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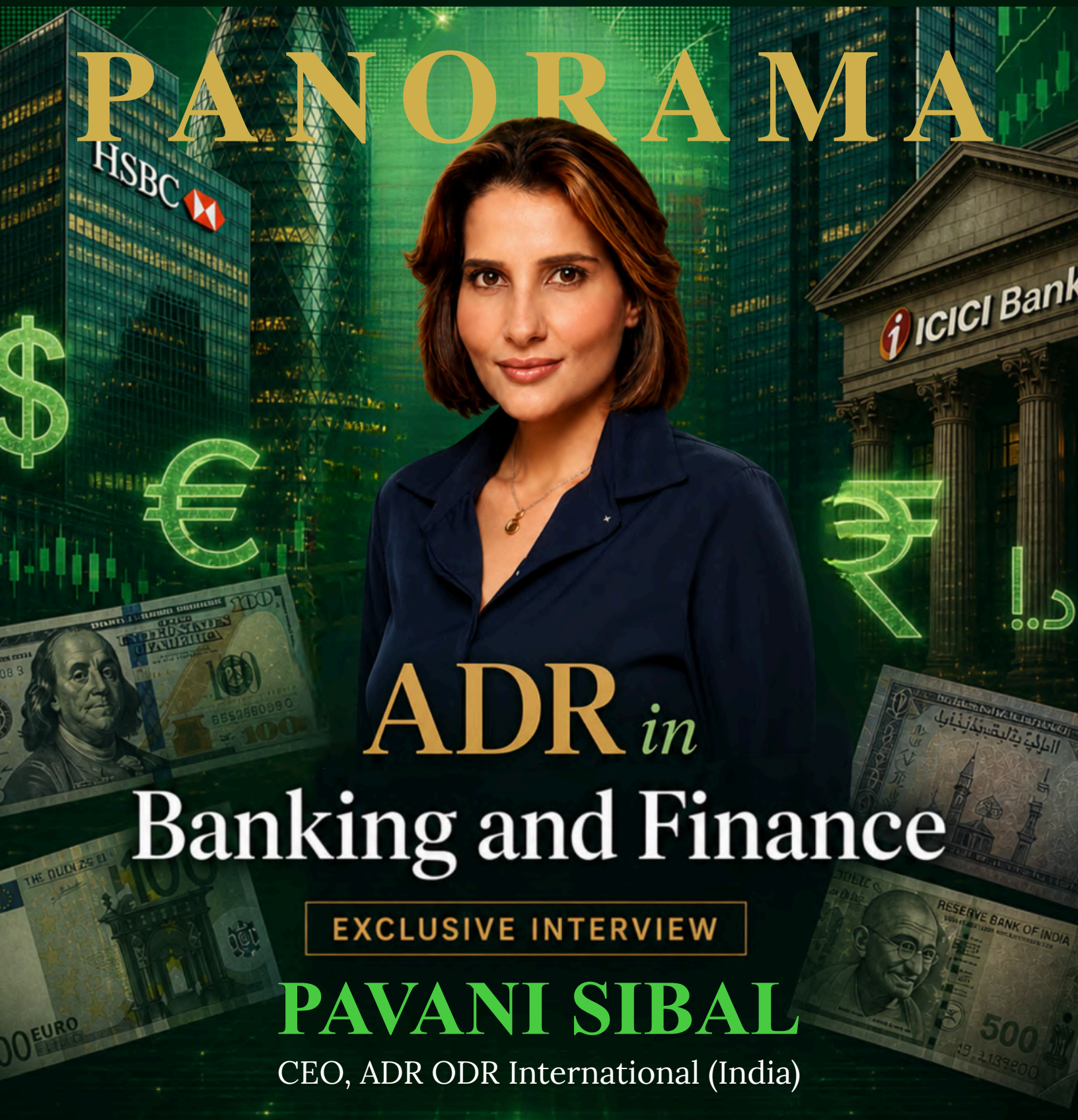
Institutional & Industrial Dispute Resolution Centre

PANORAMA



ADR *in* Banking and Finance

EXCLUSIVE INTERVIEW

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CEO's MESSAGE

01

India has 55 million pending cases. The average CIRP takes 700 days to resolve. A bank guarantee can be encashed before breakfast. And somewhere in a contract that nobody read carefully at signing, there is a dispute clause that will determine whether a business survives the next eighteen months. This is the landscape that dispute resolution practitioners actually work in. Not the conference version, the real one.

This month's Panorama sits squarely inside that reality.

The articles in this issue are not theoretical exercises. They are maps of live collision zones: insolvency versus arbitration, bank guarantees versus the speed of commerce, AI-generated decisions versus a legal framework that still assumes a human being made the call. These are disputes that are happening right now, in courts and tribunals and boardrooms, and the law is still catching up.

The Tis Hazari Open House brought that reality into the room. Our panellists did not discuss mediation as an idea. They discussed it as a practice, on the ground, at the Bar, where litigation lawyers are still figuring out what the Mediation Act, 2023 actually means for them. The honest answer, as the session made clear, is that they are still figuring it out. Which is exactly when conversations like these matter most.

We also interviewed Pavani Sibal this month. One answer stayed with me. When asked whether ADR frameworks are ready for fintech and digital disputes, she said: not entirely, but they are evolving. That is about as honest as this field gets.

The MoUs we signed this month, with law firms, chambers, and technology companies across the spectrum, are part of the same bet. That the people building dispute resolution infrastructure today will be the ones the next generation of commercial disputes lands on. We intend to be ready.

Hamid

CEO, IIDRC

SECTION ONE · WELCOME NOTE

DRIVEN BY OUR ETHOS

01 Integrity

Upholding ethical standards and trust at every stage of dispute resolution.

02 Resolution

Delivering efficient, fair, and outcome-oriented solutions to complex conflicts.

03 Neutrality

Ensuring impartiality and independence in every process and decision.

04 Excellence

Striving for the highest standards in practice, innovation, and client service.

