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Mediating Corporate Distress: The Evolving Role of ADR in Insolvency and Bankruptcy Resolution

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ABSTRACT:

This paper discusses the changing interaction between mediation and the overall concept of Corporate Insolvency Resolution, It looks at how mediation can work alongside other long-established mechanisms in today's corporate insolvency framework. Corporate insolvency is becoming an increasingly complicated matter. As such, the need for methods to resolve these issues are becoming more apparent and have become equally important as providing methods to resolve disputes in an efficient, predictable, collaborative manner. The growing importance of Alternative Dispute Resolution (ADR) techniques - such as structured negation or facilitated dialogues - as complementary to other legal process is clearly shown, especially when looking at reducing procedural bottlenecks, facilitating communication between parties, and creating flexible pathways for resolving commercial disputes as they occur during the process of insolvency, while at the same time protecting the integrity and oversight of the overall legal framework. The study considers insights drawn from several real-world instances, both in India and internationally, where mediation and negotiation played a meaningful role in resolving complex insolvency issues. Further, the paper examines the regulatory and institutional implications of integrating mediation within contemporary hybrid insolvency frameworks, where court-supervised procedures and consensual dispute-

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resolution mechanisms operate in conjunction rather than in isolation. In this context, the analysis highlights how hybrid models raise complex questions relating to mediator. By focusing on these blended structures, the paper underscores a broader global movement toward collaborative insolvency mechanisms that seek to harmonise judicial oversight with facilitated consensus-building in the management of corporate distress.

Keywords: Insolvency, Bankruptcy, ADR, Hybrid models, Debt Restructuring

I. Corporate Insolvency in Complex Times: Limits of Adjudication

The phrase "When businesses fail, relationships fail first," is used frequently in business. Corporate insolvencies are rarely the result of one instantaneous event, but rather the product of an extended period of financial decline and breakdown of negotiations and trust among the different parties involved. Historically, insolvency law has stepped in only once there has been an official declaration of default (usually when a company is unable to repay its debts) and primarily provided adjudicative methods of resolving the insolvency. This disconnection between the nature of corporate distress and the manner in which it is remedied by the courts has become increasingly evident over the last few decades in modern insolvency systems.

Currently, corporate insolvencies occur within a drastically more complex environment. Corporate entities today are connected both directly and indirectly through networks of financial contracts, supply chain logistics, regulatory obligations, and cross-border business operations. As a result, any given corporate insolvency proceeding may have a considerable number of domestic and foreign creditors; both secured and unsecured claims; multiple regulatory bodies with claims against the business; various employment issues; and ongoing commercial relationships. Despite this fact, the legal framework continues to be based upon an adversarial system of adjudication, which is not appropriate for addressing the complexity of multiple parties involved in a corporate insolvency.

Adjudication can determine the rights of parties based upon the events that have occurred prior to the commencement of the adjudication process. In effect, it determines who is entitled to what, who gets paid first, and how disputes between the different parties will be resolved according to existing legal principles. However, corporate insolvency not only relates to past events, but rather; it also concerns whether the business can continue

operations, how to maintain value of the business, and how to allocate the losses amongst the different stakeholders in a way that is both efficient and fair. To make these determinations requires negotiations between the various stakeholders, compromises made by the stakeholders, and foresight on the part of all stakeholders not only regarding how to resolve this specific situation but also about how to ensure these types of disputes do not come up again in the future. None of these qualities can be guaranteed by the current system of adjudication.

A growing awareness of the need for collaborative governance processes in insolvency resolution has led scholars, regulators, and practitioners to reassess the role that non-adversarial mechanisms can have within the current regulatory framework surrounding insolvency. As such, the increased focus on ADR – specifically mediation and structured negotiation – is indicative of a movement away from pure adjudicatory treatment of insolvency issues toward collaborative approaches.

However, this paper argues that increasing levels of ADR involvement in insolvency have not arisen from a simple happenstance or trial-and-error approach but rather as a consequence of the systemic pressures confronting adjudicative-based insolvency systems, which are becoming increasingly difficult to ignore due to their inherent structural limitations and regulatory deficiencies. In examining the structural limitations of court-centred approaches to insolvency, the functional strengths of mediation and structured negotiation and the difficulties arising from regulating the integration of these types of non-adversarial resolutions into formal insolvency frameworks, the author intends to support this emerging re-examination of how corporate distress is managed legally.

