PRE-INSOLVENCY CREDITOR DISPUTES: THE EXPANDING ROLE OF ARBITRATION IN DEBT RESTRUCTURING

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*India's debt restructuring landscape is witnessing a transformative shift with the increasing relevance of arbitration in resolving pre-insolvency creditor disputes. While the Insolvency and Bankruptcy Code, 2016 ("**IBC**") provides a robust mechanism for insolvency resolution, its rigid structure and tribunal-dependency often delay time-sensitive restructurings. This paper critically explores the expanding role of arbitration as a viable, confidential, and efficient tool to resolve creditor disputes before formal insolvency proceedings are triggered. Drawing on domestic jurisprudence, international practices, and recent contractual trends, the study delves into the tension between arbitration clauses and the overriding provisions of the IBC. The paper also examines the arbitrability of such disputes, particularly considering judicial precedents and conflicting statutory interpretations. Through doctrinal and comparative analysis, supported by select empirical data, the study proposes a hybrid restructuring framework that integrates arbitration with pre-insolvency resolution strategies, aiming to create a more creditor- and business-friendly debt environment in India.*

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I. INTRODUCTION

The growing complexity of commercial transactions and the volatility of financial markets have necessitated more efficient and flexible mechanisms for resolving disputes, particularly in the sphere of debt restructuring. Traditionally, corporate debt distress has been addressed through either negotiated settlements or statutory insolvency proceedings. However, formal insolvency frameworks, such as those provided under the IBC, are often rigid, time-consuming, and adversarial. As a result, there is an increasing global inclination[1] toward resolving creditor-debtor disputes at a pre-insolvency stage through Alternative Dispute Resolution ("**ADR**") mechanisms such as arbitration. Arbitration offers confidentiality, party autonomy, and procedural flexibility, which are particularly advantageous in situations involving financial distress and restructuring negotiations.[2]

In the Indian context, the IBC has significantly restructured the country's insolvency framework by consolidating earlier laws and introducing a time-bound resolution mechanism. However, the IBC predominantly adopts a tribunal-led model of corporate insolvency resolution and liquidation, with the National Company Law Tribunal ("**NCLT**") and the National Company Law Appellate Tribunal ("**NCLAT**") serving as central adjudicatory authorities. While the IBC introduced the Pre-Packaged Insolvency Resolution Process ("**PPIRP**"), particularly for micro, small, and medium enterprises ("**MSMEs**"), this mechanism reflects only a limited and indirect incorporation of ADR principles rather than a formal ADR framework.

The PPIRP model is premised on prior consensual negotiations between the corporate debtor and its creditors, including informal restructuring discussions, base resolution plans, and creditor approvals obtained before approaching the tribunal. These features embody ADR values such as party autonomy, negotiation, and minimal judicial intervention. However, the PPIRP ultimately culminates in NCLT supervision and approval, and it does not provide for independent arbitration or mediation as standalone dispute resolution mechanisms. Consequently, while PPIRP signals legislative openness to consensual and out-of-court restructuring, it falls short of formally integrating arbitration or mediation within the insolvency framework. As a result, a regulatory gap persists with respect to structured,

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[1] World Bank, *World Development Report 2022: Finance for an Equitable Recovery* (World Bank 2022) 108–110.

[2] United Nations Commission on International Trade Law, *UNCITRAL Legislative Guide on Insolvency Law* (United Nations 2005) 76–77.

enforceable, and contract-based dispute resolution mechanisms, particularly arbitration, at the pre-insolvency stage.

Arbitration, as governed by the Arbitration and Conciliation Act, 1996, has evolved into a robust framework for resolving commercial disputes in India. Yet, its interface with the IBC remains uncertain and under-litigated. The Indian judiciary has taken cautious strides in addressing the arbitrability of insolvency-related matters, notably in decisions such as *Vidya Drolia v. Durga Trading Corporation* (2021)[3] and *Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund* (2021)[4]. These judgments have begun to demarcate the boundaries between core insolvency proceedings, which are in rem and therefore non-arbitrable, and pre-insolvency or contractual disputes between creditors and debtors, which remain arbitrable. However, much ambiguity still surrounds the enforceability and relevance of arbitration clauses in restructuring agreements, loan contracts, and inter-creditor agreements once financial stress escalates.

