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"From Litigation to Resolution: The Role of Alternative Dispute Resolution Mechanisms in India's Insolvency and Bankruptcy Code"

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Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) represented a watershed moment in India's approach to corporate insolvency, introducing creditor-led, time-bound resolution mechanisms that fundamentally altered the insolvency landscape. Six years into implementation, however, mounting backlogs at the National Company Law Tribunal (NCLT) and the inherent complexity of multi-party commercial disputes have exposed critical limitations in this litigation-centric mode.

This paper investigates three central questions: First, what are the structural and procedural deficiencies plaguing the current IBC framework? Second, can Alternative Dispute Resolution (ADR) mechanisms effectively address bankruptcy and debt restructuring disputes? Third, what specific reforms would successfully integrate ADR within India's insolvency architecture?

Drawing on doctrinal analysis of IBC provisions, IBBI regulations, and recent judicial pronouncements, alongside comparative examination of practices in the United States, Singapore, and the European Union, this research demonstrates that mediation, arbitration, and structured negotiation can meaningfully complement the Corporate Insolvency Resolution Process (CIRP). The utility of ADR appears particularly pronounced in pre-insolvency disputes, operational creditor claims, valuation controversies, and cross-border matters.

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While regulatory developments signal growing receptiveness toward ADR, substantial obstacles persist—enforceability uncertainties, acute shortage of specialized insolvency mediators, and entrenched stakeholder resistance. This study advances concrete reform proposals: statutory recognition of insolvency mediation, establishment of accredited mediator panels, introduction of mandatory pre-litigation negotiation periods, and enhanced institutional coordination between ADR bodies and insolvency professionals.

The central argument is straightforward: India must transition from excessive litigation dependence toward a hybrid insolvency model. Thoughtful ADR integration offers a viable pathway to strengthen corporate rescue culture, alleviate judicial congestion, and harmonize domestic practice with evolving international standards

Keywords: *Insolvency and Bankruptcy Code (IBC), Alternative Dispute Resolution (ADR), Debt Restructuring, Corporate Insolvency Resolution Process (CIRP), Pre-Insolvency Disputes, Cross-Border Insolvency, Insolvency Mediation.*

1. Introduction

When Parliament enacted the Insolvency and Bankruptcy Code in 2016, the legislative intent was unambiguous: to replace India's fragmented, debtor-friendly insolvency regime with a unified, creditor-driven framework operating under strict temporal constraints.[2] The Supreme Court validated this transformative vision in *Innovative Indus. Ltd. v. ICICI Bank*,[3] characterising the IBC as a comprehensive code that recalibrates creditor-debtor dynamics while acknowledging legitimate stakeholder interests.

Yet implementation has proven considerably more challenging than anticipated. NCLT dockets continue engorgement, resolution timelines stretch far beyond statutory limits, and valuation disputes, claims classification, and procedural compliance proliferate.[4] The Supreme Court itself acknowledged these tensions in *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*[5], emphasising that while speed remains paramount, it cannot justify sacrificing procedural fairness.

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[2] Insolvency and Bankruptcy Code, No. 31 of 2016, INDIA CODE (2016), https://ibbi.gov.in/uploads/legalframwork/2016-05-28-1496214213.pdf.
[3] Innovative Indus. Ltd. v. ICICI Bank, (2018) 1 SCC 407 (India), https://main.sci.gov.in/supremecourt/2016/28013/28013_2016_Judgement_17-Aug-2017.pdf.
[4] Insolvency and Bankruptcy Bd. of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, https://ibbi.gov.in/legal-framework/regulations.
[5] Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531 (India), https://main.sci.gov.in/supremecourt/2018/28470/28470_2018_Judgement_15-Nov-2019.pdf.

This implementation gap has renewed interest in Alternative Dispute Resolution mechanisms—mediation, arbitration, and structured negotiation—as potential complements to formal adjudication.[6] International experience, particularly from American bankruptcy courts, Singapore's restructuring regime, and European Union preventive frameworks, demonstrates ADR's effectiveness in managing cross-border insolvency, resolving valuation disputes, facilitating pre-packaged restructuring, and navigating multi-stakeholder negotiations.[7] Recent IBBI circulars and emerging judicial dicta suggest cautious openness toward incorporating these mechanisms into India's insolvency practice.[8]

This paper adopts both doctrinal and comparative approaches. It examines structural deficiencies within the IBC framework, evaluates ADR's suitability for insolvency disputes, and proposes specific legislative and regulatory reforms. The analysis suggests that a hybrid model—strategically blending ADR with statutory processes—could enhance resolution efficiency, reduce tribunal congestion, and align Indian practice with global norms.

