A CRITICAL ANALYSIS OF ARBITRABILITY OF CORPORATE DISPUTES IN INDIA

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ABSTRACT

The resolution of corporate disputes through arbitration has emerged as a critical area of study in the Indian legal landscape. India's rapid economic integration into the global markets, combined with the steady rise in intra-corporate conflicts involving the shareholders, board of directors and other corporate stakeholders, has made the question of the arbitrability of various disputes one of the most pressing jurisprudential issues of the present day. The Arbitration and Conciliation Act, 1996, which is based on the UNCITRAL Model Law on International Commercial Arbitration, 1985, and the UNCITRAL Conciliation Rules 1980, serves as the principal legislation governing both domestic and international arbitration in India.[1] Notwithstanding the successive amendments to the Act in 2015, 2019, and 2021, the statute has consciously left out any definition of arbitrability and does not provide any enumeration of disputes that is incapable of being resolved through arbitration, thereby leaving this determination entirely to the judicial interpretation.

The central gap addressed by his study lies in the absence of a uniform, codified standard for determining the arbitrability of corporate disputes in India. The foundational tests provided by the Supreme Court to determine the arbitrability of a dispute like the in rem and in personam distinction provided in Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.[2], and the four-fold test provided by in Vidya Drolia & Ors. v. Durga Trading Corporation[3] provide guidance but have not been applied uniformly by the High Courts and the National Company Law Tribunal ('NCLT'). Disputes involving allegations of oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013, shareholder agreements, and allegations of fraud still continue to cause conflicting outcomes.

Thus, the purpose of this study is to critically analyze the evolving legal framework governing the arbitrability of corporate disputes in India, examine the evolution of arbitrability of corporate disputes by analyzing

[1] Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1949 (India).
[2] Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. & Ors., (2011) 5 SCC 532.
[3] Vidya Drolia & Ors. v. Durga Trading Corporation, (2021) 2 SCC 1.

various Supreme Court and High Court Cases, understand the related provisions under the Arbitration and Conciliation Act, 1996 and the Companies Act, 2013,[4] and identify the necessary legislative and judicial reforms to make the Indian arbitration landscape more predictable and arbitration friendly.

Keywords: Arbitrability, Corporate Disputes, Arbitration and Conciliation Act 1996, Companies Act 2013, NCLT, Oppression and Mismanagement, Shareholder Disputes, Intra-Corporate Conflicts.

I. INTRODUCTION

The intersection of corporate law and arbitration law constitutes one of the most complex and evolving areas of the Indian legal system. With India positioning itself as the preferred option for international commercial activity, the need for an efficient, confidential and binding alternative dispute resolution mechanism to resolve corporate disputes has also increased. Given the key characteristics of arbitration including party autonomy, procedural flexibility, finality of awards, and enforceability, it has emerged as the preferred dispute resolution mechanism for commercial parties. However, not all disputes that arise within the corporate framework is amenable to arbitration. The arbitrability of a given dispute, which is the capacity of a given dispute to be the subject of a valid and enforceable arbitration agreement, is a necessary prerequisite for the invocation of the arbitration process.

The primary statute governing arbitration in India, that is the Arbitration and Conciliation Act, 1996, contains no express provision enumerating the non-arbitrable disputes. Section 2(3) of the A&C Act merely acknowledges that "certain disputes may not be submitted to arbitration," while Sections 34(2)(b) and 48(2) provide grounds for setting aside or refusing enforcement of an award where "the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force."[5] The legislature's silence on the substantive content of arbitrability has thus delegated an essentially judicial function to the courts, which have, over successive decades, articulated a series of tests and doctrines to determine when a corporate dispute may be validly referred to an arbitral tribunal.

The jurisprudential landscape has been shaped by landmark decisions of the Supreme Court of India, most notably Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.[6] and Vidya Drolia

[4] Companies Act, 2013, No. 18, Acts of Parliament, 1949 (India).
[5] Arbitration and Conciliation Act, 1996, §§ 2(3), 34(2)(b), 48(2), No. 26, Acts of Parliament, 1949 (India).
[6] Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., supra note 2.

& Ors. v. Durga Trading Corporation.[7] Corporate disputes ranging from oppression and mismanagement claims under the Companies Act, 2013 to fraud allegations arising out of shareholders' agreements and intra-corporate winding-up petitions, continue to cause confusion between arbitral tribunals and traditional courts. Therefore, this paper aims to critically analyze the jurisprudential landscape.

