MEDIATION FOR INSOLVENCY RESOLUTION: A BESPOKE APPROACH FOR THE INSOLVENCY BANKRUPTCY CODE 2016

Aswin P S, LLM, NLIU, Bhopal

ABSTRACT

The Insolvency and Bankruptcy Code 2016 established a comprehensive legal framework intended to expedite the recovery or liquidation of distressed holdings within predetermined timeframes. While the central goal of this legislation is to optimize asset worth through a creditor-in-control model, statistics provided by the IBBI suggest that proceedings are frequently turning into hostile legal battles instead of cooperative efforts. Judicial bottlenecks driven by high volumes of interlocutory applications under Section 60(5) have led to systemic delays where resolution plan approvals far exceed the absolute statutory limit.

This research examines the necessity of integrating a bespoke voluntary mediation framework that operates on a parallel track to the Corporate Insolvency Resolution Process. It identifies a fundamental structural misalignment between the general Mediation Act 2023, which focuses on *in personam* disputes, and the *in rem* nature of insolvency proceedings that impact the collective body of creditors and public interest. The study analyses the recommendations of the IBBI Expert Committee Report 2024 and the proposed Insolvency and Bankruptcy Code Amendment Bill 2025 to synthesize a model utilizing NCLT-annexed secretariats and specialized panels. By evaluating international blueprints from the United States Chapter 11, Singapore, and the European Union, this paper demonstrates how mediation can resolve specific technical bottlenecks such as claims reconciliation and inter-creditor conflicts. The research concludes that transitioning to a collaborative rescue culture is a strategic necessity to preserve the economic value of distressed enterprises.

Keywords: Insolvency and Bankruptcy Code 2016, Mediation, Corporate Insolvency Resolution Process, NCLT, Alternative Dispute Resolution, Rescue Culture, IBBI, In Rem, Parallel Track, Value Maximization.

I. Introduction

The Insolvency and Bankruptcy Code 2016 (IBC) established a comprehensive legal framework intended to expedite the recovery or liquidation of distressed holdings within predetermined timeframes. The central goal of this legislation is to optimize asset worth by shifting to a system where lenders hold authority. This moves away from the earlier method where borrowers retained control, thereby stopping current leaders from wasting company resources. Nevertheless, statistics provided by the IBBI suggest that these proceedings are turning into hostile legal battles instead of cooperative efforts. Statutory timelines are frequently breached due to high volumes of interlocutory applications filed under Section 60(5), which empowers the National Company Law Tribunal (NCLT) to adjudicate any question of law or fact arising out of insolvency proceedings. This judicial bottleneck erodes the economic viability of corporate debtors and reduces the recovery rates for creditors.

Alternative Dispute Resolution (ADR) mechanisms, particularly mediation, serve as a vital complementary tool to transition from a litigation culture to a rescue culture. While the Mediation Act 2023 provides a general framework for ADR in India, it presents significant structural misalignments with the specialized nature of the IBC. The general Act focuses on *in personam* disputes where the rights of specific individuals are at stake, whereas insolvency resolution involves *in rem* rights that impact the entire body of creditors and the public interest at large. Furthermore, the 120-day timeline of the general Act would inevitably clash with the strict 180-day resolution window as provided in the IBC. Consequently, there is an urgent need for a bespoke mediation framework that is regulatory in nature and integrated into the NCLT machinery. This study examines the recommendations of the IBBI Expert Committee 2024 and the proposed 2025 amendments to synthesize a model where mediation runs parallel to the Corporate Insolvency Resolution Process (CIRP). Such a model ensures that the quest for stakeholder consensus does not stall the engine of resolution or stay the progress of the resolution professional.

Review of Literature

The examined works assess the theoretical function of mediation in value maximization as well as systemic NCLT delays brought on by excessive litigation. Central to the discourse is the distinction between *in personam* rights and the collective *in rem* nature of insolvency, necessitating a bespoke mediation model. A parallel-track mediation can resolve bottlenecks

in claims reconciliation and inter-creditor dynamics while maintaining the statutory integrity of the IBC.

