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From Adversarial to Collaborative: Integrating Mediation into Insolvency Resolution for Sustainable Debt Recovery

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Abstract: This study is about the challenges experienced in the Corporate Insolvency Resolution Process (CIRP) of India's Insolvency and Bankruptcy Code, 2016, due to the lengthy periods and internal fights prevailing among different stakeholders that cause the resolution of debts not to be achieved in a timely manner. It introduces mediation as an effective and lesser contentious means of solving a problem of the parties Alternative Dispute Resolution (ADR) that do away with the need of going to court and can see how they can work together to quickly come to an agreement. The findings show that when mediation becomes an integral part of the CIRP, it can lead to the benefits of the increased speed of a solution, preserving of the asset value, and confidence of the stakeholders, provided that the regulations are clear and the mediators are properly trained. The work has been pointed to the necessity for an appropriate design to incorporate mediation into insolvency procedures, thus, the idea is to create a more solid insolvency ecosystem.

Keywords: CIRP, Insolvency and Bankruptcy Code, mediation, alternative dispute resolution, debt recovery, stakeholder value, insolvency framework, India

1. Introduction

Integrating mediation into numerous institutions, including public administration, land use choices, and the legal framework, may facilitate dispute resolution, enhance social cohesiveness, and promote mutual understanding, especially in culturally heterogeneous contexts. Not only that, resolving a dispute through ADR is quicker and less expensive, and it may be a pre-litigation process or a court-annexed dispute resolution (Taxmann 2024). Corporate Insolvency Resolution Process (CIRP) is a process in India, as per the Insolvency and Bankruptcy Code, 2016, which is statutory in nature, with the main objective of achieving a time-bound resolution for corporate debtors, who are under a financial distress situation, and ensuring the maximization of value of their assets by their creditors (Aishwarya 2024). The guiding principle embraced by an organization to create and manage value for all those impacted by its operations, through the generation of financial returns and the effects on employees, customers, suppliers, and the community, to establish a positive and sustainable relationship between the organization and the stakeholders is called stakeholder value (IIIPCAI 2017).

The process of expedited debt recovery means that speedy and efficient methods are employed to get back the debt that was already due, and usually these methods involve legal means such as Debt Recovery Tribunals (DRTs) or a resort to litigation finance As a result, this method differs from the customary debt recovery processes, which could be longer than the former (Taxmann 2024). The Banerjee (2023) study presents mediation as a friendly and amicable, volunteer, and cost-effective way of settling insolvency disputes. It focuses on the implementation of the IBC while requesting that the litigation backlog and delays due to several interlocutory applications be solved (Ayed et al 2021). The aim of utilizing the mediation model is to accomplish friendly settlements among the parties, thus removing the real problems that give adversarial form to the insolvency cases. The committee also suggests the possibility of adding mediation in the Indian insolvency process that would be compliant with the timetable of the law and protect the public's interest (Keiba 2022). According to the study, mediation is instrumental in helping to resolve disputes at an early stage and at lower costs, thus raising the level of resolution in the insolvency disputes compared to conventional litigation (IBBI 2024). It also foments the

exchange of views and fosters cooperation such that the parties address the issues of commercial and individual goodwill privately (Gómez et al 2017).

Furthermore, the study proposes mediation as a cultural shift towards collaborative resolution between debtors and creditors, potentially easing the burden on the National Company Law Tribunal (NCLT) (Drabu 2024). The committee recommends a voluntary mediation model focused on specific disputes rather than all insolvency cases (Lucarelli 2017). It argues for an autonomous mediation framework under the IBC, distinct from the Agreed Mediation Act, 2023. The study acknowledges the importance of insolvency legislation in a free market economy while recognizing cultural factors that hinder the utilization of bankruptcy processes (Kashyap 2018). Global organizations like the World Bank and IMF advocate for law reform initiatives to enhance judicial systems (Kashyap et al 2019). A long-term trend of convergence in insolvency laws raises questions about their alignment with contemporary norms, particularly in an international context (Das et al 2022). English law categorizes corporate insolvency proceedings into liquidation, administration, and company voluntary agreements.

