The Moratorium-Arbitration Interface Under the Insolvency and Bankruptcy Code (IBC), 2016: Key Challenges and Emerging Jurisprudence in India

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ABSTRACT

The statutory moratorium under Section 14 of the Insolvency and Bankruptcy Code (IBC), 2016 ("IBC") serves as a protective cornerstone, designed to shield a corporate debtor from individual creditor actions and preserve asset value during the Corporate Insolvency Resolution Process. However, its operation creates a fundamental tension with arbitration, a dispute resolution mechanism underpinned by party autonomy and contractual finality under the Arbitration and Conciliation Act, 1996. The Supreme Court established a strict benchmark in Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P) Ltd. (2017), holding that arbitration proceedings instituted after the imposition of a moratorium are non-est in law, void from inception. While this bright-line rule remains formally intact, subsequent judicial practice has exposed critical operational fault lines.

This paper examines three primary areas of friction: the procedural status of arbitrations already pending before the moratorium, the treatment of claims or counterclaims designed to maximize rather than deplete the debtor's estate, and the jurisdictional ambiguity surrounding challenges to arbitral awards passed during the moratorium period. Drawing on recent judicial recalibrations, culminating in the Supreme Court's landmark 2026 ruling in Ankhim Holdings v. Zaveri Construction, this paper contends that Indian courts are shifting from a paradigm of automatic nullification toward functional, procedural continuity.

KEYWORDS

Insolvency and Bankruptcy Code (IBC), Section 14 Moratorium, Arbitration and Conciliation Act, Corporate Insolvency Resolution Process (CIRP), Estate-Impact Doctrine, Arbitrability of Disputes, Counterclaims and Adjudication, Jurisdictional Overlap.

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INTRODUCTION

The Insolvency and Bankruptcy Code (IBC), 2016 was enacted with a singular, time-bound objective: to consolidate India's fragmented legal framework into a creditor-driven mechanism capable of resolving corporate distress predictably and expeditiously.

Prior to the IBC, corporate insolvency in India was governed by a fragmented set of statutes, including the Sick Industrial Companies (Special Provisions) Act, 1985[2], the Companies Act, 1956[3], and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993[4], each administering overlapping and often contradictory processes before different forums. This multiplicity of regimes routinely delayed resolution, eroded asset value, and left creditors without a coherent recovery mechanism. The IBC sought to replace this patchwork with a single, time-bound insolvency code, and Section 14 is central to that redesign, since it is the provision that actually operationalizes the "calm period" the Code promises.

Central to this architecture is Section 14[5], which mandates the imposition of a moratorium upon the admission of application for initiation of the Corporate Insolvency Resolution Process ('CIRP'). Operating as a protective statutory umbrella, the moratorium freezes the institution of suits or continuation of pending suits or proceedings against the corporate debtor in any court of law, tribunal, arbitration panel, or other authority. As articulated by the Bankruptcy Law Reforms Committee ("BLRC"), the fundamental rationale of this freeze is to establish a "calm period" that enables the Resolution Professional ("RP") to assess, preserve, and maximize the corporate asset base without the immediate threat of asset depletion, parallel litigation, or enforcement actions across fragmented judicial forums[6].

Arbitration occupies an inherently uneasy position within this statutory scheme. Anchored in principles of party autonomy, contractual finality, and procedural insulation under the Arbitration and Conciliation Act, 1996[7] ("Arbitration Act"), the arbitral process operates on assumptions that directly conflict with the collective, creditor-protective mandate of insolvency law. When a corporate debtor enters CIRP, two distinct legislative regimes, each fortified by

[2] Sick Industrial Companies (Special Provisions) Act, 1985, No. 1, Acts of Parliament, 1986 (India).
[3] The Companies Act, 1956, No. 1, Acts of Parliament, 1956 (India).
[4] The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, No. 51, Acts of Parliament, 1993 (India).
[5] The Insolvency and Bankruptcy Code, 2016, § 14(1)(a), No. 31, Acts of Parliament, 2016 (India).
[6] Bankruptcy Law Reforms Committee, The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design 82-84 (2015).
[7] The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

non-obstante clauses designed to assert statutory priority, reach a normative impasse[8]. While the Arbitration Act seeks to protect the binding nature of the arbitral agreement and strictly limit judicial interference, Section 14 of the IBC imposes a sweeping, compulsory freeze on external dispute resolution to safeguard the integrity of the collective resolution pool.