- *Rajiv Mani, 'Mediation in Insolvency Matters' (2017) 5th Voice Legal News*[1]: Identifies the root cause of insolvency disputes as a "common pool problem" where creditors compete for limited assets. Mani argues that mediation addresses emotional and commercial complexities that pure adjudication fails to manage, potentially avoiding "corporate death" via liquidation.

- *Amir Bavani and others, 'Scope of Mediation in Insolvency Proceedings: Bespoke approach for the complete Code' (2026)*[2]: Argue that long-drawn-out litigation defeats value maximization. They advocate for a specialized regime that empowers stakeholders through collaborative negotiation rather than judicial intervention, noting that the "one-size-fits-all" model of the Mediation Act 2023 is unsuitable for collective *in rem* rights.

- *Akhil Chaddha, 'Mediation in Insolvency: A New Paradigm for Resolution under the IBC' (2025) The Resolution Professional*[3]: Observes that NCLT courts are overwhelmed by CIRP applications that do not require judicial action. He suggests a phased, stage-based mediation approach to facilitate a "rescue culture" and prioritize stakeholder autonomy.

- *'Mediation as a bankruptcy and insolvency game changer' (International Restructuring Newswire, Norton Rose Fulbright, Q4 2023)*[4]: Offers a global perspective, citing US Bankruptcy Courts' success in settling complex derivatives and mass-tort claims in cases like Lehman Brothers and the Boy Scouts of America. It posits that mediators reconcile diverse interests more effectively than judicial cram-down powers.

[1]Rajiv Mani, *'Mediation in Insolvency Matters'* (2017) 5th Voice Legal News <https://ibbi.gov.in/uploads/whatsnew/16d99586f2ed752a0e10178015aa991b.pdf> accessed 11 March 2026.
[2]Amir Bavani and others, *'Scope of Mediation in Insolvency Proceedings: Bespoke approach for the complete Code'* (2026) IBC Laws <https://www.ibclaw.in/scope-of-mediation-in-insolvency-proceedings-bespoke-approach-for-the-complete-code> accessed 11 March 2026.
[3]Akhil Chaddha, *'Mediation in Insolvency: A New Paradigm for Resolution under the IBC'* (2025) The Resolution Professional <https://ibbi.gov.in/en/resources/publications> accessed 11 March 2026.
[4]'Mediation as a Bankruptcy and Insolvency Game Changer' (International Restructuring Newswire, Norton Rose Fulbright, Q4 2023) <https://www.nortonrosefulbright.com/en/knowledge/publications/17595c5d/mediation-as-a-bankruptcy-and-insolvency-game-changer> accessed 11 March 2026.

- *IBBI, 'Report of the Expert Committee on Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016'*[5]: Provides a comprehensive blueprint for voluntary, non-adversarial mediation. It highlights the technical incompatibility of the Mediation Act 2023 with the IBC and recommends a self-contained framework featuring NCLT-annexed secretariats and specialized panels.

- *The Insolvency and Bankruptcy Code (Amendment) Bill 2025 (Bill No 107 of 2025)*[6]: Proposes formal amendments to integrate voluntary mediation without staying the resolution process. It seeks to institutionalize secretariats within the NCLT to align India with international standards while protecting statutory timelines.

A significant gap remains regarding the practical execution of this bespoke framework and procedural clarity at the pre-admission stage. This study addresses the vacuum of parallel processing mechanics where mediation operates without staying statutory milestones.

Statement of the Problem

The core principle of the IBC is speedy resolution, yet implementation has revealed significant procedural bottlenecks. The primary cause of this delay is the proliferation of litigation under Section 60(5) of the Code, where stakeholders challenge various stages of the process. While Section 12A allows for case withdrawals post-admission, there is no formal statutory framework for mediation to resolve these disputes proactively. The absence of a structured framework for applying mediation to disputes arising during the insolvency process creates a vacuum that forces even minor operational disputes into a full-scale insolvency proceeding.

Hypothesis

Integrating a bespoke voluntary mediation framework within the IBC, running parallel to statutory timelines, will reduce the litigation burden on the NCLT and expedite the resolution process, ensuring the maximization of enterprise value through collaborative settlement.

