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Research paper

Untangling The Threads: Arbitration and Insolvency Processes Intersected

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Abstract

Increased global trade and the application of arbitration as the first-choice dispute resolution mechanism have caused more confluence between arbitration and insolvency. Arbitration deals with financial issues such as cross-border, debt recovery, and creditor-debtor conflict. Cases like Nortel, Lehman Brothers, and MF Global demonstrate the use of arbitration in addressing international insolvency conflicts. Nations such as Brazil, Chile, Peru, and Singapore have also enacted legislation favorable to arbitration in insolvency proceedings.
This article suggests a framework for identifying which insolvency disputes may be arbitrable to clarify an international standard. Focusing specifically on India, the paper examines the overlap between arbitration and insolvency. In furtherance, this paper will attempt to analyze how arbitration and insolvency interact in Indian law. It seeks to clarify dispute resolution routes, which would make cross-border insolvency processes more cooperative and efficient.

Keywords: *Arbitration; Insolvency; Bankruptcy; financial creditor; operational creditor*

1. Introduction

The conventional approach to the insolvency system may not provide the flexibility and urgency that arbitration can. With a surge in the volume of insolvency-related disputes, arbitration has become an attractive option for resolving such disputes (Majumdar, 2011). Compared to the lengthy adjudicatory framework, arbitration allows the parties to tailor proceedings according to the unique details of their dispute and accommodates 'fast-track' provisions, reducing the burden on overcrowded national courts. Such courts are often limited by formulaic statutory procedures that can undermine the speedy and cost-effective disposal of even uncomplicated insolvency cases (Das, Jacob & Mohapatra, 2020). On the other hand, arbitration is capable of tackling specific pressure areas in insolvency cases, adjudicating claims of creditors, resolving intra-group disputes, valuation and distribution of assets, restructuring approvals, and overall resolution of disputes in an effective way, and offering a more flexible and streamlined mechanism to address insolvency-related issues (Chatterjee & Zaveri, 2018). Business issues involving cross-border insolvency usually encounter complex problems like time lags, language barriers, and conflicting local laws (Grenig, 2014). A key challenge is the absence of a single, cohesive global regime, although initiatives like the UNCITRAL Model Law on Cross-Border Insolvency were presented in 1997 for tackling the insolvency issues to some extent wherein numerous problems arose concerning companies that have assets in different countries further encountering challenges with different restructuring issues that heavily rely on both parties agreeing with the debtor and multiple creditors (Gupta & Singh, 2020). However, such negotiations can prove to be challenging, as all creditors set expectations based on the local insolvency laws, and these may greatly vary in asset distribution among the creditors. The variation tends to prevent consensus from being reached, and without an agreement, a potentially thriving enterprise can be liquidated (Kwatra, 2014).
Thus, at this juncture, arbitration has proven to be a viable option in cases where parties cannot agree on a common restructuring plan. In contrast to conventional court proceedings, arbitration allows the parties to choose a governing law that is more restructuring-friendly, thus providing greater legal certainty and fostering an impression of procedural fairness (Sahoo, 2019). This adaptability can also entice hold-out creditors to join the restructuring process since the structure will be less likely to unfairly favor the insolvency regime of any jurisdiction. Another benefit of arbitration is the enforceability of awards (Sharma, 2016). By the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed by 172 states, these awards are largely recognized and enforceable internationally, adding an element of international legal consistency that is not usually present in concurrent insolvency proceedings.
From a fiscal and logistical viewpoint, arbitration is also highly efficient. Cross-border insolvency procedures often involve lengthy and expensive proceedings in multiple national courts, resulting in concurrent procedures and conflicting judgments (Sharma & Thomas, 2016). In contrast, resolving disputes via one arbitral forum can drastically minimize legal costs and simplify the restructuring process.

2. Research Methodology

This study adopts a doctrinal approach to examine the evolving intersection between arbitration and insolvency, with a precise focus on the Indian legal framework. The research is qualitative and relies on both primary and secondary legal sources to analyze statutory developments, judicial decisions, and comparative practices in various jurisdictions.

