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Case Comment: Harmonizing Parallel Proceedings: The Interplay of Arbitration and Insolvency Law in India - An Analysis of Indus Biotech Private Limited v Kotak India Venture Fund

Kamireddy Jahnavi[a]

[a]Symbiosis Law School, Hyderabad, India

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INTRODUCTION

The Indian legal system offers multiple mechanisms for the resolution of commercial disputes. Arbitration and insolvency proceedings stand out as two of the most important mechanisms. Recent jurisprudence has struggled to understand the complex relationship between these mechanisms, particularly when they overlap in commercial conflicts. The landmark case of Indus Biotech Private Limited v Kotak India Venture Fund brings this overlap into sharp focus and offers crucial guidance on how to harmonize these distinct legal frameworks.

The evolution of Indian jurisprudence on this subject reveals a careful balancing act. In this regard, the Insolvency and Bankruptcy Code (IBC) has become an effective tool in dealing with corporate defaults and safeguarding creditor interests. The interplay between these frameworks becomes more apparent when parties raise both simultaneously.

It becomes a more complex situation as Section 238 of the IBC[1] provides that the provisions of the Code would override all other laws in its applicability. Courts accepted that arbitration agreements must be respected, but they were confused about the clear guidelines when both laws were applied simultaneously. Different High Courts dealt with these overlapping cases differently, creating confusion in resolving business disputes. However, the Indus Biotech Private Limited v Kotak India Venture Fund[2] case allowed the Supreme Court a chance to solve these problems by creating clear rules about how to handle cases involving both arbitration and insolvency. The case raised important questions about business disputes, how private disputes can affect public interests, and which legal process should be used to resolve them.

FACTS

In 2007-2008, four entities of the Kotak India venture Fund subscribed to the share capital in Indus Biotech Pvt Ltd through a special financial instrument called Optionally Convertible Redeemable Preference shares (OCPRS) and some equity shares. As a result of which, parties entered into their respective Share Subscription Agreement (SSA). These agreements included provisions about how long the shares would last (20 years) and gave the choice to Kotak Fund to convert their shares into regular company shares, i.e., equity shares, or get back their money with a 30% return.

The situation became complicated when Indus Biotech Pvt Ltd planned to go public through a Qualified Initial Public Offering (QIPO). According to the SEBI rules, Kotak Fund was required to convert their OCRPS into regular shares before the public offering. However, both parties could not reach an agreement on how this conversion should happen. Kotak Fund believed that they should get 30% of the total paid-up share capital of Indus Biotech Pvt Ltd after the conversion, while Indus Biotech Pvt Ltd insisted it should only be 10%. There was also a disagreement about when the QIPO should happen.

When these discussions reached a dead end, Kotak Fund sent a notice to Indus Biotech Pvt Ltd on 31st March 2019 and asked their investment to be bought back. They wanted Rs 367.09 crores

[1] Insolvency and Bankruptcy Code 2016, s 238

[2] *Indus Biotech (P) Ltd. v Kotak India Venture (Offshore) Fund* (2021) 6 SCC 436

as redemption value. Indus Biotech Pvt Ltd didn't pay this amount, which led Kotak Fund to take legal action. On 16th August 2019, one of the Kotak Fund entities filed an insolvency case against Indus Biotech Pvt Ltd at the National Company Law Tribunal (NCLT) Mumbai under Section 7 of the Insolvency and Bankruptcy Code[3]. They claimed Indus Biotech Pvt Ltd had defaulted[4] on what they now consider as debt.

Indus Biotech Pvt Ltd responded with two legal moves. First, on 20th September 2019, they invoked the arbitration clause from their original agreements, suggesting the dispute should be resolved through arbitration and not through insolvency proceedings. Then, on 6th November 2019, they asked NCLT to move the case to arbitration by filing an application under Section 8 of the Arbitration and Conciliation Act[5]. At the same time, they also requested that the insolvency proceeding be dismissed by arguing that they were a profitable company without any other debts and this was just a dispute about share conversion that should be settled through arbitration.

ISSUES RAISED

1. Whether in pending proceedings under Section 7 of IBC, a subsequent application under Section 8 of the Arbitration Act needs prior consideration by the adjudicating authority.

2. Whether the adjudicating authority must conduct a thorough examination into the existence and nature of the alleged default before admitting an application under Section 7 IBC.