[5]IBBI, *Report of the Expert Committee on Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016* (January 2024) <https://ibbi.gov.in/uploads/whatsnew/525cbe1dd3b1f9fd9866fe77676a96ae.pdf> accessed 11 March 2026.
[6]Insolvency and Bankruptcy Code (Amendment) Bill 2025, Bill No 107 of 2025 <https://prsindia.org/files/bills_acts/bills_parliament/2025/The_Insolvency_and_Bankruptcy_Code_(Amendment)_Bill,2025.pdf> accessed 11 March 2026.

Objectives of the Study

- To analyse the use of mediation as a complementary mechanism within the Indian insolvency framework to foster a rescue culture.
- To evaluate procedural delays in the CIRP and the burden on the NCLT caused by interlocutory litigation.
- To examine the legislative recognition of mediation in India, specifically the intersection of the Mediation Act 2023 and the IBC.
- To analyse the recommendations of the IBBI Expert Committee (January 2024) and the proposed Insolvency and Bankruptcy Code Amendment Bill 2025 regarding the framework for insolvency mediation.

Research Questions

- What are the key challenges in achieving time-bound insolvency resolution under the IBC and how does litigation contribute to these delays?
- How has mediation evolved as an ADR mechanism in India and what is the impact of the Mediation Act 2023 on the insolvency framework?
- What are the potential stages within the CIRP where mediation can be integrated without compromising statutory timelines?
- What are the global best practices regarding insolvency mediation and how can they inform a bespoke framework for India?

Methodological Approach

This research adopts a doctrinal methodology based on statutory analysis and policy documents. Primary sources include the Insolvency and Bankruptcy Code 2016, the Mediation Act 2023, the Insolvency and Bankruptcy Code Amendment Bill 2025, and the Report of the Expert Committee on the Framework for Use of Mediation under the IBC 2024. The study also evaluates international comparative frameworks from the United States Chapter 11, the European Union, and Singapore to synthesize a model suitable for the Indian context.

II. The Concept of Mediation

Mediation is a voluntary, party-driven process where a neutral third party facilitates negotiated settlements through structured communication and negotiation techniques. Unlike arbitration or litigation, where a binding decision is imposed by an external authority, mediation is inherently non-adversarial and focuses on consensus-building. The mediator's role is to assist parties in evaluating their underlying interests, rather than just their legal positions, allowing for creative, self-determined settlements that a court might not have the jurisdiction to order. As highlighted in the IBBI Expert Committee Report 2024,[7] the intrinsic advantages of mediation include significant time and cost efficiency, procedural flexibility, and the maintenance of strict confidentiality, which is paramount in sensitive corporate matters.

In the context of insolvency, mediation serves as a strategic tool to resolve specific bottlenecks such as claims collation, inter-creditor disputes, and valuation disagreements without stalling the overall resolution process. Insolvency disputes often stem from a "common pool problem," where various classes of creditors compete for a limited pool of assets that is insufficient to satisfy all claims.[8] This zero-sum competition typically leads to aggressive litigation that further depletes the estate's value. Mediation addresses the emotional and commercial intelligence required to reach a consensus, transforming a destructive competition into a collaborative effort to preserve the corporate debtor as a going concern that pure adjudication often fails to achieve.

Evolution of Mediation under Indian Law

Mediation in India has transitioned from traditional community-based facilitation to a structured legislative framework. Historically, models like village Panchayats and the Mahajan system prioritized harmony over blame, utilizing respected elders to resolve frictions. Modern formalization began with the Industrial Disputes Act 1947, but the most significant integration occurred with the insertion of Section 89 into the Code of Civil Procedure (Amendment) 1999.[9] This empowered the judiciary to refer pending cases to various ADR modes, including mediation, making it a formal component of the civil court process.

[7]Ibid.
[8]Ibid.
[9]Code of Civil Procedure 1908, s 89.