This tension is not merely theoretical. Commercial contracts involving Indian corporate debtors routinely contain arbitration clauses, and a significant proportion of CIRP admissions occur while related arbitral proceedings are ongoing or contemplated. For counterparties, who have structured their dispute resolution around arbitration precisely to avoid the delays of court litigation, an abrupt and undifferentiated freeze under Section 14 can be commercially disruptive, particularly where the underlying dispute has little bearing on the debtor's asset pool.

The Supreme Court appeared to resolve this statutory clash in *Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P) Ltd.* (2018)[9], establishing a bright-line rule that any arbitration proceeding instituted after the imposition of a moratorium is non-est in law. The *Alchemist* decision quickly became entrenched as settled doctrine, cited routinely by judicial and quasi-judicial tribunals to justify an absolute bar on arbitral proceedings during CIRP. However, scholarly critique and subsequent legal practice demonstrate that the *Alchemist* framework, while textually direct, remains analytically incomplete[10]. The IBC remains silent on critical operational scenarios, such as the legal fate of arbitrations already pending prior to the insolvency commencement date, the treatment of claims or counterclaims asserted by the corporate debtor to enhance rather than deplete its asset pool, and the jurisdictional authority required to evaluate arbitral awards rendered during a moratorium period.

These unresolved fault lines have led to divergent approaches across High Courts and National Company Law Appellate Tribunal ("NCLAT") benches, creating procedural uncertainty for commercial parties. Rather than applying a uniform prohibition, tribunals have struggled to reconcile the statutory mandate of Section 14 with the practical necessity of resolving underlying commercial disputes. Recent jurisprudence reflects a noticeable shift away from rigid, automatic nullification toward a more nuanced assessment of procedural continuity. Most

[8] Prateek Kumar and Raveena Sethia, Harmonising the Inherent Conflict: Insolvency Moratorium and Arbitration in India, 11 Nat'l L. U. Delhi L. J. 45, 48-52 (2022).
[9] Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P) Ltd., (2018) 16 SCC 94.
[10] Risham Garg and Vatsala Singh, Corporate Insolvency vs. Party Autonomy: Unpacking the Limits of Section 14 Moratorium on Arbitral Proceedings, 14 Ind. J. Arb. L. 112, 118-125 (2021).

notably, the Supreme Court's decision in *Ankhim Holdings Pvt. Ltd. v. Zaveri Construction Pvt. Ltd.* (2026)[11] highlights this judicial recalibration.

The Court clarified that supervisory courts exercising procedural powers, such as substituting an arbitrator under Section 15(2)[12] of the Arbitration Act, cannot exceed their statutory jurisdiction by collaterally declaring prior arbitral proceedings conducted during an IBC moratorium a nullity. Drawing on these emerging trends, this paper argues that Indian jurisprudence is evolving toward an "estate-impact" doctrine, balancing the protective objectives of the IBC with the procedural sanctity of arbitration.

OBJECTIVES

1. To analyze the normative tension between Section 14 of the IBC and Section 5 of the Arbitration Act, evaluating how their competing non-obstante clauses impact party autonomy and collective insolvency resolution
2. To identify practical ambiguities arising from the *Alchemist* bright-line rule, specifically regarding pre-existing pending arbitrations, counterclaims aimed at asset enhancement, and award challenges during a moratorium.
3. To evaluate the judicial shift marked by the Supreme Court's 2026 decision in *Ankhim Holdings v. Zaveri Construction*, highlighting the transition away from automatic nullification toward procedural continuity.
4. To formulate a pragmatic doctrinal test that distinguishes between arbitral proceedings that diminish the debtor's estate and those that preserve or maximize its value.

