INTEGRATING MEDIATION INTO CORPORATE INSOLVENCY RESOLUTION PROCESS IN INDIA: A CRITICAL ANALYSIS

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Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) provides a time-bound, creditor-driven framework for resolving insolvency of the distressed companies, focusing on asset value maximisation, creditor primacy, and business revival as a going concern. Although, the introduction of IBC has been an effective mechanism for the corporate insolvency resolution, but it faces challenges from litigation delays, low operational creditor recovery, and disputes that erode economic value of the assets. Further, enactment of the Mediation Act, 2023 introduces a structured consensual mechanism that offers possible opportunities to address these challenges through voluntary settlements, reducing court burdens, and enhancing consensus-building during the Corporate Insolvency Resolution Process (CIRP) under the IBC. Therefore, this research paper critically analyses the possibility for the integration of mediation mechanism into the CIRP under the IBC without undermining its timelines or collective structure. Firstly, the research paper analyses the judicial role in evolution of modern corporate insolvency resolution mechanism under the IBC. Secondly, it deciphers the interplay between mediation and CIRP and its need for effective corporate insolvency resolution framework. Thirdly, it discusses the policy development towards integration of mediation mechanism under into the CIRP framework. Finally, it examines the role of adjudicator, mediator and resolution professional for integrating mediation into the CIRP along with the challenges for integration of mediation into the CIRP framework.

Keywords: Mediation, Corporate Insolvency Resolution, Consensual Method, Integration, Dispute Settlement.

INTRODUCTION

The modern corporate insolvency resolution mechanism in India has been built primarily around the Insolvency and Bankruptcy Code, 2016 (IBC),[2] which consolidates earlier fragmented laws into a unified framework for insolvency resolution of corporate persons, partnership firms, and individuals. It aims to ensure time-bound resolution of financially distressed companies, maximisation of value of their assets, and balancing the interests of all stakeholders, including financial creditors, operational creditors, employees, workmen, and the corporate debtor itself.[3] The Supreme Court of India has consistently upheld these objectives, describing the IBC as a complete code designed to address the economic challenge presented by growing non-performing

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[2] The Insolvency and Bankruptcy Code, 2016.
[3] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17.

assets and to restore viable businesses as going concerns.[4] The traditional design of corporate insolvency resolution under the IBC follows an adversarial and creditor-driven model where the adjudicating authority holds a pivotal position in supervising the Corporate Insolvency Resolution Process (CIRP).[5] However, in recent years, interest has significantly grown in the possible integration of mediation as a structured consensual process within the formal CIRP, as mediation offers a voluntary and confidential mechanism where an independent third party facilitates settlement without imposing outcomes. In Indian legal system, mediation has evolved through court supervised schemes, references under various statutes, and finally the enactment of the Mediation Act, 2023,[6] which strives to create a comprehensive legislative framework for domestic and certain cross-border mediation. It establishes institutional infrastructure, pre-litigation mediation, court-referred mediation, and enforcement of mediated settlement agreements as arbitral awards under the Arbitration and Conciliation Act, 1996.[7] The emergence of this general mediation framework has triggered a thoughtful discussion on integration of mediation into CIRP without undermining the discipline, timelines, and the creditor-centric architecture of the IBC. Since, the IBC prioritises creditors, their collective action, and a non-negotiable timeline, while mediation emphasises party autonomy and flexibility.

The Insolvency and Bankruptcy Board of India (IBBI) has proactively examined this interface in its reports and recommended phased integration of mediation into CIRP through enabling amendments for specialised mediator panels, and the National Company Law Tribunal-linked secretariats.[8] A subsequent discussion paper addresses pre-admission mediation for operational creditors, suggesting non-settlement certificates to streamline admissions.[9] Further, the judicial approach actively supports these policy initiatives through structured mechanisms like creditor-initiated withdrawals, which require approval from ninety percent voting shares of the Committee of Creditors (CoC).[10] In *Nikhil Mehta & Sons (HUF) v. AMR Infrastructures Ltd.*,[11] the Court held that pending the mediation proceedings before a High Court, mediation centre do not bar admission of CIRP applications. Similarly, Supreme Court of India rulings permit settlements and withdrawals that preserve the commercial wisdom of the CoC under the statutory framework.[12]