Liquidation, either obligatory or voluntary, converts an insolvent firm's assets into cash for creditors, followed by company dissolution. The legal framework is primarily governed by the Insolvency Act 1986 and Insolvency Rules 1986 (Hagan 2001). Insolvency law plays a vital role in commercial law, aiming to optimize returns for creditors and foster credit availability (Halliday et al 2007). Society has a vested interest in preventing chaotic collapses, as bankruptcy can lead to systemic failures, jeopardizing the market's viability (Eidenmüller 2005). The privatization policies of the late 20th century created a societal interest in preserving essential supplies and establishing procedures that prioritize creditor interests (Mucciarelli 2015). Insolvency law encourages business prudence, mitigates "moral hazard," and emphasizes fulfilling commitments (Anderson 2016). The mediation framework, which includes its own rules and processes, is crucial for insolvency resolution in struggling firms to resolve issues and distribute value fairly among creditors (Menezes et al 2020). Legislative amendments, such as those to the IBC, have introduced provisions for mediation, allowing the Central Government and IBBI to establish mediation cells with trained mediators (Ravichandra et al 2024).

In India, the CIRP is a legal framework designed to resolve insolvency situations efficiently while balancing the interests of creditors and debtors. Established by the IBC Act of 2016, the CIRP represents a significant evolution in India's insolvency model (Saidani et al, 2017). The IBC prioritizes debt resolution over liquidation, aiming to enhance credit moral hazard and reduce corporate failures (Jain, 2023). Key provisions of the IBC impacting the CIRP include a time-bound resolution of 180 days, extendable by 90 days, and a moratorium period preventing legal actions against the corporate debtor during the process (Lucarelli, 2017). The CIRP can be initiated by monetary creditors or financially distressed corporations seeking debt restructuring (Gattani 2023). It begins with a petition to NCLT, which reviews and approves the case to initiate the CIRP. Each phase of the CIRP is crucial for achieving timely creditor resolution (Sexton 2011). The CIRP may result in a revamped strategy for the corporation, restoring financial stability (Kamalnath 2019). However, the process faces challenges, including court delays that often extend beyond the stipulated 180-270 days (Legal school 2022). The CIRP presents significant challenges for bidders, complicating the process and prolonging duration (Habib 2023). Longer processes lead to asset depreciation, reducing recoverable value upon liquidation (Taxmann 2024). Nonetheless, the CIRP has positively influenced India's business sector and credit landscape, enhancing credit discipline and improving recovery rates for creditors (IBC Laws 2024).

The aim of the study is to explore mediation's role in corporate insolvency, to help in delivering solutions to delays, litigation and reduce the burden through collaborative working solutions amongst creditors and debtor ultimately enhancing stakeholder value and expediting debt recovery. To do this, the research will analyze the current legal situation that exists, what the best contemporary practices might consist of from around the world, and faith and health analysis in India with case studies.

1. Literature review

Mintah et al. (2025) examined the Ease of Doing Business (EODB) metrics and their influence on economic development and sectoral production in West Africa from 2004 to 2020. They observed that while the Ease of Doing Business (EODB) corresponded with GDP growth, the impacts on particular sectors and the indirect benefits via rule of law, political stability, and the lack of violence remained less understood. The study reveals no significant mediation effects of the EODB index on sectoral outputs through the examined mediators, highlighting the complexity of translating business environment improvements into sector-specific growth. The study recommends governance changes for further economic development.

Babaie (2024) examined the substantial impact of the worldwide cryptocurrency sector on financial markets and economies. Although cryptocurrencies fostered innovation and openness, they presented obstacles, especially in bankruptcy situations. The author emphasized the significance of mediation as an alternative dispute resolution (ADR) technique to foster mutually acceptable solutions between debtors and creditors in those conflicts. The study assessed existing methods for resolving cryptocurrency disputes, identified problems, and examined the efficacy of mediation in addressing insolvency concerns associated with cryptocurrencies.

