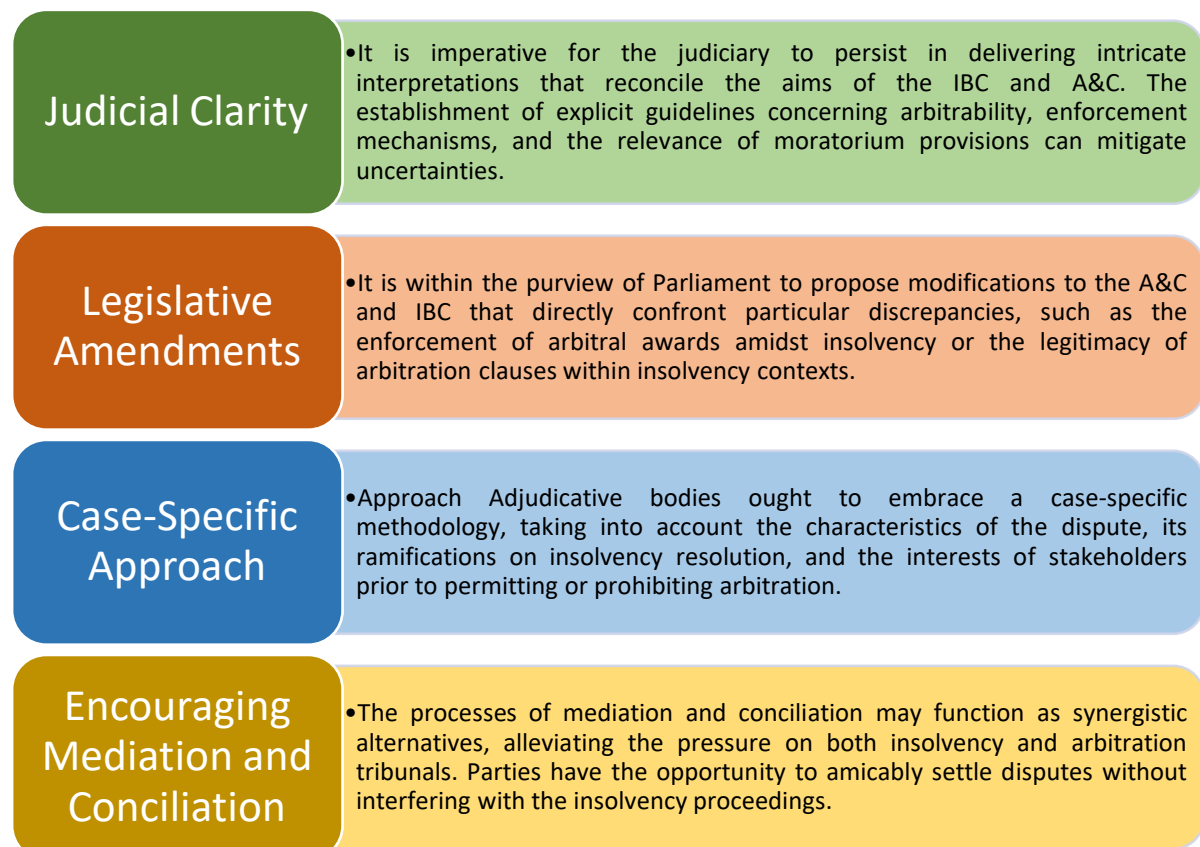
¹⁰ CIVIL APPEAL NO. 8766-67 OF 2019

other legal frameworks, including the A&C, in instances of conflict. This ruling reinforced the superiority of insolvency proceedings over arbitration for resolving disputes involving corporate debtors.

- (iv) ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*¹¹**: This case revolved around a power purchase agreement containing an arbitration clause. The Supreme Court determined that disputes pertaining to contracts vital for the efficacy of a resolution plan may not be subject to arbitration, as they fall within the jurisdiction of the IBC.

1.5. HARMONIZING THE IBC AND A&C

To mitigate conflicts and ensure effective implementation of both statutes, the following measures can be considered:



1.6. THE WAY FORWARD

The interplay between the IBC and A&C exemplifies the fluid characteristics of India's legal architecture. While conflicts are an unavoidable consequence of their distinct purposes, judicial

¹¹ AIR ONLINE 2021 SC 123

interventions and legislative precision have contributed to achieving equilibrium. Both statutes are integral to advancing India's economic progression—one by facilitating the rejuvenation of distressed enterprises and the other by endorsing dispute resolution via ADR methodologies. In the future, a cohesive strategy that honours the distinct objectives of both legal frameworks will be indispensable. Judicial entities, legislative bodies, and legal practitioners must engage in cooperative efforts to bridge gaps and resolve conflicts, thereby ensuring a cohesive relationship between insolvency and arbitration systems. Ultimately, the convergence of IBC and A&C serves as a reflection of the progressive evolution of commercial legislation in India. As the legal milieu continues to develop, this convergence will persist as a pivotal area of emphasis, influencing the adjudication of corporate and commercial disputes in the forthcoming years.