2. Evolution of India's Insolvency Framework under the IBC

2.1 The Pre-2016 Fragmentation

Before the IBC's enactment, corporate insolvency in India was governed by an unwieldy patchwork of legislation: the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI), and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). This multiplicity of forums generated precisely the problems one would expect—forum shopping, inconsistent outcomes, and resolution processes that frequently exceeded four years.[9]

The Board for Industrial and Financial Reconstruction (BIFR), established under SICA as a revival mechanism, had regionalised into what is commonly termed a "graveyard" for sick companies rather than their resuscitator. Recovery rates under SARFAESI languished at

[6] Companies Act, No. 18 of 2013, INDIA CODE (2013), https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks.html.
[7] SINGAPORE MINISTRY OF LAW, REPORT OF THE COMMITTEE TO STRENGTHEN SINGAPORE AS AN INTERNATIONAL CENTRE FOR DEBT RESTRUCTURING (2016), https://www.mlaw.gov.sg/news/press-releases/2016/04/singapores-debt-restructuring-regime-further-enhanced.
[8] Vandana Rajan, Strengthening Corporate Insolvency Framework in India, 61 ECON. & POL. WKLY. 45 (2021), https://www.epw.in.
[9] A. Abhirami & T. Rahul, On the Effectiveness of Insolvency and Bankruptcy Code, 2016: Empirical Evidence from India, LAW & BUS. (2022).

14.5%, while mounting non-performing assets underscored the urgent need for comprehensive reform.[10]

2.2 The IBC's Reconstructive Vision

The 2016 Code consolidated this fragmented landscape into a single statutory framework governing corporate entities, partnerships, and individuals. Its centrepiece—the Corporate Insolvency Resolution Process (CIRP)—imposed a 180-day resolution timeline (extendable to 330 days), fundamentally reorienting the system from debtor-in-possession to creditor-in-control.[11]

Several provisions warrant particular attention. Section 7 empowers financial creditors to initiate CIRP upon default exceeding one-lakh rupees. Section 9 extends similar rights to operational creditors, albeit with additional procedural safeguards. Section 14's moratorium provision, which the Supreme Court examined in *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.,*[12] stays all pending suits and proceedings against the corporate debtor. Section 21 vests decision-making authority in the Committee of Creditors (CoC), whose commercial wisdom the *Essar Steel* judgment elevated to near-sacrosanct status.[13]

The Code also established critical institutional architecture: the Insolvency and Bankruptcy Board of India (IBBI) under Section 188, licensed insolvency professionals under Section 206, information utilities under Section 210, and dedicated adjudicatory bodies—the NCLT and NCLAT—under Sections 60 and 61.[14]

Early empirical assessments appeared promising. Resolution timelines contracted from approximately 4.3 years to around 340-394 days, while recovery rates improved to 42-43%—substantial gains over the pre-IBC regime.[15] Yet as the Supreme Court acknowledged in *Swiss*

[10] Udichibarna Bose, Stefano Filomeni & S. Mallick, Does Bankruptcy Law Improve the Fate of Distressed Firms? The Role of Credit Channels, 64 J. CORP. FIN. 101732 (2020), https://doi.org/10.1016/j.jcorpfin.2020.101732.
[11] CA CS Funnisha Garg, Reforming Corporate Distress Resolution in India: A Financial and Legal Analysis of the IBC, 2016, INT'L J. FIN. MGMT. & ECON. (2025).
[12] Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657 (India), https://main.sci.gov.in/supremecourt/2019/19854/19854_2019_
[13] Supra note 4
[14] Supra note 8
[15] Indumati Pandey et al., *From Distress to Resolution: A Study of RBI-12 Cases Under the IBC, 2016*, J. INFO. SYS. ENG'G & MGMT. (2025).

Ribbons Pvt. Ltd. v. Union of India,[16] these initial successes have given way to concerning trends: elongating timelines, declining recoveries, and institutional strain that suggest deeper structural challenges.

The 2021 amendments introducing Chapter III-A (Sections 54A-54P) for pre-packaged insolvency of micro, small, and medium enterprises (MSMEs) reflect growing recognition that different categories of corporate distress may require differentiated resolution mechanisms.[17]

3. Structural and Procedural Limitations in the IBC Regime

3.1 The Delay Paradox

The most visible failure is temporal. Despite statutory caps of 330 days, average CIRP resolution now extends to approximately 653 days—nearly double the legislative mandate.[18] Cases breaching 600 days show markedly lower recovery rates, suggesting progressive asset value erosion. The NCLAT's warning in *Chitra Sharma v. Union of India*[19] bears repeating: these extensions fundamentally undermine the Code's core objective of time-bound resolution.

