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Mediation as a Transformative Mechanism in Insolvency Resolution Under the IBC: Emerging Dimensions Under the Mediation Act, 2023

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Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted to ensure time-bound insolvency resolution, maximisation of asset value, and balancing of stakeholders' interests. Nevertheless, increasing procedural delays, adversarial litigation, and mounting pendency before the National nyny Law Tribunal (NCLT) have diluted the efficiency of the insolvency framework. In this evolving context, mediation has emerged as a constructive and commercially viable mechanism capable of harmonising creditor-debtor relations while preserving enterprise value. The enactment of the Mediation Act marks a significant legislative shift towards institutional and pre-litigation mediation in India's dispute resolution architecture. This paper critically examines the growing interface between mediation and insolvency law in India with special reference to recent developments under the IBC regime. It analyses how consensual dispute resolution can supplement the rigid adjudicatory model of insolvency proceedings, particularly in operational debt disputes, inter-creditor disagreements, avoidance transactions, and pre-packaged insolvency mechanisms. The study further evaluates the Insolvency and Bankruptcy Board of India's proposal permitting operational creditors to opt for mediation prior to initiating proceedings under Section 9 of the IBC, thereby institutionalising a culture of negotiated settlements within insolvency jurisprudence. The paper argues that mediation can substantially reduce litigation costs, preserve business continuity, maintain commercial relationships, and decongest insolvency tribunals without undermining the objectives of the IBC. It also explores the compatibility of mediated settlements with the principles of creditor autonomy, procedural fairness, and economic efficiency. By examining comparative global practices and contemporary Indian reforms, the paper concludes that mediation represents not merely an adjunct remedy but a transformative jurisprudential tool capable of reshaping insolvency governance in India from adversarial resolution to collaborative restructuring.
Key Words: *Insolvency Law, Mediation, Corporate Restructuring.*

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1. INTRODUCTION

The enactment of the Insolvency and Bankruptcy Code, 2016[1] marked a transformative shift in India's economic and commercial jurisprudence. Prior to the Code, the insolvency[2] framework was fragmented across multiple statutes including the Sick Industrial Companies Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and the Companies Act, 2013. This multiplicity of laws created procedural overlap, jurisdictional conflict, undue delay, and significant erosion of asset value[3]. The primary objective behind the enactment of the IBC was therefore to establish a consolidated, creditor-driven, and time-bound insolvency mechanism aimed at maximisation of asset value, promotion of entrepreneurship, balancing the interests of stakeholders, and improvement in credit availability[4]. The Code sought to shift the legal paradigm from "debtor in possession" to "creditor in control," thereby strengthening commercial certainty and investor confidence[5].To a considerable extent, the Code has succeeded in altering India's insolvency ecosystem. It improved India's ranking in the Ease of Doing Business Index and established a structured institutional framework through the National Company Law Tribunal (NCLT), Insolvency Professionals, Information Utilities, and the Insolvency and Bankruptcy Board of India (IBBI). Judicial pronouncements have repeatedly acknowledged the economic significance of the Code and its role in preserving the corporate debtor as a going concern[6]. Nevertheless, the practical functioning of the IBC has revealed several structural limitations. Persistent delays in the Corporate Insolvency Resolution Process (CIRP), excessive litigation, low recovery in several sectors, and overburdened tribunals have diluted the legislative promise of speedy resolution. The increasing adversarial nature of insolvency proceedings has often transformed the process into a prolonged litigation battle rather than a genuine mechanism of commercial rescue. In this context, mediation emerges as a significant complementary mechanism capable of enhancing the efficacy of insolvency resolution. The enactment of the Mediation Act, 2023[7] demonstrates legislative recognition of consensual dispute resolution as an