Casey (2024) examined the intricacies of court-mandated mediation in Chapter 11 proceedings, emphasized its widespread use and the acclaim it garnered as a mechanism for conflict settlement. Nevertheless, the author challenged the need for judicial involvement, observing that the parties might have engaged in voluntary negotiations without obligatory stipulations. The study examined whether mandatory mediation offered supplementary benefits in the absence of repercussions for noncompliance and evaluated the implications for other countries that considered similar mediation policies in bankruptcy processes.

Ravichandra and Kasture (2024) examined the Corporate Insolvency Settlement Process (CIRP) in India, indicating that 45.23% of accepted cases resulted in liquidation or settlement. The study emphasized the necessity of amendments to the Insolvency and Bankruptcy Code (IBC) dealing with specific industry sectors due to the limitations in the current system, which in turn caused bigger haircuts and lower recovery rates. The paper examines 7,567 business samples to identify modified methods for unprofitable companies and financial organizations. The recovery and haircut rates showed significant impact, with real estate and manufacturing being the most affected fields, with recovery rates of 32.08% and 67.89% respectively.

Villavicencio (2024) discussed the complexity of reintegrating International Trade Law within the EU by detailing the problems to be solved both by regulators and national legislators due to the different legal and economic frameworks. The initiative of restructuring and insolvency was a means of legal harmony, which took into account the central role of pre-bankruptcy procedures and alternative dispute resolution, both of which assist the debtors in avoiding liquidation and managing their economic issues. The research also looked at the harmonization efforts involving the diverse legal frameworks.

Banerjee & Kumar (2023) examined the problems in the traditional litigation process in cases of bankruptcy, in particular the very high costs and the long duration, and online dispute resolution as a potential alternative. They were of the view that the implementation of such systems could lead to the resolution of issues in a friendly manner between debtors and creditors without violating the secrecy of communications as well as respecting the principle of parity of rights. At the same time, they pointed to some good models in the USA and France to indicate that those countries, which protect the interests of the debtors, can have a bright future in terms of dispute resolution in a bankruptcy context.

Kamalnath and Kaul (2022) investigated bottlenecks in the Insolvency and Bankruptcy Code of India 2016, particularly the ones created by the heavy litigation. The authors demanded a feminist perspective which

highlights the participation of stakeholders and a process of dispute resolution which is non-adversarial. The writers proposed a mediation that is placed within the Corporate Insolvency Resolution Process thus enhancing cooperation and quickening the process.

Ayed et al. (2021) explored the historical roots of debt and bankruptcy law and connected it with merchant law in medieval Italy. These authors provided an overview of alternative dispute resolution (ADR) in business disputes, stressing that mediation had become more prevalent for bankruptcy issues in recent times, especially after the 2008 financial crisis and the COVID pandemic, which had furthered social inequalities. The authors indicated that while mediation might have been a part of the solution to the bankruptcy issue, the developing world was still a long way from a change in this aspect.

Kamalnath (2019) researched the application of the Insolvency and Bankruptcy Code (IBC) in India in 2016, which was intended to facilitate the effective rescue and restructuring of businesses. The IBC utilized a UK-style structure with specialized tribunals and regulators; however, the operations revealed complications, particularly with dominant shareholders serving as directors resisting the onset of the IBC procedures. The article suggested the implementation of a "modified Revlon duty" to motivate promoters to pay attention to rehabbing the company at hand rather than maintaining control; namely, in a pre-insolvency context.

Boon (2018) examined the European Commission's heightened interaction with stakeholders in bankruptcy and restructuring, especially during the amendment of the European bankruptcy Regulation and the proposal for a directive on preventative restructuring frameworks. The paper examined the various stakeholders, their stances on EU insolvency policy, and their prospective involvement in the legislative processes.

Kilborn (2017) examined the use of mediation as a strategy for tackling personal over indebtedness in Europe and South America over the last three decades. Although sometimes ineffective, there were occasions where mediation successfully reduced court costs and reconciled debtors with creditors. The study analyzed successful mediation techniques across nations and suggested that lawmakers could improve personal insolvency frameworks by incorporating insights from these experiences. The study presented a paradigm for forecasting effective personal debt mediation, endorsing a more discerning strategy for compulsory mediation in bankruptcy matters.