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[4] *Id.* at paras. 26–28; *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407, 27.
[5] *supra* note 2, at para 27.
[6] The Mediation Act, 2023.
[7] *Id.* §§ 6, 18, 27, 28.
[8] Insolvency & Bankruptcy Board of India, *Framework for Use of Mediation Under the Insolvency and Bankruptcy Code, 2016*, 5–7 (Jan. 2024), https://ibbi.gov.in/uploads/whatsnew/1256aa8a9e2c89bd09d8186dae2e6019.pdf.
[9] Insolvency & Bankruptcy Board of India, *Discussion Paper on Mediation by Operational Creditors Before Approaching Adjudicating Authority* (Nov. 2024), https://ibbi.gov.in/uploads/whatsnew/5432fd4873e30cdb2e4ab4802454565c.pdf.
[10] *supra* note 1, at s. 12A.
[11] Nikhil Mehta & Sons (HUF) v. AMR Infrastructures Ltd, 2023 SCC OnLine NCLT 18580.
[12] *supra* note *2, at 74;* K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150.

Therefore, this research paper undertakes a critical analysis of the integration of mediation into the CIRP under the modern insolvency law regime in India. It underscores the contribution of the judiciary towards the development of the corporate insolvency resolution mechanism under the IBC. It analyses the scope of integrating mediation mechanism under the CIRP framework. Further, it analyses the compatibility between mediation and corporate insolvency resolution framework along with its statutory provisions and key judicial pronouncements. Furthermore, it critically analyses the framework of mediation recommended by the IBBI along with its statutory compatibility under the IBC framework.

JUDICIAL ROLE IN EVOLUTION OF MODERN CORPORATE INSOLVENCY FRAMEWORK IN INDIA

The contemporary corporate insolvency law system has unified the previously scattered regulations on corporate reorganisation, insolvency resolution for companies, partnership firms, and individuals, all within fixed time limits. The objectives of the IBC reflect a clear focus on supporting entrepreneurship, ensuring credit availability, and balancing the interests of all stakeholders, which include both creditors and debtors.[13] The Supreme Court of India, in its landmark decision in *Swiss Ribbons Pvt. Ltd. v. Union of India*,[14] elaborated upon these objectives while upholding the constitutional validity of the Code. The Court acknowledged that the main purpose of the IBC is not liquidation, but the revival and ongoing operation of the corporate debtor as a viable economic entity. According to the Court, liquidation is to be treated only as a measure of last resort when resolution is no longer feasible. It also noted that the Code carefully balances the interests of all parties involved and prioritises the maximisation of value of assets, which ultimately benefits both creditors and the economy at large. Further, considering the pivotal role of CIRP that allows financial creditors, operational creditors, or the corporate debtor itself to approach the adjudicating authority,[15] the Court in *Innovative Industries Ltd. v. ICICI Bank*,[16] clarified that the admission of application for initiation of CIRP only requires proof of default without delving into disputes. Therefore, it underscores the creditor-driven nature of the IBC. Further, for the operational creditors, in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*,[17] the Court mandated a pre-filing demand notice and creating a scope for rejecting admission of CIRP application if a plausible dispute exists, thus curbing misuse of the IBC as a debt recovery

[13] *supra* note 1 at Preamble.
[14] *supra* note 2.
[15] *supra* note 1 at ss. 6, 7, 8, 9, and 10.
[16] Innovative Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407.
[17] Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd, (2017) 5 SCC 146.

mechanism. Further, in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*,[18] the Court held that the adjudicating authority must apply its mind holistically before admitting the applications for CIRP, considering factors like debtor viability and post-default proof.