1 Insolvency and Bankruptcy Code, 2016.
2 A. Ramaiya, Guide to the Companies Act Vol. II (LexisNexis, Gurugram, 19th edn., 2022).
3 Bankruptcy Law Reforms Committee Report, 2015.
4 Preamble, Insolvency and Bankruptcy Code, 2016.
5 Swiss Ribbons Pvt. Ltd. and Anr. v. Union of India and Ors., AIR 2019 SC 739.
6 Innovative Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407.
7 The Mediation Act, 2023 (Act No. 32 of 2023) was enacted to promote and institutionalise mediation as a structured dispute resolution mechanism in India. The Act introduces mandatory pre-litigation mediation for several civil and commercial disputes, though parties retain the liberty to opt out after attending initial mediation sessions if settlement appears unlikely. One of the most significant features of the legislation is that a Mediated Settlement Agreement (MSA) has been granted the legal status of a final judgment or decree, thereby making it directly enforceable under law. The Act further prescribes a time-bound process requiring mediation to ordinarily conclude within 120 days, extendable by 60 days upon consent of parties. To regulate the mediation framework, the legislation establishes the Mediation Council of India (MCI), entrusted with responsibilities relating to registration of mediators, accreditation of mediation service providers, and maintenance of professional standards. The Act also statutorily recognises institutional mediation, online mediation, and community mediation while ensuring confidentiality of

integral component of modern commercial justice. Although Section 12A of the IBC permits withdrawal of insolvency proceedings after admission upon settlement, the Code does not expressly institutionalise mediation either at the pre-admission or post-admission stage. Similarly, disputes arising under Sections 8 and 9 relating to operational creditors frequently involve commercial disagreements that may be more effectively resolved through structured mediation rather than adversarial adjudication. Recent policy discussions by the IBBI proposing mediation for operational creditor disputes reflect an emerging recognition that insolvency law must move beyond purely coercive recovery mechanisms. A carefully designed amendment introducing mandatory pre-litigation mediation[8] in selected categories of insolvency disputes may substantially reduce frivolous filings, preserve business relationships, minimise liquidation, and reduce the burden on the NCLT. Such reform would also align with the objectives of Section 89[9] of the Code of Civil Procedure, 1908 and the broader constitutional vision of access to speedy and effective justice under Article 21 of the Constitution of India. Therefore, while the IBC has undeniably transformed insolvency jurisprudence in India, its long-term efficacy depends upon integrating collaborative dispute resolution mechanisms within the statutory framework. Mediation should not be viewed as antithetical to insolvency proceedings; rather, it should be

proceedings and inadmissibility of statements made during mediation in subsequent litigation. Its applicability extends throughout India and includes domestic as well as certain categories of international commercial mediation conducted in India. However, disputes involving criminal prosecution, rights of minors, persons of unsound mind, and matters affecting third-party rights are generally excluded from its ambit. The legislation also provides for recognition of Mediation Service Providers including court-annexed mediation centres, Legal Services Authorities, and accredited private institutions. Registration of mediated settlement agreements before designated authorities within the prescribed period ensures authenticity and enforceability of settlements, available at: Ministry of Law and Justice (Last Visited on May 3, 2026).

8 Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd., AIR 2022 SC 3848.

9 Code of Civil Procedure, 1908 (Act No. 5 of 1908), s. 89 provides: "(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for— (a) arbitration; (b) conciliation; (c) judicial settlement including settlement through Lok Adalat; or (d) mediation. (2) Where a dispute has been referred— (a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act; (b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authorities Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat; (c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act; (d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."

recognised as a pragmatic instrument capable of strengthening the rehabilitative and value-preserving objectives of the Code in an increasingly complex commercial economy. The contemporary insolvency landscape in India reflects both institutional achievement and systemic strain. While the Insolvency and Bankruptcy Code, 2016 has significantly altered creditor-debtor dynamics by introducing a unified and market-oriented insolvency framework, the practical realities of implementation reveal an increasing divergence between legislative aspiration and adjudicatory outcomes. The statutory timelines prescribed under Sections 12 and 33 of the Code were intended to ensure swift resolution and avoid depletion of corporate assets; however, in practice, a substantial number of Corporate Insolvency Resolution Processes (CIRPs) continue far beyond the stipulated period due to litigation, procedural complexity, and institutional backlog before the NCLT and NCLAT. Consequently, liquidation has increasingly become the norm rather than the exception in several cases, thereby undermining the original rehabilitative philosophy of the Code. The evolving judicial interpretation of the IBC has also contributed to expanding procedural intricacies. Although the judiciary has consistently upheld the commercial wisdom of the Committee of Creditors[10], the growing volume of challenges relating to admission, valuation, avoidance transactions, and resolution plans has intensified adversarial litigation within the insolvency process. Such developments indicate that insolvency proceedings cannot be treated merely as recovery mechanisms; they are multidimensional commercial disputes involving competing economic and social interests. In this changing environment, the integration of mediation assumes greater significance. The Mediation Act, 2023 has created a statutory foundation for consensual dispute resolution in commercial matters, yet its potential remains underutilised in insolvency jurisprudence. International practices, particularly in jurisdictions such as the United States and Singapore, increasingly recognise mediation as an effective mechanism for restructuring negotiations, cross-border insolvency settlements, and stakeholder consensus-building. India is gradually moving in a similar direction through discussions on pre-packaged insolvency, hybrid restructuring models, and pre-litigation mediation proposals by the IBBI. The present legal landscape therefore demands a calibrated synthesis between adjudicatory authority and consensual dispute resolution. The future efficacy of the IBC lies not merely in stricter enforcement but in developing a flexible insolvency ecosystem where mediation functions as a preventive, curative, and value-preserving mechanism. Such integration would strengthen commercial confidence, reduce judicial burden, and restore the foundational objective of the Code—resolution over liquidation.