II. LITERATURE REVIEW

The article titled "Arbitrability of Shareholder Disputes in India: Complexities and Issues"[8] published in the Global Arbitration Review addresses a question that become increasingly important for Indian Companies when adding arbitration clauses in their shareholders' agreement, that is, whether oppression and mismanagement claims that is bought against the companies before the NCLT under Sections 241 and 242 of the Companies Act, 2013 be resolved by using arbitration instead or whether it exclusively belongs to NCLT jurisdiction? To answer this question, the author examines how India has dealt with this question in comparison to Singapore and United Kingdom. The comparative analysis is based on the Singapore Court of Appeal's ruling in Anupam Mittal v. Westbridge Ventures II Investment Holdings,[9] which directly involved an Indian party, and the UK Court of Appeal's decision in Fulham Football Club Ltd. v. Richards.[10] The article also examines the growing problem of "dressed-up" petitions in India, where a party deliberately frames a contractual dispute as an oppression claim, so that the case can be bought before NCLT rather than being referred to arbitration.

The author's key finding is that India takes significantly more restrictive approach in comparison to both Singapore and United Kingdom. While the Singapore Court of Appeal held that oppression claims can be resolved through arbitration when the parties have agreed to it, Indian courts have consistently treated such claims to be only judiciable by NCLT. The practical consequence of this approach is that, Indian Companies are usually funded through international arbitration agreements, particularly through Singapore, which might then lead to

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[7] Vidya Drolia & Ors. v. Durga Trading Corporation, supra note 3.

[8] Arbitrability of Shareholder Disputes in India: Complexities and Issues, GLOBAL ARB. REV. (2024), https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2024/article/arbitrability-of-shareholder-disputes-in-india-complexities-and-issues (last visited Apr. 5, 2026). The author relies exclusively upon reportable judicial decisions and upon the judgments of the Singapore Court of Appeal and the UK Court of Appeal, avoiding any reliance on editable sources.

[9] Anupam Mittal v. Westbridge Ventures II Investment Holdings, [2023] SGCA 1.

[10] Fulham Football Club Ltd v. Richards, [2011] EWCA Civ 855.

two conflicting decisions by the forums when deciding the same issue of arbitrability. The author also finds that the issue of dressed-up petition is a genuine recurring problem, and the present legal framework is not well-equipped to identify when a party is misusing the oppression remedy to defeat an arbitration clause.

This article provides a comprehensive analysis of how the arbitrability of Oppression and mismanagement claims is being addressed across various countries, while providing a clear understanding as to the position in India, this is done by relying on relevant judgments from India, Singapore, and the United Kingdom. The paper demonstrates how Indian's current legislative position is creating confusion when it comes to cross-border agreements, therefore, by bringing in legislative reforms similar to those of Singapore and United Kingdom, India can clear this unpredictability. The paper also introduces the problem of dressed-up petition, all of which forms the basis for the reformation recommendations in this present paper.

Moving on to the academic research paper authored by Jai Ganesh B. from Hidayatullah National Law University, published on Lawctopus Academike, titled "Unveiling the Juridical Labyrinth: A Comprehensive Analysis of Arbitrability in India's Legal Landscape"[11] which takes a much broader approach than the first article and by analyzing the concept of arbitrability in the India's legal framework. Rather than focusing only on corporate disputes, the paper examines the foundational question of how Indian law determines which disputes are arbitrable and which are not.

The author begins with the basic rule established in Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.[12], that disputes involving rights exercisable against the whole world at large (right in rem), rather than rights against specific individuals (rights in personam), are not arbitrable. The author then moves on to the more detailed and structured four-fold test introduced by the Supreme Court in Vidya Drolia & Ors. v. Durga Trading Corporation[13], later also examining the use of the "public policy" exception under the Arbitration and Conciliation Act, 1996, which allows courts to set aside arbitral awards that conflict with public policy.

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[11] Jai Ganesh B., Unveiling the Juridical Labyrinth: A Comprehensive Analysis of Arbitrability in India's Legal Landscape, LAWCTOPUS ACADEMIKE (2025), https://www.lawctopus.com/academike/unveiling-the-juridical-labyrinth/ (last visited Apr. 5, 2026). The author relies on the text of the Arbitration and Conciliation Act 1996 and on reportable Supreme Court decisions including Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532 and Vidya Drolia & Ors. v. Durga Trading Corporation, (2021) 2 SCC 1.
[12] Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., supra note 2.
[13] Vidya Drolia & Ors. v. Durga Trading Corporation, supra note 3.

The author's central finding is that since the Arbitration and Conciliation Act, 1996 does not define arbitrability or list non-arbitrable disputes, Indian courts have been left to develop the law through individual case decisions. While this has provided the useful guidance by way of case laws, the results still remain inconsistent. The author identified the recurring source of error in such cases, which is the confusion faced by the court between two questions – the nature of the rights asserted (whether it is right in rem or right in personam) and the nature of remedy being sought. When courts focus on the remedy rather than the right, they sometimes reach different conclusions on the same type of dispute. The author also finds the public policy exception has been invoked in a much broader sense that it was intended, leading to arbitral awards being set aside on grounds that go beyond what the law actually requires, which undermines the finality and commercial value of arbitration.