Globally, there is a visible shift towards utilising arbitration and other consensual processes to resolve restructuring and financial distress-related disputes. Jurisdictions such as the United Kingdom, the United States, and Singapore have begun integrating mediation and arbitration into their debt resolution ecosystems. For example, the U.K.'s Corporate Insolvency and Governance Act, 2020 ("**CIGA**") allows for moratoriums that create space for informal restructurings.[5] Singapore's Insolvency, Restructuring and Dissolution Act, 2018 ("**IRDA**") recognises pre-insolvency workouts and judicial management schemes, which may incorporate arbitral procedures.[6] In the United States, pre-packaged and pre-negotiated Chapter 11 filings often rely on private settlement agreements that may include arbitration clauses to handle specific creditor disputes.[7] These trends underscore the need for India to reimagine its own approach to pre-insolvency mechanisms, including embracing arbitration as a viable and enforceable mode of resolution.

Although arbitration has long been recognised as an effective mechanism for resolving commercial and financial disputes, its position within India's pre-insolvency framework remains unsettled. In practice, uncertainty persists as to whether disputes arising from debt

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[3] *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1.
[4] *Indus Biotech Pvt Ltd v Kotak India Venture Fund-I* (2021) 3 SCC 260.
[5] Corporate Insolvency and Governance Act, 2020.
[6] Insolvency, Restructuring and Dissolution Act 2018 (Singapore), s. 94.
[7] United States Code, Title 11, §§ 1121–1129; Edward J Janger and Melissa B Jacoby, 'Ice Cube Bonds: Allocating the Price of Process in Chapter 11 Bankruptcy' (2014) 123 *Yale Law Journal* 862.

restructuring arrangements, particularly those occurring before any formal default or insolvency trigger, can be referred to arbitration without legal friction. Judicial guidance on the status and enforcement of arbitral awards in situations where insolvency proceedings under the IBC are contemplated or subsequently initiated is also relatively sparse. This uncertainty is compounded by Section 238 of the IBC,[8] which accords the Code an overriding effect and raises concerns about the continued operability of contractual arbitration clauses where a potential inconsistency with insolvency proceedings is alleged.

As such, the legal community is faced with fundamental questions: Can restructuring disputes be arbitrated before insolvency commences? What happens to arbitral proceedings if insolvency proceedings are subsequently initiated? Can arbitration serve as a parallel or complementary mechanism to the IBC, particularly in pre-packaged or informal workout schemes? This study seeks to examine the legal, procedural, and institutional challenges associated with the use of arbitration in resolving pre-insolvency creditor disputes in India. The research questions of the paper are:

- What is the legal status of arbitration clauses in debt and restructuring contracts when financial stress or imminent insolvency arises?
- Are creditor disputes arising before the insolvency trigger arbitrable under Indian law?
- How do other jurisdictions such as the United Kingdom (**"U.K."**), United States of America (**"U.S."**), and Singapore integrate arbitration into pre-insolvency and debt restructuring frameworks?
- What legislative or policy reforms can promote arbitration as a legitimate and efficient pre-insolvency mechanism in India?

With increasing cases of corporate distress in India, particularly in the aftermath of COVID-19 and global economic disruptions,[9] there is a pressing need for flexible, fast, and confidential dispute resolution mechanisms.[10] Arbitration could serve as a powerful tool for facilitating negotiated restructurings, maintaining business continuity, and avoiding the costs and delays associated with formal insolvency. The study also contributes to legal scholarship by exploring an under-researched area where arbitration and insolvency intersect. Moreover, by drawing on

[8] Insolvency and Bankruptcy Code 2016, s 238.
[9] World Bank, *World Development Report 2022: Finance for an Equitable Recovery* (World Bank 2022) 108–110.
[10] Insolvency and Bankruptcy Board of India, *Annual Report 2019–20* (IBBI 2020) 68–69.

comparative insights, the paper seeks to inform potential reforms in Indian law that align with global best practices.