2. MEDIATION AS AN EFFECTIVE TOOL UNDER THE IBC FRAMEWORK

The enactment of the Mediation Act, 2023 has introduced a significant paradigm shift in India's dispute resolution framework by institutionalising mediation as a legally enforceable and structured mechanism for commercial dispute settlement. Its relevance becomes particularly pronounced within the framework of the Insolvency and Bankruptcy Code, 2016, where increasing delays, adversarial litigation, and mounting pendency before adjudicatory forums have weakened the objective of time-bound insolvency resolution. The Mediation Act provides a

[10] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.

statutory foundation capable of complementing insolvency proceedings through negotiated settlements, stakeholder consensus, and preservation of enterprise value[11]. Contemporary scholarship increasingly recognises that insolvency disputes are not merely legal controversies but complex commercial conflicts requiring flexible and commercially sensitive resolution mechanisms[12] have acknowledged the importance of settlement and revival over liquidation. However, the absence of a formal mediation framework within the Code often forces parties into adversarial proceedings even in disputes involving manageable commercial disagreements. In operational creditor disputes under Sections 8 and 9, many matters relate to quality of goods, contractual performance, delayed payments, or accounting disagreements rather than genuine insolvency. Such disputes are more suitably resolved through mediation than through coercive insolvency proceedings. Recognising this practical reality, the Insolvency and Bankruptcy Board of India (IBBI) recently proposed voluntary mediation for operational creditors before initiation of proceedings under Section 9 of the IBC. The proposal is based on the recommendations of the Expert Committee on the "Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016" and seeks to reduce the burden upon adjudicating authorities while facilitating early settlement of disputes. The IBBI observed that a substantial number of Section 9 applications are settled before admission, thereby indicating that creditors are primarily interested in repayment and business resolution rather than pushing the corporate debtor into insolvency. From a jurisprudential perspective, mediation aligns closely with the economic objectives of the IBC. Insolvency law is fundamentally intended to maximise asset value, preserve viable businesses, maintain employment, and balance stakeholder interests[13]. Prolonged litigation and delayed CIRP proceedings often destroy commercial value and reduce recovery rates. Mediation can mitigate these consequences by encouraging confidential negotiations, preserving commercial relationships, and facilitating creative restructuring solutions that traditional adjudication may not achieve[14]. International insolvency regimes, particularly in the United States and Singapore, increasingly rely upon mediation in restructuring negotiations, cross-border insolvency disputes, and creditor coordination processes (INSOL International Reports on Mediation and Restructuring).The Mediation Act, 2023 further strengthens enforceability by granting mediated settlement agreements the status of a judgment or decree under Section 27 of the Act. This statutory enforceability enhances creditor confidence and makes mediation a practical alternative

11 "Mediation and Corporate Rescue in India" BW Legal World, Aug. 28, 2024, available at: BW Legal World (Last Visited on May 8, 2026).

12 Soumendra Roy, The Mediation Act, 2023 and its Impact on India's Dispute Resolution Landscape, The Management Accountant Journal, 2024). The structure of the IBC itself demonstrates the need for consensual settlement mechanisms. Section 12A of the Code permits withdrawal of insolvency proceedings after admission where parties arrive at a settlement with the approval of ninety percent voting share of the Committee of Creditors. Judicial decisions such as Swiss Ribbons Pvt. Ltd. v. Union of India ((2019) 4 SCC 17.

