Madhav Goel, *Arbitration of CIRP Initiation Applications Under Section 9 of the Insolvency and Bankruptcy Code, 2016: Impact of 'Indus Biotech',* 9(2) NLUJ L. Rev. 151 (2023).

ARBITRATION OF CIRP INITIATION APPLICATIONS UNDER SECTION 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016: IMPACT OF '*INDUS BIOTECH*'

~Madhav Goel[*]

ABSTRACT

The decision of the Hon'ble Supreme Court in Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund & Ors. has potentially allowed arbitration of disputes that arise in applications to initiate the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 by dismantling the hurdle of non-arbitrability of insolvency disputes. This article explores the nature of disputes that arise in applications by operational creditors to initiate the corporate insolvency resolution process of a corporate debtor, and analyses the applicability of the decision in Indus Biotech to such disputes. It argues how and why arbitration can help adjudication of such applications and highlights the need for mandating arbitration of disputes that arise during such adjudications. Due to the complex and mixed questions of law and facts involved, these applications take a substantial time to be decided by the National Company Law Tribunals, thus delaying

[*] Madhav Goel is an advocate practicing in the Supreme Court of India, Delhi High Court and other Tribunals in Delhi. He is a graduate of Campus Law Centre, University of Delhi, and St. Stephen's College, University of Delhi.

the process and defeating a core objective of the Insolvency and Bankruptcy Code, 2016, i.e., time bound resolution of commercial insolvencies. It proposes a broad alternative framework whereby arbitration can be used/mandated to adjudicate an application under Section 9 of the Insolvency and Bankruptcy Code, 2016, along with the necessary safeguards.

TABLE OF CONTENTS

I. INTRODUCTION

Jurisprudence on the amenability of insolvency disputes to arbitration has always leaned towards a negative, anti-arbitrability view. The Hon'ble Supreme Court has repeatedly held such disputes to be unamenable to arbitration, relying on the conventional jurisprudence that insolvency disputes involve adjudication of *'rights in rem'* and not *'rights in personam'*. Generally speaking, disputes involving the former are not considered suitable for arbitration as they involve the determination of rights of the parties not merely amongst themselves, but also against all persons at any time claiming any interest(s) in the subject matter of the dispute.[1] This is the most fundamental test of arbitrability.[2]

This is because an arbitral tribunal derives its powers and jurisdiction by mutual consent,[3] and non-signatories to an arbitration agreement cannot be bound by its decision as they have not consented to submit to its jurisdiction, and have thus not agreed to be bound by its decision.[4] Consequently, disputes such as insolvency disputes which have an *erga omnes* effect, i.e., affecting rights and liabilities of those other than the parties to the dispute, are generally considered unsuitable for arbitration.[5]

---

[1] Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532.
[2] Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1.
[3] KK Modi v. KN Modi, (1998) 3 SCC 573.
[4] Sukanya Holdings Private Limited v. Jayesh H. Pandya, (2003) 5 SCC 531.
[5] Ajar Rab, *Defining the Contours of the Public Policy Exception - A New Test for Arbitrability in India*, 7 IJAL 161 (2019).

However, the decision of the Hon'ble Supreme Court in *Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund & Ors.*[6] ("**Indus Biotech**") may have opened carved out an exception to conventional jurisprudence, as far as adjudications under Section 7 and Section 9 of the Insolvency and Bankruptcy Code, 2016[7] ("**the Code**" or "**IBC**") for initiation of the Corporate Insolvency Resolution Process[8] ("**CIRP**") of a Corporate Debtor are concerned.[9]

This article analyses the nature of adjudications under Section 9 of the Code and whether they have an *erga omnes* effect. It analyses the reasoning of the Hon'ble Supreme Court in *Indus Biotech* to assess whether disputes under Section 9 of the Code are arbitrable.[10] Finally, it proposes a framework that could be implemented to arbitrate such disputes whilst ensuring that necessary safeguards are in place, and the benefits thereof.