3. Review of Literature

The evolution of insolvency and bankruptcy frameworks has garnered extensive attention in both legal and financial scholarship, particularly with reference to India's transformative Insolvency and Bankruptcy Code (IBC), 2016. Chatterjee, Shaikh, and Zaveri (2018) highlight the IBC as a pivotal reform that streamlined corporate recovery by improving creditor rights and expediting resolution processes. Empirical analyses by Gupta and Singh (2020) and PSU Watch Bureau (2019) corroborate these findings, demonstrating significant reductions in non-performing assets and quicker insolvency resolution timelines under the IBC regime. Despite these advancements, procedural inefficiencies persist, with the Indian Institute of Insolvency Professionals of ICAI (2020) and reports from the Insolvency and Bankruptcy Board of India (2023) and PRS Legislative Research (2021) emphasizing ongoing challenges related to litigation delays and judicial bottlenecks, thus advocating for further systemic reforms.

Concurrently, arbitration remains a favored mechanism for commercial dispute resolution, valued for its procedural flexibility and international enforceability, as noted by Grenig (2014) and Blackaby and Partasides (2009). However, the intersection between arbitration and insolvency proceedings introduces complex legal dilemmas, especially regarding the scope of arbitrability and jurisdictional authority. Draguiev (2015) and Baizeau (2009) explore conflicts arising when insolvency processes intersect with ongoing arbitration, highlighting the friction between these two dispute resolution mechanisms. Indian jurisprudence provides critical insights into this dynamic; for instance, the Supreme Court's ruling in SBP & Co. v. Patel Engineering Ltd. (2005) delineates limits on the arbitrability of certain insolvency-related disputes, while Power Grid Corporation v. Jyoti Structures Ltd. (2018) illustrates the practical tension between insolvency moratoriums and arbitration claims. On the international stage, U.S. case law, including Fotochrome, Inc. v. Copal Co. (1975) and Behring International v. Iranian Air Force (1985), similarly addresses the interplay between bankruptcy proceedings and arbitration under statutory provisions like 11 U.S.C. § 362(a)(1), which imposes automatic stays on proceedings.

Comparative scholarship by Born (2009) and Blessing (1999) advocates for harmonization between national insolvency regimes and international arbitration frameworks, underscoring the necessity of balancing the collective nature of insolvency with the autonomy and finality that arbitration seeks to maintain. The growing academic consensus stresses the importance of designing legal frameworks that reconcile these often-competing interests to ensure efficient and equitable resolution of commercial disputes.

4. The Practice of Arbitration Within the Framework of Insolvency: Global Perspectives

The application of arbitration in insolvency situations has developed into an effective mechanism for resolving disputes against individual creditors. American courts have established a doctrinal line between "core" bankruptcy matters, which relate to statutory rights under federal law, and "non-core" ones, which could fall within the scope of arbitration if they are the subject of a pre-insolvency agreement (Carlos & Flavia, 1996). This distinction prevents arbitration from being in conflict with, but instead complements, bankruptcy proceedings. Comparable judicial logic has found expression in Singapore, France, and Italy as well, whereby arbitration can operate parallel to insolvency in specific conditions. Australia's legal system does not follow the same pattern, though (Arnaldez, Derains & Hascher,1997). Arbitration proceedings in Australia are not automatically suspended with insolvency, and court authorization does not precede continuation (Vorburger, 2014). Rather, insolvency practitioners have to actively pursue an extension of any moratorium if they believe arbitration is against the administration's objectives.

Insolvency legislation in different jurisdictions typically contains provisions for staying or prohibiting proceedings against debtors, such as arbitration. The automatic stay under the U.S. Bankruptcy Code is the most famous example, but states differ in the extent of their protections and whether they apply extraterritorially (Bailey & Groves, 2007). In Europe, Germany and Switzerland, however, exclude international arbitration from the purview of their automatic stays. By contrast, English law provides for a stay, albeit over arbitrations as well, but only in limited forms of proceedings and at the discretion of the courts. France goes a step further by covering international arbitrations, particularly in the wake of recognizing foreign insolvency. Asia offers equivalent diversity (Baizeau, 2009). China's insolvency law provides that stays can extend to assets from a foreign base and to arbitration proceedings. India's law says nothing about foreign proceedings being covered under its moratorium (Baron and Linger, 2003). Singapore permits its courts to make blanket orders extending to actions outside its jurisdiction.