This shift was reinforced by the Supreme Court in *Salem Bar Association v Union of India*[10] and *Afcons Infrastructure Ltd v Cherian Varkey Construction Co,*[11] which clarified Section 89's application and established mediation as essential to modern jurisprudence. Over the last decade, specialized statutes like the Companies Act 2013 (Section 442)[12] and the Consumer Protection Act 2019 established dedicated mediation panels. Furthermore, the Commercial Courts Act 2015[13] introduced mandatory pre-institution mediation for suits not requiring urgent interim relief, signalling a definitive institutional shift from adversarial models toward collaborative settlement frameworks.

The Mediation Act 2023 and its Intersection with Insolvency

The enactment of the Mediation Act 2023[14] established a general framework for alternative dispute resolution, yet it remains structurally misaligned with the IBC. While the 2023 Act governs *in personam* disputes, insolvency proceedings involve *in rem* rights affecting the public interest and the collective body of creditors. Furthermore, the Act's 120-day timeline risks breaching the strict 180-day resolution window of the CIRP. Consequently, the IBBI Expert Committee and the 2025 Amendment Bill[15] propose a bespoke, regulatory framework integrated into the NCLT machinery. This parallel processing model ensures that mediation does not stay the resolution process, preserving the "multi-door courthouse" efficiency required for distressed enterprises. This necessity for specialized intervention leads to a deeper examination of the current insolvency resolution mechanism and the litigation bottlenecks discussed in the following chapter.

III. Insolvency Resolution Mechanism

The Insolvency and Bankruptcy Code 2016 (IBC)[16] consolidated fragmented regulations like SICA and SARFAESI, which previously caused delays and minimal recovery rates for creditors. Its primary objective is the revival of the corporate debtor as a going concern to

[10]Salem Bar Association v Union of India [2005] 6 SCC 344.
[11]Afcons Infrastructure Ltd v Cherian Varkey Construction Co [2010] 8 SCC 24.
[12]Companies Act 2013, s 442.
[13]Commercial Courts Act 2015.
[14]The Mediation Act 2023 (No 32 of 2023).
[15]Insolvency and Bankruptcy Code (Amendment) Bill 2025, Bill No 107 of 2025 <https://prsindia.org/files/bills_acts/bills_parliament/2025/The_Insolvency_and_Bankruptcy_Code_(Amendment)_Bill,2025.pdf> accessed 10 March 2026.
[16]Insolvency and Bankruptcy Code 2016.

prevent liquidation and optimize asset value.[17] A defining feature is the shift from a debtor-in-possession regime to a creditor-in-control model, addressing the common pool problem where creditors compete for limited assets.[18] Upon admission, management is replaced by a Resolution Professional (RP) operating under the Committee of Creditors (CoC). This ensures stakeholders with the highest financial interest drive the process, preventing asset stripping or mismanagement by former leadership during distress.

Challenges in Achieving Time-Bound Resolution

A cornerstone and non-negotiable principle of the IBC is its emphasis on speed; the time-value of money is central to the Code's philosophy, as every day spent in resolution leads to a rapid and often irreversible depletion of asset value, business goodwill, and operational viability. Section 12 originally mandated a 180-day CIRP period, later capped at an absolute limit of 330 days to include legal proceedings. However, these timelines are frequently breached; as of March 2023, 67% of ongoing CIRPs exceeded 270 days, with plan approvals averaging 831 days in high-profile cases. These delays stem from adversarial litigation under Section 60(5), where stakeholders challenge claim rejections, applicant eligibility under Section 29A, and distribution waterfalls.[19] Although the Supreme Court in *Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta*[20] held the 330-day limit as directory to avoid forced liquidation, the resulting judicial bottleneck transforms streamlined resolutions into protracted trials, eroding enterprise value.