II. DO ADJUDICATIONS UNDER SECTION 9 OF THE CODE HAVE AN *ERGA OMNES* EFFECT?

It is important to analyse whether disputes under Section 9 of the Code have an *erga omnes* effect. This provision deals with an application filed by an operational creditor(s) to initiate the CIRP of a corporate debtor. In an application under Section 9 of the Code, the Adjudicating Authority, i.e.,

---

[6] Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund & Ors. (2021) 6 SCC 436.
[7] Insolvency & Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India)
[8] *Id.* at Chapter II, Part II.
[9] *Id.* at §3(8).
[10] Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund & Ors. (2021) 6 SCC 436.

the National Company Law Tribunal ("**NCLT**"), has to assess whether the application is complete, whether the payment of the operational debt has been made pursuant to the notice under Section 8 of the Code, whether the said notice under Section 8 of the Code was delivered to the corporate debtor, and whether there exists a pre-existing dispute with respect to the debt claimed to be due and payable by the operational creditor.

This adjudication is a mixed question of facts and law which has to be determined on the basis of the evidence put forth by the parties as to the transaction entered into by them, as well as evidence pertaining to the repayment of the alleged debt. If the Adjudicating Authority is satisfied with respect to the above parameters, it is obligated to admit the application.[11] In that sense, it is fairly similar to the procedure followed in cases of applications under Section 7 of the Code where the Adjudicating Authority has to assess whether the application is complete and whether there is a default as claimed by the financial creditor, and thereafter exercise its discretion to admit or reject such an application.[12]

At this stage of adjudication, the dispute is *inter-partes* and only involves determining mixed questions of fact and law that affect the rights of the two parties concerned, i.e., the operational creditor and the corporate debtor. The adjudication relates to whether the corporate debtor owes an undisputed debt to the operational creditor, and whether there is a default in the repayment of that debt. Therefore, it is clear that the adjudication, while taking place in an insolvency proceeding, is one dealing with *rights in*

[11] Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353; Vidarbha Industries Power Ltd. v. Axis Bank Ltd., 2022 SCC OnLine SC 1339.
[12] Vidarbha Industries Power Ltd. v. Axis Bank Ltd., 2022 SCC OnLine SC 1339.

personam, i.e., the rights and liabilities of the parties amongst and against each other, and not dealing with *rights in rem*, i.e., not dealing with their rights and liabilities against the world at large.

However, it is important to note a long line of judicial decisions that have repeatedly held that insolvency disputes are not arbitrable as they involve adjudication of *rights in rem* and not *rights in personam*. The logical corollary to this, considering the fact that the first stage of adjudication under Section 9 of the Code deals with *rights in personam* of the operational creditor and the corporate debtor against each other, is that at some point in the process the adjudication under Section 9 of the Code is converted from one dealing with *rights in personam* to one dealing with *rights in rem*. The exact stage at which this happens can be understood by referring to the decision of the Hon'ble Supreme Court the decision in *Indus Biotech*.[13]

III. THE DECISION IN INDUS BIOTECH (P) LTD. V. KOTAK INDIA VENTURE (OFFSHORE) FUND & ORS.

In *Indus Biotech*,[14] the Hon'ble Supreme Court was determining the nature of interplay between the Code and the Arbitration and Conciliation Act, 1996 ("**ACA**").[15] An application under Section 7 of the Code was filed by the Respondents claiming that the Appellant owed them a financial debt under the share subscription and shareholder agreements executed between them. The cumulative effect of these agreements was that the Respondents

[13] Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund & Ors. (2021) 6 SCC 436.
[14] *Id.*
[15] Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

had subscribed to equity shares and optionally convertible redeemable preference shares of the Appellant. Thereafter, certain disputes arose pertaining to the calculation and conversion formula by which the preference shares would be converted to equity shares.

The Respondents filed an application under Section 7 of the Code, contending that as per the option exercised by them under the said agreements to cover their preference shares into equity shares, the Appellant owed them about Rs. 367 Crore which they had not paid. On the other hand, the Appellant filed an application under Section 8 of the ACA for referring the parties to arbitration, contending that since there was a dispute as to the calculation and conversion formula by which the Respondents' preference shares would be converted to equity shares, there was no debt due and payable by them. It thus sought a reference of the dispute to arbitration, as per the terms of the agreements, in order to first determine whether there actually was a debt due and payable by the Appellant, a *sine qua non* for initiating the CIRP under the Code.