After the admission of the application, the statute mandates for strict adherence to prescribed timelines for completion of the CIRP Process.[19] Further, the adjudicating authority, upon a valid resolution passed by the CoC, may grant a one-time extension of up to ninety days.[20] This mandatory timeline underscores the legislative intent to prevent undue delays and to promote expedient settlement of insolvency proceedings. The Code thus combines procedural discipline with substantive fairness. Furthermore, the Code mandates for declaration of a moratorium once the CIRP commences.[21] It prevents the initiation or continuation of legal proceedings against the corporate debtor, the enforcement of security interests, the transfer of assets, or the recovery of property during the moratorium period. Such mechanism is designed to provide breathing space to the debtor and to maintain the corporate entity as a going concern while a resolution plan is formulated and considered. In this regard, the Court in *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*,[22] held that the moratorium also halts proceedings under the Negotiable Instruments Act against the corporate debtor. Further, in *Punjab National Bank v. Amrit Hatcheries Pvt. Ltd.*,[23] the Court established that the moratorium under the IBC, declared after an auction under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 but before its completion, halts the process of auction, bringing the property into the asset pool of the corporate debtor for resolution or liquidation.

During the CIRP, the adjudicating authority holds exclusive jurisdiction over disputes directly linked to the insolvency resolution process.[24] The Court in *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*,[25] held that jurisdiction of the adjudicating authority covers only matters that arise from or relate directly to the insolvency process. It does not extend to unrelated claims, such as breaches of contracts that occurred before the commencement of the CIRP. Further, in *TATA Consultancy Services Ltd. v. SK Wheels Pvt. Ltd.*,[26] the Court reaffirmed the adjudicating authority under the IBC as a specialised forum for insolvency matters. Recently, in *Mohammed Enterprises (Tanzania) Ltd. v. Farooq Ali Khan*,[27] the Supreme Court barred the High Courts from intervening

[18] Vidarbha Industries Power Ltd. v. Axis Bank Ltd, (2022) 8 SCC 352.
[19] *supra* note 1, at s. 12.
[20] *Id. § 12(3).*
[21] *Id. § 14.*
[22] P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd, (2021) 6 SCC 258.
[23] Punjab National Bank v. Amrit Hatcheries Pvt. Ltd, 2024 SCC OnLine SC 1123.
[24] *supra* note 1, at s. 60.
[25] Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209.
[26] TATA Consultancy Services Ltd. v. SK Wheels Pvt. Ltd, (2022) 2 SCC 583.
[27] Mohammed Enterprises (Tanzania) Ltd. v. Farooq Ali Khan, 2025 SCC OnLine SC 23.

in insolvency matters and uphold that the adjudicating authority under the IBC has an exclusive jurisdiction, ensuring that the insolvency process is managed by a single, specialised authority.

Further, the IBC does not merely operate as a mechanism for debt recovery, but as a framework for corporate revival, where the resolution process serves as the vital bridge between corporate insolvency and revival. It commences with the Resolution Professional enabling the submission of competitive resolution plans by prospective applicants.[28] Recently, the boundaries of the IBC to prevent the misuse of its provisions are refined in *Mansi Brar Fernandes v. Shubha Sharma*,[29] where the Court held that allottees seeking to exploit the CIRP should instead pursue remedies under the Real Estate Regulatory Authority (RERA). This ensures that the insolvency process remains focused on corporate revival rather than individual debt collection. In addition, at the core of CIRP is the CoC, whose commercial wisdom gets primacy, as established in *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*,[30] thereby limiting the judicial interference to cases of gross illegality. Additionally, in *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*,[31] the Court held that upon approval of a resolution plan by the CoC, all prior unadjudicated claims stand extinguished, thereby enabling the corporate debtor to commence afresh, free from past encumbrances. Therefore, the Court emphasised the requirement for respecting the commercial decisions of the CoC. This principle restricts the role of adjudicating authority to insolvency-related matters, excluding unrelated claims, while respecting the commercial wisdom of the CoC.