3. Whether the chosen method for constituting the Arbitral Tribunal aligned with the procedural requirements outlined in the agreements between parties.

ARGUMENTS

Petitioner's Arguments: Indus Biotech had some strong reasons to say they should not face insolvency. They said their company is doing well financially by making profits and not owing

[3] Insolvency and Bankruptcy Code 2016, s 7
[4] Insolvency and Bankruptcy Code 2016, s 3(12)
[5] Arbitration and Conciliation Act 1996, s 8

anyone money. They argued that insolvency should only be for struggling companies, not successful ones. They even pointed out a Supreme Court case, Duncans Industries Ltd. v AJ Agrochem[6], that said insolvency laws are meant to help struggling companies survive, not just help people collect debts. Indus argued that the problem was not about missing payments. Instead, it was about figuring out how to convert some special shares, called OCRPS, into regular shares. They showed proof, like meeting notes and letters, to show both sides were trying to solve the disagreement. They said this issue was not about insolvency yet and could still be solved privately. They gave examples from other court cases like Swiss Ribbons Private Limited v Union of India[7] and Booz Allen & Hamilton v SBI Home Finance Ltd[8] to prove that private arbitration is allowed before insolvency cases are officially started.

Respondents' Arguments: On the other hand, Kotak Fund argued why insolvency should go ahead. Kotak Fund said Indus Biotech Pvt Ltd owed them Rs 367.08 crores for redeeming shares, which was written in their agreement. Kotak Fund said Indus Biotech Pvt Ltd had not paid this money, so it was a clear case of default. Kotak Fund explained the four rules needed to start insolvency under the law: there must be a debt, a default, the debt must be owed to a financial creditor, and the corporate debtor must fail to pay. Kotak fund argued that all these rules were met in this case, citing another case, Innovative Industries Ltd. v ICICI Bank[9], to back them up. Kotak said the insolvency process is more important than arbitration and should be handled first. They pointed to a law Section 238 of the IBC that says insolvency rules take priority over other legal processes. Kotak Fund argued that the discussions about converting shares into equity didn't change the fact that Indus Biotech Pvt Ltd owed them money. They said these were two separate issues, and even if talks were happening, Indus Biotech Pvt Ltd still needed to pay the Rs 367.08 crores.

[6] *Duncans Industries Ltd. v AJ Agrochem* (2019) 9 SCC 725
[7] *Swiss Ribbons (P) Ltd. v Union of India* (2019) 4 SCC 17
[8] *Booz Allen & Hamilton Inc. v SBI Home Finance Ltd.* (2011) 5 SCC 532
[9] *Innoventive Industries Ltd. v ICICI Bank* (2018) 1 SCC 407

JUDGEMENT AND RATIONALE

NCLT'S Judgement: The NCLT Mumbai decided to look at the arbitration request first. The tribunal focused on three main points while making its decision.

- They noted that Indus Biotech Pvt Ltd was doing financially well and had no other debts.
- They believed that since the main issue was about how to calculate share values, arbitration made more sense than insolvency proceedings.
- They took into account that Indus Biotech Pvt Ltd has already filed a request for appointing arbitrators in the Supreme Court.

Based on these factors, NCLT allowed the arbitration application and dismissed the insolvency proceedings[10].

THE SUPREME COURT'S JUDGEMENT

The Indus Biotech case brought a fresh perspective to how courts handle business disputes when both insolvency and arbitration are involved. The Supreme Court took this opportunity to lay down clear rules about when insolvency cases become legally binding and how they work alongside arbitration requests.

When Does Insolvency Become Binding: The Supreme Court held that insolvency proceedings only become fully binding when a court officially accepts it, not just when someone files it. Looking at the Indus Biotech Pvt Ltd v Kotak India Venture Fund case, the Court carefully studied whether there was a default in payment. They saw that Indus Biotech Pvt Ltd and Kotak Fund were still discussing how to convert shares, specifically whether Kotak Fund should get 10% or 30% of the company. Since these talks were ongoing, the Court felt it was not right to start insolvency proceedings yet.

Handling Multiple Legal Requests: When companies file both insolvency and arbitration requests, the Court creates an easy-to-follow system. They said courts must first check if there's

[10] *Indus Biotech Private Limited v Kotak India Venture Fund-I* (2021) SCC OnLine SC 268

a payment default under insolvency law before looking at anything else. This serves two purposes:

- It stops companies from using arbitration just to delay things.
- It makes sure real business disputes can still go to arbitration when appropriate.