SECTION TWO · EVENTS

IIDRC – INSTITUTIONAL COLLABORATION

02

IIDRC continues to strengthen its vision of fostering a robust dispute resolution ecosystem by actively building meaningful alliances across the legal and corporate landscape. Through a series of strategic Memorandums of Understanding (MoUs), IIDRC has successfully partnered with a diverse network of law firms, chambers, and innovative business entities, reinforcing its commitment to promoting Alternative Dispute Resolution (ADR) across industries.

These collaborations include esteemed organizations and professionals such as **Vachaspatey Partners**, **Medhavi Law Partners**, **Lexvent Partners, Legalpay Technology Private Limited**, and **Ahuja & Associates**, along with dynamic corporate entities like **Trailnest Innovations (OPC) Private Limited** and **Aonami Technologies Private Limited.**

IIDRC has also extended its network to leading independent practitioners and chambers, including **Vaishali Jain**, **Law Chambers of Natasha Syal**, **Chambers of Saurajay Prakas Nanda**, **Clement Law, Chambers of Himanshu Shembekar, Chambers of Dr Charu Mathur, and C&S Law Chambers.**

These partnerships reflect IIDRC's strategic approach to bridging the gap between traditional legal practice and evolving dispute resolution mechanisms. By collaborating with stakeholders across litigation, corporate advisory, legal technology, and emerging business sectors, IIDRC aims to create a multi-disciplinary platform that encourages dialogue, innovation, and practical adoption of ADR.

Through these alliances, IIDRC is not only expanding its institutional reach but also facilitating knowledge exchange, capacity building, and awareness around arbitration, mediation, and other ADR mechanisms. The institute's outreach efforts are designed to integrate ADR into mainstream business practices, making dispute resolution more efficient, accessible, and commercially viable.

As IIDRC continues to grow its network, these collaborations stand as a testament to its mission of building a future-ready dispute resolution ecosystem one that transcends industries, fosters professional synergy, and promotes sustainable growth through effective conflict management.

Institutional Collaboration

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IIDRC – INSTITUTIONAL COLLABORATION

MoU signing with **Vachaspatey Partners**

MoU signing with **Medhavi Law Partners**

MoU signing with **Lexvent Partners**

SECTION TWO · EVENTS

INSIGHTS FROM THE AAI KNOWLEDGE SERIES

IIDRC on **4th April 2026** hosted another webinar from AAI Series titled **ADR In Banking & Finance: Loan Defaults, Guarantees, Insolvency & Fintech Disputes.** The session brought together leading arbitration practitioners, legal scholars, and technology law specialists to examine the evolving landscape of dispute resolution in the fast-moving startup and digital ecosystem. Moderated by **Asad Saeed**, (Executive Policy and Communications, Presolv360), the webinar provided actionable insights into how ADR mechanisms can address the unique legal challenges that technology-driven businesses face today.

Opening the discussion, **Mr. Rishabh Gandhi,** Founder, Rishabh Gandhi & Advocates offered a grounded perspective, cautioning against viewing Alternative Dispute Resolution (ADR) as a universal remedy. He highlighted that modern financial disputes are no longer linear but involve multiple stakeholders, borrowers, guarantors, financial institutions, and regulators, making them inherently layered. While ADR can be highly effective in contractual disputes, he emphasised that its success lies in contextual application, not blanket adoption.

> *"The banking and finance ecosystem today is evolving at an unprecedented pace, driven by digital lending, fintech platforms, and increasingly complex financial products."*
>
> **Asad Saeed,**
> Executive Policy and Communications, Presolv360

> *"In high-stakes commercial matters, accessibility and efficiency are as important as legal correctness.."*
>
> **Ms. Raveena Rai**
> (Counsel, Khaitan & Co.)

The session explored how financial disputes today are increasingly complex, sitting at the intersection of multiple legal and commercial considerations. The discussion emphasised that modern dispute resolution must balance efficiency, fairness, and commercial realities, with ADR emerging as a central not alternative mechanism. Ultimately, the focus is not on selecting a single forum, but on designing flexible systems tailored to the nature of disputes and stakeholder priorities.

> *"ADR in banking and finance is not a one-size, fitsall solution it must be tailored to the nature of each dispute."*
>
> **Dr. Misha Kumar**
> FCIArb (Founder, MK Law Chambers)

KEY INSIGHTS FROM THE WEBINAR

- Financial disputes are multi-layered, involving contract, insolvency, and regulatory dimensions.
- Future lies in flexible, tailored, and stakeholder-centric dispute resolution systems.
- Stakeholders often prioritise resolution over perfect outcomes
- Effective dispute resolution begins at the contract drafting stage, not just at conflict.
- ADR is no longer "alternative" but a core pillar in financial dispute resolution.

To know more from the webinar, read the full transcript on the IIDRC website.

SECTION TWO · EVENTS

OPEN HOUSE AT TIS HAZARI DISTRICT COURT

The Mediation Act, 2023 at the Bar: What Has Changed, What Hasn't, and What Must.

On **23 April 2026**, IIDRC hosted an **Open House at Tis Hazari District Court** on an evolving and relevant theme, '**The Mediation Act, 2023 at the Bar: What Has Changed, What Hasn't, and What Must.**'

The session was enriched by the valuable insights and practical experiences of our speakers **Mr. Param Bhamra** (Founder, MediateGuru), **Ms. Aastha Gupta** (Treasurer, New Delhi Bar Association), and **Mr. Nishant K. Srivastava (Managing Partner**, Actus Legal) and moderated effectively by **Mr. Himanshu Bodwal** (Founder, Medhavi Law Partners).

SECTION TWO · EVENTS

OPEN HOUSE AT TIS HAZARI DISTRICT COURT

The Mediation Act, 2023 at the Bar: What Has Changed, What Hasn't, and What Must.

OPEN HOUSE AT TIS HAZARI DISTRICT COURT

'The Mediation Act, 2023 at the Bar: What Has Changed, What Hasn't and What Must.'

KEY TAKEAWAYS

Mr. Bhamra raised important questions such as: What do clients really seek when they approach the courts? As torchbearers of justice, what should be the end goal and driving force behind advocacy?