13 Bankruptcy Law Reforms Committee, The Report of the Bankruptcy Law Reforms Committee: Volume I – Rationale and Design (Ministry of Finance, Government of India, 2015), available at: Ministry of Finance Report (Last Visited on May 8, 2026).

14 Ibid.

rather than a merely conciliatory exercise. Moreover, pre-litigation mediation under the Act may significantly reduce frivolous insolvency filings and tribunal congestion. Academic commentary has noted that consensual dispute resolution promotes commercial continuity and reduces transactional costs associated with insolvency litigation[15]. Therefore, mediation under the Mediation Act, 2023 has the potential to transform the functioning of the IBC from a predominantly adversarial mechanism into a balanced framework emphasising commercial rehabilitation and cooperative restructuring. The future effectiveness of insolvency jurisprudence in India depends not only upon stricter adjudication but also upon integrating collaborative and economically efficient dispute resolution models within the statutory architecture. One of the most compelling advantages of mediation within the framework of the Insolvency and Bankruptcy Code, 2016 lies in its ability to provide speedy, economical, and commercially practical dispute resolution. Insolvency proceedings before adjudicatory forums frequently involve extensive procedural formalities, repeated hearings, voluminous documentation, and prolonged appellate litigation. Such processes consume substantial financial resources and managerial energy of both creditors and corporate debtors. In contrast, mediation functions through party autonomy, flexibility, confidentiality, and consensual negotiation, thereby significantly reducing procedural rigidity and transactional costs. The newly enacted Mediation Act, 2023 institutionalises mediation as a formal yet simplified mechanism capable of resolving commercial disputes without the adversarial burden associated with conventional litigation. Unlike arbitration and other adjudicatory forums where parties often incur substantial filing fees, arbitrators' fees, administrative charges, and prolonged legal expenses, mediation remains comparatively inexpensive because the process focuses on facilitated settlement rather than adjudicatory determination. The absence of elaborate evidentiary procedures and strict procedural technicalities further reduces the economic burden upon disputing parties. This feature becomes particularly important in insolvency matters where preservation of financial resources and continuity of business operations are essential objectives. Mediation also minimises the psychological and commercial strain associated with insolvency litigation. Corporate insolvency proceedings frequently damage business reputation, disrupt commercial relationships, and create uncertainty among investors, employees, suppliers, and financial institutions. A confidential mediation process allows parties to negotiate settlements without public hostility or reputational harm. Consequently, mediation preserves commercial goodwill and promotes long-term business cooperation, which adversarial insolvency proceedings often destroy. Another significant advantage is procedural flexibility and time efficiency[16]. The statutory timelines under the IBC have repeatedly been frustrated due to judicial backlog and prolonged appeals. Mediation, however, enables parties to reach mutually beneficial settlements within a comparatively shorter duration because discussions are interest-based rather than strictly rights-based. Such efficiency not only reduces tribunal congestion but also ensures quicker recovery for

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15 Avtar Singh, Law of Insolvency (Eastern Book Company, Lucknow, 6th edn., 2021).

16 M.S. Sahoo and Vinod Kothari, Insolvency and Bankruptcy Code – Law and Practice (Taxmann Publications, New Delhi, 3rd edn., 2022).