Lucarelli and Ilaria (2017) contacted the process of steering a business crisis in Italy off the rocks by not only filing for a more informal way of bankruptcy but also getting an agreement with their creditors before any enforcement took place. They had also identified the benefits of extrajudicial systems concomitant with the inefficacies of the negotiations between the debtors and the creditors. The academics also promoted mediation in order to make negotiation processes more even-handed and effective. As one of the methods, the paper dealt with mediation-to work out quarrel, conduct a successful negotiation, and to provoke bankruptcy and strongly introduced mediation's ability to develop a new Rescue Culture among the business stakeholders**.**

Mintah et al. (2025) recognized gaps in empirical validation of mediation as viable in insolvency frameworks. Babaie (2024) examined mediation's capacity to resolve crypto currency disputes as an alternative to arbitration but did not provide a cross-jurisdictional analysis. Lucarelli & Ilaria (2017) examined pre-bankruptcy and sectoral reform issues but did not advance a comprehensive mediation model. Kamalnath & Kaul (2022) suggested mediation or mediation type processes be integrated into an insolvency framework, but did not discuss enforceability or stakeholder concerns. Casey (2024) studied mandatory mediation; however, they did not highlight any relevance to emerging economies. Ayed et al. (2021) acknowledge that developing nations had seen less substantial progress, and Banerjee & Kumar (2023) and Boon (2018) discuss international practice without any recognition of accessibility in the context of SMEs. Villavicencio (2024) considers coordinating trade and insolvency within the EU, but they offer no insight into India's written rules on cross-border insolvency. The introduction of mediation as a new component of the CIRP in India through the IBC is with a number of obstacles.

First of all, it is difficult from an operational point of view to bring mediation into line with the statutory requirements. Moreover, a fundamental question is the empirical validation of the increase in efficiency through mediation. The further investigation is required to match the paradigm of preserving confidentiality with the requisites of transparency for example to the minority creditors or the regulatory authorities like Insolvency and Bankruptcy Board of India.

2. Objectives

- To examine the current framework of the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016, with a focus on challenges related to delays and stakeholder conflicts.
- To explore the potential role and effectiveness of mediation as an alternative dispute resolution (ADR) mechanism within the CIRP for resolving creditor-debtor disputes.

3. Hypothesis

H1: The current CIRP framework under the IBC, 2016, significantly contributes to delays and unresolved stakeholder conflicts, thereby reducing the overall efficiency of debt recovery.

H2: Integrating mediation into the CIRP significantly improves the resolution of creditor-debtor disputes and leads to faster and more mutually beneficial outcomes for stakeholders.

4. Research Methodology

The study aims to examine the existing framework of the corporate insolvency resolution process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016 with a particular emphasis on identifying challenges such as procedural delays and conflicts among stakeholders. Additionally the research seeks to explore the potential role and effectiveness of mediation as an alternative dispute resolution (ADR) mechanism in resolving creditor –debtor disputes within the CIRP framework. Employing a qualitative research approach the study follows a descriptive and explanatory research design and relies on secondary data sources for analysis.

5. Result

OBJECTIVE 1: To examine the current framework of the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016, with a focus on challenges related to delays and stakeholder conflicts.

The Corporate Insolvency Resolution Process (CIRP), under the Insolvency and Bankruptcy Code (IBC), 2016, was meant to be a powerful, time-bound process to tackle insolvency of corporate entities while ensuring maximization of asset value and balancing the interests of all stakeholders. While the framework has placed a significant amount of change into India's insolvency scenario by bringing in a creditor-in-control model and a good framework for resolution, it still faces many impediments that keep it from performing at least optimally. At the most critical level of stalemate lays the delay in resolution processes exceeding the stipulated deadline of 330 days, including the litigation period. The delays set in motion by protracted judicial proceedings, frequent appeals, and the refusal of stakeholders, compounded by an absent infrastructure within the adjudicating authorities; then clashes among stakeholders themselves, more so between financial and operational creditors, on resolution plans and sharing of proceeds, all tend to impede the process further. While the existence of the Committee of Creditors (CoC) is vital to CIRP, the CoC has attracted criticism for alleged opacity, imbalances of power, and insufficient consideration for all creditor classes. These include the problems faced by Resolution Professionals (RPs) such as the lack of required authority and resources, thereby affecting the ability to effectively manage distressed companies in the period of insolvency. Such issues dilute the IBC's original intention of speedy resolution and value maximization. In that spirit, while CIRP can be viewed as a landmark leap in the reform of