II. The Structural Conflicts of Court-Based Insolvency Systems

The contemporary insolvency system faces a paradox: the statutes on insolvency typically promote speed, efficiency, and maximization of value, yet most insolvency proceedings experience compatible delays, heightened levels of legal contention, and declining levels of recovery. This gap cannot be traced solely to poor compliance with or tactical abuse of the statutes but rather, demonstrates a far deeper level of conflict(s) related to the structure of adjudicatory systems. The key element of these conflicts comes from the nature of litigation being an adversarial process. An insolvency proceeding converts a commercial dispute into a legal "battle" pitting two opposing parties against one another and as such forces the

participants to adopt defensive or aggressive litigation strategies. The creditors seek to use litigation to improve their potential for recovery, while debtors will use the litigation process to resist or seek leverage over the proceedings and those involved with the resolution of such disputes often find themselves diverted from the business restructuring process because of the procedural disputes resulting from the litigation. Each litigation "battle" requires time and resources, resulting in a decrease in the overall value preserved throughout the insolvency process.

In addition, many insolvency disputes include issues that cannot be determined solely through a precise legal analysis. Valuation disputes are not simply a matter of determining whether an object, product, or service has an objectively correct value; rather the determination of value is based on assumptions regarding future performance, market conditions, and strategic choices. As such, the "winner" of an insolvency dispute is often determined based upon the parties' ability to suffer the longest in a litigation process rather than based upon any economic rationale. Courts are limited by the rules of evidence and the rigid adherence to legal principles (formalism) and therefore are seldom "well-placed" to make an effective arbitration regarding the nature of a commercial judgement.

Judicial capacity is another factor that is very important. The insolvency courts are overburdened with a lot of cases which makes it impossible for them to really go deep into the complicated restructuring disputes and know the ins and outs of the matter. Consequently, the system ends up where compliance with procedures is often more important than solving the issue in a business-friendly way. On the other hand, if the judicial intervention is not there at all, the collective interest may not be properly attended to and abuses may occur. Therefore, reliance on the courts may transform the insolvency process from a resolution mechanism into a war of attrition that lasts for a long time. It is worth noting that these constraints in the judicial system are not limited to one country only. Looking at the world, one finds that the different countries' insolvency regimes have similar problems. This comparison results in a search for complementary provided mechanisms that can handle disputes in a more efficient and constructive manner. Mediation rises here not as an alternative way of thinking but as a workable solution to the institutional pressure.[3]

[3]Alternative Dispute Resolution in Insolvency Disputes, MMondaq(2022), https://www.mondaq.com/india/insolvencybankruptcy/alternative-dispute-resolution-in-insolvency-disputes-1ujv4v2dz3.pdf.

III. Reframing Insolvency Disputes: From Legal Rights to Economic Interests

ADR means to reframe the disputes arising out of the corporate distress in a much broader and more comprehensive way, and the corporate distress was probably its most significant application in the insolvency area. The bankruptcy courts, by their very nature, tend to focus exclusively on legal rights and the enforcement of such rights. They are mainly concerned with questions of who is entitled to what, who ranks higher, and who has complied with the legal procedure.[4] This approach, although it is necessary for the protection of rights and for the existence of orderly bankruptcy proceedings, is often such that it hides or puts aside the economic factors, which are the major causes of the financial failure, once and for all. Thanks to mediation, it is possible to switch the analysis from the rigid legal positions to the underlying economic interests, encouraging the parties to view bankruptcy as a shared business problem rather than a zero-sum legal contest.

Particularly in corporate bankruptcy, where several different stakeholders could possess contradictory legal claims, this separation becomes very important, however, they all may want to keep the company's value intact as a common goal. The court procedure usually presents insolvency disagreement as elimination of one lawsuit or claim. Either claim is accepted or dismissed, or a plan is voted down or approved. Such a situation obscures the fact that in a lot of cases insolvency opens up avenues of positive-sum situations which are blocked from sight due to the litigating parties' posturing. Juxtaposition of opinions enables the parties to bring forth those positive-sum situations by making them verbalize not only what they are legally entitled to but also what they practically need. This way, it opens the door to solutions, which respect the law and are creative for the market at the same time, including but not limited to restructuring debts in payments over time, settlements that rely on condition, or changing from creditor to stockholder.