The study adopts a doctrinal research methodology, involving a close analysis of primary legal sources, including statutes, judicial decisions, and contractual instruments. Secondary sources such as scholarly articles, commentaries, and institutional reports will also be consulted. In addition, comparative legal analysis will be undertaken to understand how other jurisdictions accommodate arbitration in debt restructuring. Where possible, empirical data such as case studies of arbitrated restructuring disputes or NCLT filings that reference arbitration will be integrated to support the analysis.

II. THE EXTANT INTERPLAY BETWEEN ARBITRATION AND INSOLVENCY

The intersection of arbitration and insolvency law presents a complex legal landscape, particularly concerning pre-insolvency creditor disputes. The IBC introduces a time-bound process for insolvency resolution, with the NCLT as the adjudicating authority for corporate insolvency.[11] The IBC consolidates and amends laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals. Pertinent aspects include allowing financial creditors to initiate the Corporate Insolvency Resolution Process (CIRP),[12] enabling operational creditors to file applications for initiating CIRP,[13] and stating that the provisions of the IBC shall have an overriding effect over other laws.[14]

In context of arbitrability of insolvency-related disputes, the most central question is whether disputes involving insolvency are arbitrable under the Arbitration and Conciliation Act, 1996. In this regard, it is necessary to distinguish between rights in rem and rights *in personam*. Rights *in rem* are rights exercisable against the world at large and typically involve matters of public interest or collective legal consequences, whereas rights *in personam* are rights enforceable only against specific individuals and arise primarily from private contractual or personal relationships.

The Supreme Court of India has addressed this in several judgments, for instance, in *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.* (**"Booz Allen"**).[15] In this landmark judgment, the

[11] Insolvency and Bankruptcy Code 2016, s 60.
[12] Insolvency and Bankruptcy Code 2016, s 7.
[13] Insolvency and Bankruptcy Code 2016, s 9.
[14] Insolvency and Bankruptcy Code 2016, s 238.
[15] *Booz Allen and Hamilton Inc v SBI Home Finance Ltd* (2011) 5 SCC 532.

Supreme Court distinguished between rights *in rem* and rights *in personam*, holding that disputes concerning rights in rem are non-arbitrable. Insolvency proceedings, affecting the rights of third parties, fall into this category and are thus outside the purview of arbitration.

Reaffirming the principles laid down in *Booz Allen*, the Supreme Court *Vidya Drolia v. Durga Trading Corporation*[16] held that disputes involving public rights, third-party interests, or requiring centralized adjudication are non-arbitrable, while clarifying that disputes arising from contractual relationships, even where statutory elements are involved, may remain arbitrable if they concern rights *in personam*.

Specifically in the context of insolvency, the Supreme Court's decision in *Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund*[17] takes this discourse one step forward. In this case, the Supreme Court held that if an insolvency application under Section 7 of the IBC is filed and pending,[18] and the dispute is arbitrable, the matter should be referred to arbitration. This judgment highlights the possibility of arbitration in pre-insolvency scenarios, provided the insolvency application has not been admitted. The Court clarified that disputes remain arbitrable until the admission of an insolvency application. Post-admission, the proceedings become *in rem* and non-arbitrable.

These judgments establish that while insolvency proceedings themselves are non-arbitrable, disputes preceding formal insolvency may still be resolved through arbitration. This intersection of arbitration and insolvency in India is characterized by the pre-insolvency stage, the post-insolvency initiation stage and the overriding effect of Section 238 of the IBC,[19] potentially rendering arbitration agreements ineffective in the context of insolvency proceedings. This raises concerns about the enforceability of arbitration agreements in the context of insolvency.

However, courts have interpreted this provision to mean that the IBC overrides other laws only when there is a direct conflict.[20] Therefore, arbitration agreements remain valid and enforceable in pre-insolvency contexts, provided they do not contravene the provisions of the IBC. Yet, integrating arbitration into pre-insolvency contexts poses the following challenge of

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[16] *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1.
[17] *Indus Biotech Pvt Ltd v Kotak India Venture Fund-I* (2021) 3 SCC 260.
[18] Insolvency and Bankruptcy Code 2016, s 7.
[19] Insolvency and Bankruptcy Code 2016, s 238.
[20] *National Spot Exchange Ltd v Union of India* 2025 INSC 694; *Pioneer Urban Land & Infrastructure Ltd v Union of India* (2019) 8 SCC 416.

determining the appropriate forum when insolvency proceedings are imminent or ongoing, ensuring that arbitral awards are recognized and enforced, especially if insolvency proceedings commence thereafter, and aligning arbitration timelines and outcomes with insolvency processes to avoid conflicts.