A key feature of the CIRP is the provision allowing withdrawal of an admitted corporate insolvency application, subject to approval by ninety percent of the voting share of the CoC voting share.[32] It enables settlement between parties even after commencement of the process, fostering a culture of negotiated resolution. This high requirement was examined in *Manish Kumar v. Union of India*,[33] where the Court ruled that such a strict threshold is necessary. It ensures that any decision to stop the insolvency process is backed by a clear consensus among the creditors, while still allowing for a fair settlement. Therefore, the legal framework encourages finding solutions before a formal resolution plan is approved. In *Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd.*,[34] the Court has endorsed exploring possibilities for settlements and mediation. This ruling confirms that while the IBC seeks to revive companies, it also values the

[28] *supra note 1, at §§ 30, 31.*
[29] Mansi Brar Fernandes v. Shubha Sharma, 2025 SCC OnLine SC 1972.
[30] ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1.
[31] Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd, (2021) 9 SCC 657.
[32] *supra note 1, at § 12A.*
[33] Manish Kumar v. Union of India, (2017) 12 SCC 333.
[34] Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd, (2022) 2 SCC 401.

ability of parties to reach an amicable agreement, provided it does not disrupt the strict timelines required by the law.

The evolution of the IBC through significant judicial pronouncements has collectively solidified it as a pragmatic, creditor-centric mechanism designed to rescue distressed enterprises while maximising economic value. These pronouncements, spanning challenges to creditor primacy, resolution plan approvals, and the clean slate doctrine, affirms the intent of the legislatives to prioritise commercial wisdom over undue judicial interference, intervening only in cases of blatant illegality or procedural infirmities. Over time, the judiciary has adeptly integrated mediation as a strategic tool within the insolvency ecosystem, fostering out-of-court settlements that expedite resolutions, mitigate litigation delays, and preserve going-concern value for stakeholders. This promotes a market-driven rehabilitation process that not only rehabilitates corporate debtors but also instils investor confidence, curbs non-performing assets, and bolsters systemic financial stability. Thus, through the judicial interpretations the IBC emerges not merely as a recovery statute but as a dynamic instrument of economic revival, harmonising creditor rights with broader socio-economic imperatives which creates a scope of integrating mediation as a strategic tool within the corporate insolvency resolution process.

MEDIATION AND CORPORATE INSOLVENCY RESOLUTION FRAMEWORK

Corporate insolvency law is generally designed as a collective process in which claims of multiple creditors are resolved in a structured manner, with a moratorium, information collection, and a decision on resolution or liquidation. It establishes this framework for corporate entities, including provisions for initiating the CIRP by financial creditors, operational creditors, or the corporate debtor itself.[35] The process is governed by a strict timeline, originally envisaging completion within one hundred and eighty days with a one-time extension of ninety days, later effectively capped at three hundred and thirty days including litigation periods.[36] Further, in *Innoventive Industries Ltd. v. ICICI Bank*,[37] the Supreme Court of India held that the adjudicating authority must admit an application if a default exists and the applicant is eligible, without delving into disputed facts beyond the threshold test.

Mediation, on the other hand, is a consensual dispute resolution process driven by party autonomy, which emphasises confidentiality, flexibility and voluntary settlement. It is a process whether referred by a court or otherwise, where a mediator assists the parties to reach a settlement.[38]

[35] *supra* note 14.
[36] *supra* note 19.
[37] *supra* note 15.
[38] *Supra note 5, at § 2(k).*