A Different Way of Looking at Things: The Court took a fresh look at how the NCLT handled the case. While they agreed with the final decision, they explained it differently. Instead of focusing on whether arbitration was possible, they looked at whether there was enough proof of default. This new way of thinking helps tell the difference between actual payment problems and regular business disagreements.

Making Different Legal Processes Work Together: The Court found a practical solution to handle multiple arbitration agreements in one case. Even though some agreements needed international arbitration and others domestic, they allowed one panel to handle everything while following all the proper legal rules. This showed how courts can be practical while still following the law.

What this Means for Business Disputes: This decision helps companies and courts understand when to use insolvency proceedings and when to use arbitration. The Court's guidelines make it easier to handle complex business disputes without automatically pushing companies into insolvency. They showed that not every money-related disagreement needs to become an insolvency case.

The Court's decision shows how to balance different legal options in business disputes. They created clear steps for handling cases where both insolvency and arbitration might apply. This helps ensure that companies with genuine business disagreements don't unnecessarily end up in insolvency proceedings while still protecting creditors when there are real payment defaults.

This decision does more than just solve one case; it also gives clear directions for similar situations in the future. It shows that courts understand modern business needs and can create practical solutions that work in the real world. Most importantly, it helps make sure that business disputes get solved most appropriately, whether through insolvency proceedings or arbitration.

INTERPRETATION AND ANALYSIS

The Supreme Court's decision in Indus Biotech provides new insight into handling business disputes through insolvency and arbitration. After analysing the issues carefully, I strongly feel that this ruling is supported because of its practical approach and the forward-thinking solutions it holds.

Balanced Treatment of Business Disputes: The Court made an important distinction on when insolvency cases are binding on all parties. The Supreme Court decision mainly relied on two important precedents, Swiss Ribbons Private Limited v Union of India and Booz Allen & Hamilton v SBI Home Finance Ltd, to establish that IBC proceedings become actions in rem only after admission. However, the Court deviated from the Swiss Ribbons' interpretation regarding the company's insolvency by saying insolvency proceedings would be binding only when the Court accepts it. It is an important shift from earlier rigid approaches. The Court realized that laws must work in real business situations, not just by blind adherence to strict rules.

Protecting Healthy Companies: A key strength of this judgment is how it views the financial health of a company. In the case of the Swiss Ribbons Pvt Ltd v Union of India, the Court looked into the company's financial health, and whether a company could pay its debts didn't matter much. Whereas, in the present case, the Court decided on the company's financial health. This approach avoids the misuse of insolvency laws against healthy businesses. It is very helpful when companies are attempting to work out their differences like Indus and Kotak were doing regarding share conversion rates.

Supporting Business Solutions: The Court also expanded on what they had said in the case of Vidya Drolia v Durga Trading Corporation[11] about what can be settled through arbitration. The Court explained that if the dispute remains between the parties of the case before the insolvency admission, then it is suitable to go to arbitration. This approach by the Court brought a sensible

[11] *Vidya Drolia v Durga Trading Corpn.* (2021) 2 SCC 1

balance by maintaining IBC's strength while creating space for arbitration in business conflicts. This will retain the effectiveness in resolving commercial disputes.

Long-term Benefits: This judgment looks forward to bringing an alteration in the present position of how businesses deal with disagreements. Some critics would express a fear that this somehow diminished the power of the laws on insolvency, and in my opinion, this judgment enhances both systems by using them properly. By arbitration and insolvency, a business would have the best alternatives on what suits them more for their case, solving it faster while preserving the interest of all parties.

The Supreme Court's ruling shows an excellent understanding of real business needs. This judgment proves that our legal system is adaptable to meet the modern challenges of business but in a manner that maintains just treatment for all concerned.

CONCLUSION

This landmark judgment establishes a clear precedent for handling overlapping insolvency and arbitration claims, emphasizing that IBC proceedings become in rem only after admission by the Adjudicating Authority. The Court's balanced approach ensures that genuine business disputes can be resolved through arbitration while safeguarding the insolvency process from dilatory tactics. This case promotes effective dispute resolution while preserving the integrity of both legal mechanisms and supporting a stronger commercial dispute resolution framework.