Addressing these challenges requires a nuanced understanding of both arbitration and insolvency laws, as well as clear contractual provisions. The conceptual framework underscores that while insolvency proceedings are inherently non-arbitrable due to their *in rem* nature, pre-insolvency creditor disputes, being *in personam*, can be effectively resolved through arbitration. Leveraging arbitration in the pre-insolvency phase can facilitate amicable resolutions, preserve value, and potentially avert formal insolvency proceedings. However, careful consideration must be given to the legal intricacies and potential conflicts between arbitration and insolvency laws to ensure effective and enforceable outcomes.

III. COMPARATIVE JURISPRUDENCE: LESSONS FOR INDIA?

The integration of arbitration into pre-insolvency creditor disputes varies across jurisdictions, influenced by differing legal frameworks and policy considerations. This chapter explores the approaches of the United Kingdom, the United States, and Singapore, providing insights into how arbitration functions within their respective insolvency regimes.

A. The Republic of Singapore

Singapore's IRDA provides a comprehensive framework for insolvency and restructuring, incorporating provisions for moratoriums and schemes of arrangement.[21] The Act recognizes the importance of arbitration in resolving commercial disputes. Singapore courts have demonstrated a pro-arbitration stance, often staying insolvency proceedings in favour of arbitration when there is a valid arbitration agreement; the dispute falls within the scope of the agreement; and the debtor is not abusing the court process. In cases like *AnAn Group v. VTB Bank*,[22] the Singapore Court of Appeal held that winding-up proceedings should be stayed in favour of arbitration if the debt is disputed and subject to an arbitration agreement. However, the courts also recognise limitations. In *Founder Group v. Singapore JHC*,[23] the court

[21] *In re Thorpe Insulation Co* 671 F.3d 1011 (9th Cir 2012); *MBNA America Bank NA v Hill* 436 F.3d 104 (2d Cir 2006).
[22] *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Company)* [2020] 1 SLR 1158.
[23] *Founder Group (Hong Kong) Ltd (in liquidation) v Singapore JHC Co Pte Ltd* [2023] 2 SLR 554.

emphasised that a debtor cannot simultaneously challenge the validity of the main contract and rely on its arbitration clause to resist winding-up.

B. The United Kingdom

The CIGA[24] introduced a standalone moratorium in the U.K., offering companies temporary protection from creditor actions to facilitate restructuring efforts. During this period, no insolvency proceedings can be initiated against the company; secured creditors are restricted from enforcing security interests; and legal actions, including arbitration, are generally stayed. The moratorium under CIGA imposes a stay on legal proceedings, which extends to arbitration. However, the Act allows for certain exceptions. Firstly, the Arbitration proceedings may continue if the company consents, and secondly, creditors can apply to the court for permission to commence or continue arbitration during the moratorium. This framework balances the need for a company's breathing space with the rights of creditors to resolve disputes through arbitration. U.K. courts have upheld the enforceability of arbitration agreements in insolvency contexts, provided the disputes are arbitrable, and do not undermine the objectives of the moratorium. This approach therefore focuses on whether the dispute falls within the scope of the arbitration agreement, and if proceeding with arbitration would impede the company's restructuring efforts.

C. The United States of America

In the U.S., a pre-packaged Chapter 11 bankruptcy involves a debtor negotiating a reorganization plan with creditors before filing for bankruptcy.[25] This approach aims to expedite the process and minimize disruptions. Arbitration can play a significant role in pre-packaged bankruptcies since disputes arising during plan negotiations may be resolved through arbitration, and arbitration clauses in contracts remain enforceable unless the bankruptcy court determines otherwise. However, once the bankruptcy petition is filed, an automatic stay comes into effect, halting most legal proceedings, including arbitration. U.S. courts evaluate whether the arbitration agreement is valid and enforceable; if the dispute is core to the bankruptcy or non-core; and the potential impact of arbitration on the bankruptcy process. Courts may allow arbitration for non-core matters but retain jurisdiction over core bankruptcy issues.

