ARBITRAL PROCEEDINGS CONDUCTED DURING AN IBC MORATORIUM: NULLITY OR CONTINUITY? A CASE NOTE ON ANKHIM HOLDINGS PVT. LTD. V. ZAVERI CONSTRUCTION PVT. LTD.

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ABSTRACT

Supreme Court made a very significant comment in *Ankhim Holdings Pvt. Ltd. v. Zaveri Construction Pvt. Ltd,* that a court exercising the narrow substitution jurisdiction under section 15(2) of the Arbitration and Conciliation Act, 1996 cannot retrospectively declare arbitral proceedings a nullity merely because they were conducted during a moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016. This case note argues that the judgment should be read only as deciding a narrow jurisdictional issue, namely whether section 15(2) applies and not as a substantive pronouncement addressing the broader issue of the effect of a moratorium on ongoing arbitral proceedings. However, later commentators, like the Telangana High Court, have treated similar issues with judgments that almost answer that broader question, which risks the misinterpretation of the exception recognised by the Supreme Court in *Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund* without any deserving doctrinal scrutiny. The note concludes with an argument on the unresolved paradox the judgment has left behind, referring to a larger bench on the substantive question by the apex court in the eyes of Article 142 of the Indian Constitution.

Keywords: Arbitration and Conciliation Act 1996; Insolvency and Bankruptcy Code 2016; moratorium; section 15(2); competence; Indus Biotech.

A. INTRODUCTION

In Indian commercial law, very few interfaces generate as much structural friction as that between arbitration and insolvency. Both are significantly distinct from each other; insolvency law is built on a collective creditor action with a moratorium that prevents individual claimants, including the counterparties in ongoing arbitration, whereas arbitration is totally founded upon party autonomy and minimal judicial interference.[1]

The Supreme Court's decision in *Ankhim Holdings* lies squarely at the unresolved paradox, or as we call it, the fault line.[2] As the first readers suggest, the holding reflects the expression of addressing a broad issue, but it is narrower in nature, only deciding upon a limited legal question. In the real scenario, the court was actually asked whether a court exercising the specific, mechanical jurisdiction conferred by section 15(2) ordinarily invoked simply to replace an arbitrator and the application of section 14 moratorium during arbitral proceedings whether a valid as a matter of insolvency policy was never a question. And the answer was no.[3]

These two questions form the foundational core of the case, and this case not only analyses and recognises its necessity to be used as a precedent correctly in future litigation and scholarship. Part B sets out the facts of the case, followed by Part C with the key legal question; Part D summarises the court's reasoning; Part E lays down a critical comment based on the court's reasoning against *Indus Biotech* and the Telangana High Court's parallel reasoning in *Kaizen Power*;[4] Concluding the note with Part F.

B. FACTUAL MATRIX

The parties to the case were partners in a joint venture that aimed to redevelop a slum rehabilitation project in Andheri, Mumbai.[5] Due to some disputes in 2019, the Bombay High Court appointed a retired chief justice as sole arbitrator after recording their consent terms

[1] Insolvency and Bankruptcy Code, 2016, § 14, No. 31, Acts of Parliament, 2016 (India); Arbitration and Conciliation Act, 1996, § 5, No. 26, Acts of Parliament, 1996 (India).
[2] *Ankhim Holdings Pvt. Ltd. v. Zaveri Construction Pvt. Ltd., 2026 INSC 137 (2026).*
[3] *Arbitration and Conciliation Act, 1996*, §§ 14–15(2), No. 26, Acts of Parliament, 1996 (India).
[4] *Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund, 2021 SCC OnLine SC 268; Kaizen Power Ltd. v. Andhra Pradesh Industrial Infrastructure Corporation Ltd., COMCA No. 3 of 2026 (Telangana HC 2026).*
[5] Aditya Mehta, Manan Shah & Deeksha Singh, Judicial Restraint in Arbitral Substitution: Key Takeaways from *Ankhim Holdings v. Zaveri Construction*, CYRIL AMARCHAND MANGALDAS (Mar. 2, 2026), https://disputeresolution.cyrilamarchandblogs.com/2026/03/judicial-restraint-in-arbitral-substitution-key-takeaways-from-ankhim-holdings-v-zaveri-construction/.