Mediation goes further than economic recalibration by targeting the relational breakdown that is often part of the insolvency picture. Trust is weakened in the process of financial distress, suspicion is increased and the parties will tend to be quiet strategically. Through formal bankruptcy proceedings, these relationships could be made more intense as the only form of interaction would be legal pleadings and procedural filings which lead to the formation of

[4] Douglas G. Baird & Robert K. Rasmussen, The End of Bankruptcy, 55 Stan. L. Rev. 751

oppositional identities rather than the sharing of common goals. Mediation at this relational level intervenes by restoring the communication channels in a structured and facilitated environment. Through communication, the parties can share their different viewpoints, make assumptions clear, and reconsider the firm positions, and very often they find out that the conflicts they thought were hard to reconcile are actually not so. Mediation's confidentiality strengthens its ability to reframe insolvency disputes even more. The public nature of bankruptcy proceedings can result in a distressed company suffering a loss of reputation which, in turn, may hasten its decline in the market. They will stop supplying the company, customers who are not confident will not come back and employees will leave looking for safe havens. The mediation process being conducted out of the public eye permits the various stakeholders to negotiate insolvency solutions without creating a scare in the market. In the case of corporate insolvency, where the image can greatly influence the value, the mediation process is not only the choice of a convenient procedure but also a powerful economic protection.

Lastly, the flexibility of mediation makes it different from adjudication. Courts have to follow statutory remedies and procedural stages which hinder their ability to come up with nuanced and forward-looking solutions. On the other hand, there are no limits for mediated outcomes but legality and consent only. This allows the parties to create the arrangements that perfectly fit the operational realities of the firm. Thus, mediation does not supplant adjudication but rather complements it, connecting the two legal systems.[5]

IV. The Emergence of Hybrid Insolvency Frameworks

The progressive acknowledgment of mediation's benefits has brought about hybrid insolvency frameworks that mix the supervision of the judiciary with the resolution of disputes by agreement. These frameworks attack the traditional view that the only way to deal with insolvency is through a trial. They, however, admit that various disputes in the insolvency process need different treatments. Thus, the courts and the mediators are placed

[5] Mediation in Insolvency, Indian Inst. of Arbitration & Mediation (2022), https://www.iiam.org.in/wp-content/uploads/2023/01/23-26-Article-Mediation-in-Insolvency.pdf.

not as opponents but as co-working entities that support and serve one another in their distinct and yet interlinked functions[6].

Judicial control is still the key factor in insolvency management. The courts give the process legitimacy, power, and safeguards to the minor and public interests. They ascertain that the statutory objectives are met, prevent exploitation, and maintain the collective character of insolvency proceedings. On the other hand, mediation offers flexibility, speed, and collaborative problem-solving as its contributions. Hybrid frameworks are intended to take advantage of both by incorporating mediation in the formal insolvency process rather than pushing it to an external alternative. In reality, this blending often occurs as mediation referred by the court or facilitated by the court at specific procedural stages. Disputes about valuation, disagreements between creditors, or negotiations of the plan may be directed to mediation while the court continues to have the ultimate supervisory authority. This arrangement maintains legal discipline while granting the parties the right to carve out outcomes that mirror commercial realities. Significantly, the power of mediated settlement over judicial approval increases the trust in the process further.

There are certain questions that institutions have to deal with when it comes to hybrid frameworks. The selection, training, and licensing of mediators, the limits of confidentiality, and the position of non-participating stakeholders are all subjects needing precise regulation and care. Still, these difficulties should not be seen as lack of correlation between ADR and insolvency law. Instead, they signify the struggles of a system that is still in the process of adapting to the intricacies of modern corporate distress. Hybrid models with proper protections can speed up the process without sacrificing justice.