Ms. Aastha highlighted the ground realities, noting how litigation lawyers are still grappling with mediation as a resolution mechanism.

Mr. Nishant K. Srivastava drew from his personal experiences as a mediator and provided practical tips and guidance to aspiring mediators.

The session also touched upon the enforceability of mediation settlements, the Mediation Council of India, and the need for a psychological shift to instill greater confidence in mediation as a resolution mechanism.

The session moved beyond theory to focus on practical, on-ground insights for counsels and aspiring mediators navigating this evolving landscape.

Crucially, the session reinforced that mediation is no longer just an "alternative" - it is becoming a core dispute resolution mechanism, creating strong, long-term opportunities for the Bar.

It also addressed a key misconception: mediation does not mean a monetary loss, but rather offers efficiency, better client outcomes, and sustainable professional growth.
The room brimmed with intelligent discourse making the session a success and the Open House a meeting of great minds.

SECTION THREE · ARTICLES

Article 1: AI-Enabled Smart Contracts and Automated Decision-Making in FinTech: Legal Attribution, Evidentiary Challenges, and Arbitral Enforceability Under the Egyptian Civil Law Framework

03

I. INTRODUCTION

The convergence of artificial intelligence systems and smart contracts in FinTech creates contractual environments that challenge foundational legal assumptions about intention, attribution, and enforceability, assumptions embedded in Egypt's Civil Code of 1948 and the arbitration framework under Law No. 27 of 1994. AI systems now govern credit scoring, loan origination, and payment routing across Egypt's expanding digital lending sector, regulated by the Central Bank of Egypt's FinTech framework under Law No. 194 of 2020 and CBE FinTech Regulations 2022. When disputes arise, arbitral tribunals must assess attribution, evidentiary weight, and procedural fairness without codified standards for algorithmic evidence, a governance gap with direct consequences for the enforceability of Egyptian-seated awards.

Empirical research on AI adoption in Egyptian commercial contracting identifies legal readiness as the primary determinant of adoption depth, a finding with direct implications for FinTech governance: structural and normative obstacles, not capital expenditure, constitute the principal barriers to responsible AI deployment. This article addresses three structural tensions: the attribution gap when AI denies credit or executes a smart contract adversely; the evidentiary classification problem when AI outputs are submitted in arbitration; and the due process asymmetry between sophisticated deployers and algorithmically disadvantaged counterparties. These tensions are causally interdependent: attribution gaps generate evidentiary voids, and evidentiary voids produce the procedural asymmetries that undermine fair adjudication.

II. CIVIL LAW FOUNDATIONS AND THE ATTRIBUTION PROBLEM

Under Egyptian civil law, contractual validity is grounded in attributable human consent. Article 89 of the Civil Code provides that a contract is formed by two corresponding declarations of will; Article 90 requires coincidence on essential terms. These provisions embed the voluntarist principle that contractual obligation arises from conscious, attributable human intention, a principle developed systematically by Al-Sanhuri's foundational civil law scholarship. AI systems lack legal personality and cannot generate juridical will independently. Their outputs acquire legal relevance only through human validation.

The binding force established by Article 147(1) and the good faith obligation of Article 148 impose continuing supervisory duties on deploying institutions. An institution deploying an AI credit model does not discharge its Article 148 obligation by automating assessment; it assumes an affirmative duty extending to monitoring, correction of discriminatory outputs, and recalibration

against model drift, a temporal dimension of good faith compliance that Egyptian judicial authority has not yet directly addressed but that follows from the provision's structural logic.

Three attribution dimensions require distinct analysis. Formation attribution treats AI- communicated credit decisions as attributable institutional declarations under Articles 89–90, precluding characterization of automated outputs as non-binding computations. Performance attribution holds deploying parties responsible for smart contract execution consequences, including erroneous execution from corrupted oracle data, under Article 147(1). Liability attribution engages Article 148's good faith standard as a basis for institutional responsibility for AI outputs that produce discriminatory or inequitable results.

III. EVIDENTIARY CLASSIFICATION AND DUE PROCESS

Law No. 27 of 1994 grants arbitral tribunals broad procedural discretion under Article 25 and mandates equal treatment of parties under Article 26. AI-generated outputs, credit scores, smart contract execution logs, algorithmic delay analyses, resist binary classification as either documentary or expert evidence. This article proposes a three-tier framework: **first-tier** clerical outputs (transaction records, blockchain logs) treated as documentary evidence; **second-tier** assistive analytical outputs (compliance alerts, pattern-matching summaries) requiring methodological disclosure; and **third-tier** determinative outputs credit scores, quantum calculations) classified analogously to expert evidence with full methodology disclosure, adversarial scrutiny, and independent verification where proportionate.

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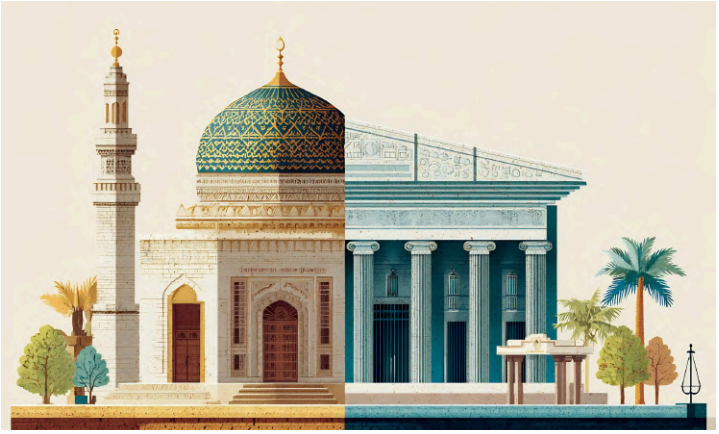
Article 1: AI-Enabled Smart Contracts and Automated Decision-Making in FinTech: Legal Attribution, Evidentiary Challenges, and Arbitral Enforceability Under the Egyptian Civil Law Framework

The critical threshold between tiers two and three lies in evaluative depth: where an output effectively determines rights through probabilistic inference, it requires treatment as expert-analogue material.