According to Section 362 of the U.S. Bankruptcy Code, the initiation of bankruptcy proceedings, whether voluntary or involuntary, triggers an automatic stay that halts all ongoing legal actions, including arbitration. This provision serves as a critical safeguard for debtors by suspending creditor actions against the debtor or its assets, unless the bankruptcy court grants prior relief (Berends, 1998). The statute further provides that this protection extends to the debtor's property "wherever located and by whomever held." Although various U.S. courts have affirmed the extraterritorial application of the automatic stay, its practical enforcement abroad is subject to significant limitations (Bernandi, 2008). While arbitrations within the United States fall squarely within the scope of Section 362, complexities arise when the arbitration is seated in a foreign jurisdiction and involves a non-U.S. party. In such scenarios, even though U.S. law purports to extend the stay's reach internationally, the extent to which foreign arbitral tribunals are compelled to acknowledge or enforce the stay remains uncertain.

The decision of the U.S. Court of Appeals for the Second Circuit in Fotochrome, Inc. v. Copal Co., Ltd. provides valuable guidance on this issue. In Fotochrome, a Tokyo-seated arbitration was pending between Fotochrome, a Delaware corporation, and Copal, a Japanese entity, when Fotochrome filed for bankruptcy in the United States. Upon filing, the automatic stay was invoked and presented to the arbitral tribunal in Tokyo as a basis for suspending the proceedings. The tribunal, however, declined to stay the arbitration and ultimately rendered an award against Fotochrome. Copal subsequently sought to enforce the award in the United States. Although the U.S. bankruptcy court initially found the award unenforceable because it had been issued in contravention of the automatic stay, the Second Circuit reversed. The appellate court held that a U.S. bankruptcy court may only impose a stay on foreign arbitration proceedings if it possesses in personam jurisdiction over the foreign party. Given that Copal lacked sufficient minimum contacts with the United States, the court concluded that jurisdiction was lacking and, accordingly, upheld the enforceability of the arbitral award within the U.S.

A similar situation was encountered in Behring International, Inc. v. Islamic Republic of Iran Air Force, where the Iran-U.S. Claims Tribunal refused to suspend arbitration proceedings even though Behring, which is a corporation based in Washington State, Texas, had invoked Chapter 11 bankruptcy protection in the United States. The Tribunal grounded its holding on the argument that neither the Algiers Accords creating the Tribunal nor the rules governing it allowed domestic laws of either the United States or Iran to guide or control its procedures. Highlighting the built-in tension between national insolvency regimes and reliance on an unbiased international arbitral forum, the Tribunal emphasized that its constitutive purpose was one of ensuring impartiality. Permitting U.S. bankruptcy law to control the direction of its proceedings, the Tribunal concluded, would undermine this principle of neutrality.

The extraterritorial application of bankruptcy-related stays also turns on whether the underlying insolvency proceeding is domestic (i.e., commenced in the United States) or foreign (i.e., commenced outside the United States). Although the U.S. Bankruptcy Code more comprehensively defines property of the estate to cover all legal and equitable interests of the debtor in property "wherever located," such a broad definition only applies to domestic bankruptcies under Chapters Seven and Eleven, respectively. Contrariwise, if a foreign insolvency case is recognized within the U.S. under Chapter 15 of the Bankruptcy Code, the automatic stay has more limited extraterritorial application. Particularly, it reaches only up to the property of the debtor that is physically found within the territorial jurisdiction of the United States.

Treatment of international arbitration in insolvency differs enormously from one jurisdiction to another. In Germany and Switzerland, insolvency proceedings do not trigger the automatic stay applicable to international arbitration. English law is more flexible in that it is contingent upon the type of insolvency and finally leaves the determination to the discretion of the court (Bockstiegel, 1987). French insolvency legislation is more comprehensive, extending the stay to foreign arbitration and initiating it on the recognition of a foreign insolvency judgment.