RESEARCH METHODOLOGY

This paper adopts a doctrinal, black-letter method of legal research, supplemented by a qualitative case-law analysis. Rather than generating primary empirical data, the study is built on a close, critical reading of statutory text, judicial precedent, and academic commentary, tracing the doctrinal evolution of the moratorium-arbitration interface from the rigid rule in *Alchemist* to the more calibrated position reflected in *Ankhim Holdings*. Primary sources include the Insolvency and Bankruptcy Code, 2016, the Arbitration and Conciliation Act, 1996, Insolvency and Bankruptcy Board of India (IBBI) regulations, and judicial pronouncements of the Supreme Court, High Courts, and the NCLAT/NCLT. Secondary sources comprise the

[11] Ankhim Holdings Pvt. Ltd. v. Zaveri Construction Pvt. Ltd., 2026 INSC 137.
[12] The Arbitration and Conciliation Act, 1996, § 15(2), No. 26, Acts of Parliament, 1996 (India).

BLRC Report, peer-reviewed journal articles, and commentary drawn from legal databases such as SCC Online and Manupatra.

The analysis proceeds along three lines. A historical-doctrinal reading situates Section 14 of the IBC within legislative intent and the non-obstante framework of the Arbitration Act. A case-law analysis then examines the facts, holding, and ratio of key decisions to map points of doctrinal convergence and divergence over time. A critical-analytical component evaluates the coherence of the emerging estate-impact doctrine against three operational scenarios: pending arbitrations, asset-enhancing counterclaims, and award challenges during the moratorium.

The study is confined to the Indian statutory and judicial framework and does not undertake an empirical assessment of practice. Comparative references to foreign regimes, where used, sharpen the doctrinal argument rather than constitute an independent comparison. The analysis is current as of the Supreme Court's 2026 ruling in *Ankhim Holdings*, and later developments may qualify these conclusions. Citations follow a uniform footnote-based legal citation style.

ANALYSIS

The *Alchemist* case settled one question clearly that an arbitration started after a moratorium takes effect is barred. It did not say much, though, about the practical situations frequently encountered in insolvency-related arbitrations, such as arbitrations that were already going on before the moratorium began, counterclaims that are tied up with the corporate debtor's own claim, and disputes over which forum can even look at an award once one has been passed. This section works through each of these in turn and then tries to draw out what connects them.

Take pending arbitrations first. On a plain reading, *Alchemist* seems to bar them outright, since the Court treated the moratorium as a blanket bar without separating arbitrations that had already begun[13]. But the Delhi High Court moved away from this within a year, in *Power Grid Corpn. of India Ltd. v. Jyoti Structures Ltd.* (2017), holding that Section 14 is meant to stop debt-recovery actions, not proceedings that leave the corporate debtor's assets untouched[14]. On this view, a Section 34 petition to confirm an award already made in the debtor's favour is not caught by the moratorium at all, because confirming it protects the estate rather than draining it. The same court applied this reasoning again in *SSMP Industries Ltd. v. Perkan Food Processors Pvt. Ltd.*, (2019) where a counterclaim that could not really be separated from the

[13] Alchemist Asset Reconstruction Co. Ltd., *supra* note 9.
[14] Power Grid Corpn. of India Ltd. v. Jyoti Structures Ltd., 2017 SCC OnLine Del 12189.

debtor's own claim was allowed to proceed, though any actual recovery from the debtor would still have to wait[15]. Hence, the courts have not really overturned *Alchemist*; they have drawn a line between deciding a dispute and enforcing it, and only the second is stopped by the moratorium.

Counterclaims raise a similar but sharper problem: Can an arbitration go ahead at all once one side to it is a corporate debtor under moratorium, especially where a counterclaim is involved? The NCLAT dealt with this in *Jharkhand Bijli Vitran Nigam Ltd. v. IVRCL Ltd.*, where the debtor's own claim could not really be decided without also deciding the counterclaim brought against it[16]. Instead of staying the whole case, the Tribunal allowed both sides to be heard, but held that if the debtor was ultimately found to owe money, that amount could not actually be recovered until the moratorium was lifted. This is really the same idea as before: let the arbitration run its course, but hold back anything that would actually take money or assets away from the debtor.