The due process dimension is structural. A deploying institution possesses inherent informational advantages; the counterparty typically cannot interrogate algorithmic methodology without mandatory disclosure. Article 26's equal treatment requirement, purposively construed, extends to any evidentiary category whose opacity structurally impairs adversarial engagement. Egypt's Personal Data Protection Law reinforces this obligation: institutions must disclose automated decision logic to affected data subjects, and non-compliance constitutes an anterior violation that strengthens Article 26 challenges in arbitration. Enforcement vulnerability is concrete. Under Article 53(1)(d) of Law No. 27 of 1994, awards may be annulled for procedural defects affecting the award. Under Article V(1)(b) of the New York Convention, enforcement may be refused where a party was unable to present its case. Awards relying on undisclosed algorithmic analyses without affording meaningful challenge face both domestic annulment risk and international enforcement vulnerability, particularly in jurisdictions applying AI governance frameworks mandating explainability.



IV. GOVERNANCE ARCHITECTURE

A governance framework compatible with existing Egyptian law requires five elements: explicit affirmation of human attribution under Articles 147–148; adoption of the three-tier evidentiary classification standard under Article 25 discretion; mandatory methodological disclosure calibrated to the tier of inference involved; tribunal authority to appoint neutral technical experts; and institutional guidance notes from CRCICA, consistent with its 2024 rulemaking, addressing disclosure standards, classification criteria, and equality of arms safeguards. Statutory amendment is unnecessary: the Civil Code's foundational provisions and Law No. 27 of 1994's procedural flexibility are sufficient legal instruments if applied with deliberate institutional purpose.

Gulf Cooperation Council enforcement markets reinforce this agenda operationally. ADGM, DIFC, and the Saudi Data and AI Authority have each introduced governance frameworks imposing AI transparency and auditability requirements that Egyptian-seated awards must be capable of satisfying. CRCICA awards are more frequently submitted for enforcement in Gulf jurisdictions than in EU member states, making GCC governance standards the primary practical enforcement risk. Egypt's proactive development of equivalent domestic standards through CRCICA and CBE institutional channels is therefore a regional competitive imperative, not merely an aspirational governance objective.

V. CONCLUSION

Egyptian civil law is normatively capable of governing AI-enabled FinTech contracting through adaptive interpretation of existing provisions. The attribution triad, tiered evidentiary classification, and structured disclosure standards are grounded in the Civil Code and the Arbitration Law rather than aspirational reform. What remains necessary is deliberate institutional articulation, by CRCICA, the Egyptian judiciary, and financial regulators, ensuring that algorithmic tools serve law rather than silently reshape it. The direction chosen now will determine whether AI integration reinforces arbitration's legitimacy or gradually erodes it through opacity and doctrinal uncertainty.

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SECTION THREE · ARTICLES

Article 2: Arbitration's Collision with Insolvency: Mapping the Structure Asymmetry in India's Dual Framework

I. INTRODUCTION

India's dispute resolution landscape fractured and rebuilt itself in the post-2015 era. Two legislative giants emerged: the Insolvency and Bankruptcy Code, 2016 2 and the Arbitration and Conciliation (Amendment) Act. 3 Both were transformative. The IBC dismantled a sluggish, decades-old insolvency architecture, replacing it with a creditor-driven, time-bound machine. Meanwhile, the amended Arbitration Act aggressively pushed back against judicial interference, crowning party autonomy as the undisputed king of commercial disputes. Both frameworks championed efficiency. But when you put them in the same room, with the same parties, they violently collide.

This collision happens every day. A corporate debtor enters CIRP carrying a massive stack of loan agreements, supply contracts, and joint venture documents. Almost all of them contain arbitration clauses. What happens next? Three distinct questions immediately surface: Are insolvency disputes arbitrable at all? Does a moratorium instantly paralyze an ongoing arbitral proceeding? And can a financial creditor just bypass an arbitration clause entirely to drag a debtor to the NCLT under Section 7? Indian courts have tackled all three. Yet, their answers expose a glaring structural asymmetry that Parliament has completely ignored.

II. THE NON-ARBITRABILITY OF IBC DISPUTES

The Supreme Court drew a hard line in *Vidya Drolia v. Durga Trading Corporation*. The Court confirmed what practitioners already suspected: you cannot arbitrate an insolvency. The logic hinges on the classic in rem versus in personam divide established earlier in *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd*. Arbitration is a private, bilateral room. It works beautifully for in personam disputes. But a CIRP is fundamentally in rem. It does not just settle a debt between two parties; it forcefully restructures the debtor's entire legal reality against the rest of the world. No arbitral tribunal holds that kind of power.

The problem is that *Vidya Drolia* only tackles the low hanging fruit. The insolvency proceeding itself? Non arbitrable. That makes sense. But the messy reality of a CIRP does not exist in a vacuum. It drags a tangled web of underlying contracts with it. What about a fight over the exact quantum of a claim? Or whether a specific security interest is actually valid? These are deeply bilateral fights hiding inside an in rem process. *Vidya Drolia* tells us we cannot arbitrate the insolvency. It offers zero guidance on what to do with the highly specific, purely bilateral disputes that inevitably explode mid-CIRP.

III. THE MORATORIUM AND ITS ARBITRAL CONSEQUENCES

The moment a CIRP kicks off, Section 14 drops the guillotine: an automatic moratorium. Everything stops. The text explicitly bars the continuation of "legal proceedings" against the corporate debtor. It conspicuously fails to mention "arbitral proceedings." Unsurprisingly, that silence triggered a wave of litigation.