While analysing the interplay between the Code and the ACA, the Supreme Court noted that the NCLT, while adjudicating an application under Section 7 of the Code, has to first assess whether the debt as claimed by the financial creditor has become due and payable. It held that if on the basis of the evidence and the law, the Adjudicating Authority concludes that there is no default, then it shall reject the application. However, if the Adjudicating Authority concludes that there has been a default and thereafter proceeds to admit the application, then the CIRP of the corporate debtor is deemed to have been commenced. Up until this point,

i.e., up until the NCLT decides to admit the application, the proceedings are confined to determining whether the debt has become due and payable between the parties involved.

The Supreme Court held that once the CIRP has been initiated,[16] by imposing the moratorium,[17] issuing the public announcement of the initiation of the CIRP,[18] and appointing the Interim Resolution Professional,[19] it becomes a proceeding *in rem*, and thereafter the issues involved would not be arbitrable. The Apex Court thus held that the cutoff point for determining when the proceeding actually becomes one *in rem* from one *in personam* is the point at which the application under Section 7 of the Code is admitted and the CIRP of the corporate debtor has commenced, and not the point at which the application is filed. Once the application is admitted and the CIRP commences, third party rights are affected and that is the point at which the *erga omnes* effect becomes applicable.[20]

The Hon'ble Apex Court referred the parties to arbitration, and held that the adjudication of the dispute as to the calculation and conversion formula was one involving *rights in personam* and not *rights in rem*. Since the CIRP had not been triggered, the same could be referred to

[16] Insolvency & Bankruptcy Code, 2016, §13, No. 31, Acts of Parliament, 2016 (India).
[17] *Id.* at §14.
[18] *Id.* at §15.
[19] *Id.* at §16.
[20] Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17; Vallal RCK v. Siva Industries & Holdings Ltd., (2022) 9 SCC 803; MINISTRY OF CORPORATE AFFAIRS, GOVERNMENT OF INDIA, REPORT OF THE INSOLVENCY LAW COMMITTEE (Government of India, 2018).

arbitration to determine whether there was a debt that was actually due and payable.

IV. IMPLICATIONS OF INDUS BIOTECH ON APPLICATIONS UNDER SECTION 9 OF THE CODE?

The decision of the Hon'ble Supreme Court in *Indus Biotech* has significant implications for applications under Section 9 of the Code.[21] In particular, the observations and reasoning given by the Hon'ble Apex Court are pertinent for deciding arbitrability of disputes that arise when an application for initiating CIRP is filed by operational creditors. Unlike applications by financial creditors, applications by operational creditors under Section 9 of the Code have greater scope of disputes given the nature of the transaction and evidence presented by the parties. Typically, financial debt and the default are well documented and easier to establish and adjudicate upon, as opposed to operational debt.

Practical experience shows that undisputed and unpaid operational debt is often difficult to establish because numerous defences are raised by corporate debtors. These include, but are not limited to, showing the existence of a pre-existing dispute, the debt being barred by limitation, disputes as to the method of accounting, disputes about the very transaction itself, disputes about whether the demand notice under Section 8 of the Code was delivered, etc.

[21] Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund & Ors. (2021) 6 SCC 436.

Every application by an operational creditor under Section 9 is resisted using numerous defences by the corporate debtor, and due to the issues highlighted above, the dispute about whether there exists an undisputed debt due and payable on the part of the corporate debtor takes significant time to adjudicate. As a consequence, a significant portion of limited judicial time is spent on deciding these disputes that are mixed questions of fact and law, i.e., whether the corporate debtor owes an undisputed debt to the operational creditor that has become due and payable.