Why this delay paradox? The NCLT/NCLAT system operates with insufficient benches and members relative to caseload. In *Jignesh Shah v. Union of India*,[20] the Bombay High Court documented severe shortages producing frequent adjournments and mounting backlogs—precisely the pathologies the IBC was designed to cure.[21]

3.2 Procedural Equipping and Valuation Disputes

Delay alone does not capture the full picture. The regime suffers from strategic misuse of triggering provisions, tactical litigation, and valuation controversies that inject uncertainty into resolution plan negotiations.[22] The Supreme Court attempted to curb frivolous filings

[16] > Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17 (India), https://main.sci.gov.in/supremecourt/2017/35184/35184_2017_Judgement_25-Jan-2019.pdf.
[17] Vijay Kumar Singh, *Modern Corporate Insolvency Regime in India: A Review*, SSRN (2021), https://ssrn.com/abstract=3881246.
[18] Namrata Kalwani & Prakash Sharma, *The Insolvency and Bankruptcy Code (IBC) and Its Impact on the Indian Economy: A Quantitative and Qualitative Analysis*, INT'L J. ADVANCED RES. COM., MGMT. & SOC. SCI. (2025).
[19] Chitra Sharma v. Union of India, (2018) SCC Online NCLAT 724 (India), https://nclat.nic.in.
[20] Jignesh Shah v. Union of India, (2019) SCC Online Bom 1997 (India), https://bombayhighcourt.nic.in.
[21] Ms. Pooja Nakul Maniar & D.R.H. Varashti, *Unveiling Key Challenges in the IBC: A Critical Study of Loopholes and Structural Issues in India's Insolvency Framework*, INT'L J. ENV'T SCI. (2025).
[22] Ibid

through *Brilliance Offshore Pvt. Ltd. v. VGS Offshore Serv. Pvt. Ltd.*[23] emphasises Section 65's cost and compensation provisions, but opportunistic behaviour persists.

Section 30(2) mandates that resolution plans meet fair valuation standards. In *K. Sashidhar v. Indian Overseas Bank*,[24] the Supreme Court clarified that while the CoC enjoys commercial wisdom in plan approval, valuation must comply with IBBI regulations, with NCLT retaining supervisory jurisdiction over statutory compliance. Yet these safeguards have not eliminated valuation disputes as a major source of litigation and delay.

3.3 The CoC Opacity Problem

The Committee of Creditors' centrality presents its own difficulties. While the Essar Steel doctrine of "commercial wisdom" appropriately limits judicial interference in business judgments, it has also generated concerns about opaque decision-making and marginalisation of non-CoC stakeholders.[25] The Supreme Court attempted recalibration in *Jaypee Kensington Boulevard Apartments Welfare Ass'n v. NBCC (India) Ltd.*[26], clarifying that commercial wisdom cannot shield decisions that violate statutory provisions or constitutional principles. But the tension between deference and accountability remains unresolved.

3.4 Cross-Border Gaps and Interim Finance Underutilization

India's cross-border insolvency framework remains rudimentary. Sections 234-235 provide basic provisions, but India has not adopted the UNCITRAL Model Law on Cross-Border Insolvency, creating challenges for cases involving overseas assets or creditors.[27] Similarly, interim finance—critical for preserving going-concern value—remains

[23] Brilliance Offshore Pvt. Ltd. v. VGS Offshore Serv. Pvt. Ltd., (2023) SCC Online SC 659 (India), https://main.sci.gov.in/supremecourt/2022/35256/35256_2022_Order_14-Jun-2023.pdf.
[24] K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 (India), https://main.sci.gov.in/supremecourt/2018/20924/20924_2018_Judgement_31-Oct-2019.pdf.
[25] Viswajith T.S., *Critical Study of the Commercial Wisdom of Committee of Creditors Under IBC*, SHODHKOSH (2024), https://shodhkosh.com.
[26] Jaypee Kensington Boulevard Apartments Welfare Ass'n v. NBCC (India) Ltd., (2022) 1 SCC 401 (India), https://main.sci.gov.in/supremecourt/2019/9328/9328_2019_Judgement_10-Dec-2021.pdf.
[27] Akhilesh Kumar, *A Study on the Effect of the Insolvency and Bankruptcy Code (IBC) on Other Existing Legislation*, EDUCATIONAL ADMIN.: THEORY & PRAC. (2022).

underutilized under Sections 5(15)-5(16) due to unclear priority rules and weak lender incentives.[28]

4. Comparative Examination of International Practice

4.1 Institutional Borrowing and Adaptation

The IBC's drafters explicitly drew upon international models, particularly the UK Insolvency Act 1986 and Singapore's Companies Act. Britain's administration procedure and Singapore's judicial management provisions influenced India's creditor-driven architecture with specialized tribunal oversight.[29]