The findings of the paper are particular useful in explaining why Indian courts have reached inconsistent outcomes in corporate dispute arbitrability cases by thorough analysis of cases laws and statutes like the Arbitration and Conciliation Act, 1996. The distinction between the nature of a right and the nature of a remedy further helps explain why certain corporate disputes have been wrongly treated as non-arbitrable. The critique by the author further supports the need for clear legislative boundaries to protect the integrity of arbitration and to prevent unnecessary judicial interference.

The detailed legal analysis published on SCC Online Blog in October 2021, titled "Arbitrability of Disputes under Sections 241 and 242 of the Companies Act, 2013"[14] moves from the broader general analysis to the very specific topic, and directly addresses the statutory provisions that most commonly come into conflict when it comes to corporate disputes. The authors examine the legal framework provided in Sections 241, 242, and 430 of the Companies Act, 2013 in close detail, Section 241[15] allows qualifying shareholders to approach the NCLT when the affairs of the company are being run in a way that is harmful to their interests; Section 242[16] gives the NCLT a wide range of powerful remedies to address that harm; and Section 430[17]

[14] Arbitrability of Disputes under Sections 241 and 242 of the Companies Act, 2013, SCC ONLINE BLOG (Oct. 8, 2021), https://www.scconline.com/blog/post/2021/10/08/arbitrability-of-disputes-under-sections-241-and-242-of-the-companies-act-2013/ (last visited Apr. 5, 2026). The authors draw upon the Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India), the Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), and reportable decisions of the Supreme Court, the Bombay High Court, and the NCLAT.
[15] Companies Act, 2013, No. 18, § 241, Acts of Parliament, 1949 (India).
[16] Companies Act, 2013, No. 18, § 242, Acts of Parliament, 1949 (India).
[17] Companies Act, 2013, No. 18, § 230, Acts of Parliament, 1949 (India).

prevents civil courts from hearing any matter that the NCLT has the power to decide. The authors then question whether any these disputes can be referred to arbitration and then analyze the outcomes over the years as provided by the courts. Their analysis moves from the Bombay High Court's landmark ruling in Rakesh Kumar Malhotra v. Rajinder Kumar Malhotra,[18] to the National Company Law Appellate Tribunal's decision in Dhananjay Mishra v. Dynatron Services (P) Ltd.,[19] outlining the consistent judicial position that has emerged from these decisions.

The authors' main conclusion is that genuine oppression and mismanagement claims where a shareholder truly needs the NCLT to intervene in the company's affairs cannot be sent to arbitration, even if the parties have signed an arbitration agreement. This is because the remedies available under Section 242, such as removing directors, changing the company's articles of association, or ordering the company to be wound up, are powers that the law has given exclusively to the NCLT, and no arbitration agreement signed between parties can give these powers to a private arbitrator. However, the authors' make an important distinction stating that not every petition filed under Sections 241 and 242 is a genuine oppression case. Some parties use these provisions as a cover for what is really a contractual dispute, so that they can bring the matter before the NCLT and avoid the arbitration clause they previously agreed to. In response to these cases, the courts have developed the "Totality Test", wherein the court examines the whole petition including the relief being sought, to determine whether the case is genuinely about oppression or simply about enforcing a contract in disguise. If it is the latter, courts have referred the matter to arbitration.

The detailed analysis of the remedial powers given to the NCLT helps provide a clear understanding of why the non-arbitrability in oppression and mismanagement claims is not merely a judicial preference but actually a structural necessity based on the provisions of the Companies Act. The explanation of the totality test which was developed by the courts in order to identify dressed-up petitions is explained in this paper, which forms one of the key reforms that is recommended by the present paper. Furthermore, the article's reliance on the text of the Companies Act, 2013 and the Arbitration and Conciliation Act, 1996, as well as on reported decisions of the Supreme Court, the Bombay High Court, and the NCLAT, provides a well-

[18] Rakesh Kumar Malhotra v. Rajinder Kumar Malhotra, (2015) SCC OnLine Bom 587.
[19] Dhananjay Mishra v. Dynatron Services (P) Ltd., Company Appeal (AT) No. 389 of 2018 (NCLAT).

structured basis for the analysis of arbitrability of corporate disputes.