Current Settlement and Withdrawal Mechanisms

The IBC provides settlement mechanisms to prioritize business continuity over forced legal resolution. Rule 8 of the Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016[21] allows application withdrawal before admission, serving as a debt recovery catalyst as debtors seek to avoid management displacement and public stigma. Post-admission, Section 12A permits withdrawal but requires a high 90% voting share from the Committee of Creditors (CoC) to prevent collusive exits that might disadvantage minority stakeholders. IBBI data

[17]Ministry of Finance, *Report of the Bankruptcy Law Reforms Committee* (Volume I: Rationale and Design, 2015) <https://finmin.nic.in/reports/BLRCReportVol1_04112015.pdf> accessed 11 March 2026.
[18]Rajiv Mani, *'Mediation in Insolvency Matters'* (2017) 5th Voice Legal News <https://ibbi.gov.in/uploads/whatsnew/16d99586f2ed752a0e10178015aa991b.pdf> accessed 11 March 2026.
[19]Insolvency and Bankruptcy Code 2016, s 12.
[20]Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta [2020] 8 SCC 531.
[21]Rule 8, Insolvency and Bankruptcy (Adjudicating Authority) Rules 2016.

highlights the effectiveness of pre-admission "threats": by August 2023, over 26,000 applications involving defaults of approximately Rs 9.33 lakh crore were withdrawn before formal commencement. Conversely, post-admission withdrawals are rare. Once the process becomes in rem, achieving a 90% consensus among creditors with competing interests is nearly impossible without professional facilitation. The lack of a structured, bespoke mediation framework leaves the 90% threshold as an insurmountable hurdle, often forcing viable companies toward contested resolution plans or value-destroying liquidation.

IV. Recommendations of the IBBI Expert Committee

To operationalize mediation within the Insolvency and Bankruptcy Code (IBC), the Insolvency and Bankruptcy Board of India (IBBI) constituted a high-level Expert Committee that submitted its comprehensive report in January 2024.[22] The Committee emphasized that for mediation to be effective in the high-stakes, time-sensitive environment of insolvency, it must not be viewed as a mandatory hurdle or a jurisdictional roadblock that stalls the resolution process. Instead, it should function as a complementary, voluntary tool that operates on a strict parallel track. The primary recommendation of the Committee is the creation of a self-contained, bespoke mediation framework under the IBC, which remains explicitly independent of the general Mediation Act 2023.

This independence is not merely a procedural preference but a technical necessity to accommodate the unique *in rem* nature of insolvency proceedings. Unlike civil mediation, where a settlement affects only the parties in the room, an insolvency settlement often alters the rights of the entire body of creditors and the public at large. Furthermore, the IBC operates under rigid, non-extendable milestones for the CIRP, which would be fundamentally jeopardized by the lengthy 120-day timelines prescribed under the general 2023 Act. The Committee proposed that the insolvency mediation framework be regulatory in nature, governed by IBBI regulations rather than the Mediation Council of India, ensuring that the rules are specifically tailored to corporate distress and financial restructuring.

Key institutional safeguards proposed by the Committee include:[23]

[22]IBBI, *Report of the Expert Committee on Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016* (January 2024) <https://ibbi.gov.in/uploads/whatsnew/525cbe1dd3b1f9fd9866fe77676a96ae.pdf> accessed 11 March 2026.
[23]Ibid.

- **NCLT-Annexed Mediation:** The establishment of a dedicated mediation secretariat at the National Company Law Tribunal (NCLT) is central to the Multi-door Courthouse philosophy. This secretariat would facilitate the referral process, maintain the mediation clock, and ensure that the Adjudicating Authority (NCLT) remains informed of progress without compromising the confidentiality of discussions.

- **Specialized Panels:** The creation of an Insolvency Mediation Panel is vital because generic mediation skills are often insufficient for complex debt restructuring. These panels would comprise retired judges, senior advocates, and experienced insolvency professionals who possess deep commercial and technical expertise in valuation, inter-creditor dynamics, and corporate finance.

- **Voluntary and Flexible:** Participation in mediation should be entirely voluntary for all stakeholders. This safeguard ensures that mediation is not weaponized as a dilatory tactic by recalcitrant corporate debtors or disgruntled creditors seeking to stay the proceedings. The Committee recommended that the initiation of mediation should never automatically result in a stay of the CIRP or the liquidation process.

Potential Stages for Introducing Mediation

The Expert Committee and legal scholars identify several critical intervention points where mediation can yield significant dividends in reducing the judicial burden on the NCLT and preserving the going-concern value of the debtor.