The Mediation Act, 2023 marks a major development in dispute resolution landscape in India. It provides a single legislative framework to encourage and regulate mediation. The purpose of the Act is to make mediation a structured and credible alternative to traditional litigation and arbitration. Its provisions are designed to ensure that mediated settlements have enforceable legal effect. It lays down procedures for pre-litigation mediation, court-referred mediation, and enforcement of mediated settlement agreements, with limited grounds of challenge.[39] However, the Act also recognises the importance of special laws that regulate specific domains. The IBC is one such law that functions as a complete and self-contained code in matters relating to corporate insolvency. Therefore, the primary question is whether a process that is centred on collective creditor interests, strict timelines, and statutory priorities under the IBC can accommodate mediation, which is typically bilateral or small-group based and flexible in time. Mediation also appears inconsistent with the mandatory and time-bound nature of corporate insolvency resolution, as affirmed by the Supreme Court in *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*,[40] where the Court stressed the need for expeditious resolution to prevent asset value erosion. But mediation can also be understood as a tool that facilitates quicker settlement of discrete disputes, assists in planning negotiation among stakeholders, and reduces litigation around admission, claims, or implementation phases.

Further, the international practice also indicates that mediation has been used in various ways in restructuring and insolvency, such as pre-packaged plans in United States.[41] The experiences from these jurisdictions show that when carefully designed, mediation can complement rather than undermine formal insolvency frameworks by promoting faster, consensual outcomes while preserving statutory safeguards. The Indian framework must therefore be carved not as a plain choice between adversarial insolvency and consensual mediation, but as a considerate attempt to integrate mediation at suitable stages of the corporate insolvency resolution process, drawing lessons from both domestic policy experiments and global practice.

The possibility of integrating mediation within the CIRP process raises both opportunities and limitations. On one hand, mediation can be useful in facilitating negotiations between the corporate debtor and its creditors, helping them explore settlement possibilities early and possibly preventing insolvency proceedings. On the other hand, the strict procedural and time-bound framework of the IBC provides very minor scope for informal processes that could delay resolution. Since its primary objective is to preserve value through discipline and certainty. Therefore, any introduction of mediation must not dilute these core principles of IBC. Accordingly,

[39] *Id.* §§ 6, 18, 27, 28.
[40] *supra* note 29.
[41] Bankruptcy Code, 11 U.S.C.

the judicial interpretation of the term 'existence of a dispute' under the IBC has provided an important point of connection with the mediation framework. In *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*,[42] the Court examined the meaning of 'dispute',[43] under and held that if there exists a plausible dispute supported by documents, the application for initiation of insolvency proceedings cannot be admitted. Similarly, in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*,[44] the Court clarified that a dispute includes a plausible contention which requires further examination and need not be conclusively proven at the admission stage. This interpretation shows that the threshold for demonstrating a dispute under the IBC is relatively low. In this context, outcomes of pre-filing mediation under the Mediation Act, 2023 could play a significant role. If mediation leads to a partial or complete settlement, or even if it documents unresolved but genuine contentions, such material may influence the determination of existence of a 'dispute' at the stage of admitting an application filed by an operational creditor.

Therefore, it is not a question of whether mediation should be integrated to CIRP, but how it can be done without undermining the foundational structure of the IBC. Further, the Mediation Act, 2023 ensures that whenever there is a conflict between the two statutes, the IBC, being the special law, will prevail.[45] This means that mediation cannot alter statutory timelines, moratorium provisions, or creditor-driven procedures set by the IBC. However, mediation can be positioned at the pre-admission stage as a voluntary or recommended step, especially in operational debt cases where the dispute concerns payment defaults rather than systemic insolvency. The IBBI has already begun exploring frameworks and pilot programmes enabling such mediation initiatives.[46] These efforts suggest a cautious and complementary approach, allowing mediation to serve as a filter that reduces frivolous filings while maintaining the emphasis of the IBC on efficiency and finality. Thus, the Mediation Act, 2023, while establishing a universal regime for amicable resolution, must operate in harmony with the IBC. The two laws serve different but related purposes: the Mediation Act, 2023 promotes consensual settlement, and the IBC ensures orderly insolvency resolution. However, the challenge lies in designing an interface where mediation enhances, rather than obstructs, the objectives of modern corporate insolvency law.