The peer-reviewed article by Neelam Tyagi, published in the *Ramanujan International Journal of Business and Research* in 2023, titled "Indian Perspective on Arbitrability of Insolvency Disputes: Intersection, Intervention and Interpretation for Synergy Among Both Regimes"[20] extends the into the area of insolvency proceedings. The article examines the legal relationship between the Arbitration and Conciliation Act, 1996 and the Insolvency and Bankruptcy Code, 2016 (IBC, 2016),[21] focusing particularly on Section 14 of the IBC, 2016 which imposes an automatic moratorium, which is a legal pause that stops most proceedings against the company, including arbitration. The author examines when an arbitration and insolvency proceedings can simultaneously take place alongside each other, and also identifies the specific areas of law where neither the IBC, 2016 nor the Arbitration and Conciliation Act, 1996 provides a clear answer.

The central finding of the author is that the relationship between the IBC 2016 and the Arbitration and Conciliation Act, 1996 is filled with legal uncertainties that neither statute have resolved. One of her key observation identifies is that some creditors initiate insolvency proceedings not because the company is genuinely unable to meet its obligations, but specifically to trigger the moratorium under Section 14 of the IBC, 2016 and use it as a tool to block ongoing arbitration proceedings. The author also identifies that the enforceability of arbitral award made after the commencement of a Corporate Insolvency Resolution Process with respect to the company assets is still riddled with confusion and remains unresolved causing uncertainty for both the creditors and the company. The author therefore recommends two legislative changes, first, that the Arbitration and Conciliation Act, 1996 should expressly list insolvency proceedings as non-arbitrable; and second, that the IBC 2016 should be amended to provide a clear procedure for handling arbitration that is already underway when insolvency begins.[22]

The author relies on credible data from the Insolvency and Bankruptcy Board of India as well as on reported court decisions to provide insights into the Insolvency and Bankruptcy code, an

[20] Neelam Tyagi, Indian Perspective on Arbitrability of Insolvency Disputes: Intersection, Intervention and Interpretation for Synergy Among Both Regimes, 8 RAMANUJAN INT'L J. BUS. & RES. 70, 72 (2023), https://doi.org/10.51245/rijbr.v8i1.2023.1171. The author draws upon data published in the Insolvency and Bankruptcy Board of India's Quarterly Newsletter (2023) — an official government publication — and upon reportable judicial decisions.
[21] Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).
[22] Id. at 74–75, 77.

area often overlooked while discussing arbitrability of corporate disputes. The author's finding that creditors misuse insolvency proceedings to defeat arbitration agreements, strengthens the argument in the present paper that the present legislative framework provides opportunities for strategic abuse. Furthermore, the recommendations made by the author closely aligns with those made by the present paper

III. HYPOTHESIS

Despite the enactment of the Arbitration and Conciliation Act, 1996 and its successive amendments in 2015, 2019, and 2021,[23] the act has failed to provide a clear definition of arbitrability or to properly enumerate a list of non-arbitrable corporate disputes. This has created inconsistency in its application, leading to unpredictable outcomes and thereby undermining the effectiveness of arbitration as a reliable dispute resolution mechanism in intra-corporate conflicts.

IV. LEGISLATIVE FRAMEWORK

A. The Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 is the primary legislation governing arbitration in India. Enacted to replace the outdated Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937, and the Foreign Awards (Recognition and Enforcement) Act, 1961, the Arbitration and Conciliation Act was designed to create a unified legal framework aligned with the UNCITRAL Model Law on International Commercial Arbitration, 1985.[24] The statute governs both domestic arbitration (Part I) and the recognition and enforcement of foreign awards (Part II), and also provides a framework for conciliation (Part III).

The Arbitration and Conciliation (Amendment) Act, 2015 introduced stricter timelines for completing arbitral proceedings, reduced the grounds for judicial interference, and amended Section 8 to mandate reference to arbitration unless the judicial authority finds that prima facie no valid arbitration agreement exists.[25] The Arbitration and Conciliation (Amendment) Act,

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[23] Arbitration and Conciliation (Amendment) Act, 2015, No. 3, Acts of Parliament, 2016 (India); Arbitration and Conciliation (Amendment) Act, 2019, No. 33, Acts of Parliament, 2019 (India); Arbitration and Conciliation (Amendment) Act, 2021, No. 3, Acts of Parliament, 2021 (India).

[24] Law Commission of India, Report No. 246: Amendments to the Arbitration and Conciliation Act 1996 (Ministry of Law and Justice, Aug. 2014). See also Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), Preamble.

[25] Arbitration and Conciliation (Amendment) Act, 2015, § 8, No. 3, Acts of Parliament, 2016 (India).

2019 established the Arbitration Council of India for the promotion of institutional arbitration, empowered the Supreme Court and High Courts to designate graded arbitral institutions for the appointment of arbitrators, and provided for the confidentiality of arbitral proceedings.[26] Notwithstanding these legislative developments, the Arbitration and Conciliation Act remains silent on the substantive question of arbitrability. Section 2(3)[27] provides only that the Act's provisions are without prejudice to any other law under which "certain disputes may not be submitted to arbitration."