India shares certain objectives with US Chapter 11 and UK administration—preserving going-concern value, maximizing creditor recovery, ensuring procedural predictability. However, the IBC diverges through its pronounced creditor control via the CoC mechanism and comparatively rigid timelines.[30]

4.2 International ADR Integration in Insolvency

What distinguishes mature insolvency regimes is their systematic integration of ADR. Consider three examples:

The United States employs bankruptcy mediation programs in several districts, with Delaware and the Southern District of New York reporting settlement rates of 70-80%. These programs handle disputes over plan confirmation, valuation, claims classification, and executory contracts—precisely the controversies that bog down Indian proceedings.

Singapore amended its Companies Act in 2017 to enhance debt restructuring provisions and establish specialised insolvency mediation through the Singapore International Mediation Centre (SIMC). This integration of mediation into the restructuring framework has facilitated complex cross-border resolutions.

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[28] Amol Baxi, *Interim Finance in Creditor-Oriented Bankruptcy Codes: A Study in the Context of Insolvency & Bankruptcy Code, India*, VIKALPA (2023), https://doi.org/10.1177/0256090920230301.
[29] Rajeswari Sengupta & Anjali Sharma, *Corporate Insolvency Resolution in India: Lessons from a Cross-Country Comparison* (2016), https://www.igidr.ac.in/pdf/publication/WP-2016-019.pdf.
[30] Supra note 11

The European Union's Directive 2019/1023 on preventive restructuring frameworks mandates that member states provide access to mediation and other ADR mechanisms as part of early intervention strategies to avoid formal insolvency.[31]

Even debtor-friendly jurisdictions like France have embedded ADR into restructuring. The Re-adjustment Judiciaries procedure employs court-supervised negotiations and mediation to balance business continuity against creditor claims while reducing litigation costs.[32] These international experiences offer valuable lessons as India considers pre-packaged insolvency expansion and broader CIRP mediation.[33]

5. ADR's Potential within the CIRP Framework

5.1 The Litigation Pathology

Six years of IBC implementation demonstrate that litigation-centric CIRP generates three predictable pathologies: delay, cost escalation, and relationship destruction. Stakeholder disputes over admission, claims classification, plan approval, and valuation routinely migrate to NCLT and NCLAT, systematically elongating timelines.[34] The NCLAT observed in *Srei Equip. Fin. Ltd. v. RBL Bank Ltd.*[35] that excessive litigation at every CIRP stage has become a principal impediment to timely resolution.

5.2 The Theoretical Case for ADR

Comparative insolvency scholarship identifies several inherent limitations of adjudication in bankruptcy contexts: the common-pool problem (where individual creditor litigation diminishes collective recovery), business disruption from protracted proceedings, and disproportionate transaction costs.[36] ADR mechanisms can mitigate these problems by encouraging negotiated settlements, reconciling business continuity with creditor recovery, and resolving disputes confidentially.[37]

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[31] Dhivya U, *Pivotal Significance of Alternative Dispute Resolution Within the Realm of Financial Institutions*, J. L. & LEGAL RES. DEV. (2024).
[32] Remigijus Jokubauskas, *Alternative Dispute Resolution in Insolvency Disputes*, 9 SOC. STUD. 41 (2017), https://doi.org/10.13165/SMS-17-9-1-03.
[33] Ibid
[34] Akshaya Kamalnath & Aparajita Kaul, *Adding Mediation to India's Corporate Resolution Process*, 31 INT'L INSOLVENCY REV. 89 (2022), https://doi.org/10.1002/iir.1434.

[35]Srei Equip. Fin. Ltd. v. RBL Bank Ltd., (2022) SCC Online NCLAT 1063 (India), https://nclat.nic.in.
[36] Supra note32
[37] Benjamin Balzer & Johannes J. Schneider, *Managing a Conflict: Optimal Alternative Dispute Resolution*, 52 RAND J. ECON. 275 (2021), https://doi.org/10.1111/1756-2171.12367.

Economic research on dispute resolution design demonstrates that well-structured mediation reduces total dispute costs even when immediate settlement proves elusive, by facilitating information exchange and narrowing contested issues for subsequent adjudication.[38] Literature on commercial mediation consistently identifies temporal and cost advantages, process streamlining, and relationship preservation—benefits particularly valuable in complex insolvency disputes.[39]

The Supreme Court's endorsement of ADR in *Patil Automation Pvt. Ltd. v. Rakheja Eng'rs Pvt. Ltd*.[40] applies with particular force to insolvency: parties should explore settlement before resorting to contested litigation, especially where ongoing commercial relationships are at stake.