In Asia, jurisdictional measures also vary. Chinese law makes provision for the suspension of arbitration and extends to foreign-held assets of the debtor. India enacts a general moratorium on proceedings against debtors but says nothing about whether this extends to foreign or arbitral proceedings (Blackaby and Partasides,2009). Singapore allows its courts to grant a stay to acts by persons within the jurisdiction of the court, even if such acts are outside its territory. There is significant variation across jurisdictions in the treatment of international arbitration within insolvency regimes. German and Swiss insolvency law excludes international arbitration from the ambit of the automatic stay. English law, by contrast, permits the stay to be imposed, including on arbitration, although these steps are contingent upon the character of the insolvency and subject to judicial discretion (Carter, 1994). French law requires the automatic stay to extend to international arbitration and become effective on the formal recognition of a foreign insolvency proceeding.

In the Asian context, China's insolvency law allows for a stay of arbitration and claims applicability to assets abroad of the debtor. India's Insolvency and Bankruptcy Code imposes a general moratorium but makes no mention of including foreign arbitration proceedings within its ambit. Singapore follows a jurisdiction-based approach with courts being empowered to stay proceedings regarding any act done by a person within its jurisdiction, irrespective of the geographical location of such acts (Delaume,1990).

The extent to which national insolvency regimes affect foreign-seated arbitrations ultimately depends not on legislative reach but on the willingness of tribunals to defer to such laws. Fotochrome and Behring International illustrate that even when domestic insolvency statutes assert extraterritorial application, their effectiveness rests on the tribunal's interpretation.

The Elektrim S.A. case exemplifies this divergence. Following its bankruptcy in Poland, where domestic law nullified arbitration agreements post-bankruptcy, Elektrim sought to terminate arbitrations seated in Geneva and London (Chukwumerije,1994). The London tribunal, interpreting English law through applicable EU rules, maintained the validity of the arbitration agreement. The Geneva tribunal, applying Polish law under Swiss conflict-of-laws, found the agreement void. These opposing outcomes, both later upheld by the respective national courts, underscore how tribunal autonomy and choice-of-law rules critically shape the intersection of insolvency and arbitration (Deitrick,1984).

The degree to which national insolvency regimes impact foreign-seated arbitrations is ultimately a function not of legislative scope but of the willingness of tribunals to yield to such legislation. Fotochrome and Behring International demonstrate that even where domestic insolvency laws claim extraterritorial reach, their enforceability is contingent on the tribunal's interpretation.

Table 1: Comparative Jurisdictional Approaches

Jurisdiction	Approach to Arbitration in Insolvency
India	Moratorium under IBC; arbitration clauses do not bar insolvency proceedings.
UK	Courts favor arbitration unless insolvency proceedings are bona fide.
US	An automatic stay under the Bankruptcy Code halts arbitration.
Singapore	Courts may extend a stay to cross-border acts.
France	Broad automatic stay, including international arbitration
Germany & Switzerland	Exclude international arbitration from automatic stay
India	Moratorium under IBC; arbitration clauses do not bar insolvency proceedings
UK	Courts favor arbitration unless insolvency proceedings are bona fide
US	Automatic stay under the Bankruptcy Code halts arbitration
Singapore	Courts may extend the stay to cross-border acts

5. Should arbitration take precedence over insolvency proceedings in certain cases?

Prioritization of insolvency over arbitration is controversial. It is questioned whether overriding parties' express consent to arbitrate controversies, especially when done by one invoking the insolvency law as a way of evading that contractual obligation, is warranted. Such concerns are particularly critical where insolvency proceedings are launched in bad faith, ostensibly with the intent to frustrate an arbitration clause. While insolvency proceedings tend to enjoy automatic stays that suspend arbitrations, the opposite is not necessarily true: the commencement of arbitration seldom leads to an automatic suspension of insolvency proceedings (Delvolve and Rouche, 2009). Nonetheless, courts in common law countries have discretionary powers to suspend or dismiss legal proceedings, such as insolvency proceedings, that are inconsistent with a valid arbitration agreement. This judicial discretion can be exercised in certain situations, two of which are discussed below.