creditors and survival opportunities for financially distressed enterprises. Therefore, mediation represents a commercially rational and economically efficient mechanism capable of complementing insolvency jurisprudence. By reducing costs, conserving time and institutional resources, and encouraging cooperative restructuring, mediation advances the broader objectives of access to justice, economic efficiency, and value maximisation underlying the IBC framework. Despite its numerous advantages, mediation within the framework of the Insolvency and Bankruptcy Code, 2016 may also present certain structural and practical limitations[17]. Insolvency disputes often involve multiple stakeholders, including secured creditors, operational creditors, employees, government authorities, and resolution applicants, whose competing financial interests may make consensual settlement difficult[18]. Unlike ordinary commercial disputes, insolvency proceedings concern collective resolution and public economic interest; therefore, excessive reliance on mediation may delay urgent insolvency action where immediate judicial intervention is necessary to prevent asset dissipation. Another significant concern relates to imbalance in bargaining power. Financially distressed corporate debtors may face pressure from dominant creditors during mediation, thereby undermining genuine voluntariness and fairness of settlement. The confidential nature of mediation, though beneficial in commercial terms, may also reduce procedural transparency and create apprehensions regarding unequal settlements among similarly situated creditors. Moreover, mediated settlements lacking adequate judicial scrutiny could potentially conflict with the principles of equitable treatment embodied in insolvency jurisprudence. There is also the practical challenge of limited institutional capacity and trained mediators possessing specialised expertise in insolvency and restructuring matters[19]. Without professional commercial mediators and a clear statutory framework within the IBC itself, mediation may remain underutilised or inconsistently applied. Therefore, mediation should supplement—not replace—the formal insolvency adjudicatory process, ensuring a balanced integration between consensual settlement and statutory creditor protection. Therefore, a balanced evaluation demonstrates that while mediation is not a complete substitute for the adjudicatory framework of the Insolvency and Bankruptcy Code, 2016, its advantages substantially outweigh its limitations when applied in a carefully regulated manner. The potential concerns relating to bargaining inequality, confidentiality, and multi-party complexity are not insurmountable; rather, they indicate the need for a specialised statutory framework, trained insolvency mediators, and judicial supervision wherever necessary. In contrast, the benefits of mediation—speedy resolution, reduced litigation costs, preservation of business relationships, confidentiality, reduced burden upon tribunals, and enhancement of value-maximisation objectives—directly strengthen the foundational philosophy of the IBC[20]. The present insolvency regime in India increasingly suffers from procedural delays and adversarial excesses that often

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17 Soumendra Roy, "The Mediation Act, 2023 and its Impact on India's Dispute Resolution Landscape" The Management Accountant Journal (2024), available at: Research Gate (Last Visited on May 1, 2026).

18 Sumant Batra, Corporate Insolvency: Law and Practice (Eastern Book Company, Lucknow, 2020).

19 V. Niranjan and Rajeev Saumitra, Mediation in India: Law, Policy and Practice (LexisNexis, Gurugram, 2024).

20 Shubham Jain, "Mediation under the Insolvency and Bankruptcy Code: Need for a Structured Framework" 14 Indian Journal of Arbitration Law 67 (2023).

transform a resolution-oriented statute into prolonged commercial litigation[21]. In such circumstances, mediation emerges not merely as an optional alternative dispute resolution mechanism but as a necessary corrective tool capable of restoring commercial pragmatism within insolvency jurisprudence. Consequently, the future effectiveness of the IBC may depend upon integrating mediation as an institutionalised and professionally regulated component of insolvency resolution rather than treating it as a peripheral or exceptional process.

3. SUGGESTED AMENDMENTS FOR INTEGRATING MEDIATION INTO THE IBC FRAMEWORK

To fully realise the advantages of the Mediation Act, 2023 within the insolvency regime, the Insolvency and Bankruptcy Code, 2016 requires targeted statutory amendments that formally incorporate mediation into the insolvency resolution architecture. Presently, mediation operates only indirectly through settlement mechanisms under Section 12A and judicial encouragement of compromise[22]. A comprehensive legislative framework is therefore necessary to transform mediation from an incidental practice into an institutional component of insolvency jurisprudence. One important amendment may be the insertion of a separate chapter within Part II of the IBC specifically dealing with "Insolvency Mediation and Negotiated Resolution." Such provisions should recognise both pre-admission and post-admission mediation. In operational creditor disputes under Sections 8 and 9, mandatory pre-litigation mediation may be introduced before filing an insolvency application, except in cases involving fraud or clear asset dissipation. This would prevent the misuse of insolvency proceedings as debt recovery mechanisms and substantially reduce frivolous filings before the NCLT. The recent recommendations of the IBBI Expert Committee strongly support this approach. Secondly, the Code should empower the NCLT to refer disputes relating to valuation, inter-creditor conflicts, resolution plan objections, and avoidance transactions to court-annexed mediation during the Corporate Insolvency Resolution Process (CIRP). Such referral powers may be modelled upon Section 89 of the Code of Civil Procedure, 1908. This would preserve judicial time while allowing commercially workable solutions to emerge through stakeholder negotiations. Another necessary reform would be the statutory recognition of insolvency mediators possessing expertise in finance, restructuring, banking, and commercial law. A specialised panel may be constituted jointly by the IBBI and recognised mediation institutions. Insolvency disputes involve highly technical financial negotiations; therefore, ordinary mediation without sectoral expertise may prove ineffective. Singapore has achieved considerable success through institutionally trained insolvency mediators under the Singapore Mediation Centre and Singapore International Mediation Centre. Further, the IBC should expressly recognise mediated settlement agreements approved by the Committee of Creditors as binding and enforceable without requiring prolonged adjudicatory confirmation. The enforceability provisions under Section 27 of the Mediation Act, 2023 may be incorporated