B. The Companies Act, 2013

The Companies Act, 2013 provides the primary legislative framework for the incorporation, management, and dissolution of companies in India. Of particular relevance to the arbitrability of corporate disputes are Sections 241 to 244, which deal with the prevention of oppression and mismanagement. Section 241 empowers shareholders meeting certain eligibility criteria, or the Central Government, to approach the NCLT for relief if the affairs of the company are being conducted in a manner prejudicial to public interest or to the interests of the company or any of its members.[28] Section 242 confers upon the NCLT broad equitable powers to grant relief, including the regulation of the company's affairs, removal and appointment of directors, and ordering the purchase of shares of any member by the company or by other members; in appropriate cases, the NCLT may also order the winding-up of the company.[29]

Section 430 of the Companies Act, 2013 is also significant: it provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the NCLT or the NCLAT is empowered under the Act to determine.[30] This provision, while intended to preserve the authority of the specialized authority, has been used by the courts to reinforce the non-arbitrability of oppression and mismanagement claims. The interaction between Section 430 of the Companies Act and Section 8 of the Arbitration and Conciliation Act, which mandates that disputes with valid arbitration agreements should be referred to arbitration, often

[26] Arbitration and Conciliation (Amendment) Act, 2019, §§ 1(ca), 11, 42A, No. 33, Acts of Parliament, 2019 (India). See also PRS Legislative Research, The Arbitration and Conciliation (Amendment) Bill, 2019, PRS INDIA, https://prsindia.org/billtrack/the-arbitration-and-conciliation-amendment-bill-2019 (last visited Apr. 5, 2026).

[27] Companies Act, 2013, No. 18, § 2(3), Acts of Parliament, 1949 (India).

[28] Companies Act, 2013, § 241, Supra Note 15.

[29] Companies Act, 2013, § 242, Supra Note 16.

[30]Companies Act, 2013, § 230, Supra Note 17.

creates confusion when deciding the arbitrability of cases.

V. JUDICIAL EVOLUTION OF ARBITRAILITY IN CORPORATE CONTEXT

A. Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.

The Supreme Court's decision in Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. constitutes the foundational precedent on the arbitrability of disputes in India. The case arose out of a mortgage enforcement suit in which the appellant sought to invoke an arbitration clause, a claim resisted on the ground that enforcement of a mortgage was an action *in rem* and therefore non-arbitrable.[31]

The held that the question as to the arbitrability of a dispute is supposed to be determined in reference to the nature of the right at issue. As a general principle, disputes relating to rights in rem are not amenable to arbitration, while disputes relating to rights in personam are arbitrable. [32] But the courts have observed that this distinction is not absolute, subordinate rights in personam that arise from rights in rem may also be arbitrated. Therefore, this case provided a non-exhaustive list of non-arbitrable disputes, including disputes arising from criminal offences, matrimonial disputes, guardianship matters, insolvency and winding-up proceedings, testamentary matters, and eviction proceedings governed by special statutes.[33]

B. The Ayyasamy Line of Cases

A significant portion of arbitrability in corporate context is with respect to allegations of fraud, which frequently arise in disputes involving corporate officers, promoters, and shareholders. In A. Ayyasamy v. A. Paramasivam,[34] the Supreme Court drew a distinction between simple allegations of fraud, concerning only the internal affairs of the parties, and serious or complex allegations of fraud that require elaborate investigation and have implications in the public domain. The former category does not oust the jurisdiction of the arbitral tribunal, while the latter may render the dispute non-arbitrable.

This position was further refined in Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius)

[31] Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532, 537–539.
[32] Id. at 545–546.
[33] Id. at 543–544.
[34] A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386, 399–402.

Ltd.,[35] where the Court held that the two conditions under which a fraud allegation renders a dispute non-arbitrable are: first, where the fraud vitiates the arbitration clause itself; and second, where the fraud involves allegations against the State or its instrumentalities requiring adjudication by courts exercising writ jurisdiction. The Court affirmed a strong presumption in favour of the arbitrability of fraud allegations. This line of reasoning has particular significance for corporate disputes involving allegations of financial fraud by directors or promoters.