In India, the regulatory conversation increasingly shows this hybrid idea. The insolvency system from the very beginning has been demonstrating creditor discipline and judicial control[7]. However, the latest suggestions reveal the gradual willingness to accept mediation in insolvency processes. By stressing that participation is voluntary, imposing strict deadlines, and ensuring tribunal monitoring, the new proposals want to include mediation in a way that supports the insolvency regime's goals. This testing of limits and facing challenges

[6] Mediation in Insolvency of Corporates under the Indian Regime, SCC Online Blog (Nov. 19, 2025), https://www.scconline.com/blog/post/2025/11/19/mediation-insolvency-corporates-indian-regime/.

[7] Kristin van Zwieten, Restructuring Law: Recommendations from the European Perspective, 16 Eur. Bus. Org. L. Rev. 623 (2015).

is not only about India moving towards collaborative insolvency governance but also about getting part of a larger global trend.[8]

V. ADR Across the Insolvency Lifecycle: Prevention, Resolution, and Beyond

One of the main characteristics of ADR is its adaptability across the whole insolvency lifecycle. Mediation, on the other hand, can be functional and used at different stages of corporate distress, while adjudication, for instance, is usually the last resort and only happens after a formal default. This flexibility corresponds with the more sophisticated viewpoint of insolvency as a continuum rather than a discrete event.

Mediation as a pre-insolvency tool allows for a way to intervene early in the issue. There is rarely a sudden case of financial distress; it is usually accompanied by liquidity decline, covenant breaches, and creditor relationships being trampled. Pre-insolvency mediation offers an opportunity for the stakeholders to resolve these issues while the legal positions are not yet too set and the statutory processes have not yet been triggered. By making early conversation possible, mediation can help in the debt restructuring process, which is the main aim of mediation, so that both sides are happy, the value of the entity that is about to go under is preserved, and the bankruptcy that could have been avoided does not happen. These kinds of interventions are especially important in places where going through formal bankruptcy is really bad for a company's reputation and results in a lot of disruption in the market.

In the course of formal insolvency, mediation plays the role of a problem-solving mechanism for particular issues that slow down progress. The disputes between the parties involved in insolvency cases are often disagreements over the valuation of assets, conflicts among creditors, and objections to the proposed settlement plans. Even though the legal status is that the disputes are framed in law, they are usually driven by differing commercial expectations rather than irreconcilable legal principles. The mediation framework enables the parties to discuss their disputes in a constructive way, thereby minimizing the delay caused by litigation and at the same time improving the quality of the negotiated outcomes. The use of ADR is relevant not only in the approval of the plan but also in the post-resolution stage. The process of implementing resolution plans is often hit by unexpected challenges, including the

[8] Insolvency & Bankruptcy Bd. of India, Discussion Paper on Mediation in Insolvency Proceedings (2023)

volatility of the market. [9]

VI. Negotiating Corporate Debt: Mediation as a Restructuring Tool

Debt restructuring is the most important step in the corporate insolvency resolution process. Corporate debt structures are complex by nature as they have a mix of different maturities, security interests, and creditor priorities. Usually, the formal insolvency processes will enforce collective outcomes; however, these processes are ineffective in dealing with the diversity of the cases due to strict procedural frameworks. Mediation is a process that is more flexible and provides a space for the parties to negotiate the restructuring solutions that they have in mind and that reflect the economic realities rather than legal abstractions.

The structured negotiation helps the different parties involved in the case to try out a whole range of restructuring options such as extending the maturity of the debt, restructuring the interest rates, writing down the debt partially, or converting it into equity. And, if these arrangements are not only legally permissible but also technologically very cumbersome to achieve through adjudication then only mediation will prove its worth by encouraging creative ways of solving disputes within the framework of legality. In this way, the parties will be free to decide how to take risks, the rewards, and the sustainability of their deals in ways that cannot be easily mandated by the courts.

International exposure and experience make the use of mediated debt restructuring more valuable. In different parts of the world, mediation has been such a good tool in negotiated workouts that it has saved some businesses from being liquidated through formal insolvency proceedings. Hence, these companies were able to survive due to the mediation process. With such instances, one can see that mediation has the potential to be the cure as well as the preventive measure in the insolvency framework. To the contrary, formal processes are complements but rather assisted through the process of mediation. Legal outcomes and commercial logic go hand in hand in such cases.