The hardest of the three issues is who gets to decide whether an award passed during a moratorium is even valid. Two separate questions tend to get mixed up here. The first is whether the NCLT can itself set aside such an award using its wide powers under Section 60(5)(c) of the IBC. Most tribunals have said no, since setting aside an award is something only a court can do under Section 34 of the Arbitration Act, and the IBC does not hand the NCLT that power simply because a corporate debtor happens to be involved. The Supreme Court's own reading of Section 60(5)(c) in *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta* supports this view that the NCLT's powers are wide, but they stop at questions connected to the insolvency process, not the specific remedy the Arbitration Act sets up for challenging awards[17]. The second question is different: can a court exercising a narrower power under the Arbitration Act, such as replacing an arbitrator under Section 15(2), also declare, almost in passing, that an award or proceeding from the moratorium period is a nullity? This is the question the Supreme Court answered in *Ankhim Holdings*, holding that a court's narrow supervisory power cannot be stretched to reach a conclusion of that magnitude[18]. Read alongside *Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund*, which had earlier drawn a line between merely filing a Section 7 application and that application actually being admitted for the moratorium to take

[15] SSMP Industries Ltd. v. Perkan Food Processors Pvt. Ltd., CS (COMM) 470/2016 & CC (COMM) 73/2017 (Del. H.C., July 18, 2019).
[16] Jharkhand Bijli Vitran Nigam Ltd. v. IVRCL Ltd., Company Appeal (AT) (Insolvency) No. 285 of 2018 (NCLAT, Aug. 3, 2018).
[17] Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209.
[18] Ankhim Holdings Pvt. Ltd., *supra* note 11.

effect[19], these cases suggest that courts are becoming less willing to let insolvency proceedings, or anything connected to them, bypass the specific process the Arbitration Act sets up for dealing with awards.

This caution sits a little oddly next to the strong language in *Alchemist*, which called arbitrations started during a moratorium *non-est*, or essentially nullities[20]. Taken at face value, that would mean any award made in violation of the moratorium simply does not count, without anyone needing to do anything about it. In practice, though, tribunals have not treated it that way. The NCLT in Kolkata, for instance, refused to set aside an award passed during a moratorium, holding that only a court acting under Section 34 could do that, and told the party concerned to approach that court instead[21]. What this really does is turn *Alchemist*'s talk of automatic nullity into something closer to a defect that has to be raised and proved before the right forum, rather than something anyone can simply assume and act on. *Ankhim Holdings* reflects the same caution, refusing to let a narrower power be used to reach the same result through a shortcut.

Put together, these three issues are not really separate exceptions to the moratorium; they all come back to the same underlying question, which is whether a given proceeding would hurt the corporate debtor's assets or not. Proceedings and remedies that leave the estate alone, or that actually protect it, have generally been allowed to continue, while anything that would let a creditor recover money or assets from the debtor has been put on hold until the moratorium lifts. Seen this way, *Ankhim Holdings* is not really a break from *Alchemist* so much as a natural next step. The rule against starting new arbitrations after a moratorium still stands, but courts have filled in the space around it with a test based on what a proceeding would actually do to the debtor's estate, rather than what kind of proceeding it technically is.

FINDINGS

The analysis suggests that the *Alchemist* rule remains formally intact, but has been considerably narrowed in practice. Courts have not overturned the bright-line prohibition on arbitrations commenced after a moratorium; instead, they have carved out space around it by distinguishing between adjudication of a dispute and enforcement or recovery against the debtor's estate.

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[19] Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund, (2021) 6 SCC 436.
[20] Alchemist Asset Reconstruction Co. Ltd., *supra* note 9.
[21] LiveLaw, NCLT Kolkata: NCLT Has No Jurisdiction To Set Aside Arbitral Award Passed During Moratorium Period Under Section 14 of IBC, LIVELAW (May 10, 2024), https://www.livelaw.in/ibc-cases/nclt-kolkata-jurisdiction-set-aside-arbitral-award-passed-during-moratorium-256895.