5.3 Institutional Mechanisms for Integration

Embedding mediation within CIRP could operate at several junctures: pre-admission (to resolve alleged pre-existing disputes under Section 9), during claims verification (to resolve classification and quantum disputes), during plan negotiation (to reconcile divergent stakeholder interests), and post-approval (to address implementation disputes). Court-annexed mediation could divert cases from adjudication, compress timelines through faster settlements, and preserve post-resolution business relationships critical to going-concern value.[41]

The recently enacted Mediation Act, 2023, provides relevant infrastructure. Section 3 defines mediation, Section 13 addresses settlement enforceability, and Section 14 governs interaction with other proceedings. While not explicitly addressing insolvency, Section 2(1)(e)'s broad "commercial dispute" definition potentially encompasses insolvency-related matters, offering a statutory foundation for integration.[42]

6. Emerging Acceptance and Persistent Implementation Barriers

6.1 The Global Trend

International practice shows growing ADR acceptance alongside uneven implementation. Bibliometric analysis covering 1981-2022 documents expanding research and

[38] Ibid
[39] N. Sherman & Bashar Talal Momani, *Alternative Dispute Resolution: Mediation as a Model*, F1000RESEARCH (2024), https://doi.org/10.12688/f1000research.143539.1.
[40] Patil Automation Pvt. Ltd. v. Rakheja Eng'rs Pvt. Ltd., (2022) SCC Online SC 1028 (India), https://main.sci.gov.in/supremecourt/2022/7949/7949_2022_Order_24-Aug-2022.pdf.
[41] Supra note 34
[42] Ibid

practice across sectors and jurisdictions, highlighting ADR's perceived advantages in flexibility, efficiency, and relationship preservation.[43] Legal systems increasingly incorporate mediation and arbitration into mainstream dispute resolution, including through court-annexed programs.[44]

Indian courts have consistently endorsed this trajectory. The Supreme Court characterized ADR as "essential" rather than merely desirable for justice system efficiency in *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd.,*[45] particularly for commercial matters.

6.2 The Implementation Gap

Yet endorsement and utilisation diverge significantly. Pakistan offers a cautionary example: despite extensive statutory and policy support, ADR utilization remains low due to limited awareness, entrenched litigation culture, unequal access, inadequate standardization, and weak enforcement mechanisms.[46] Indonesian studies report similar patterns—legal recognition without meaningful uptake, hampered by public scepticism, professional resistance, and institutional underdevelopment.[47]

Financial services sector analyses confirm this mixed picture. While ADR is recognised as valuable for efficient, confidential dispute resolution, concerns persist regarding design adequacy, enforcement reliability, and specialised capacity development.[48] Business dispute research across developing jurisdictions consistently finds that ADR, though promoted as faster and cheaper than litigation, is often perceived as second-best and consequently underemployed.[49]

6.3 Indian Insolvency Context

[43] Fabio Batista Mota et al., *Alternative Dispute Resolution Research Landscape from 1981 to 2022*, 32 GROUP DECISION & NEGOT. 931 (2023), https://doi.org/10.1007/s10726-023-09831-9.
[44] Thomas J. Stipanowich, *ADR and the "Vanishing Trial": The Growth and Impact of "Alternative Dispute Resolution"*, 1 J. EMPIRICAL LEGAL STUD. 843 (2004), https://doi.org/10.1111/j.1740-1461.2004.00025.x.
[45] Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd., (2010) 8 SCC 24 (India), https://indiankanoon.org/doc/1569166/.

[46] S.M.M.R. Jurgees et al., *The Role of Alternative Dispute Resolution (ADR) in Pakistan's Legal System*, QLANTIC J. SOC. SCI. & HUMAN. (2024).
[47] Frensiska Ardhiyaningrum & Diana Setiawati, *Hambatan dan Peluang Efektivitas Alternative Dispute Resolution (ADR) dalam Penyelesaian Sengketa Bisnis di Indonesia Berdasarkan Undang-Undang Nomor 30 Tahun 1999*, JEMBATAN HUKUM (2024).
[48] Supra note 31
[49] Lucky Nugroho & Masyunah, *Keunggulan Penyelesaian Sengketa Alternatif Dibandingkan dengan Litigasi di Pengadilan* , AHKAM (2025).

Within Indian insolvency specifically, the picture is evolving but incomplete. The IBC contains no explicit ADR mandate, though judicial commentary acknowledges potential utility. The NCLAT noted that while the IBC provides structured processes, scope exists for incorporating alternative mechanisms to expedite resolution, particularly for valuation disagreements and stakeholder conflicts.