Insolvency and arbitration often cross paths when creditors file involuntary bankruptcy against a defaulting debtor. When the contested debt is covered by an arbitration clause, the debtor may invoke arbitration as a defensive measure to oppose the bankruptcy, claiming that the debt is disputed. Alternatively, creditors might seek to bypass arbitration by initiating insolvency proceedings, claiming that the debt is undisputed and does not require arbitration. This tension has generated much debate, especially where the creditors are alleged to be in bad

faith and open up insolvency to exclude arbitration, or debtors are accused of using claims for arbitration in bad faith to prolong bankruptcy proceedings.

In England, where a debt triggering an involuntary winding-up petition is subject to an arbitration agreement, courts will normally suspend or reject the insolvency proceedings in favor of arbitration, save in the most exceptional circumstances. Any attempt to reconcile the conflicting interests of insolvency and arbitration otherwise would threaten to destroy the integrity of arbitration agreements. It could result in parties automatically evading arbitration by making winding-up petitions, so they can put undue pressure on the debtor to settle the debt immediately, with the risk of liquidation.

The British Virgin Islands' courts have described the English position under the law as being "close to the automatic stay position," where a petition of winding-up generally stays in respect of an arbitration agreement. Nonetheless, deviating from this course of action, the Court of Appeal of the Eastern Caribbean Supreme Court has held that winding-up petitions cannot be stayed simply because an arbitration clause is present, except where the debt underlying it is challenged on "genuine and substantial grounds." In an important decision, the BVI court refused to stay insolvency proceedings even though an arbitration seated in Hong Kong was pending, for reasons including, inter alia, fear of dissipation of assets. This question of law—i.e., whether there is a presumption in favor of staying winding-up petitions to enable arbitration to continue, or whether such a stay should only be granted if the debtor can show a bona fide dispute—is one of continuing controversy in several jurisdictions, including Hong Kong, Singapore, and the Cayman Islands.

While this specific problem has not been the topic of major judicial or scholarly controversy in the United States, the U.S. Bankruptcy Code does have provisions applicable to the interaction of insolvency and dispute resolution. In particular, it allows for involuntary bankruptcy proceedings to commence only in cases of non-payment of debts where the debt is not "the subject of a bona fide dispute." Furthermore, U.S. courts are hesitant to permit insolvency processes to be used as improperly motivated litigation tactics. In one such high-profile case, an involuntary bankruptcy petition filed in bad faith by a debtor to evade arbitration was revoked. The court emphasized that the use of bankruptcy procedure as a tactical tool amid existing litigation is inimical to the good-faith standards underlying American insolvency legislation (Di Pietro, 2009).

6. Arbitration and Insolvency in India: Legal Interactions and Practical Implications

Legal systems around the world, including India, have struggled with the inherent tension between arbitration and insolvency proceedings. The tension arises from their divergent principles: arbitration emphasizes private and decentralized dispute resolution, while insolvency requires a centralized and collective mechanism for creditor protection. In India, the Arbitration and Conciliation Act, 1996, facilitates party-driven dispute resolution, often acting as a recovery tool, whereas the Insolvency and Bankruptcy Code, 2016 (IBC), is concerned with adjudicating defaults and commencing collective insolvency resolution rather than debt recovery (Draguiev, 2015).

While courts have attempted to clarify the relationship between these regimes, doctrinal consensus remains elusive. Nonetheless, recent jurisprudence indicates scope for a unified approach. This article assesses operational intersections between arbitration and insolvency through four stages: (i) initiation of proceedings, (ii) ongoing arbitration before award, (iii) effect of arbitral awards on insolvency, and (iv) the impact of moratorium provisions on arbitral processes.

In Indus Biotech v. Kotak India Venture, the Supreme Court clarified that in rem disputes, affecting collective rights, fall outside the scope of arbitration once a Section 7 petition is admitted, in line with its reasoning in Vidya Drolia. Until admission, however, arbitration remains available.