Mediation, therefore, saves the day by introducing insolvency resolution as an economic problem-solving rather than a procedural compliance issue. ADR makes it possible for the

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[9] Aayush Gupta, Mediation in Insolvency: A Way Forward, IBC Laws (2023), https://ibclaw.in/mediation-in-insolvency-a-way-forward-by-adv-aayush-gupta

parties to come up with sustainable debt arrangements and thus it not only contributes to the legality of the outcome but also to the economic durability of it.[10]

VII. Risks, Power Imbalances, and the Limits of Mediation

Despite being more and more accepted, mediation in insolvency cases still has to be seen as a process with limitations. Its consensual base, which is often cited as a major strength, can turn out to be the biggest weakness of the process. Mediation is built on voluntary participation and settlement, so the dominant stakeholders—especially the big financial creditors—might all the time just step back and wait for a judicial decision that favours them. So, in that case, the parties will only use mediation as a means to comply with a procedural requirement, not as a way to resolve their conflict.

Such a case would expose power differences as the worst aspect. Mediation would still bear the mark of the inherent power imbalance that characterizes the whole insolvency process. Assuming those creditors with security rights, big institutional lenders, and majority shareholders as the ones who usually have the best and the most access to information, to legal expertise, and to finance the strongest among the parties. If such disparities are taken to mediation, then the weaker parties like operation creditors, small suppliers, or even the debtor may find it easier to give in and accept the terms of the stronger parties, just for the sake of the process going fast. In the absence of proper controls, mediation may unwittingly give the stamp of approval to the coercive-type outcomes rather than coming to consensus through dialogue.

Poorly regulated mediation poses a risk and working with an unregulated mediation can be a poor strategy to delay proceedings. The insolvency periods are usually inflexible; they maintain the value of the business through quick and certain processes. If the mediation is introduced without fixing strict time limits, this will provide the parties with a chance to prolong the adjudicative processes, pretending to be negotiating. This kind of delaying tactic not only defeats the purposes of the insolvency law but also makes people lose trust in ADR as a viable means of dispute resolution. Another major barrier to the process is the complexity of the requirements for the insolvency mediation. Corporate bankruptcy disputes

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[10] Negotiating Corporate Debt Restructuring: The Role of ADR Mechanisms under India's Insolvency Framework, SSRN (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5060666.

are not merely a matter of legal disagreement; they require complicated financial forecasting, valuation assumptions, compliance with regulations, and the particularities of the industry that must be considered. Mediators who do not have enough expertise may not be able to engage the parties in a dialogue of such depth that mediation becomes a process of superficial compromise rather than of substance resolution. This underlines the need for specialised training and accreditation for insolvency mediators, different from that for general commercial mediation.[11]

VIII. Comparative and Transnational Perspectives

The comparative experience is a comparative analysis reveals of ideas on how to tackle the challenges in the way of mediation. More and more jurisdictions are turning to the incorporation of ADR into their insolvency frameworks, which points to the fact that business law is moving to the cooperative way of conflict resolution. Many countries are employing court-assisted mediation arrangements, where the procedural guarantees and the judicial encouragement are combined to ensure accountability and fairness. These approaches also recognize that although the insolvency is still a public process, this does not mean that all the disputes within it have to be conducted publicly. The mediation argument has got more strength from transnational insolvencies. Cross-border bankruptcy disputes are often composed of different legal systems, cultural norms, and enforcement strategies. Rigid adjudication often fails in these cases due to jurisdictional disputes and difficulties in enforcing the judgments. Mediation offers a slow-flexibility, interest-based way of conflict resolution that courts may find hard to enforce on their own.

The ratification of mediated results is also supported by the evolution of international law. The use of mediation in high-stakes, cross-border bankruptcy scenarios is now possible due to the introduction of tools that ensure the enforceability of settlements reached through mediation in commercial disputes. This global trend shows that mediation is increasingly viewed not as a soft option but as an effective tool for dealing with complex economic issues. Mediation for institutional support is gaining momentum, and this is also revealed through

[11] ADR and Personal Insolvency: Emerging Legal Dimensions, Nat'l L. Univ. Working Paper Series (2021), https://ssrn.com/abstract=5060666.

international law. The availability of the tools that back the enforceability of the judicial settlements in commercial disputes has made ADR processes to be adopted even in high-stakes, cross-border bankruptcy scenarios.[12] This trend across the globe is a sign that mediation is losing its image of being merely a soft option and is now recognized as a sophisticated tool for resolving complex economic issues.