These disputes have to be adjudicated at the time of deciding whether to admit the application of the operational creditor under Section 9 of the Code, i.e., prior to the initiation of the CIRP of the corporate debtor. They are limited to deciding inter-party disputes, and at this stage are not concerned with the rights of any third party. The adjudication is singularly limited to determining whether the corporate debtor owes an undisputed debt to the operational creditor that has become due and payable, thus dealing with *rights in personam* and not *rights in rem*. This is where arbitration can have significant impact on improving the efficiency of the Code and the Adjudicating Authority.

Increasingly, commercial transactions have provisions for resolving disputes through arbitration. Such arbitration clauses, often widely worded, cover within their ambit issues that have a direct bearing on whether the debt is due and payable as per the contract, whether there is a pre-existing dispute, whether there is any issue with the accounting, whether the debt is barred by limitation, etc. Given this situation it is possible to have a

legislative framework that supports and/or mandates arbitration of such disputes rather than leaving it solely to the already overburdened NCLTs to adjudicate. These disputes are mixed questions of law and fact that involve *rights in personam* as opposed to *rights in rem*, and do not have a 'social welfare' element either, thus satisfying the tests of arbitrability laid down by the Supreme Court in *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*[22] and culminating in *Vidya Drolia v. Durga Trading Corporation.*[23]

V. PROPOSED ALTERNATIVE FRAMEWORK FOR ARBITRATING APPLICATIONS UNDER SECTION 9 OF THE CODE

Currently, it is the exclusive jurisdiction of the NCLTs to adjudicate all disputes that arise in an application under Section 9 of the Code. As highlighted above, these are disputes that are not concerned with the rights of any third party since they only involve the determination of whether one party owes a debt to the other party that is undisputed and has actually become due and payable under the law. Furthermore, the decision of the Supreme Court in *Indus Biotech*[24] may have removed the jurisprudential hurdle in arbitrating such disputes, thus affording the legislature an opportunity to let arbitration enter insolvency dispute resolution.

This article proposes that the provisions of the Code should be suitably amended to mandate arbitration in respect of certain nature of disputes arising in an application under Section 9 of the Code in order to

[22] Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532.
[23] Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1.
[24] Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund & Ors. (2021) 6 SCC 436.

allow and encourage arbitration of disputes that arise in such the adjudication process of such applications. A provision, akin to Section 8 of the ACA, can be inserted in the Code, whereby the NCLT will be obligated to refer the parties to the application under Section 9 of the Code to arbitration. Herein, reference to arbitration will be done in case there is a dispute raised by the corporate debtor about whether it owes an undisputed debt to the operational creditor that has become due and payable. Once referred by the NCLT, a framework similar to that of the ACA would govern the dispute resolution process.

The principles governing the arbitration framework of insolvency disputes could be similar to that under the ACA, prioritising party autonomy, flexibility, efficiency, minimal court interference, etc. However, certain features would have to be tailored to the specific need of insolvency disputes. Given that these arbitral proceedings would not render an executable award but a mere determination of whether the corporate debtor owes an undisputed debt, that has become due and payable, to the operational creditor, the amount of Court interference can be even lesser than that under the ACA.

Therefore, unlike the current situation where the NCLT adjudicates on these mixed questions of law and fact, it will be the arbitral tribunal that will be tasked with this exercise. The arbitral tribunal would be responsible for determining the issues in dispute and giving a final finding on whether the corporate debtor actually owes an undisputed debt to the operational creditor that has become due and payable. Consequently, the advantages of arbitration as a speedy dispute resolution mechanism will be infused into

the insolvency framework, thereby helping expedite the adjudication of CIRP initiation applications. This is where the mandate of the arbitral tribunal would end.

Once the proceedings culminate in a final award, the NCLT vested with the jurisdiction over the original application can proceed to admit/reject the application basis the final findings of the arbitral tribunal. If the award establishes that the corporate debtor owes an undisputed debt to the operational creditor that has become due and payable, then the NCLT can initiate the CIRP, appoint the Interim Resolution Professional, and impose the moratorium under Section 14 of the Code.