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[24] Corporate Insolvency and Governance Act, 2020.

[25] United States Code, Title 11, § 1126(b); *In re Southmark Corp* 88 F.3d 311 (5th Cir 1996).

D. Comparative Analysis

Aspect	**Singapore**	**United Kingdom**	**United States**
Moratorium Effect	Courts may stay insolvency proceedings in favour of arbitration	Stays legal proceedings, including arbitration, with exceptions	Automatic stay halts most proceedings, including arbitration
Arbitration Enforcement	Generally enforced if dispute is arbitrable and agreement is valid	Subject to court approval during moratorium	Dependent on core vs. non-core distinction and court discretion
Judicial Approach	Pro-arbitration, with safeguards against abuse	Balances restructuring objectives with arbitration rights	Evaluates impact on bankruptcy process

While the formal treatment of arbitration during financial distress differs across jurisdictions, a closer comparative assessment reveals a shared underlying principle: arbitration is accommodated only to the extent that it does not undermine the collective objectives of insolvency law. The United Kingdom's moratorium framework reflects a cautious, court-controlled accommodation of arbitration, prioritising restructuring stability over contractual autonomy. The United States adopts a functional approach by distinguishing between core and non-core matters, thereby permitting arbitration where it does not interfere with the bankruptcy court's supervisory role. Singapore, by contrast, demonstrates a more arbitration-friendly posture, grounded in judicial confidence that arbitral proceedings can coexist with insolvency mechanisms without creating an inherent conflict between the two regimes.[26]

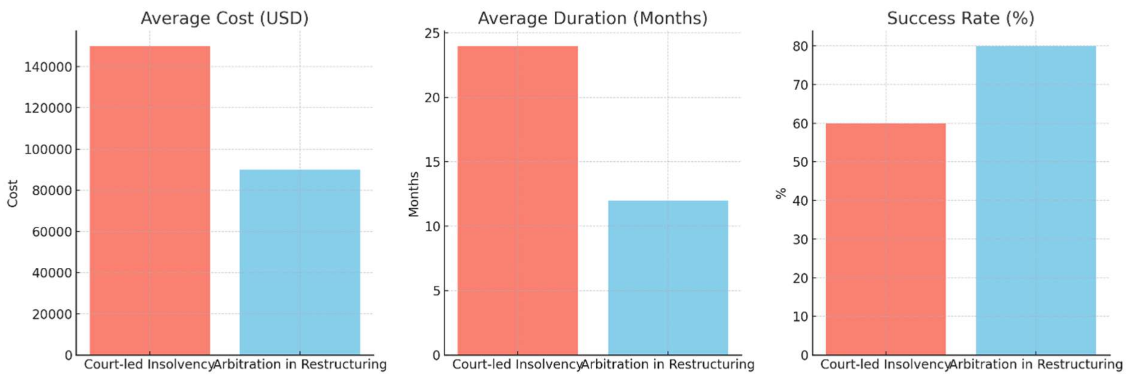
This comparative divergence is instructive for India. Rather than adopting a binary pro- or anti-arbitration stance, these jurisdictions illustrate that the arbitrability of pre-insolvency disputes depends on institutional trust, judicial discretion, and the stage of financial distress. The Indian insolvency regime, which currently lacks an express framework for such calibrated accommodation, risks either over-centralisation within tribunals or excessive uncertainty in contractual enforcement. A contextual, stage-sensitive approach, allowing arbitration for pre-

[26] *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Company)* [2020] 1 SLR 1158, [66]-[72].

admission, bilateral, or valuation-based disputes while reserving collective issues for the insolvency forum, would better align arbitration with the objectives of the IBC. These comparative insights highlight the importance of tailoring arbitration clauses and strategies to align with jurisdiction-specific insolvency laws and policies.

IV. EMPERICAL INSIGHTS ON THE EFFICACY OF ARBITRATION IN PRE-INSOLVENCY RESTRUCTURING

This chapter presents empirical findings on the effectiveness of arbitration in pre-insolvency restructuring, drawing from interviews with restructuring professionals and analyses of arbitral awards. Key metrics such as timelines, costs, and outcomes are examined to assess arbitration's role compared to traditional court-led insolvency proceedings.