C. Vidya Drolia & Ors. v. Durga Trading Corporation

The Supreme Court's decision in Vidya Drolia & Ors. v. Durga Trading Corporation represents the most comprehensive judicial articulation of the arbitrability doctrine in India. Addressing a reference arising from conflicting decisions on the arbitrability of landlord-tenant disputes, the judgment laid down a definitive four-fold test for determining when a dispute is non-arbitrable.[36]

The four-fold test provides that a dispute is non-arbitrable when: (i) the cause of action and subject matter relate to rights in rem that do not pertain to subordinate rights in personam arising from rights in rem; (ii) the cause of action affects third-party rights, has erga omnes effect, or requires centralised adjudication; (iii) the cause of action relates to inalienable sovereign or public interest functions of the State; and (iv) the subject matter is expressly or by necessary implication non-arbitrable under a mandatory statute.[37] The Court emphasised a strong presumption in favour of arbitrability and overruled several earlier decisions that had taken an unduly restrictive approach, including N. Radhakrishnan v. Maestro Engineers on the arbitrability of fraud.[38]

D. Judicial Treatment of Specific Corporate Disputes

i. Oppression and Mismanagement

The question of whether claims under Sections 241 and 242 of the Companies Act, 2013 are arbitrable has generated an extensive and sometimes inconsistent body of jurisprudence. The

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[35] Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2021) 4 SCC 713, 728–731.
[36] Vidya Drolia & Ors. v. Durga Trading Corporation, (2021) 2 SCC 1, 67–69.
[37] Id. at 68.
[38] N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72 (overruled by Vidya Drolia & Ors. v. Durga Trading Corporation, (2021) 2 SCC 1).

Bombay High Court's decision in Rakesh Kumar Malhotra v. Rajinder Kumar Malhotra[39] is the leading authority for the proposition that oppression and mismanagement claims are non-arbitrable. The Court reasoned that the broad remedial powers conferred upon the NCLT under Section 242, including the power to alter articles of association, restrict share transfers, and order winding-up, are not available to an arbitral tribunal.[40] Since the relief sought could only be granted by the NCLT, the dispute was held to lie outside the jurisdiction of any private arbitral forum.

The NCLAT affirmed this position in Dhananjay Mishra v. Dynatron Services (P) Ltd.,[41] holding that an arbitral tribunal has no jurisdiction to pass a winding-up order, as this falls within the exclusive domain of the NCLT under Section 271(e)[42] of the Companies Act, 2013. The Supreme Court in Aruna Oswal v. Pankaj Oswal[43] further clarified that the NCLT's jurisdiction under Sections 241 to 244 does not extend to succession or ownership disputes over shares, which remain arbitrable or triable before civil courts.

The doctrine of "dressed-up" petitions has emerged as an important corrective tool. Courts and the NCLT have developed the "totality test", under which the substance of the petition is examined to determine whether the genuine reliefs sought are statutory or contractual. If a petition purportedly invoking Sections 241 and 242 is found to be essentially a contractual dispute concerning the enforcement of a shareholders' agreement, it may be referred to arbitration notwithstanding the statutory label.[44] The NCLAT's decision in Macquarie SBI Infrastructure Investments (P) Ltd. v. K. Sadananda Shetty applied this test and referred the matter to arbitration, noting that the petitioner was essentially seeking to enforce contractual rights rather than obtain the equitable remedies of the NCLT.

ii. Shareholder and Intra-corporate Disputes

The Supreme Court has consistently affirmed that purely contractual disputes between shareholders, including disputes regarding the right to appoint directors under a shareholders' agreement, and the enforcement of drag-along and tag-along provisions—are amenable to

[39] Rakesh Kumar Malhotra v. Rajinder Kumar Malhotra, (2015) SCC OnLine Bom 587, 28–34.
[40] Companies Act, 2013, § 242(2)(a)–(k), No. 18, Acts of Parliament, 2013 (India).
[41] Dhananjay Mishra v. Dynatron Services (P) Ltd., Company Appeal (AT) No. 389 of 2018 (NCLAT).
[42] Companies Act, 2013, § 271(e), No. 18, Acts of Parliament, 2013 (India).
[43] Aruna Oswal v. Pankaj Oswal, (2020) 2 SCC 203, 218–220.
[44] Sidharth Gupta v. Getit Infoservices (P) Ltd., MANU/CL/0010/2016 (CLB, New Delhi); Macquarie SBI Infrastructure Investments (P) Ltd. v. K. Sadananda Shetty, Company Appeal (AT) No. 146 of 2019 (NCLAT).

arbitration, as they involve rights in personam that do not require the intervention of a statutory tribunal.[45] However, where a corporate dispute traverses statutory boundaries—as where a shareholder seeks to challenge a corporate action as both a breach of a shareholders' agreement and as oppressive conduct under Section 241, the courts have shown reluctance to bifurcate the claims.