Pending arbitrations, in particular, have been permitted to continue where they do not deplete the estate. In *Power Grid v. Jyoti Structures* and *SSMP Industries v. Perkan Food Processors*, the Delhi High Court held that Section 14 targets debt-recovery actions rather than proceedings, including Section 34 confirmation petitions, that leave the debtor's assets untouched or actively protect them. A similar logic applies to counterclaims that cannot be meaningfully separated from the debtor's own claim. In *Jharkhand Bijli Vitran Nigam v. IVRCL*, the NCLAT allowed both claim and counterclaim to be adjudicated together, while withholding any actual monetary recovery from the debtor until the moratorium lifted.

On the question of who may invalidate an award passed during a moratorium, the findings indicate a clear jurisdictional line. *Gujarat Urja Vikas Nigam v. Amit Gupta* confirms that the NCLT's powers under Section 60(5)(c) do not extend to setting aside arbitral awards, since that remedy remains exclusive to the Arbitration Act's own Section 34 mechanism. This caution extends further in *Ankhim Holdings v. Zaveri Construction* (2026), where the Supreme Court held that a court exercising a narrow supervisory power, such as substituting an arbitrator under Section 15(2), cannot use that occasion to collaterally declare prior proceedings a nullity. Read together with the NCLT Kolkata's refusal to set aside a moratorium-period award and its deferral to a Section 34 court instead, these decisions show that *Alchemist*'s language of automatic "non-est" nullity has functionally become a rebuttable defect, one that must be raised and proven before the correct forum, rather than assumed and acted upon.

Taken together, these findings point toward a single unifying test emerging across all three fault lines. Whether the issue concerns a pending arbitration, a counterclaim, or a challenge to an award, courts appear to be converging on one underlying question: does the proceeding or remedy threaten to diminish the debtor's estate, or does it preserve or protect it? Proceedings of the former kind are stayed until the moratorium lifts, while those of the latter kind are permitted to continue, suggesting that Indian jurisprudence is moving from rigid, categorical nullification toward a more functional, estate-impact-based standard.

CONCLUSION

This paper examined the friction between the IBC's moratorium and arbitration, tracing how courts have dealt with gaps left open by *Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P) Ltd.* The rule that arbitration commenced after a moratorium is void still stands, but its application has shifted. Courts now distinguish between adjudicating a dispute and enforcing recovery against the debtor's estate. Adjudication is generally allowed to proceed, while enforcement is held back until the moratorium lifts.

This is evident in how pending arbitrations and inseparable counterclaims have been treated, with tribunals permitting disputes to be heard while staying actual recovery. It also appears in award-challenge jurisdiction, where the Supreme Court, in *Gujarat Urja Vikas Nigam v. Amit Gupta* and *Ankhim Holdings v. Zaveri Construction*, has kept the power to set aside an award confined to Section 34 of the Arbitration Act, resisting its exercise through the IBC or unrelated supervisory powers. *Alchemist*'s language of automatic nullity now functions more as a defect to be raised and proven before the right forum than as a self-executing bar.

The result is an emerging estate-impact approach, where outcomes turn on a proceeding's actual effect on the debtor's assets rather than its formal label. This aligns more closely with Section 14's purpose of preserving value during resolution, while easing tension with the Arbitration Act.

Moreover, this alignment has emerged case by case, and its outer limits remain untested. Disputes involving mixed claims, where a single arbitration contains elements that would both drain and protect the estate, don't fit neatly into a binary test, since courts so far have treated proceedings as either fully stayed or fully permitted, rather than splitting them claim by claim. There's also the unresolved question of whether limitation periods keep running against a corporate debtor while adjudication is paused during a lengthy CIRP, something the estate-impact framework doesn't address on its own. These are the areas likely to require further judicial clarification, and further scholarly attention going forward.