The Delhi High Court hit the issue head-on in *Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd.*, ruling that the moratorium absolutely suffocates pending arbitral proceedings. The Supreme Court backed this up in *Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan Pvt. Ltd.*, extending the freeze across all legal fora. *Embassy Property Developments Pvt. Ltd. v. Union of India* hammered the final nail into the rationale: you have to read the moratorium purposively. If creditors could keep quietly securing arbitral awards against the debtor mid-CIRP, they would effectively jump the queue and drain the collective asset pool. The logic holds up in a courtroom. On the ground, it is brutal. Imagine a creditor who just spent three years and millions of rupees fighting an arbitration, weeks away from a final award. The moratorium forces them to drop their pens, walk away, and stand at the back of the CIRP line. Party autonomy does not just yield; it is entirely erased by a statutory framework the creditor never opted into. The arbitration clause is suspended indefinitely, leaving the creditor at the absolute mercy of the Section 53 waterfall.

IV. ARBITRATION CLAUSES AT THE PRE-ADMISSION STAGE

Here is the issue that actually keeps commercial lenders awake at night: can a desperate debtor use an arbitration clause to block a Section 7 petition before it even gets off the ground? The debtor's playbook is obvious. They argue the payment default is a contractual dispute, demanding the creditor exhaust arbitration first. The Supreme Court shut this down in *Innoventive Industries Ltd. v. ICICI Bank*. The Court clarified that a Section 7 application is not a contractual remedy at all. It is a statutory trigger pulled by the mere fact of a "default." An arbitration clause governs the contract; it cannot legally gatekeep a statutory insolvency regime. Pragmatically, forcing lenders into arbitration first would completely gut the IBC's 180-day timeline, handing defaulting debtors the ultimate delay tactic.

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Article 2: Abitration's Collision with Insolvency: Mapping the Structure Asymmetry in India's Dual Framework

This creates a clean, fast lane for financial creditors. But operational creditors get a completely different, far more frustrating reality. As Swiss Ribbons Pvt. Ltd. v. Union of India 12 established, the IBC treats these two classes differently. Under Section 9, an operational creditor must prove the debt is undisputed before they even get through the NCLT's door. If their contract has an arbitration clause and the debtor raises even a shadow of a dispute, the NCLT will likely throw the petition out. The fundamental rule of arbitrability from *A. Ayyasamy v. A. Paramasivam* is that private agreements govern private disputes. Yet, the IBC fractures this rule, applying it selectively depending on who is asking for the money.

V. THE WAY FORWARD

The doctrine holds. The practice, however, fails. Courts are technically correct: CIRP is not arbitrable, and moratoriums must freeze arbitrations. *Indus Biotech Private Limited v. Kotak India Venture (Fund)-I* solidified that no arbitration agreement can oust the NCLT when the core of the dispute touches insolvency. But while Section 60(5) hands the NCLT broad jurisdiction, that tribunal was never built for complex, granular contract law. Asking the NCLT to dissect the intricacies of liquidated damages in a specialized construction contract is asking a bankruptcy judge to act as an arbitration panel. It simply does not work. The empirical reality of the NCLT dockets makes this an urgent crisis rather than a theoretical puzzle. In an eight-month empirical study of 200 NCLT orders conducted at CARCIL, the operational friction was glaringly obvious. The statutory 180-day ceiling is effectively a fiction. Real-world resolution timelines shatter these limits, stretching to an agonizing average of 512 days. Even more troubling, 38% of these NCLT orders face inadequacy issues or appellate scrutiny. A significant driver of this breakdown is the tribunal suffocating under the weight of bilateral contractual disputes it was never equipped to adjudicate.

We do not need a radical doctrinal overhaul. We need a surgical legislative fix. Parliament must amend the IBC or the Arbitration Act to explicitly allow bilateral contractual disputes arising within a CIRP to be referred to a specialized arbitral tribunal. The catch? The resulting award operates purely as a verified claim in the insolvency process, not as an executable decree against the estate. The moratorium stays intact. No one jumps the queue. But the NCLT's crushing docket is lightened, and the actual bilateral dispute gets resolved by experts chosen for the job. We need Parliament to finally draw the clear line that courts have been struggling to sketch case by case.

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SECTION THREE · ARTICLES

Article 3: Between Moratorium and Mandate: Resolving Jurisdictional Conflict between Insolvency Proceedings & Arbitration in India

I. INTRODUCTION

The enactment of the Insolvency and Bankruptcy Code, 2016 represented a paradigmatic shift in India's approach to corporate distress. The 2016 introduction of the Insolvency and Bankruptcy Code (IBC) signalled a new era in the management of corporate distress in India. Before the IBC, several acts regulated insolvency proceedings, creating inefficiencies and low returns to creditors. The IBC simplified this process by introducing a time-bound, creditor-friendly Corporate Insolvency Resolution Process (CIRP), administered by the National Company Law Tribunal (NCLT), and a mandatory moratorium during admission. Meanwhile, the Arbitration and Conciliation (Amendment) Act (ACA) was amended in 2015, and again in 2019 and 2021, promoting arbitration as the preferred dispute resolution mechanism for commercial disputes. But this centralised approach to dispute resolution under IBC is at odds with the ACA's emphasis on giving effect to the dispute resolution mechanism selected by the parties, revealing an inconsistency between the two frameworks.

I. LEGISLATIVE FRAMEWORK: THE INTERSECTION OF THE IBC AND THE ACA

I.I IBC's Moratorium: Section 14 and Section 238

When an application for CIRP is admitted, Section 14(1)(a) of the IBC operates to impose an automatic stay which bars 'the institution of suits or the continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.' The scope of this provision, which explicitly mentions 'arbitration panel[s]', leaves no room for doubt that the moratorium includes arbitral proceedings, not just litigation in court. This interpretation is supported by Section 238 of the IBC, which states that the provisions of the Code shall prevail over anything inconsistent with them in 'any other law for the time being in force'. Together, Sections 14 and 238 offer a strong prima facie argument in favour of an automatic stay on pending arbitral proceedings in the event of an application for admission to a CIRP.

I.II The Arbitration and Conciliation Act, 1996 (as amended)

The ACA promotes party autonomy and constrains judicial intervention, with Section 8 mandating court referral to arbitration in case of a valid agreement, without exceptions. Courts can grant interim relief under Section 9. The 2015 and 2021 amendments added Section 29A, strictly enforcing time limits for awards, but with judicial discretion. There is a tension between the ACA, promoting arbitration and the IBC requiring suspension of actions against corporate debtors, with no clear precedence. Section 238's overriding provision isn't self-operating in complex scenarios, requiring judicious attention to jurisdictional concerns.