The IBBI has issued discussion papers exploring mediation integration, though formal regulations remain pending. This regulatory uncertainty creates ambiguity about ADR outcomes' enforceability and procedural integration within CIRP timelines—a significant deterrent to uptake.

The literature thus reflects emergent normative consensus favouring ADR alongside enduring practical challenges rooted in legal culture, institutional capacity, enforcement credibility, and stakeholder awareness.[50]

7. Proposed Reforms, Implementation Strategy, and Conclusion

7.1 Statutory and Regulatory Framework

Legislative Amendments

The IBC requires targeted amendments to embed ADR explicitly. Consider four key provisions:

First, a new Section 12A on "Pre-Admission Mediation" would authorise NCLT to refer parties to mediation for up to 30 days before admitting Section 7, 9, or 10 applications where the dispute appears amenable to settlement. This addresses operational creditor disputes under Section 9, where pre-existing dispute allegations often trigger protracted litigation.

Second, Section 24A on "Mediation During CIRP" would permit the CoC, by 51% vote, to refer specific disputes—valuation controversies, claims verification disagreements, inter-creditor priority conflicts—to mediation, provided such referral does not breach the Section 12 timeline.

Third, Section 30 should be amended to explicitly recognise that resolution plans may incorporate mediated settlements, provided they satisfy Section 30(2)'s substantive

[50] Supra note 43

requirements. This legitimises settlement as a plan component rather than treating it as procedurally irregular.

Fourth, Section 60(5) should grant NCLT explicit statutory authority to refer appropriate disputes to mediation with strict time limits, similar to Section 89 of the Code of Civil Procedure, 1908. This addresses the current ambiguity about NCLT's inherent mediation referral power.

The Supreme Court's directive in *Salem Advoc. Bar Ass'n v. Union of India*[51]supports this approach: statutory provisions enabling ADR referral should be construed liberally to promote settlement.

Regulatory Infrastructure

The IBBI should establish dedicated insolvency mediation centres attached to NCLTs and Debt Recovery Tribunals, modelled on the Commercial Courts Mediation Cells. These centres would maintain empanelled specialists with qualifications in insolvency law, corporate finance, and restructuring—certified through rigorous accreditation similar to insolvency professional registration under Regulation 6 of the IBBI (Insolvency Professionals) Regulations, 2016.

Subordinate legislation under Section 240 should promulgate specific Insolvency Mediation Rules addressing confidentiality (aligned with Section 22 of the Mediation Act, 2023), time-bound procedures, and integration with CIRP timelines.

Capacity Building

Regulation 7 of the IBBI (Insolvency Professionals) Regulations, 2016 should be amended to mandate continuing professional education in mediation and negotiation techniques for all registered insolvency professionals. NCLT and NCLAT members require specialised training in identifying mediation-appropriate disputes, supervising settlement processes, and reviewing mediated outcomes.

The Reserve Bank of India should issue guidelines under Section 35A of the Banking Regulation Act, 1949, encouraging financial institutions to incorporate mediation clauses in loan documentation and prioritise ADR in stressed asset management.

[51] Salem Advoc. Bar Ass'n v. Union of India, (2005) 6 SCC 344 (India), https://indiankanoon.org/doc/1337935/.

Arbitration-Moratorium Interaction

The Supreme Court clarified in *Uttarand Pradesh Power Corp. Ltd. v. Prayag Polytech Pvt. Ltd*.[52] that while arbitration proceedings may continue during the Section 14 moratorium, award enforcement requires integration into the Section 18 claims process. This creates uncertainty that deters arbitration utilisation.

Section 14 should be amended to explicitly carve out certain contractual disputes—particularly those not directly relating to debt recovery—that may proceed through arbitration or mediation without violating the moratorium's protective purpose. Additionally, introducing a hybrid "med-arb" model where disputes first undergo mediation, then automatically convert to arbitration if settlement proves elusive, could provide structured flexibility while maintaining temporal discipline.

Leveraging the Mediation Act, 2023

Section 14 of the Mediation Act provides that mediated settlement agreements are final, binding, and enforceable as arbitral awards under Section 30 of the Arbitration and Conciliation Act, 1996. IBBI regulations should explicitly extend this framework to insolvency-related settlements, eliminating enforceability ambiguity.

Section 28 of the Mediation Act permits recognition of specialised mediation service providers. The IBBI should utilise this provision to recognise insolvency-specific mediation institutions with enhanced accreditation standards addressing the technical complexity of bankruptcy disputes.