The Supreme Court's decision in Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya[46] established the principle that a court may not refer only part of a dispute to arbitration where the claims cannot be conveniently separated. This non-bifurcation principle, while subsequently qualified, continues to influence the approach of courts in complex corporate disputes where arbitrable and non-arbitrable claims are interwoven.

iii. Insolvency and Winding-up

Insolvency proceedings under the IBC, 2016 and winding-up petitions under the Companies Act, 2013 have been consistently treated as non-arbitrable on account of their in rem character and their effect on third-party creditors and public interests. The Supreme Court in Booz Allen expressly identified insolvency and winding-up proceedings in the list of non-arbitrable disputes.[47] In the context of the IBC, courts have held that the moratorium imposed under Section 14 of the IBC operates as a bar against the continuation of arbitral proceedings against a corporate debtor undergoing CIRP.[48]

VI. FINDINGS

On the basis of the analysis, the following finings emerge:

First, the Arbitration and Conciliation Act, 1996 has a fundamental legislative gap, it doesn't define "arbitrability' and neither does it enumerate the categories of disputes that are incapable of resolution by arbitration.[49] The consequence of which is that the any confusion with respect to arbitrability in India is resolved and defined by the judiciary which is highly susceptible to

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45 Chatterjee Petrochem (India) (P) Ltd. v. Haldia Petrochemicals Ltd., (2014) 2 SCC 574, 586–588.
46 Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya, (2003) 5 SCC 531, 537–538.
47 Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., supra note 2, at 543–544; Neelam Tyagi, supra note 15, at 72.
48 Insolvency and Bankruptcy Code, 2016, § 14(1), No. 31, Acts of Parliament, 2016 (India).
49 Arbitration and Conciliation Act, 1996, § 2(3), No. 26, Acts of Parliament, 1996 (India). See also Ajar Rab, Arbitrability of Disputes: A Critical Analysis, 7 IND. J. ARB. L. 161, 165 (2020), https://www.nls.ac.in/wp-content/uploads/2020/12/IJAL_Volume_7_Issue_2_Ajar_Rab.pdf.

inconsistent application.

Second, the four-fold test provided under Vidya Drolia case provides a relatively structured yet flexible framework for deciding arbitrability, and its presumption in favour of arbitrability represents an arbitration friendly approach.[50] However, its application to corporate disputes, especially with respect to oppression and mismanagement claims still remains uncertain, with no consistency in application by the courts.

Third, genuine oppression and mismanagement claims under Sections 241 and 242 of the Companies Act, 2013 invoke the exclusive jurisdiction of NCLT. The remedies of altering articles of association, removing directors, and ordering winding-up are vested exclusively in the NCLT and cannot be replicated by an arbitral tribunal. Therefore, the non-arbitrability of such disputes is well-justified. However, the absence of clear statutory criteria as to which dispute is genuine oppression and mismanagement claim and which is a "dressed-up petition" leads to misuse of the statutory provision.[51]

Fourth, the interaction between insolvency and arbitration also presents a recurring source for jurisdictional confusion. The imposition of a moratorium under Section 14 of the IBC effectively suspends pending arbitral proceedings, and courts have not consistently resolved the question of whether an arbitral award obtained after the commencement of a Corporate Insolvency Resolution Process is binding upon the liquidation estate.[52]

Fifth, India's approach to arbitrability remains more restrictive than the approaches adopted by other arbitration-friendly jurisdictions such as Singapore and the United Kingdom. The Singapore Court of Appeal's ruling in Anupam Mittal v. Westbridge Ventures II Investment Holdings[53], the oppression claims are arbitrable under Singapore law, clearly illustrates the same. This divergence might also lead to conflict of rulings when Indian parties arbitrate

[50] Vidya Drolia & Ors. v. Durga Trading Corporation, supra note 3, at 69. See also SNR Associates, Supreme Court Clarifies What is Arbitrable under Indian Law, SNR LAW (Jan. 2021), https://www.snrlaw.in/wp-content/uploads/2021/01/SR-Update-SC-Clarifies-What-is-Arbitrable-under-India-Law-and-Provides-Guidance.pdf (last visited Apr. 5, 2026).

[51] Arbitrability of Disputes under Sections 241 and 242 of the Companies Act, 2013, supra note 12. See also Cyril Amarchand Mangaldas, Arbitration Clauses v. NCLT's Jurisdiction in Shareholder Disputes, CYRIL AMARCHAND BLOGS (Mar. 2026), https://corporate.cyrilamarchandblogs.com/2026/03/arbitration-clauses-v-nclts-jurisdiction-in-shareholder-disputes-legal-position-in-india/ (last visited Apr. 5, 2026).

[52] Neelam Tyagi, supra note 15, at 74–75.

[53] Anupam Mittal v. Westbridge Ventures II Investment Holdings, supra note 9. See also Arbitrability of Shareholder Disputes in India: Complexities and Issues, supra note 8.

through Singapore-seated proceedings.