VI. BENEFITS OF ARBITRATING APPLICATIONS UNDER SECTION 9 OF THE CODE

Speedy resolution is an important element as far as commercial disputes is concerned, and even more central as far as the Code and the CIRP are concerned. It has been repeatedly noted that speedy resolution is the essence of the CIRP,[25] and that the provisions of the Code ought to be interpreted and applied in a manner that contributes towards the faster conclusion of the CIRP so that the resolution is done in a manner that does not lead to erosion of the corporate debtor's.[26]

While the 330-day time limit for the CIRP commences from the day the application under Section 7 or 9 of the Code is admitted and the

[25] Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407; Kridhan Infrastructure (P) Ltd. v. Venkatesan Sankaranarayan, (2021) 6 SCC 94; Vidarbha Industries, Vidarbha Industries Power Ltd. v. Axis Bank Ltd., 2022 SCC OnLine SC 1339.
[26] Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17.

CIRP is commenced,[27] and not from the day the aforesaid application is filed,[28] one has to be mindful of the need to adjudicate the admission of such applications expeditiously. The Code itself provides a 14-day time limit for the NCLTs to decide on whether or not to admit an application under Section 9 of the Code.[29]

However, these applications take months, if not years, to be decided for myriad reasons. The increasing number of applications being filed under the Code, inadequate infrastructure, judicial vacancies, complex nature of issues involved, voluminous documentary evidence, etc. are some of the reasons contributing to this delay. Consequently, NCLTs end up spending considerable judicial time deciding a handful of CIRP initiation applications under Section 7 or Section 9 of the Code, leaving little time to decide other substantive disputes arising out of the Code.

The other consequence is that the corporate debtor is able to stave off the initiation of CIRP for prolonged periods, despite being insolvent and unable to clear its liabilities towards its creditors. The longer the delay, the greater the erosion of an already diminishing asset base of the corporate debtor, leaving little that can be rescued by a resolution applicant to keep it running as a going concern. This, in turn, results in resolution applicants valuing the corporate debtor at lower prices, thus often making the resolution plan an unattractive option for the Committee of Creditors of the corporate debtor, who end up favouring liquidation.

---

[27] Insolvency & Bankruptcy Code, 2016, §12, No. 31, Acts of Parliament, 2016 (India).
[28] Vidarbha Industries Power Ltd. v. Axis Bank Ltd., 2022 SCC OnLine SC 1339.
[29] Insolvency & Bankruptcy Code, 2016, §9, No. 31, Acts of Parliament, 2016 (India).

Eventually, the corporate debtor either enters liquidation, which is the last resort outcome as per the Code,[30] or the resolution plan results in creditors having to take significant haircuts on their recovery. Both consequences run contrary to two key objectives of the Code, i.e., timely resolution of the corporate debtor as a running/going concern and maximisation of the economic value of the assets of the corporate debtor to ensure maximum recovery by all creditors.[31]

Arbitration can help address these issues. Due to its procedural flexibility, the dedicated nature of arbitral tribunals to a particular dispute, and the greater availability of arbitrators, it can be expected that CIRP initiation applications under Section 9 of the Code will be decided more expeditiously. With the increasing support being provided to arbitration as a means of commercial dispute resolution, it is slowly emerging as a preferred means of resolving complex commercial-legal issues. Disputes arising in applications under Section 9 of the Code can be one of the types of disputes that the Indian arbitration framework resolves.

VII. NECESSARY SAFEGUARDS FOR THE PROPOSED ALTERNATIVE FRAMEWORK

Given that the aforesaid framework proposes that arbitration (a private, non-sovereign dispute resolution mechanism) has a direct bearing on *in rem* proceedings like insolvency, there ought to be necessary safeguards in place to ensure just outcomes. At the same time, it has to be

[30] K.N. Rajakumar v. V. Nagarajan, (2022) 4 SCC 617.
[31] Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17.

ensured that such a framework does not give either party avenues to engage in dilatory tactics that unnecessarily extend the time taken to adjudicate applications under Section 9 of the Code, as that will defeat the entire purpose for introducing arbitration to CIRP admission applications.