Technology and Inclusion

Online Dispute Resolution platforms should be developed and integrated with NCLT e-filing systems, particularly for small-value claims and MSME pre-packaged insolvency under Chapter III-A. Fast-track mediation protocols for pre-packaged cases where debtor and

[52] Uttarand Pradesh Power Corp. Ltd. v. Prayag Polytech Pvt. Ltd., (2023) SCC Online SC 480 (India), https://main.sci.gov.in/supremecourt/2023/8655/8655_2023_Order_18-Apr-2023.pdf.

creditors have reached substantial agreement but require mediation for specific disputed terms could significantly enhance efficiency.

Mediation processes must provide meaningful representation opportunities for operational creditors, employees, and suppliers beyond the CoC structure, addressing legitimate criticisms about stakeholder exclusion raised in Essar Steel and related cases.

7.2 Phased Implementation Strategy

Phase One: Foundation

The IBBI should immediately issue a guidance circular under Section 196 authority, encouraging Resolution Professionals to explore mediation for specified dispute categories. Simultaneously, pilot programs should be launched at the Mumbai and Delhi NCLT benches to test protocols, assess outcomes, and refine procedures based on empirical feedback.

Emergency amendments to the CIRP Regulations permitting time-bound mediation with NCLT approval would provide interim authorisation while comprehensive statutory amendments proceed through Parliament. Initial training should target 50-100 empanelled mediators with insolvency expertise.

Phase Two: Institutionalisation

A comprehensive IBC Amendment Bill should be introduced, incorporating the statutory changes outlined above—new Sections 12A and 24A, amendments to Sections 14, 30, and 60. Concurrently, NCLT-annexed mediation centres should be established at principal benches with dedicated infrastructure and empanelled specialists.

The Ministry of Corporate Affairs and IBBI should issue coordinated regulations harmonising IBC with the Mediation Act, 2023, explicitly recognising insolvency mediation and establishing enforcement mechanisms. Standardised training programs targeting 200+ certified insolvency mediators should be operationalised, and a cross-border insolvency framework incorporating ADR provisions should be introduced.

Phase Three: Maturation

Full operationalisation of specialised insolvency mediation infrastructure across all NCLT benches would follow, alongside adoption of the UNCITRAL Model Law on Cross-

Border Insolvency with integrated ADR provisions. ODR platform integration for MSME cases and establishment of a National Insolvency Mediation Institute under IBBI aegis would provide sustainable institutional foundations.

Comprehensive evaluation targeting quantifiable outcomes—30% reduction in average resolution time, 5-10% improvement in recovery rates, 70%+ stakeholder satisfaction—would enable evidence-based refinement.

7.3 Monitoring and Accountability

Regulation 40 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 should mandate that Resolution Professionals report ADR referrals, outcomes, and temporal/cost impacts in periodic submissions to the CoC and NCLT. The IBBI should publish annual aggregate data on mediation utilisation, settlement rates, and impact on resolution timelines.

The Ministry of Corporate Affairs should conduct annual reviews with multi-stakeholder consultation, tabling detailed assessments in Parliament to ensure political accountability. The NCLAT should develop consistent jurisprudence addressing standards for NCLT mediation referral exercise, grounds for setting aside mediated settlements (analogous to Section 34 of the Arbitration Act), and the appropriate scope of judicial review of CoC mediation decisions.

7.4 Concluding Assessment

The Insolvency and Bankruptcy Code represented ambitious legislative reform when enacted in 2016. It has achieved meaningful successes: consolidating fragmented law, empowering creditors, improving recovery rates relative to the pre-IBC baseline, and establishing dedicated institutional infrastructure. The Supreme Court's jurisprudence from *Innovative Industries* through *Essar Steel* to *Jaypee Kensington* has provided important doctrinal clarity while acknowledging implementation challenges.

Yet the promise of swift, value-maximising resolution remains incompletely realised. Average timelines of 653 days against a 330-day statutory cap, declining recovery trends in recent years, and overwhelmed tribunals indicate systemic rather than transitory difficulties. These are not mere teething problems but fundamental capacity and design challenges.

This research establishes that ADR mechanisms—particularly mediation, supplemented by arbitration and structured negotiation—can meaningfully address these challenges when properly integrated. Comparative analysis of US bankruptcy mediation, Singapore's SIMC protocols, and EU preventive restructuring frameworks demonstrates that strategic ADR deployment can reduce adjudicatory burden, compress timelines, preserve commercial relationships, enhance stakeholder participation, and protect confidential information.

However, several caveats warrant emphasis. ADR is not a panacea. It cannot supplant NCLT's essential adjudicatory functions in interpreting statutory provisions, determining legal rights, or addressing bad-faith conduct. Nor is every dispute amenable to mediation—some conflicts involve fundamental legal questions requiring authoritative judicial resolution. The proposal here is targeted integration for disputes, particularly suited to consensual resolution: valuation disagreements, inter-creditor priority disputes, operational creditor claims, and pre-packaged restructuring negotiations.

