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Doctorate of research in International and Domestic Arbitration Law

XXIV cycle

Doctoral Thesis: **Arbitration and Bankruptcy**

The object of the present work is to analyze the relationship between arbitration and bankruptcy in Italian domestic law, examining the recent evolution brought on by doctrinal and jurisprudential reforms that have modified the relative norms.

The methodological approach used to reach this object was both theoretic and practical. The analysis of specific cases furnished interesting opportunities of verifying the concrete application of the principles of the norms analyzed in the first part.

In general, the main question that one asks when starting to consider together the institutions of arbitration and bankruptcy is if they are reconcilable and what effects can a sentence declaring a bankruptcy have on an arbitration procedure, either on-going or on an arbitration convention, which has not yet been actuated.

For many years legislation on the issue was characterised by a system full of gaping holes, but recently legislators have attempted to remedy this with legislative decree No. 5 of 9 January 2006 which implemented fundamental modifications in the Bankruptcy Law. In fact, today, the answer is supplied by norms that allows for the fundamental compatibility between these institutions and determines the effects of possible inferences between arbitration and bankruptcy.

The current conformation of the relationship between the two institutions sanctions on the one hand, their compatibility, but on the other hand limits the choice of implementing an arbitration convention to the bankruptcy board. In other words, the legislators of 2006 intended to bind the indistinct destiny of the compromise or of the arbitration clause, as well as that of any ongoing arbitration procedure, to the destiny of the contract to which the clause or procedure refers.

Starting from these issues, that are only some of those which are thoroughly treated, it has been possible to discover that the doctrine and jurisprudence *ante*-reform are still for many aspects current and this, in fact, is what has formed the base of my comments in the second part of this study – practice.

In fact, the legislators' efforts, though significant, have generated a mechanism which is not immune from problems, some of which are of either a systemic or practical nature, but considering the current regulatory situation, cannot find alternative solutions that are not *contra legem* and so must be considered unacceptable.

So the conclusion of the present study cannot but constitute a humble invitation to re-evaluate some of the brilliant intuitions of the ante-reform doctrine, with the intention of modifying, also juristically, the current conformation of the relationship between bankruptcy and that of a pending arbitration procedure, so as to reach results that are more coherent with the principle of the autonomy of arbitration clauses and with the stated – but not perfectly pursued – compatibility of arbitration with insolvency procedures.