A. Pre-Commencement and Pre-Admission Stage

This stage offers the most fertile ground for mediation, particularly for applications filed by Operational Creditors (OCs) under Section 9 of the Code.[24] OC disputes often involve relatively small, bilateral claims for unpaid goods or services. While these claims are simple in nature, they frequently clog the NCLT's dockets and risk dragging fundamentally solvent companies into a collective insolvency process. By facilitating a neutral "check-in" at the pre-admission stage—running strictly parallel to the 14-day admission clock—mediation can act as a powerful nudge for the parties to reach a settlement. This prevents the corporate death associated with a full CIRP and preserves the credit relationship between the supplier and the

[24]Ibid.

debtor, which is often destroyed in adversarial litigation.[25]

B. Post-Commencement (CIRP) Process Mediations

Once a CIRP is admitted, the proceedings assume a collective character, and the *in rem* effect makes blanket mediation more complex. However, process-specific mediations can resolve individual technical bottlenecks that frequently lead to interlocutory litigation under Section 60(5):[26]

- **Claims Collation and Reconciliation:** Disputes arising from the Resolution Professional's (RP) partial or full rejection of claims are a primary source of litigation. A mediator can assist in reconciling accounting discrepancies quickly through "class mediations" for similar types of creditors, significantly saving the NCLT's judicial time.

- **Inter-Creditor Conflicts at the CoC:** Reaching the 66% voting threshold required for the approval of a resolution plan is often hindered by conflicts within the Committee of Creditors (CoC). These conflicts typically involve disagreements between secured and unsecured creditors over the distribution waterfall or the valuation of specific security interests. A neutral mediator can facilitate "interest-based" negotiations to build a consensus among the creditors.

- **Handover of Control and Information:** Mediation can be effectively used to resolve friction between the suspended management and the RP. Disputes regarding the handover of critical assets, statutory records, and digital information can be resolved through facilitated dialogue far more quickly than through contempt applications filed before the Tribunal.

Comparative International Insolvency Mediation Practices

International jurisdictions provide a robust and successful blueprint for integrating mediation into bankruptcy frameworks, demonstrating its efficacy in preserving enterprise value and maximizing recoveries.

[25]Ibid.
[26]Ibid.

United States

US Bankruptcy Courts utilize mediation extensively under Chapter 11 proceedings, often appointing specialized mediation judges or private neutrals to handle complex multi-party disputes. A landmark example is the *In re Lehman Brothers Holdings Inc*[27] bankruptcy, where court-appointed mediators successfully settled 73 out of 77 complex derivatives disputes, recovering over $2 billion for the estate without protracted litigation. Similarly, in the Boy Scouts of America bankruptcy, mediation was the primary engine that drove the establishment of a $2.48 billion settlement trust, resolving over 80,000 mass-tort claims.[28]

European Union & Italy

The EU Directive on Restructuring and Insolvency explicitly promotes the use of out-of-court workout tools. Italy, through its Code of Business Crisis and Insolvency, relies heavily on a mechanism called "Negotiated Settlement for Business Crisis" (Composizione Negoziata). This is a strictly confidential, out-of-court mediation process led by an independent expert who assists the debtor in negotiating with creditors before any formal insolvency filing occurs. This early warning system has proven effective in catching financial distress before enterprise value is totally eroded.

Singapore

As a global hub for debt restructuring, Singapore champions the concept of "plan mediation." This involves utilizing neutral third-party facilitators to align the interests of diverse, multi-jurisdictional creditors in complex cross-border restructurings. The Singapore model focuses on consensus-building and "interest-based" bargaining to reach the high voting thresholds required for a Scheme of Arrangement, often avoiding the need for the court to exercise its cram-down powers against dissenting creditors.[29]

V. Findings and Analysis

The doctrinal analysis of the current insolvency landscape reveals critical findings regarding

[27]In re Lehman Brothers Holdings Inc, No 08-13555 (Bankr SDNY 15 September 2008).
[28]'Mediation as a Bankruptcy and Insolvency Game Changer' (International Restructuring Newswire, Norton Rose Fulbright, Q4 2023) <https://www.nortonrosefulbright.com/en/knowledge/publications/17595c5d/mediation-as-a-bankruptcy-and-insolvency-game-changer> accessed 11 March 2026.
[29]Ibid.