POLICY DEVELOPMENTS TOWARDS INTEGRATING MEDIATION MECHANISM

[42] *supra* note 24.
[43] *supra note 1, at § 9(5)(ii).*
[44] Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd, (2018) 1 SCC 353.
[45] *supra* note 5, at § 55.
[46] Rahul Sundaram, *IBBI's Discussion Paper on Mediation for Operational Creditors: A New Approach Under the Insolvency and Bankruptcy Code*, INDIA LAW (Nov. 12, 2024), https://www.indialaw.in/blog/civil/ibbi-mediation-operational-creditor-ibc/.

The IBBI has performed a pivotal role in creating mediation frameworks for corporate insolvency cases. It has released an important policy document that explain the role of mediation within the IBC framework and highlights the advantages of mediation in settling corporate insolvency disputes.[47] These initiatives seek to integrate mediation as a supportive process without changing the core features of the IBC. It highlights the possibility of addressing the common pool problem in insolvency through mediation, where creditors compete for limited assets, and promotes negotiation over adjudication. In January 2024, an Expert Committee formed by the IBBI released the Framework for Use of Mediation under the IBC and recommended a gradual introduction of mediation at various stages of insolvency processes. It stresses voluntary participation and the need to protect statutory timelines under the IBC. Key proposals include amendments to the IBC to allow the Central Government and IBBI to frame rules for mediation. The framework also suggests creating a panel of specialist mediators with knowledge of insolvency law and establishing a mediation secretariat attached to the National Company Law Tribunal (NCLT). The IBBI also issued a separate discussion paper in November 2024 on mediation by operational creditors before filing applications under the IBC. It proposed a voluntary pre-filing mediation to settle disputes related to payment defaults, goods quality, or contracts. If mediation fails, the mediator issues a non-settlement report, which the operational creditor attaches to the application. This report helps the adjudicating authority to assess the existence of a genuine dispute and speeds up the admission process. The proposal aims to filter out matters that can be resolved quickly and reduce unnecessary CIRP triggered by small or disputed operational debts. Therefore, it aligns with the objectives of the Mediation Act, 2023 and the recommendations of the Expert Committee.

These proposals position mediation as a complement to formal insolvency, applicable at specific stages: pre-filing, during claims collation, plan negotiations, and settlements under the IBC. The suggested framework also calls for an independent NCLT-linked mediation cell with e-filing and online hearings to ensure efficiency. Further, it proposes that the mediators would be selected from qualified professionals, including retired NCLT members, insolvency experts, and senior advocates with relevant experience. Enforcement of mediated settlement agreements would occur through NCLT orders, similar to withdrawal approvals under existing rules. Costs of mediation would be shared by parties and excluded from insolvency resolution costs to make it affordable. The proposal strives to address issues like moratorium, approvals of CoC, and exclusion of disputes involving public interest or fraud. In addition, mediation remains voluntary to respect creditor primacy and time discipline. Overall, these IBBI initiatives proposes a phased, tailored mediation regime under the IBC. It aims to balance amicable resolutions with statutory objectives,

[47] *supra* note 7.

potentially reducing pendency of the matters with adjudicating authority and also enhancing the recovery rates.

ROLE OF ADJUDICATORS, MEDIATORS AND INSOLVENCY PROFESSIONALS

Integrating mediation into the CIRP under the IBC requires careful institutional design that respects the existing statutory framework. The National Company Law Tribunal (NCLT), which acts as the primary adjudicating authority, is responsible for overseeing and deciding matters under the IBC;[48] therefore, it must assume a central supervisory role for any mediation process for corporate insolvency disputes. It ensures that mediation functions as a supportive mechanism rather than an independent alternative that could disrupt the insolvency proceedings. The IBBI Framework proposes practical structures such as a dedicated mediation secretariat and specialised panels of mediators, which would operate in coordination with NCLT across the country. The mediation secretariat would handle administrative functions including case allocation, scheduling, e-filing of mediation applications, and progress monitoring. It would maintain a complete confidentiality of proceedings while providing the necessary infrastructure for both physical and virtual mediation sessions. It would be located within or closely linked to NCLT facilities and enable seamless referral of matters from ongoing insolvency cases. Further, the NCLT would retain authority to refer suitable disputes to mediation either on its own motion, upon application by the parties, or as recommended by the resolution professional. Such referrals would apply only to matters appropriate for settlement, excluding cases involving fraud, public interest, or matters specifically barred under the Mediation Act, 2023.[49]