I.III The Pre-Existing Dispute Defence

One particular problem in the interaction between the IBC and arbitration occurs at the gate: the 'pre-existing dispute' defence. The IBC bars an operational creditor's application under Section 9 if the debtor proves that the debt is disputed. The presence of an arbitration agreement in the underlying contract and of pending (or proposed) arbitration proceedings is seen as circumstantial evidence of such a dispute. This provides a strong incentive to invoke "pre- existing disputes" to delay insolvency procedures, and courts have struggled to separate genuine disputes from abuse.

II. JUDICIAL TRENDS

The Supreme Court established the test of non-arbitrability in India with a fourfold test. A dispute is not arbitrable if: (i) it is a right in rem (as opposed to in personam); (ii) it has erga omnes effect affecting third-party rights; (iii) it is required to be adjudicated by a centralised court; and (iv) it is expressly or by necessary implication excluded from arbitration by statute.

Kotak brought an application under Section 7 of the IBC against Indus Biotech for optionally convertible redeemable preference shares. Indus Biotech argued the dispute is governed by an arbitration clause and the NCLT should order arbitration, rather than proceed further with the insolvency application.

The Supreme Court held that where an operational creditor's debt is the subject of a pre-existing dispute evidenced, inter alia, by pending arbitral proceedings the Section 9 insolvency application is not maintainable.

III. DATA ANALYSIS

Financial Year	CIRPs Admitted	Resolution Plans Approved	Liquidation Orders	Sec. 12A Withdrawals	Avg. CIRP Duration (days)
FY 2020–21	727	62	252	294	~650
FY 2021–22	1,140	105	317	229	655
FY 2022–23	1,263	189	448	322	659
FY 2023–24	~1,080	~200	~350	~290	701
FY 2024–25†	~589	~100+	~200+	~150+	~597*

Source: Insolvency and Bankruptcy Board of India, Annual Reports 2021–2024 and Quarterly Newsletter October–December 2024; EY, Nine Years of IBC: Transforming India's Insolvency Landscape (2025).

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Article 3: Between Moratorium and Mandate: Resolving Jurisdictional Conflict between Insolvency Proceedings & Arbitration in India

A few key observations can be made from the study of insolvency-arbitration nexus.

Firstly, the large and steady number of CIRP admissions (more than 1,000 cases per year in 2021-22 and 2022-23), indicates that IBC has emerged as the preferred mechanism for large-scale commercial dispute settlement. This has led to a wave of situations where the moratorium has an impact on the arbitration.

Secondly, the trend of a decline in the number of cases resolved under approved plans and an increase in the number of orders for liquidation suggests that many CIRP admissions are for entities that have lost a significant portion of their assets before they become insolvent.

Third, the large number of Section 12A withdrawals (averaging more than 250 per year in the time period under consideration) suggests that a considerable number of cases are settled by way of negotiations after the application is admitted but before a resolution plan is approved. This raises the possibility that the CIRP process, including the moratorium, has a coercive effect on settlement of disputes.

IV. KEY ISSUES AND ANALYTICAL OBSERVATIONS

The Supreme Court's interpretation of Section 14 in NTPC v. SPML, which treats claims against and by corporate debtors differently, leads to uncertainties in the arbitration processes in matters involving claims and counterclaims. It leads to queries regarding the status of arbitration proceedings: whether to stay the whole process or the counterclaim, or bifurcate the proceedings. The judicial inconsistent practices and absence of legislative guidance makes these cases complex for the arbitral tribunal. Additionally, the interplay between Section 29A of the Arbitration and Conciliation Act" (ACA) and the IBC moratorium raises issues. Under Section 29A, arbitral awards must be made within a certain timeframe, but this continues to apply despite an arbitration being stayed by a moratorium under Section 14 of the IBC, which could result in delays. The Mediation Act, 2023 aims to resolve disputes via mediation, and provides a framework that could assist in insolvency cases by presenting alternatives to initiation of CIRP. Mediation may avoid insolvency and ease the shift from conflict to settlement, possibly complementing the IBC's Section 12A facility for withdrawing insolvency applications with creditor agreement. This dual approach may promote a more positive dispute resolution environment.

V. CONCLUSION

India's insolvency-arbitration interaction is fraught with complexities that need to be managed judiciously by key stakeholders. While the Supreme Court's decisions, such as in Vidya Drolia, Indus Biotech and NTPC v. SPML, establish an emerging paradigm, we need legislative reforms to ensure clear rules for business. India's aspirations to be an international arbitration destination are consistent with its aspirations to be a creditor-friendly insolvency jurisdiction. A harmonised relationship between the IBC and the Arbitration and Conciliation Act (ACA) is crucial to avert abuse of IBC proceedings, protect arbitrations and resolve insolvency issues. The need for better managing these interactions is underlined by the filing of more than 8,000 CIRPs between 2020 and 2025, with an average resolution time of more than 700 days.

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SECTION THREE · ARTICLES

Article 4: When a Guarantee Is Called: ADR and the Battle Over Bank Guarantees in India

I. INTRODUCTION

Imagine you are a mid-sized construction contractor. You have spent two years building 400 flats for a steel conglomerate, navigating labor shortages, delayed approvals, and a pandemic-hit supply chain. The project runs behind schedule. The employer terminates the contract and, almost immediately, sends a letter to your bank demanding encashment of the performance bank guarantee you had provided as security. By the next morning, Rs. 4 crores could be gone. Your business could be crippled. And the underlying dispute about who was actually responsible for the delays has not even been heard yet. This is not hypothetical. This is, in essence, what happened to M/s Bansal Infra Projects in 2024, when Jindal Steel and Power Limited moved to encash their bank guarantee after terminating a construction contract. The case travelled from a Commercial Court in Cuttack all the way to the Supreme Court of India in 2025. And the questions it raised about when courts should step in, when arbitration is the right forum, and what happens to the underlying dispute while a guarantee hangs in the balance sit at the very heart of ADR in Indian banking and finance today.