Indian tribunals have consistently affirmed that the existence of an arbitration clause does not bar or postpone IBC proceedings. In Hasan Shafiq v. CT Technologies, the NCLAT held that an arbitration clause cannot be treated as an “existing dispute” sufficient to defeat an insolvency application. Similarly, in Gauder & Co. v. Isinox Ltd., the NCLT Mumbai reiterated that an operational creditor may initiate proceedings under Section 9 despite an arbitration clause. This principle was reinforced in Achenbach Buschhütten GmbH & Co. v. Arcotech Ltd., where the NCLAT emphasized that, absent a pending arbitral proceeding or genuine dispute, the clause alone does not bar CIRP. Other rulings, such as Mitcon Consultancy v. Vitthal Corporation and Dinesh Chand Jain v. Fabulous Buildcon, align with this position, confirming that arbitration clauses cannot be misused to delay or derail insolvency actions.

Courts have further underlined the independence of insolvency remedies. The Delhi High Court in Pitambar Solvex v. Manju Sharma observed that arbitration proceedings do not prevent a corporate debtor from invoking the IBC. Likewise, the Madras High Court in Chennai Metro Rail v. Lanco Infratech highlighted that arbitral proceedings may continue subject to the Adjudicating Authority’s discretion under Section 33(5). The NCLT in Reliance Commercial Credit v. Ved Cellulose reaffirmed that pendency of arbitration is no bar to initiating CIRP under Section 7.

Together, these rulings establish a consistent judicial stance: arbitration clauses cannot oust the jurisdiction of insolvency fora, and the IBC remains a standalone statutory remedy designed to protect collective creditor interests.

7. Results

The study reveals a clear and increasing convergence between arbitration and insolvency, driven by the growth of global trade and the complexity of cross-border financial disputes. The case studies above illustrate how arbitration has been effectively employed in resolving international insolvency disputes, reinforcing its practical relevance. In the Indian context, however, the research highlights a notable lack of clarity in distinguishing between arbitrable and non-arbitrable insolvency matters under current law. This legal uncertainty can hinder the resolution of cross-border insolvency cases and reduce overall procedural efficiency.

Recent data from the Insolvency and Bankruptcy Board of India (IBBI) shows that between 2020 and 2023, nearly 22% of insolvency petitions involved contracts containing arbitration clauses, and in over 60% of such cases, the NCLT admitted insolvency proceedings despite parallel arbitration. Similarly, World Bank indicators (2023) note that India’s average “time to resolve insolvency” remains 1.6 years, compared with Singapore’s 0.8 years, underscoring the practical urgency of harmonizing arbitration and insolvency pathways.

To address this, the paper proposes a structured framework for assessing the arbitrability of insolvency-related disputes, aiming to guide practitioners and support the development of a more predictable legal environment. Ultimately, the results underline the urgent need for greater harmonization of international standards to improve cooperation and certainty in cross-border insolvency proceedings.

The proposed framework differentiates arbitrable disputes as those concerning contractual or inter-creditor claims—often financial and resolvable without affecting collective creditor rights—whereas non-arbitrable disputes include resolution plan approvals, triggering of insolvency, or any matter affecting the debtor's estate as a whole.

Table 2: Framework for Assessing Arbitrability

Category	Examples of Arbitrable Disputes	Examples of Non-Arbitrable Disputes
Nature of Claim	Contractual disputes such as supplier payment disputes (e.g., non-payment for delivered goods), lease/license fee defaults, breaches of distribution agreements	Insolvency-specific functions like approval/rejection of a resolution plan under Section 30(2) IBC
Parties Involved	Inter-creditor disagreements under contractual arrangements (e.g., sharing of security proceeds between two banks); debtor–vendor disputes (e.g., defective goods disputes)	Initiation of CIRP under Sections 7 & 9 IBC, determination of insolvency/default (in rem proceedings)
Impact on Creditors	Valuation disagreements affecting only a limited set of creditors (e.g., a dispute over the enforceability of a charge against one secured creditor)	Avoidance transactions (preferential, undervalued, fraudulent, extortionate), which affect the debtor's estate and all creditors collectively
Stage of Proceedings	Pre-admission disputes (e.g., whether a debt is genuinely disputed or time-barred); enforcement of arbitral awards before CIRP admission (subject to limitation)	Post-admission disputes (in rem) such as claim collation/verification by RP, application of moratorium, CoC decisions, resolution plan approval, liquidation waterfall

8. Discussion

The increasing interdependence of international trade, arbitration, and insolvency law reflects the global movement toward uniformity in dispute resolution. This convergence is especially visible in cross-border financial disputes, where overlapping jurisdictions and the demand for speed necessitate innovative strategies.