the limitations of the existing framework and the potential for mediation to serve as a corrective mechanism for judicial congestion. The primary inhibitor to value maximization under the IBC is the rapid erosion of asset value caused by prolonged litigation. Statistical evidence from the IBBI confirms that the average time for resolution plan approval often exceeds 800 days, far beyond the intended statutory limit of 330 days. This delay is fundamentally linked to the adversarial nature of Section 60(5) applications, which clog NCLT dockets with disputes over claims collation, the conduct of resolution professionals, and inter-creditor priorities. The research finds that the "common pool problem," where creditors aggressively compete for limited assets, exacerbates these delays, turning a collective resolution process into a series of bilateral legal battles. This often leads to the "corporate death" of potentially viable entities through forced liquidation.

Furthermore, there is a fundamental structural incompatibility between the Mediation Act 2023 and the IBC. The 120-day timeline prescribed in the 2023 Act is a linear process that would conflict with the 180-day CIRP cycle, adding months of delay if not managed within a bespoke framework. While the 2023 Act is designed for *in personam* disputes, insolvency resolution involves *in rem* rights that impact the entire body of creditors and the public interest. The research underscores that a "one-size-fits-all" approach fails in the insolvency context. Therefore, a self-contained framework as proposed in the Insolvency and Bankruptcy Code (Amendment) Bill 2025 is essential to protect the unique, time-sensitive milestones of the Code.

Suggestions

Based on the analysis of the IBBI Expert Committee Report and international best practices, the following suggestions are proposed for a robust implementation of insolvency mediation:

- **Adoption of the Parallel Track Model:** To ensure mediation does not become a tool for delay, it must run concurrently with the CIRP or the admission process. This ensures that the initiation of mediation does not stay statutory timelines or provide a loophole for recalcitrant debtors. Specifically, for Section 9 applications, mediation should conclude within the 14-day admission window to maintain the "threat" of insolvency as a catalyst for settlement.

- **Establishment of NCLT-Annexed Secretariats:** A dedicated in-house secretariat

should be created within the NCLT to handle administrative aspects. This body would be responsible for the empanelment of specialized mediators with expertise in corporate finance, valuation, and insolvency law. These secretariats should manage the "mediation clock" to ensure alignment with the NCLT judicial calendar.

- **Defined Role for Resolution Professionals (RP):** The framework should explicitly define the RP's role in mediation as a neutral facilitator of information rather than a primary disputant. To encourage participation, the law must provide the RP with immunity for actions taken during facilitated settlements, ensuring that mediation does not lead to subsequent litigation against the professional for "negligence" or "bias" in claims reconciliation.

- **Focus on Process Mediation:** Instead of using mediation for the entire case, the framework should prioritize specific bottlenecks such as claims reconciliation and inter-creditor disputes within the Committee of Creditors (CoC). This targeted approach facilitates democratic decision-making and builds the consensus required to reach the high 66% or 90% voting thresholds, which are often insurmountable in purely adversarial settings.

Conclusion

The Insolvency and Bankruptcy Code 2016 has successfully reformed India's credit culture and ended the era of the unrelenting debtor. However, the maturation of the insolvency ecosystem now requires a transition from a purely adversarial model to a collaborative rescue culture. Incorporating a bespoke mediation framework is not merely a procedural addition but a strategic necessity to preserve the economic value of distressed enterprises and ensure the survival of viable businesses.

By integrating specialized mediation that respects the strict, non-negotiable timelines of the IBC, India can significantly decongest the NCLT and foster an environment where value maximization is achieved through sophisticated negotiation rather than protracted litigation. The proposed 2025 amendments represent a significant step toward this goal, aligning the Indian insolvency regime with global standards such as those seen in the United States and Singapore. Ultimately, a robust insolvency mediation framework will safeguard the interests of all stakeholders, promote financial stability, and strengthen India's position as a predictable

and efficient global investment destination.