I. WHAT MAKES A BANK GUARANTEE SO DANGEROUS

A bank guarantee is deceptively simple on its face. A bank promises to pay a fixed sum to a beneficiary, typically the employer or lender if the principal fails to perform. Unlike a surety bond or a letter of credit conditional on documents, an unconditional bank guarantee can be called on demand. The bank is not entitled to look behind the guarantee. It does not examine the merits of the underlying dispute.

That is precisely why bank guarantees are so commercially useful and so commercially dangerous. They function, as the Supreme Court has described them, as "the lifeblood of commercial transactions." A contractor furnishing a performance guarantee is, in effect, putting cash on the table. If the guarantee is called, the financial hit is immediate and real. The fact that the contractor may win an arbitration award two years later does not undo the liquidity crunch in the meantime.

This asymmetry between the speed of encashment and the slowness of adjudication is what creates the battlefield.

II. THE COVID GAMBIT: HALLIBURTON V. VEDANTA

Halliburton Offshore Services Inc. had a contract with Vedanta Limited to develop three oil fields in Rajasthan the MBA blocks (Mangala, Bhagyam, and Aishwarya). Halliburton provided eight bank guarantees as performance security. When the lockdown brought industrial activity to a halt in March 2020, Halliburton fell behind its deadlines. Vedanta terminated the contract and immediately moved to encash all eight guarantees. Halliburton rushed to the Delhi High Court under Section 9 of the Arbitration and Conciliation Act, 1996, seeking an emergency injunction. The argument was not fraud. Halliburton did not claim that Vedanta was acting dishonestly. Instead, it argued that the COVID-19 pandemic constituted "special equities" that justified a stay on encashment. The lockdown was unprecedented, incapable of being predicted by either party, and amounted prima facie to a force majeure event. Allowing Vedanta to encash eight bank guarantees while Halliburton was literally incapable of working and while the lockdown was still in force would cause irretrievable injury.

III. THE JINDAL STEEL JUDGMENT: THE SUPREME COURT TRIES TO DRAW THE LINE

Fast-forward to 2025, the Jindal Steel case clarifies the position of the Supreme Court of India on bank guarantees. The dispute arose when Jindal Steel and Power Limited terminated a ₹44 crore housing contract and sought to encash a bank guarantee for recovery of advances. Bansal Infra challenged this and obtained interim protection from the Orissa High Court.

The Supreme Court dismissed Jindal's appeal and reaffirmed that courts should rarely interfere with bank guarantee encashment. Such intervention is allowed only in cases of egregious fraud or irretrievable injustice, reinforcing the autonomy and reliability of bank guarantees in commercial transactions. The practical message for banking and finance lawyers: draft your arbitration clauses carefully, invoke arbitration early, and do not wait until the guarantee has been encashed to seek judicial protection.

V. THE SARFAESI DIMENSION: WHEN BANKS FIGHT BANKS

In May 2025, the Supreme Court decided in Bank of India v. M/S Sri Nangli Rice Mills Pvt. Ltd. a case that will reshape how inter-creditor disputes are resolved. Two banks, Bank of India and Punjab National Bank, had both extended credit facilities to a rice mill company, and both had security interests over the same stocks of rice and paddy. When the borrower defaulted, the banks found themselves in a dispute with each other about priority.

SECTION THREE · ARTICLES

Article 4: When a Guarantee Is Called: ADR and the Battle Over Bank Guarantees in India

The Supreme Court's answer was unequivocal: arbitration. Section 11 of the SARFAESI Act, 2002, provides that disputes between secured creditors must be resolved through conciliation or arbitration. And here is what made the ruling truly remarkable for the Court held that no written arbitration agreement is required between the banks. Section 11 creates a "statutory legal fiction" of consent. The banks are deemed to have agreed to arbitrate simply by virtue of being secured by creditors under SARFAESI. The word "shall" in Section 11 makes this mandatory, not optional. The DRT has no jurisdiction over such disputes.

V. THE UNRESOLVED QUESTION: WHAT DOES "SPECIAL EQUITIES" ACTUALLY MEAN?

Let us return to the doctrinal issue that the Halliburton-Vedanta saga exposed, because it remains unresolved. The Supreme Court's 2019 decision in Standard Chartered Bank expanded the grounds for injuncting bank guarantee encashment to include "special equities" as a circumstance distinct from fraud and irretrievable injustice. But the Court did not define what constitutes special equities with any precision.

The law is genuinely unsettled, and the uncertainty has cost. Beneficiaries of bank guarantees typically lenders, and employers cannot be confident that their security is as liquid as they believed. Banks' pricing guarantee products into loan structures must factor in the risk that encashment will be stayed. And parties who legitimately need emergency protection against wrongful invocation face courts that may or may not apply a consistent standard.

VI. WHAT GOOD ADR LOOKS LIKE IN BANKING DISPUTES

Bank guarantee disputes are urgent, high-value, and technically complex. They demand a dispute resolution mechanism that can match the pace of commerce, not the pace of litigation, first, speed matters more than anything else. The entire commercial value of a bank guarantee rests on its immediacy.

A dispute resolution process that takes two years to produce an award even if a correct one has failed the system. Emergency arbitrator provisions, which are now increasingly standard in institutional arbitration rules globally and have been proposed in India's draft Amendment Bill, are essential.

Second, domain expertise is not negotiable. Bank guarantee disputes require familiarity with RBI regulations, FEMA provisions, banking practice on performance security, and the commercial context of the underlying transaction. IIDRC and similar institutions need to actively develop panels of arbitrators who combine legal expertise with genuine financial sector knowledge.

Third, and perhaps most counterintuitively: the best ADR for bank guarantee disputes may not be arbitration at all at least not at the first stage. Mediation, conducted by a skilled mediator who understands the commercial interests of both parties, can often resolve the underlying dispute, the one that gave rise to the guaranteed invocation faster and more satisfactorily than any adjudicative process. The employer who invoked the guarantee usually wants to recover its advance and move on, not litigating for three years. The contractor who provided it usually wants to preserve its business relationship and reputation, not accumulate legal costs.