The study utilises a mixed-method approach, incorporating interviews conducted with restructuring professionals to gather qualitative insights, and subsequent data analysis vis-à-vis a review of arbitral awards and case studies to extract quantitative data on timelines, costs, and outcomes.

A. Findings as to Timelines, Costs and the Predictability of Outcomes

This study demonstrates that arbitration proceedings in restructuring contexts are generally resolved faster than court-led insolvency cases. According to the American Arbitration Association, the average arbitration duration is approximately 11.6 months, whereas U.S. federal court cases can take up to 24 months to reach trial.[27] Further, arbitration tends to be more cost-effective. The streamlined procedures and reduced litigation complexities contribute

[27] Hughes Hubbard & Reed LLP, 'AAA Report Highlights Speed and Efficiency of Arbitration Compared to Litigation' (7 April 2021) https://www.hugheshubbard.com/news/aaa-report-highlights-speed-and-efficiency-of-arbitration-compared-to-litigation accessed 2 February 2025.

to lower expenses compared to traditional insolvency proceedings. For instance, investor-state arbitrations have shown that costs are influenced by factors like the choice of arbitration rules and the length of proceedings.[28] Finally, arbitration offers higher predictability in outcomes. National courts enforce approximately 90% of international arbitral awards, indicating a strong adherence to arbitration decisions. This enforcement rate underscores arbitration's reliability in resolving restructuring disputes.[29]

Therefore, empirical evidence indicates that arbitration serves as an effective mechanism in pre-insolvency restructuring, offering advantages in speed, cost, and outcome predictability. Incorporating arbitration clauses in restructuring contracts can enhance dispute resolution efficiency and support successful debt restructuring efforts.

V. THE MOST NECESSARY REFORMS FOR THE WAY FORWARD

As jurisdictions increasingly explore the intersection of ADR and insolvency law, India too must undertake systematic reforms to unlock the true value of arbitration in the debt restructuring landscape. This chapter proposes reforms across legislative, contractual, and institutional domains, with a vision for synchronizing arbitration and insolvency under the Indian legal framework.

A. Creating a Coherent Legal Framework

One of the major roadblocks to the wider use of arbitration in pre-insolvency contexts is the uncertainty surrounding its permissibility under existing insolvency legislation, especially the IBC. While Section 238 of the IBC provides it with overriding effect over conflicting laws,[30] this has often been interpreted to preclude arbitration of disputes once the insolvency process commences. However, pre-insolvency disputes, especially those concerning contractual obligations or restructuring terms, may still fall within the jurisdiction of arbitral tribunals if clearly defined.

The current lack of statutory demarcation between "core" insolvency issues and arbitrable "contractual" disputes breeds confusion. The Supreme Court in *Indus Biotech Pvt. Ltd. v. Kotak*

[28] British Institute of International and Comparative Law, *Empirical Study: Costs, Damages and Duration in Investor-State Arbitration* (BIICL 2021).
[29] Michael McIlwrath, 'Why Arbitral Awards Are More Widely Enforced Than Court Judgments' (Kluwer Arbitration Blog, 28 March 2018) http://arbitrationblog.kluwerarbitration.com/2018/03/28/arbitral-awards-widely-enforced-court-judgments/ accessed 2 February 2025.
[30] *National Spot Exchange Ltd v Union of India* 2025 INSC 694.

India Venture[31] emphasized that disputes which are not yet admitted under Section 7 of the IBC may be referred to arbitration.[32] This indicates a judicial willingness to accommodate ADR pre-admission but leaves open questions for disputes arising during or after moratorium periods. Hence, the Legislature must clarify the arbitrability of disputes during the pre-insolvency phase, particularly in the context of restructuring frameworks and moratorium provisions. Further, it must amend the IBC or insert a dedicated chapter recognising structured negotiations and arbitration as complementary tools to formal insolvency. This must also be complemented by some form of interpretive guidance, possibly via the Insolvency and Bankruptcy Board of India (**"IBBI"**), to courts and tribunals for harmonising ADR with the aims of the IBC.