The selection of mediator represents another critical element of this institutional architecture. The corporate insolvency disputes involve complex financial, commercial, and legal issues that demand specialised knowledge and experience. The proposed panel of mediators would include retired judges, senior advocates with substantial insolvency practice, experienced insolvency professionals, and senior officials from regulatory bodies such as the IBBI or the Reserve Bank of India. All the mediators would undergo mandatory training on IBC provisions, creditor rights, valuation principles, and resolution plan mechanics. A strict code of conduct would govern their appointment, with mandatory conflict disclosures and cooling-off periods to prevent any perception of bias. Accordingly, the selection would follow a transparent roster system managed by the secretariat, with parties retaining limited rights to object on valid grounds.

[48] *supra* note 1, at § 60(1).
[49] *Supra* note 5, at § 6(1).

The interface between mediators and insolvency professionals requires particularly careful delineation to avoid role confusion or conflicts of interest. The resolution professional or interim resolution professional holds statutory responsibilities including management of the affairs of the corporate debtor, claims verification, and facilitation of CoC meetings.[50] During mediation, the resolution professional would provide necessary information and documents to the mediator but would not participate as a decision-maker in the process. Further, the mediators would lack authority to issue directions to resolution professionals or interfere with their statutory functions. Such clear separation preserves the independence of both mechanism while ensuring that mediation receives complete and accurate information needed for productive negotiations.

The adjudicating authority maintains a comprehensive oversight throughout the mediation process. It would determine the appropriateness of referrals, set firm timelines to prevent delays, and monitor compliance with mediation schedules. Further, upon successful conclusion, mediated settlement agreements would require approval of the adjudicating authority before gaining enforceability within the insolvency framework. This judicial scrutiny ensures compatibility with the collective nature of CIRP and the requirements for approval of the resolution plan. Additionally, the settlements impacting creditor distributions, plan terms, or liquidation value would need approval of the CoC following statutory voting thresholds. The adjudicating authority would also handle enforcement of mediated agreements and address any breaches through its contempt powers or execution proceedings.

Furthermore, the enforceability of the mediated settlement agreements operates through the NCLT approval mechanism rather than direct execution contrary to the Mediation Act, 2023 where mediated settlement agreements carry the status of binding contracts enforceable as arbitral awards, subject only to limited challenge grounds such as fraud or coercion. This approach reconciles the provisions of the Mediation Act, 2023 with the overriding effect of the IBC and maintains the hierarchy of creditor-driven decision-making. Thus, mediation mechanism functions as an input mechanism that generates potential settlement terms, which must then pass through established statutory channels such as process for approval of the resolution plan or process for the withdrawal of the applications.

This institutional design positions mediation appropriately within the IBC framework as a voluntary, time-bound process operating under NCLT supervision. The mediation secretariat provides necessary infrastructure, specialised mediators bring required expertise, and clear role demarcations prevent operational conflicts. By requiring judicial approval of the outcomes of the mediation process and preserving the authority of the CoC, the structure ensures that mediation

[50] *Supra* note 1, at §§ 18–25.

enhances rather than undermines the statutory objectives of timely resolution, creditor primacy, and value maximisation. Such carefully tailored institutional arrangements enable mediation to filter disputes, facilitate consensus, and reduce litigation without compromising the discipline and predictability that define the modern corporate insolvency resolution regime in India.