VII. CONCLUSION: THE GUARANTEE THAT ADR WILL DELIVER

Bank guarantees will keep being called. Contractors will keep missing deadlines. Borrowers will keep defaulting. And disputes over whether those calls were legitimate will keep finding their way to our courts unless we build the ADR infrastructure that can absorb them. The jurisprudence reviewed in this article tells a story of a legal system that recognizes the problem but has not yet fully solved it. The Halliburton affair showed how quickly a well-intentioned extension of judicial discretion can become a source of commercial uncertainty. The Jindal Steel ruling showed a Supreme Court trying to restore order while acknowledging that arbitration, not litigation, is where these disputes belong. The SARFAESI ruling showed the boldness that is possible when the legislature and the court are aligned on mandating ADR for an entire category of banking disputes.

What India now needs is the institutional follow-through: specialist tribunals, domain-expert arbitrators, fast-track procedures calibrated to the speed of financial markets, and a statutory definition of "special equities" that gives commercial parties and the banks that finance them the certainty they need. ADR in banking and finance is not a novelty. It is a necessity.

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SECTION FOUR· INTERVIEW

GRACE IN BALANCE: PAVANI SIBAL ON POWER, POISE, AND REWRITING THE RULES OF LAW

INTERVIEW WITH

PAVANI SIBAL

CEO, ADR ODR International (India).

Pavani Sibal is an Indian legal professional known for her work in corporate law, dispute resolution, and the evolving field of online dispute resolution (ODR). She is a dual-qualified lawyer (India and England & Wales) with over two decades of international experience, having worked across sectors such as infrastructure, energy, renewables, environmental technologies, and education.

Currently, she serves as the Head of India at AOI International (ADR ODR International) and has also been associated with mediation and negotiation platforms, contributing to the growth of alternative dispute resolution (ADR) and digital justice systems in India.

Overall, Pavani Sibal is regarded as a key figure in modern dispute resolution, especially for her role in integrating legal practice with technology-driven platforms and promoting structured, multi-forum approaches to resolving complex disputes.

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GRACE IN BALANCE: PAVANI SIBAL ON POWER, POISE, AND REWRITING THE RULES OF LAW

"BUILD SYSTEMS THAT OUTLAST YOU"

-Pavani Sibal

Q. Are ADR frameworks ready for the speed and complexity of fintech and digital disputes?

Not entirely but they are evolving. Traditional ADR mechanisms were designed for deliberation, not velocity, whereas fintech disputes demand real-time responsiveness. The future lies in integrating technology with ODR platforms, AI-assisted case management whilst preserving procedural fairness. The frameworks must become more agile without losing their legitimacy.

Q. What are the biggest misconceptions businesses still have about ADR?

Many still see ADR as a fallback rather than a strategic first choice. There's also a misconception that it lacks enforceability or seriousness, when in reality, it often delivers more commercially sensible outcomes than litigation.

Q. Is India a global dispute resolution hub, or still in transition?

India is undeniably in transition, but with strong intent. The legal infrastructure is improving, and there is growing institutional support for arbitration and mediation. However, consistency in enforcement and global perception will determine how quickly we move from potential to position.

Q. What is one professional risk you took that changed the trajectory of your life?

I chose to step away from a predictable legal path to build an institution around dispute resolution before the ecosystem was ready. That decision didn't just change my trajectory; it defined my purpose.

Q. What does balance actually look like in your day-to-day reality?

Balance is less about equal hours and more about intentional presence. Some days I'm fully immersed in high-stakes negotiations; others, I'm simply present at home, or with dear friend's, uninterrupted. The real balance lies in knowing where you're needed most and being fully there without guilt. I love life.

Q. What feels most like "you"? How do you unwind?

The most authentic version of me exists in quiet, unstructured moments whether it's spending time with family, friends or simply pausing to reflect. I unwind by stepping away from noise and returning to simplicity.

SECTION FOUR· INTERVIEW

GRACE IN BALANCE: PAVANI SIBAL ON POWER, POISE, AND REWRITING THE RULES OF LAW

Q. If you had to rebuild your career from scratch today, what would you do differently and what would you refuse to compromise on?

I would embrace technology and global collaboration far earlier, and build stronger cross-border frameworks from the outset. What I would never compromise on is integrity, both in process and outcome and the belief that dispute resolution must remain humane, not just efficient.

Q. What does success look like to you now vs. 10–15 years ago?

Earlier, success was defined by milestones and recognition. Today, it's about impact, sustainability, and the ability to create systems that outlast you while still having the space to live a full personal life.

Q. If your younger self could see you today, what would you say to her?

Trust your instincts sooner and don't wait for validation to take bold decisions. You're far more capable than you think.

Q. One life mantra you live by?

Clarity over noise always. When your intent is clear, decisions follow.

Q. If not in the legal field, what would your alternate profession be?

I would likely build something in the space of human development. Perhaps a platform focused on conflict coaching or emotional resilience. At its core, my work has always been about people, not just law.

PAVANI SIBAL
CEO, AOI India.
ADR ODR International Limited

SECTION FIVE · ABOUT US

UPCOMING EVENTS AT IIDRC

8th May 2026:

Fireside Chat: with Mr. Kevin Nash, hosted by Foresight Law Offices and Co-hosted by IIDRC

9th May 2026:

IIDRC Edge: Foundation Arbitration Programme (Galgotia University Edition)

10th May 2026:

IIDRC Podcast Series: In Conversation with Kevin Nash

15th May 2026:

High Tea with IIDRC: Join us for an insightful session on the POSH Act, 2013 and opportunities for female advocates at Patiala House District Court (Ladies Bar Room)

22nd May 2026:

IIDRC Open House: Join us for an informal interaction as we showcase our state-of-the- art center

29th May 2026:

POSH Train-The-Trainer (TTT) Programme

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SECTION FIVE · ABOUT US

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