under section 9 of the petition.[6] Following this order, the respondent was admitted to the corporate insolvency resolution process by the National Company Law Tribunal (NCLT), imposing a moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016.[7]

The High Court, under the mistaken belief that the Interim Resolution Professional (IRP) had become functus officio in March 2022, permitted the parties to restart their application before the tribunal to seek interim measures under section 17 of the Arbitration and Conciliation Act, 1996.[8] Subsequently, a Resolution Professional argued under section 16 of the Act, challenging the tribunal's jurisdiction or moratorium grounds, as an IBC moratorium was in force;[9] Hence, the arbitral tribunal had no jurisdiction whatsoever. But the claim was rejected by the arbitral tribunal, and it also permitted the sale of several flats to third parties between March and April 2022. The issue didn't end with this, as the NCLT triggered another moratorium as the company was ordered to liquidate under section 33(5) of the IBC in August 2022.[10] As a result, the tribunal terminated the proceedings in October 2023, and the appellants sought a substitute arbitrator under section 15(2) of the Arbitration Act.[11]

Before appointing a substitute arbitrator, the High Court held that all the tribunal proceedings conducted in the moratorium-affected period, i.e. between 17 March and 25 august was null, and following the decision, the appellants challenged the nullity finding in the apex court.

C. THE PRECISE QUESTION OF LAW

The Supreme Court identified the key legal issue: whether the High Court, exercising jurisdiction under section 15(2) specifically,[12] was entitled to declare the tribunal's moratorium-period proceedings a nullity. This question is deliberate and consequential and enquires into the scope of a particular jurisdictional grant and not a question about the effect of the moratorium. The judgment of the court maintains this distinction, and further, this paper contends to govern how this case should be subsequently cited.

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[6] *Arbitration and Conciliation Act, 1996*, § 9, No. 26, Acts of Parliament, 1996 (India).
[7] *Insolvency and Bankruptcy Code, 2016*, § 14, No. 31, Acts of Parliament, 2016 (India).
[8] *Arbitration and Conciliation Act, 1996*, § 17, No. 26, Acts of Parliament, 1996 (India).
[9] *Arbitration and Conciliation Act, 1996*, § 16, No. 26, Acts of Parliament, 1996 (India).
[10] *Insolvency and Bankruptcy Code, 2016*, § 33(5), No. 31, Acts of Parliament, 2016 (India).
[11] *Arbitration and Conciliation Act, 1996*, § 15(2), No. 26, Acts of Parliament, 1996 (India).
[12] *Id*.

D. THE COURT'S REASONING

The argument followed as the counsel for the appellants argued about the mechanics of arbitrator substitution with respect to section 15(2) that it is modelled on the rules originally applicable to appointment, similar to those under section 11,[13] the court is authorised to prima facie check the existence of an arbitration agreement and not further delve into larger questions such as whether the IBC moratorium prevents the arbitration from continuing. The appellant relied on the precedents laid down in *Yashwith Constructions (P) Ltd v Simplex Concrete Piles (India) Ltd,*[14] where the court had confirmed that the mechanical replacement of an arbitrator subsists only under section 15(2) and not any fresh adjudicatory inquiry into prior proceedings.[15] They further relied upon the court rulings of *Official Trustee v Sachindra Nath Chatterjee,*[16] where an order passed outside the court's remedial power is not merely erroneous but is void.