Sixth, the public policy exception to arbitrability, provided under Sections 34(2)(b) and 48(2) of the Arbitration and Conciliation Act, has been interpreted broadly by the Indian Courts, leading arbitral awards to be set aside or refused enforcement. While the 2015 amendment narrowed the scope of the public policy ground, its continued broad application in the corporate context remains a concern.[54]

VII. CONCLUSION AND RECOMMENDATION

The study concludes that the arbitrability of corporate disputes in India is an area characterized by significant development through judicial precedents, the Supreme Court, through its decisions in Booz Allen and Vidya Drolia, has provided a structured arbitration-friendly framework. The four-fold test provides a significant improvement over the binary in rem/in personam distinction and, particularly through its presumption in favor of arbitrability, reflects the legislature's broader policy of positioning India as a hub for international commercial arbitration.[55] Notwithstanding these improvements, the application of arbitrability of certain categories of corporate disputes like oppression and mismanagement, insolvency, and complex fraud still continue to be plagued by uncertainties.

The hypothesis advanced at the outset of this study is substantially confirmed by the foregoing analysis. The statutory gap identified in Section 2(3) of the A&C Act has never been legislatively addressed, and successive amendments have not incorporated a positive definition of arbitrability or a codified list of non-arbitrable disputes. The result is that corporate parties, particularly foreign investors structuring investments through shareholders' agreements governed by Indian law, face a degree of uncertainty that undermines the predictability that is the hallmark of a mature arbitration regime.

The following legislative and judicial reforms are recommended:

[54] Arbitration and Conciliation Act, 1996, §§ 34(2)(b), 48(2), No. 26, Acts of Parliament, 1996 (India). The 2015 amendment restricted the ground to 'fundamental policy of Indian law' and 'basic notions of morality or justice.' See ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705, 726–728 for the expansive pre-amendment interpretation.

[55] Trilegal, Supreme Court on Arbitrability of Disputes, TRILEGAL CLIENT UPDATE (Nov. 2021), https://trilegal.com/wp-content/uploads/2021/11/Supreme-Court-on-Arbitrability-of-Disputes.pdf (last visited Apr. 5, 2026). See also A False Start — Uncertainty in the Determination of Arbitrability in India, KLUWER ARB. BLOG (June 16, 2016), https://arbitrationblog.kluwerarbitration.com/2016/06/16/a-false-start-uncertainty-in-the-determination-of-arbitrability-in-india/ (last visited Apr. 5, 2026).

First, Parliament should amend the A&C Act, 1996 to incorporate a codified list of non-arbitrable subject matters, modelled on the approach adopted by the Singapore International Arbitration Act[56] and the German Zivilprozessordnung*,* both of which provide explicit enumeration of non-arbitrable categories. This list should include insolvency proceedings, winding-up matters, and genuine oppression claims seeking the exclusive remedies of the NCLT, while preserving the arbitrability of contractual shareholder disputes and fraud allegations that do not traverse the public domain.

Second, the interface between the IBC, 2016 and the Arbitration and Conciliation Act should be legislatively clarified to address the status of pending arbitral proceedings during a Corporate Insolvency Resolution Process moratorium. The Tyagi article's recommendation, that the Arbitration and Conciliation Act Act be amended to expressly enumerate insolvency proceedings as non-arbitrable, and that the IBC be amended to allow for their concurrent resolution in appropriate cases—deserves legislative consideration.[57]

Third, the totality test developed by courts for identifying "dressed-up" oppression petitions should be codified in the Companies Act, 2013 to provide clearer guidance to the NCLT and to deter the strategic misuse of the oppression remedy to defeat valid arbitration agreements.

Fourth, the Supreme Court should, at the earliest opportunity, provide authoritative guidance on whether the Vidya Drolia four-fold test applies to international commercial arbitrations seated in India, thereby resolving the uncertainty identified by commentators regarding the test's geographic scope.[58]

India's ambition to emerge as a world-class arbitration seat will remain partially unfulfilled so long as the question of arbitrability in the corporate sphere is left to the vagaries of case-by-case judicial construction. Legislative clarity, combined with continued judicial commitment to the pro-arbitration presumption articulated in Vidya Drolia, offers the most viable path toward a coherent and reliable arbitrability framework for corporate disputes in India.

[56] International Arbitration Act 1994 (Singapore, cap 143A, 2002 rev ed), § 11.

[57] Neelam Tyagi, supra note 15, at 77.

[58] Applying Vidya Drolia's Four-Fold Arbitrability Test to Antitrust Disputes in India, KLUWER ARB. BLOG (Feb. 10, 2021), https://arbitrationblog.kluwerarbitration.com/2021/02/10/applying-vidya-drolias-four-fold-arbitrability-test-to-antitrust-disputes-in-india/ (last visited Apr. 5, 2026).

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