21 Anirudh Wadhwa, "Role of ADR in Corporate Insolvency Resolution Process" 5 NLIU Law Review 102 (2022).

22 Insolvency and Bankruptcy Board of India, Report of the Expert Committee on the Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016 (2024), available at: IBBI Expert Committee Report (Last Visited on April 7, 2026).

through cross-referencing amendments within the IBC. Such integration would increase commercial confidence in mediated restructuring arrangements. India may also draw lessons from the United States, where Chapter 11 restructuring proceedings frequently utilise mediation for resolving creditor disputes and restructuring negotiations. In large insolvency matters such as Lehman Brothers, structured mediation successfully resolved thousands of derivative-related claims with significant reduction in litigation costs and delay. Similarly, the United Kingdom and Singapore increasingly encourage judicially supervised mediation in restructuring proceedings to preserve enterprise value and promote business continuity. Additionally, timelines for mediation should be statutorily integrated into the CIRP process without frustrating the overall objective of time-bound resolution. A limited mediation window of thirty to forty-five days may be prescribed so that consensual settlement complements rather than delays insolvency proceedings[23].Thus, the proposed amendments would harmonise the rehabilitative objectives of the IBC with the consensual philosophy of the Mediation Act, 2023. The comparative success of mediation-oriented insolvency systems in jurisdictions such as Singapore, the United States, and the United Kingdom demonstrates that modern insolvency law functions most effectively when adjudication and negotiated restructuring operate together rather than in isolation.

4. FUTURE CHALLENGES IN INTEGRATING MEDIATION WITH THE IBC

Even after the successful integration of mediation into the Insolvency and Bankruptcy Code, 2016, several structural, institutional, and jurisprudential challenges are likely to persist. The first major challenge would be balancing consensual dispute resolution with the time-bound character of insolvency proceedings. The IBC was enacted to ensure speedy resolution and prevent erosion of asset value; however, if mediation is misused as a delaying tactic by defaulting corporate debtors, it may frustrate the statutory objectives of the Code. Therefore, excessive procedural flexibility may potentially weaken creditor confidence in the insolvency framework. Another significant challenge would arise from the multi-party nature of insolvency disputes. Unlike ordinary commercial disputes involving two parties, insolvency proceedings involve numerous stakeholders with conflicting interests, including financial creditors, operational creditors, employees, government authorities, shareholders, and resolution applicants[24]. Achieving consensus among such diverse groups through mediation may prove difficult, especially where financial exposure and voting rights are unequal. Minority creditors may also fear coercive settlements dominated by major financial institutions. Institutional capacity would remain another serious concern. India presently lacks a sufficient number of professionally trained insolvency mediators possessing expertise in banking, restructuring, corporate finance, and cross-border insolvency. Without specialised mediators and standardised procedural guidelines, mediation may become inconsistent and commercially ineffective. Additionally, mediation culture in India is still evolving, and many commercial litigants continue to perceive adversarial

[23] Law Commission of India, Report No. 222: Need for Justice-dispensation through ADR etc. (2009), available at: Law Commission Report No. 222 (Last Visited on May 8, 2026).