Reading sections 15(2), (3) and (4),[17] the court agreed, labelling them as interlocking rather than free-standing provisions. The court further stated that section 15(2) merely lays down the procedure for appointing a substitute arbitrator, hence does not authorise it to invalidate or scrutinise orders passed by the tribunal in past arbitral proceedings. In the five-judge bench decision in *In re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Stamp Act, 1899,*[18] the court had stated that the Arbitration Act is, however, a comprehensive procedural framework and is a self-contained code, leaving little scope for any judicial scrutiny outside the remedies provided by the Act. Based on this, the court reiterated that even though the Act does not permit such a course, the High Court effectively overturned the tribunal's rejection of a jurisdictional challenge under section 16 and several interim orders under section 17,[19] through a section 15(2) application.[20] The High Court exceeded its remedial power since section 37 of the Act allows appeals only in specified circumstances, and rejection by the tribunal due to a jurisdictional challenge was not open for judicial scrutiny.[21] Relying on the precedents of *Hindustan Construction Co Ltd v Bihar Rajya*

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[13] *Arbitration and Conciliation Act, 1996*, §§ 11–15(2), No. 26, Acts of Parliament, 1996 (India).
[14] *Yashwith Construction Pvt Ltd v Simplex Concrete Piles India Ltd* (2006) 6 SCC 204.
[15] *Arbitration and Conciliation Act*, § 15(2).
[16] *Official Trustee, West Bengal v. Sachindra Nath Chatterjee*, AIR 1969 SC 823.
[17] *Arbitration and Conciliation Act, 1996*, §§ 15(2)– (4), No. 26, Acts of Parliament, 1996 (India).
[18] *In Re: Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*, 2023 INSC 1066 (2023).
[19] *Arbitration and Conciliation Act, 1996*, §§ 16–17, No. 26, Acts of Parliament, 1996 (India).
[20] *Arbitration and Conciliation Act*, § 15(2).
[21] *Arbitration and Conciliation Act, 1996*, § 37, No. 26, Acts of Parliament, 1996 (India).

Pul Nirman Nigam Ltd,[22] the court held that section 15(2) is for a substitute arbitrator to continue proceedings from the stage reached and its proper course would be not to restart any de novo, consistent with the Act's object of speedy dispute resolution. Hence, the court, with the extraordinary powers of Article 142 of the Constitution, declared the acquisition of the relevant flats by the third parties as a valid transaction.[23]

E. CRITICAL COMMENT

A Jurisdictional Holding, not a Substantive One

Ankhim Holdings lays down the precedent of "who may decide" rather than "what effect does the moratorium have," which is the single most interpretive point for future use of this case. The court bases its ruling on the forum's incompetence with respect to section 15(2),[24] where it lacked the power to determine nullity, rather than affirmatively holding that, as a matter of IBC policy, the moratorium in fact did not affect the tribunal's authority to act. While the case to be used as a future reference is quite narrow, it leaves the underlying question open, i.e. whether section 14 actually suspends an arbitral tribunal's authority already constituted absent its own recognition of the bar.[25]

Relationship with *Indus Biotech*

The court in *Indus Biotech* held that insolvency proceedings generally exercise supremacy once a moratorium attaches,[26] as it carves out the limited room for pre-existing, bona fide contractual arbitration to proceed whether an insolvency petition is yet to be admitted. *Ankhim Holdings* simply left this principle untouched, neither revisiting, extending, nor narrowing it, but instead decides the application of section 15(2) that it cannot determine whether past arbitral proceedings were invalid because of the IBC moratorium. Hence, *Ankhim Holdings* cannot be treated as the pro-arbitration expansion of *Indus Biotech*, as it risks the expansion of an exception that the bench actually sanctioned.

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[22] *Hindustan Construction Co. Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd., 2025 INSC 1365 (2025) ("Hindustan Construction").*
[23] *INDIA CONST.* art. 142.
[24] *Arbitration and Conciliation Act*, § 15(2).
[25] *Insolvency and Bankruptcy Code, 2016*, § 14, No. 31, Acts of Parliament, 2016 (India).
[26] *Indus Biotech, 2021 SCC OnLine SC 268.*

Telangana Divergence

The risk of expanding the moratorium exception is concretely evident in the Telangana High Court's decision in *Kaizen Power Ltd v Andhra Pradesh Industrial Infrastructure Corp Ltd*.[27] A commercial court division bench directly and substantively decides that the IBC moratorium could not defeat any ongoing arbitral proceedings, ordering their resumption. This holding is completely distinct from anything that *Ankhim Holdings* actually decided, and it risks the drift of the jurisprudence into an unarticulated expansion of *Indus Biotech* if, by any chance,[28] the lower courts and tribunals begin to cite the *Kaizen power* proposition, i.e. the moratorium period arbitration is simply valid without subjecting it to the collective expansion proceeding rationale the IBC moratorium exists to protect.