Since arbitration proceedings pursuant to applications under Section 9 of the Code will not result in an executable award but will only determine whether the corporate debtor owes an undisputed debt to the operational creditor that has actually become due and payable, the scope of interference by the NCLT while the arbitral proceedings are ongoing can be and will have to be minimal. It is thus proposed that the framework only allow petitions to the NCLT for grant of interim relief(s) so that the operational creditor's application does not become infructuous.

Second, the framework should have short timelines for the appointment and completion of arbitral proceedings, keeping in mind the necessity of adjudicating these applications efficiently. A one-to-three-month timeline would be most appropriate, with the NCLT having limited jurisdiction to extend the same. Given that the arbitral tribunal will be dedicated to deciding a single question, it is fair to expect that it will be able to resolve the dispute expeditiously within this timeline. Furthermore, there can be stringent, mandatory penalties that discourage either party from adopting dilatory tactics, and the incentive structure for the arbitrators can also be tailored to ensure they are motivated to decide disputes referred to them within the prescribed timelines.

As far as the procedure for challenging the award is concerned, a course similar to that under Section 34 of the ACA can be adopted, with

certain modifications. First, certain grounds can be removed, such as those encapsulated under Section 34(2)(b) of the ACA, thus restricting the scope of challenge only on procedural and jurisdictional grounds. Alternatively, the ground to challenge the arbitral award based on jurisdiction can be removed if the NCLT is mandated to take a final, binding, and non-appealable view at the stage of referring the parties to arbitration on whether the arbitral tribunal would have jurisdiction to decide the disputes involved.

Second, the provision of an appeal as provided under Section 37(1)(c) of the ACA against an order setting aside or refusing to set aside an arbitral award under Section 34 ACA can also be removed in order to prevent unnecessary appeals and consequent delays in deciding the issues raised in an application by the operational creditor to initiate the CIRP. Third, a provision like Section 36 of the ACA can be abolished, as the arbitral award in this context will not have to be enforced at all. Under this framework, the arbitral tribunal will automatically forward its findings to the concerned NCLT, which will then be expected to take a decision, based on these findings, to either admit or reject the application under Section 9 of the Code, and consequently initiate or decline to initiate the CIRP of the corporate debtor.

This framework can attain the balance of ensuring that the arbitration process under the Code is lean and efficient, while also ensuring that necessary safeguards to protect the rights of the parties involved are present. It will also help ensure that while there is minimal interference by

the in the arbitration process, supervisory jurisdiction is still exercised so that the process has the required legal sanctity.

VIII. CONCLUDING REMARKS

Until recently, insolvency disputes were considered in-arbitrable. *Indus Biotech* has possibly changed the landscape and potentially overcome a jurisprudential hurdle towards arbitrability of admission applications under Section 7 and Section 9 of the Code. It is possible, theoretically and practically, to refer CIRP initiation applications to arbitration for determination of whether the corporate debtor owes a debt to the creditor that has become due and payable, and thereafter refer the issue to NCLT.

A possible framework can be developed, along the broad contours suggested above, such that it balances the interests and concerns of all stakeholders involved, while helping infuse efficiency and ensuring time bound adjudication of CIRP initiation applications under the Code. Infusing arbitration into insolvency disputes will help reduce the burden on NCLTs, which is already saturated with various disputes under the Code and the Companies Act 1956/2013. This measure, by promoting time bound adjudication of CIRP initiation applications, will help effectuate one of the central objectives of the Code. It will also help in affording the parties the necessary procedural flexibility that aids the adjudication of complex commercial disputes.

Similar to other commercial disputes, arbitration has the potential of reforming the adjudication process of CIRP initiation applications under Section 9 of the Code. The Hon'ble Supreme Court having removed the

jurisprudential hurdle in *Indus Biotech*,[32] the legislature has a golden opportunity to suitably amend the Code and introduce mandatory arbitration of CIRP initiation applications under Section 9 of the Code.

[32] Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund & Ors. (2021) 6 SCC 436.