[24] Law Commission of India, Report No. 238: Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions (2011), available at: Law Commission Report No. 238 (Last Visited on May 8, 2026).

adjudication as a stronger enforcement mechanism[25]. Confidentiality in mediation may also create tensions with the transparency requirements of insolvency law. Since insolvency proceedings affect public economic interests and multiple stakeholders, excessive confidentiality may raise concerns regarding fairness, disclosure obligations, and equitable treatment of creditors. Courts may therefore face difficulties in balancing private settlement autonomy with public accountability[26]. Cross-border insolvency disputes under global commercial transactions would create additional complexities. Mediated settlements involving multinational creditors may require harmonisation with foreign insolvency regimes and international enforcement standards[27]. India's evolving cross-border insolvency framework under the UNCITRAL Model Law principles may therefore require further refinement to accommodate mediation-based settlements effectively. Finally, there remains the jurisprudential challenge of reconciling the coercive character of insolvency law with the voluntary nature of mediation[28]. Insolvency proceedings fundamentally involve statutory rights, collective creditor remedies, and public economic considerations, whereas mediation is based upon party autonomy and consensual participation. Integrating these contrasting philosophies without undermining either system would require careful legislative drafting, judicial discipline, and institutional maturity. Thus, although mediation has immense transformative potential within insolvency jurisprudence, its long-term success will depend upon specialised infrastructure, procedural safeguards, trained professionals, and a balanced legal framework capable of preserving both commercial flexibility and creditor protection.

5. CONCLUSION

The introduction of the Insolvency and Bankruptcy Code, 2016 represented one of the most significant economic and legal reforms in contemporary India. The Code was enacted primarily to address the chronic inefficiencies of the earlier insolvency regime, which suffered from multiplicity of laws, institutional fragmentation, prolonged delays, poor recovery rates, and continuous erosion of asset value. Prior statutes such as the Sick Industrial Companies Act, 1985 and debt recovery mechanisms failed to provide a coherent and time-bound framework for insolvency resolution. Consequently, the IBC sought to establish a unified, creditor-oriented, and commercially efficient mechanism focused upon resolution rather than mere recovery or liquidation. Its core objectives included maximisation of asset value, promotion of entrepreneurship, improvement of credit culture, balancing stakeholder interests, and ensuring speedy insolvency resolution. To a substantial extent, the Code has achieved transformative

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25 Anjali Sharma, "Can Mediation Rescue India's Insolvency Framework?" The Economic Times, Jan. 12, 2025, available at: Economic Times Legal World (Last Visited on May 8, 2026).

26 INSOL International, Statement of Principles for a Global Approach to Multi-Creditor Workouts (INSOL International, London, 2017), available at: INSOL International (Last Visited on May 3, 2026).

27 Sreenath Khemka, Law Relating to Insolvency and Bankruptcy Code, 2016 (Thomson Reuters, New Delhi, 2021).

28 Debolina Sengupta, "IBBI proposes mediation before insolvency proceedings by operational creditors" Business Standard, Nov. 6, 2024, available at: Business Standard Article (Last Visited on May 6, 2026).