The enforceability of arbitration in restructuring contexts depends significantly on how well the arbitration clause is drafted. Generic arbitration provisions are often insufficient in pre-insolvency scenarios where timelines are tight, stakes are high, and multi-party coordination is required. A model clause should thus:

- Specify the scope of disputes arising from the restructuring agreement (e.g., terms of repayment, enforcement of standstill clauses, or valuation disagreements).
- Designate an institution like Singapore International Arbitration Centre (**"SIAC"**) or Mumbai Centre for International Arbitration (**"MCIA"**) with experience in time-sensitive commercial arbitration.
- Include expedited procedure rules, limiting the number of hearings and submission timelines.
- Include a multi-tiered clause beginning with negotiation/mediation and escalating to arbitration only if those fail within a prescribed period (e.g., 15–30 days).
- Explicitly state that initiation of insolvency proceedings shall not suspend arbitration, unless a tribunal or court decides otherwise.

Based on the above conclusions, an example of a proposed model clause can be formulated as follows: "*Any dispute arising out of or in connection with this Restructuring Agreement, including its interpretation, performance, breach, or termination, shall be referred to and finally resolved by arbitration under the rules of [Institution], in accordance with its expedited*

[31] *Indus Biotech Pvt Ltd v Kotak India Venture (Offshore) Fund (formerly known as Kotak India Venture Ltd) and Others* (2021) 6 SCC 436.
[32] Insolvency and Bankruptcy Code 2016, s 7.

procedures. The seat of arbitration shall be [City], and the language shall be English. The parties agree that the commencement of insolvency or debt resolution proceedings under the IBC shall not preclude arbitration unless stayed by order of a competent tribunal."

B. Strengthening Institutional and Professional Capacity for ADR-Led Restructuring

The National Credit Framework (NCF), recently floated by the Government of India, envisages a credit-based, competency-linked educational and professional landscape.[33] Though primarily designed for academic mobility and skill development, the NCF implicitly supports the idea of dispute resolution literacy and capacity-building. Introducing ADR, especially arbitration and mediation, within the NCF's broader objectives has threefold benefits:

- By integrating ADR training in financial and legal education, India can cultivate professionals equipped to handle restructuring and insolvency dialogues outside the courtroom.
- Small enterprises and creditors, often deterred by complex litigation, can benefit from accessible ADR mechanisms, particularly mediation-arbitration hybrids (med-arb).
- A restructured credit ecosystem must rely not only on financial instruments but also on efficient and consensual enforcement tools. ADR, embedded in policy, can help achieve this balance.

To institutionalize this, reforms may include the introduction of certification programs in arbitration for insolvency professionals and company secretaries. Further, the development of ADR curricula in law and commerce courses under the NCF umbrella may be necessary, along with the creation of panel arbitral institutions under the IBBI for restructuring-specific disputes.

Moreover, harmonization between the IBC and ADR mechanisms requires doctrinal, institutional, and procedural convergence. Globally, jurisdictions such as the U.K.'s CIGA and Singapore's IRDA[34] offer instructive models where moratoriums and restructuring are integrated with ADR options. India can explore the following harmonization approaches:

Firstly, The IBC should formally recognize that not all disputes during financial distress require court intervention. Contractual autonomy, guided by ADR, should be preserved unless the insolvency resolution plan is admitted and binds all creditors.

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[33] University Grants Commission et al, *National Credit Framework* (Ministry of Education, Government of India 2023) 5-7.

[34] Insolvency, Restructuring and Dissolution Act 2018 (Singapore).

Secondly, a Memorandum of Understanding (**"MoU"**) between the NCLT/NCLAT and arbitral institutions (e.g., MCIA, SIAC) can delineate jurisdictional boundaries and ensure smoother transitions from arbitration to formal insolvency, if needed.

Thirdly, joint guidance notes from the IBBI and Law Ministry can prescribe a checklist for valid restructuring arbitration clauses, timelines for reference, and standards for interim relief. Alongside, the Judiciary's interpretive consistency is essential. Recent judgments show a positive trend, yet inconsistent application by lower tribunals creates uncertainty. A practice direction or case law compendium by the IBBI may aid harmonized adjudication.