The global convergence is likewise manifested in India's evolving abatement strategy. The Indian insolvency law has mainly put the emphasis on judicial supervision and creditor discipline, but recent regulatory negotiations indicate that the hybrid models comprising mediation within the court proceedings are being talked about. This systematic experimentation points out that collaboration and supervision need not be opposing forces, as it is the case with the international best practices. India's trajectory places it squarely in the global reorientation that is towards pragmatic, solution-driven insolvency governance and not pointing out a break from insolvency orthodoxy.[13]

IX. Institutionalizing Collaboration: The Way Forward

Institutionalization is vital for ADR to move from the periphery to the centre of bankruptcy resolution. Although ad hoc or discretionary mediation may be useful in some cases, they cannot bring about systemic advantages. A clear-cut framework that defines not only when and how, but also who is to supervise the process of mediation in insolvency matters is a must. Regulatory clarity is the first step to institutionalizing ADR. To mitigate any risk of unclear situations and misuse, really strict regulations about mediation referrals, timelines, confidentiality, and sanctioning are indispensable. Also, the establishment of a dedicated body of insolvency mediators who can handle intricate financial cases and negotiate between multiple parties is of utmost importance. Mediators, if they are not supported by such training and development initiatives, may be at risk of being under- or ineffective in their roles.

Furthermore, the judicial institutions are very important in this respect. Courts and tribunals should not be the ones to make all the decisions; rather, they should serve as custodians and

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[12] ADR and Personal Insolvency: Emerging Legal Dimensions, Nat'l L. Univ. Working Paper Series

[13] UNCITRAL, *Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation* (2018).

facilitators. The judicial institutions will see to it that the mediated settlements are not only legally but also ethically acceptable by controlling the mediation processes and allowing the results to be in favor of the mentioned issues. Instead of being impeded by the courts in this mixed procedure, the courts' legitimacy becomes the foundation of the whole process.[14]

Ultimately, the fate of insolvency resolution relies on the understanding of mediation and adjudication as mutually supporting instruments rather than clashing paradigms. The insolvency laws have to progressively change with the business structures' complexity and the interdependency of economic crises. The possibilities of engaging through the legal framework turn into avenues for efficient, cost-effective, and institutionally strong resolution processes through ADR-integrated frameworks.

X. Conclusion: When Resolution Requires More Than Judgment

The evaluation of corporate bankruptcy in the current tightly-knit economic world has revealed the limitations of the adversarial legal reasoning approach. The transition from purely adversary insolvency systems to the creation of hybrid frameworks with mediation and negotiation included has been a common thread throughout the paper. The communication and coordination issues regarding legal entitlements are the same as in the case of insolvency. The legal system's traditional practice of relying just on judgment often does not succeed in restoring economic order when the financial crisis breaks confidence and hardens people’s attitudes.

The law's growing acceptance of ADR shows this change in the legal imagination and its incorporation into the insolvency systems. It indicates a movement away from insolvency viewed as a game where one plays to win and towards a problem that is shared and needs to be dealt with. Mediation thus brings to the legislative process of insolvency the issues that courts are not able to manage effectively and consequently, it enhances rather than weakens the legislation's power. ADR methods open up routes that better fit with the realities of the corporate crises by promoting communication, ensuring confidentiality, and recognizing the intricacies of commerce.

[14] Insolvency & Bankruptcy Bd. of India, Discussion Paper on Mediation in Insolvency Proceedings (2023)

Nonetheless, the analysis continues to caution against viewing consensus in rosy hues. The power relations that are mediating the process can become very oppressive and to maintain the existing unfairness, if not controlled properly. The combination of good institutional planning, talented facilitators, and constant judicial monitoring are the main factors for success. Hence, hybrid bankruptcy tribunals must find a careful equilibrium of their own between granting so much independence that negotiated settlements could eventually come about and the court's dominance and discipline. Rather than abolishing the judicial system, the future of the insolvency process would encompass a complete re-definition of their role from being the sole result creators to being a safeguard for justice.