The Unacknowledged Tension in the Article 142 Relief

The Supreme Court was practical and equitable in invoking Article 142 to uphold the sales of flats to the third-party purchasers as they had simply relied on the arbitral tribunal's orders in good faith.[29] Even if they intended to protect the innocent buyers, the court conflicted with its own reasoning as it, throughout the holding, maintained that section 15(2) was concerned only with the limited jurisdiction of the court and avoided deciding whether arbitral proceedings conducted during the IBC moratorium were legally valid. Yet, the court declared those arbitral orders as legally valid by validating the third-party sales, despite the effect of the moratorium. This paradox in the decision is understood as an exercise of the Supreme Court's exceptional power granted under Article 142 of the Constitution, because the court granted relief to the innocent buyers consisting of the very issue that it itself stated it was not deciding. Hence, Article 142 of the Constitution provides the ultimate power to grant complete justice in the particular facts of the case rather than as an implied legal ruling that the moratorium effect during arbitral proceedings is invalid, hence leaving the same open as a substantive question.

Doctrinal and Policy Implications

The overall effect of the judgment is that it resolves an important procedural question: a court hearing a section 15(2) application cannot decide whether the earlier arbitral proceeding is valid

[27] *Kaizen Power Ltd. v. Andhra Pradesh Industrial Infrastructure Corporation Ltd., COMCA No. 3 of 2026.*
[28] *Indus Biotech, 2021 SCC OnLine SC 268.*
[29] *INDIA CONST.* art. 142.

or not, while leaving the substantive arbitration-insolvency interface exactly where *Indus Biotech* left it.[30] Cases like *Kaizen Power* are increasingly encountering this unresolved issue,[31] and the same highlights how the existing legal framework is insufficient and in urgent need of a clear judicial answer. The absence of a clear rule on whether the Section 14 moratorium suspends ongoing arbitral proceedings creates significant commercial uncertainty as disputes related to real estate, homebuyers and joint ventures continue to increase, proceeding to appear simultaneously before arbitral tribunals (NCLT) and insolvency forums (NCLAT). Despite several rulings by the High Court, the underlying legal question remains and now warrants consideration from a larger bench of the Supreme Court to declare an authoritative and substantive ruling and end this paradox once and for all.

F. CONCLUSION

Ankhim Holdings exonerated the self-contained procedural architecture of the Arbitration and Conciliation Act,[32] correctly pronouncing that the court cannot use a substitution proceeding as a road to nullify past arbitral proceedings and orders under section 15(2).[33] Despite sections 16,34 or 37 of the Act that can really disturb,[34] the court did not overstate its significance, leaving the substantive question undecided as to what a section 14 moratorium actually does to already-constituted, ongoing arbitral proceedings or a fresh arbitral order.[35] The tension in the judgment between Article 142 relief,[36] granting the bona fide third-party purchasers protection, is something that a future constitutional bench facing a similar arbitration-insolvency interface will need to resolve.

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[30] *Indus Biotech, 2021 SCC OnLine SC 268*

[31] *Kaizen Power Ltd. v. Andhra Pradesh Industrial Infrastructure Corporation Ltd., COMCA No. 3 of 2026.*

[32] *Ankhim Holdings, 2026 INSC 137.*

[33] *Arbitration and Conciliation Act, 1996*, § 15(2), No. 26, Acts of Parliament, 1996 (India).

[34] *Arbitration and Conciliation Act, 1996*, §§ 16, 34, 37, No. 26, Acts of Parliament, 1996 (India).

[35] *Insolvency and Bankruptcy Code, 2016*, § 14, No. 31, Acts of Parliament, 2016 (India).

[36] *INDIA CONST.* art. 142.