success. It fundamentally altered debtor-creditor relations, strengthened financial discipline, improved institutional accountability, and enhanced investor confidence in India's commercial framework. The establishment of the NCLT, Insolvency Professionals, Information Utilities, and the Insolvency and Bankruptcy Board of India created a modern insolvency ecosystem that was previously absent. The judiciary also played a crucial role in strengthening the Code through purposive interpretation and recognition of commercial wisdom as the cornerstone of insolvency resolution. However, the evolving realities of insolvency litigation soon revealed practical and structural limitations. In response, Parliament repeatedly amended the Code to meet emerging challenges. Since 2016, numerous amendments have been introduced addressing homebuyers' rights, withdrawal of proceedings under Section 12A, threshold limits for initiation, protection of successful resolution applicants under Section 32A, pre-packaged insolvency for MSMEs, cross-border insolvency discussions, and procedural streamlining. These amendments demonstrate that insolvency law is a dynamic economic instrument requiring continuous adaptation to commercial realities. Despite such reforms, several problems persist even today. Judicial backlog before the NCLT and NCLAT, prolonged litigation, excessive procedural complexity, liquidation of potentially viable businesses, and adversarial creditor-debtor relationships continue to undermine the objective of time-bound resolution. Many insolvency proceedings still function more as recovery actions than genuine restructuring mechanisms. Consequently, the original rehabilitative philosophy of the Code often becomes secondary to procedural contestation. In this context, the Mediation Act, 2023 offers a progressive opportunity to integrate consensual dispute resolution within insolvency jurisprudence. Mediation can reduce litigation costs, save time and institutional resources, preserve business relationships, encourage cooperative restructuring, and decongest tribunals. More importantly, it restores commercial pragmatism by prioritising negotiated settlement over destructive litigation. International experiences from the United States, Singapore, and the United Kingdom demonstrate that mediation can significantly strengthen insolvency systems when supported by institutional safeguards and specialised expertise. Nevertheless, no legal problem is ever absolutely permanent, and similarly no legislative solution can ever claim complete finality. Economic systems continuously evolve, commercial relationships become increasingly complex, and legal institutions must adapt accordingly. The IBC itself is a continuing experiment in economic governance rather than a finished legislative product. Mediation therefore should not be viewed as a perfect or exclusive remedy, but as an important complementary mechanism capable of humanising and strengthening insolvency resolution. The future effectiveness of India's insolvency framework will ultimately depend upon maintaining a balanced synthesis between adjudicatory authority, commercial efficiency, and consensual justice in an ever-changing economic landscape. In the contemporary global commercial environment, mediation is increasingly emerging as one of the most effective and commercially rational methods of dispute resolution. Modern business transactions are highly complex, transnational, technology-driven, and relationship-oriented. Traditional adversarial litigation often proves inadequate in addressing these realities because it is time-consuming, expensive, rigid, and frequently destructive of commercial relationships. In contrast, mediation offers flexibility, confidentiality, speed, and collaborative problem-solving, which are indispensable for modern commerce. Consequently, advanced economies and international commercial institutions are progressively recognising mediation not merely as an alternative mechanism, but as an integral component of efficient commercial governance. The growing acceptance of mediation reflects a broader jurisprudential shift from adversarial justice to participatory and interest-based resolution. Commercial entities today seek business continuity, reputation management, and economic stability rather than prolonged courtroom battles. Mediation allows disputing parties to preserve professional relationships while simultaneously resolving financial disagreements in a confidential and commercially practical manner. This aspect becomes particularly important in insolvency and restructuring disputes where aggressive litigation often destroys enterprise value and investor confidence. International legal developments strongly support this transition. Instruments such as the United Nations Commission on International Trade Law Singapore Convention on Mediation, 2019 demonstrate the growing global commitment toward enforceable mediated settlements in cross-border commercial disputes. Countries such as Singapore, the United States, the United Kingdom, and Australia increasingly incorporate mediation within corporate restructuring and insolvency frameworks because negotiated settlements frequently provide more sustainable outcomes than coercive adjudication. The rise of digital commerce, multinational investment, and cross-border financial transactions further strengthens the relevance of mediation. Commercial disputes today often involve technical, financial, and international dimensions requiring specialised and flexible solutions beyond conventional judicial processes. Mediation enables parties to craft innovative settlements tailored to commercial realities rather than being confined to rigid legal remedies. Therefore, in the modern economic world, mediation represents not merely a procedural alternative but a progressive philosophy of commercial justice based upon cooperation, efficiency, and preservation of economic relationships. Its integration into insolvency jurisprudence reflects the broader transformation of law from purely adjudicatory control toward collaborative and economically sustainable dispute resolution. Among the various mechanisms of Alternative Dispute Resolution, mediation occupies a uniquely superior position in contemporary commercial jurisprudence because it emphasises consensual participation, preservation of relationships, procedural flexibility, and mutually beneficial outcomes rather than adversarial determination. Unlike arbitration, which often replicates the formalism, technicality, and high costs of litigation, mediation remains comparatively informal, economical, confidential, and solution-oriented. Similarly, unlike conciliation where the conciliator may assume a more interventionist role, mediation primarily empowers parties themselves to control both the process and the outcome, thereby strengthening commercial autonomy and long-term cooperation. In complex insolvency and restructuring disputes, where business continuity and stakeholder confidence are more valuable than purely adjudicatory victory, mediation provides space for creative and commercially sustainable settlements that rigid legal proceedings frequently fail to achieve. Its emphasis upon dialogue rather than contest, rehabilitation rather than punishment, and collaboration rather than coercion reflects the evolving philosophy of modern commercial justice. Therefore, in an increasingly interconnected and economically sensitive world, mediation represents not merely an alternative to traditional adjudication or other ADR processes, but a more humane, pragmatic, and future-oriented model of dispute resolution capable of balancing efficiency with equity and commercial certainty with relational stability.

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