Implementation will require confronting substantial challenges. Indian legal culture remains litigation-oriented, often perceiving ADR as signalling weak legal position. Building stakeholder confidence demands successful pilot demonstrations, judicial leadership through proactive referrals, and regulatory incentives. Capacity constraints are acute—India currently lacks sufficient mediators with specialised insolvency expertise. Remediation requires mandatory training for insolvency professionals, specialised institutions with rigorous accreditation, and judicial education for tribunal members.

Enforceability concerns must be addressed through clear statutory language treating mediated settlements as binding consent decrees under Section 60(5), limited challenge grounds, and expedited NCLT approval processes. Timeline coordination is critical—ADR mechanisms must not inadvertently extend already-strained CIRP durations. Solutions include strict time caps (30 days with limited extension), exclusion of mediation time from the CIRP clock for approved referrals, and fast-track conversion of successful mediation into approved plans.

The integration carries implications beyond procedural efficiency. It represents systemic maturation from rigid, uniform processes toward flexible, differentiated mechanisms responsive to diverse corporate distress scenarios. Economic benefits include faster asset return to productive use, enhanced creditor confidence, strengthening bank balance sheets, and

employment protection across India's 50+ million corporate sector workforce. Access to justice improves, particularly for MSMEs (constituting 99% of Indian enterprises) and operational creditors disadvantaged by litigation costs. Global competitiveness increases as sophisticated ADR integration aligns Indian practice with international standards, potentially improving World Bank Ease of Doing Business indicators.

What is required now is political will, institutional leadership, and sustained implementation effort. The Ministry of Corporate Affairs must prioritise legislative amendment. The IBBI must exercise regulatory creativity within existing Section 240 authority while awaiting comprehensive statutory reform. The judiciary must develop supportive jurisprudence through proactive case referrals and thoughtful review of mediated outcomes. Insolvency professionals must embrace expanded skill sets beyond traditional legal and financial expertise. Financial institutions must shift from reflexive adversarial to collaborative problem solving.

This research concludes that ADR integration into India's insolvency framework is not merely opportune but urgent. Each day of avoidable CIRP delay erodes asset value by an estimated 2-3% monthly. Each dispute proceeding to contested litigation when amenable to mediation represents a process optimisation failure and resource waste. Each marginalised operational creditor or MSME debtor denied cost-effective dispute resolution represents an incomplete realisation of the IBC's inclusive vision.

To address the documented problem of delay-induced value destruction in Indian insolvency proceedings, where procedural lags and litigation have significantly undermined the Code's promise of time-bound and value-maximising resolution[53], this article proposes an IBBI-regulated panel of accredited IBC mediators. Drawing on comparative experience with national mediator accreditation systems, which require specific training, ethical commitments, and demonstrated competencies beyond subject-matter expertise, panel membership would be conditional on completion of at least 50 hours of structured training in mediation process, insolvency law, and distressed-asset valuation, including simulations of multi-creditor negotiations. Practice standards would impose clear duties of impartiality, confidentiality and proactive case management, with strict timetables and limited adjournments tailored to the

[53] Udichibarna Bose, Stefano Filomeni & Sushanta Mallick, *Does Bankruptcy Law Improve the Fate of Distressed Firms? The Role of Credit Channels*, 58 J. Corp. Fin. 101475 (2020).https://www.sciencedirect.com/science/article/pii/S0929119920302807?via%3Dihub

Code's 180-day CIRP framework[54]. By ensuring that only trained and supervised mediators handle creditor–debtor conflicts, the proposed accreditation regime aims to reduce litigation spill-overs and negotiation deadlocks.

The path forward requires experimentation, courage, learning humility, evidence commitment, adaptive willingness, and multi-stakeholder collaboration. With these elements, India can develop an insolvency regime that combines the IBC's structural discipline with ADR's procedural flexibility. This hybrid model delivers on the promise of swift, fair, and value-maximising corporate distress resolution.

ADR integration into the IBC framework is fundamentally about realising core statutory principles more completely: creditor control, time-bound process, and value maximisation. It means building a sophisticated insolvency ecosystem where litigation and resolution, adjudication and mediation, formal process and informal negotiation function as complements rather than antagonists. This vision should guide India's next insolvency reform phase—translating analytical foundations, comparative insights, and reform blueprints into institutional reality, benefiting the corporate sector, the financial system, and the broader economy.

[54] Georges Affaki, *Alternative Dispute Resolution Mechanisms in the Enforcement of Security Interests and Insolvency*, 75 Rev. Int'l de Droit Comparé 186 (2023),https://doi.org/10.3917/ridc.752.0186