In India, the tension between arbitration and insolvency is particularly acute. While arbitration rests on contract theory and the principle of party autonomy (Vidya Drolia v. Durga Trading Corporation, 2021), insolvency law embodies the collective rights doctrine, treating proceedings as in rem and designed to protect all creditors (Swiss Ribbons v. Union of India, 2019). This explains why bilateral disputes—such as supplier payment claims or inter-creditor disagreements—remain arbitrable, whereas core insolvency matters—such as the initiation of CIRP or approval of resolution plans—are non-arbitrable (K. Kishan v. Vijay Nirman Company, 2018; Indus Biotech v. Kotak India Venture Fund, 2021).

By classifying disputes along this line, the framework developed here brings conceptual clarity. It recognizes where private mechanisms must yield to statutory obligations, thus reducing uncertainty in practice. Such distinctions are equally critical for cross-border insolvency, where harmonizing arbitration and insolvency rules could enhance predictability, investor confidence, and alignment with global best practices.

In conclusion, while the arbitration–insolvency nexus presents difficult doctrinal and procedural questions, it also opens space for flexible and globally harmonized dispute resolution. The framework offered here is a first step toward bridging the gap between contract-based autonomy and collective insolvency mandates, paving the way for a more coherent international standard.

9. Policy Implications

To operationalize the proposed framework, several concrete policy steps may be undertaken. First, an explicit amendment to the Insolvency and Bankruptcy Code (IBC) should be introduced to clarify the boundary between arbitrable and non-arbitrable disputes. This amendment could codify the principle that core insolvency matters—such as initiation of CIRP, approval of resolution plans, and liquidation orders—remain non-arbitrable, while contractual and inter se disputes continue to be resolved through arbitration.

Second, a preliminary screening mechanism before the NCLT could be institutionalized. At the admission stage, the NCLT may be empowered to assess whether a dispute is arbitrable or whether it involves collective insolvency rights that require centralized adjudication. Such a threshold check would curb misuse of the IBC as a debt recovery tool and reduce unnecessary tribunal workload.

Third, India should consider adopting international best practices. This may include aligning with UNCITRAL's recommendations on arbitration and insolvency, adopting the Model Law on Cross-Border Insolvency, and negotiating bilateral or multilateral protocols with key jurisdictions to ensure harmonized recognition of arbitral awards and insolvency proceedings.

Together, these measures would strengthen legal certainty, discourage forum shopping, and build investor confidence in India's insolvency and arbitration regime while moving closer to global standards.

10. Conclusion

Although arbitration may provide an efficient and flexible forum for addressing disputes that arise in insolvency contexts, the legal standards governing its use in this domain are still evolving. A central concern is the arbitrability of insolvency-related claims, a topic marked by both doctrinal ambiguity and jurisdictional divergence.

This work has advanced a novel analytical framework intended to assess the arbitrability of insolvency matters by advocating for a principled separation between arbitrable and non-arbitrable issues. The proposed methodology aims to promote legal clarity and coherence while simultaneously upholding the autonomy of parties involved in arbitration. In doing so, it aspires to establish a balanced model that respects the foundational objectives of both insolvency and arbitration regimes.

Author's Contribution:

The study was conceptualized by S. Chakraborty, who also played a key role in developing the methodology alongside S. Chandra and A. Banerjee. S. Ghosh and R. B. Chaudhri contributed essential resources for the research. The original manuscript draft was prepared by S. Chakraborty and A. Banerjee, while S. Ghosh, S. Chandra, and D. Bhowmick provided critical inputs through review and editing. All authors have read, contributed to, and approved the final version of the manuscript.

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