CHALLENGES FOR INTEGRATION OF MEDIATION MECHANISM

The IBC established a rigorous and time-bound framework for CIRP. The framework under the IBC prioritises promptness, certainty, and collective creditor decision-making to maximise asset value. It requires that the corporate insolvency resolution process be completed within 180 days from the date when the application is admitted.[51] However, the adjudicating authority may grant a one-time extension of up to 90 days. Subsequent judicial interpretations and amendments have established an overall timeline cap of 330 days, inclusive of any time spent in litigation.[52] During this period, the moratorium is a crucial element, as it prohibits actions such as initiating or continuing suits, executing decrees, enforcing security interests, transferring assets, and recovering property from the corporate debtor. These provisions ensure a protected environment for orderly resolution. Further, the mediation mechanism introduced through the Mediation Act, 2023, and policy frameworks from the IBBI, offers a consensual method for dispute resolution. Nevertheless, its integration into the IBC raises fundamental concerns regarding enforceability. A primary concern is challenges for harmonising mediation with the strict timelines emphasised by the IBC, without introducing delays or uncertainty. Another critical aspect is interaction of mediation with the existing moratorium and the collective nature of proceedings managed by the CoC.

Further, the intention of the parliament underscores prevention of prolonged corporate insolvency proceedings as the delays invariably diminish asset value through depreciation, operational disruptions, and creditor losses. Therefore, introducing mediation at various stages risks extending these established timelines. As a result, in situations involving deteriorating assets or imminent dissipation risks, such as perishable goods or volatile markets, this delay could be significantly detrimental. Additionally, the creditors might also lose leverage as the corporate debtor continues operations without oversight. Hence, during the CIRP, mediation could disrupt key essentials like claims verification, formation of the CoC, or the submission of a resolution plan. Thus, if mediation diverts resources or halts these essential functions, it directly conflicts with the statutory mandate. Therefore, if unchecked, mediation could potentially undermine creditor primacy, asset preservation, and the overarching goal of swift value maximisation.

[51] *supra* note 18.
[52] *supra* note 19.

In addition, the moratorium acts as a protective barrier against individual creditor actions, ensuring that collective proceedings remain undisturbed. Therefore, mediation during this moratorium period raises concerns about permissible activities. The bilateral negotiations between a single creditor and the debtor might resemble prohibited recovery efforts. In case, mediation results in a settlement favouring one creditor, it could potentially undermine the equitable distribution of assets among all creditors. Further, the Mediation Act, 2023, lists certain disputes as non-medicable, including those involving fraud or public interest.[53] Thus, the corporate insolvency disputes frequently overlap with these categories, particularly in cases of wilful default or preferential transactions. The Mediation Act, 2023 also defers to special laws in instances of repugnancy, and consequently, the IBC prevails, reinforcing that mediation cannot override the protections afforded by the moratorium.

Further, the collective framework under the IBC vests decision-making authority in the CoC, comprising financial creditors who bear the primary economic risk. The Supreme Court of India has consistently reinforced this structure. In *K. Sashidhar v. Indian Overseas Bank*,[54] the Court affirmed that CoC decisions reflect commercial wisdom and are subject to limited judicial review, with challenges succeeding only on grounds of mala fides or gross irrationality. Similarly, in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*,[55] the Court upheld differential creditor treatment based on legitimate commercial factors, prioritising financial over operational creditors.

However, mediation aligns to the framework of CIRP under the IBC when it supports this collective paradigm. Facilitating CoC negotiations for resolution plans can also enhance consensus without altering established priorities. Mediation for specific disputes such as disagreements over valuation, security enforcement, or related-party claims, can efficiently resolve bottlenecks. Nevertheless, the bilateral mediation that bypasses CoC approval distorts creditor equality. For instance, a secret settlement between the debtor and a major creditor could prejudice other creditors. Therefore, the CIRP framework mandates CoC involvement for settlements that impact the CIRP. Accordingly, the voting thresholds reflects stricter statutory requirements where sixty percent votes are required for procedural matters and ninety percent votes are required for substantive changes. Hence, it preserves creditor primacy while leveraging the flexibility offered by mediation.

CONCLUSION

[53] *supra* note 48.
[54] K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150.
[55] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.