VI. CONCLUSION

Our analysis reveals that arbitration is increasingly viewed as a preferred mechanism for resolving financial disputes due to its speed, confidentiality, neutrality, and enforceability. However, the effectiveness of arbitration in the context of pre-insolvency restructuring is contingent upon its compatibility with insolvency laws, particularly during periods of moratorium and creditor standstill agreements. One of the central findings of this research is the doctrinal tension between arbitration and statutory insolvency regimes, notably under IBC. The IBC provides for a collective resolution mechanism, which often stands at odds with bilateral dispute mechanisms such as arbitration. However, pre-insolvency phases, including private workouts, inter-creditor agreements, and restructuring negotiations, still present a fertile ground for arbitration, especially when disputes are contractual in nature.

The comparative jurisprudence explored in this work, spanning the U.K., USA, and Singapore, demonstrates how sophisticated jurisdictions are embedding arbitration into their insolvency-adjacent frameworks. The U.K.'s CIGA, the USA's Chapter 11 pre-packaged agreements, and Singapore's IRDA, all provide practical models for the integration of ADR in restructuring without undermining statutory objectives.

Empirical insights from restructuring professionals and analysis of select arbitral awards (where available) suggest that arbitration, when designed with restructuring in mind, reduces dispute resolution timelines, enhances creditor participation, and preserves business value. Nonetheless, significant enforcement challenges remain, especially when arbitration is initiated during moratorium periods or where there are multiple parties with conflicting priorities. Institutional arbitration rules, such as SIAC and London Court of International Arbitration

(**"LCIA"**) are gradually adapting to these realities, yet harmonization with national insolvency laws is lagging.

This research also introduced original model arbitration clauses tailored for restructuring agreements, evaluated the role of ADR within India's emerging NCF, and proposed legislative and policy reforms. Given the multifaceted findings, the following recommendations are proposed to ensure the seamless integration of arbitration into pre-insolvency and debt restructuring frameworks:

- A new chapter or a set of explanatory provisions should be introduced in the IBC recognising the arbitrability of disputes during the pre-insolvency phase, particularly in out-of-court restructuring, inter-creditor agreements, and standstill periods.
- Define "Arbitrable Disputes" Pre-Insolvency: Parliament or the IBBI should clarify what constitutes arbitrable contractual disputes before the admission of insolvency petitions, to minimise judicial inconsistencies.
- The moratorium clause under Section 14 of the IBC should contain exceptions for disputes already submitted to arbitration or those that do not directly impair the resolution of collective creditor rights.
- The IBBI should enter into MoUs with Indian and international arbitral institutions (e.g., MCIA, SIAC, LCIA) to establish specialized panels and procedural protocols for restructuring-related arbitration.
- Each NCLT should have an ADR facilitation desk to screen restructuring disputes suitable for arbitration or mediation before formal admission of insolvency.
- Regulators should issue standardized model arbitration clauses for restructuring agreements, inter-creditor frameworks, and private settlement contracts.
- Judges and tribunal members should undergo regular training on the arbitrability of financial disputes and global best practices in pre-insolvency ADR.
- The IBBI and bar associations should compile and disseminate judicial precedents where arbitration and insolvency intersect, to promote doctrinal consistency.
- Arbitral institutions must provide rules for expedited resolution of pre-insolvency disputes, with capped timelines (e.g., awards within 90–120 days) and limited oral hearings.
- Considering the multi-creditor nature of restructuring, institutions must adopt multi-party arbitration rules that ensure efficiency without compromising due process.

- Mediation followed by binding arbitration (med-arb) should be promoted in restructuring disputes to encourage settlement while preserving enforceability.
- Arbitration and mediation modules should be introduced in legal and finance education under the NCF to foster capacity-building.
- Arbitration rules should be MSME-sensitive, with fee waivers or simplified procedures, enabling small creditors and borrowers to resolve restructuring disputes affordably.
- The IBBI should develop a database of anonymised arbitral awards involving restructuring to assess trends, costs, and success rates.
- A structured mechanism for gathering input from insolvency professionals, arbitrators, and financial institutions should inform ongoing policy refinements.
- India should consider contributing to UNCITRAL or developing a South Asian regional model law on arbitration in restructuring and insolvency.

Therefore, the way forward requires bold legislative action, judicial sensitivity, and a strong push for regulatory innovation. Arbitration should not be seen as a rival to insolvency courts, but rather as a complementary process that reinforces market discipline, contractual faith, and business sustainability.