insolvency, its present challenges require remedial improvements— procedural as well as structural ones—which, at a minimum, include reducing litigation, increasing institutional capacity, and enhancing the cooperation of stakeholders so the process can reach its full capacity and revamp credit culture in India.

OBJECTIVE 2: To explore the potential role and effectiveness of mediation as an alternative dispute resolution (ADR) mechanism within the CIRP for resolving creditor-debtor disputes.

The possible role and success of mediation as an ADR process in the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016 is being increasingly reviewed to overcome the traditional challenges of delay, litigation backlog, and/or conflict between stakeholders. Mediation provides a collaborative, confidential and non-adversarial process for negotiating a speedy resolution between creditors and debtors, which would be beneficial to the National Company Law Tribunal (NCLT) and decreases the time taken to process a CIRP. Mediation allows parties to offer creative and flexible solutions based on their commercial interests, as opposed to going to Court in a civil judicial process, as the focus in mediation is on attaining consensus and maximizing business value. Especially in instances when discrepancies are the result of the misunderstanding of contracts, paying conditions, or operational wrangles, mediation can surely be the right path to be able to start a dialogue, without disturbing the CIRP timeline at all. Although the existing IBC framework says nothing about mediating as one of the official steps of CIRP, best practices around the world and recent recommendations have been suggesting that the process of mediation being part of the pre-CIRP period or the process itself can be a great addition to the solution. Nonetheless, for mediation to be effective, the backing of an organization, trained mediators that have financial and legal knowledge and a well-set regulatory framework will be among the necessary things. Therefore, examining the use of mediation in CIRP is likely to result in fruitful cooperation in dispute resolution, hence minimizing any delays that come as a result of litigation and thus making a more efficient and fair insolvency ecosystem.

6. Discussion

The study started with a detailed evaluative overview of the challenges that the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016 was confronted with and, in specific, investigated if integrating mediation as an Alternative Dispute Resolution (ADR) mechanism could be a more effective way of solving these issues. The results confirmed that although the use of CIRP has been our findings indicated that the CIRP has indeed brought about a radical change in India's happened through the creditor-in-control model and the imposition of specific deadlines, resolvable procedural delays, prolonged litigations, and disharmony in the treatment of financial and operational creditors have arisen as the major challenges that have caused delays and threatened with substantial profit-loss besides stakeholder's interests. According to Banerjee (2023), Keiba (2022), and Drabu (2024), mediation is equally efficient, as it not only is inexpensive, but it offers a collaborative and confidential environment thus, it fosters consensus rather than litigation or NCLT cases by providing a dispute resolution that does not lead to the use of massive amounts of money.

This is justified by the current research data where mediation emerges as a means of making negotiations faster, settling disputes amicably, and thus of saving time without prolonging CIRP timelines. Casey (2024) and Lucarelli and Ilaria (2017) exhibit International insights which suggest that before-insolvency and court-annexed mediation practices being carried out in other countries are rather low-cost and rescue-culture-friendly practices. This is also in agreement with Menezes et al. (2020), online and early-stage mediation for distressed firms. There is a piece of evidence provided by Ravichandra and Kasture (2024) in a sector-specific fashion that showcases several of the factors responsible for liquidation and a low recovery rate, thereby reconfirming this study's finding that a flexible, sectoral, and adaptive mediation model could be better than litigation in dealing with disputes of various stakeholders. Babaie (2024) also substantiates the idea that mediation is not only for known areas but also for the novel areas of the legal industry such as cryptocurrency insolvencies, thus it is verifiable that the argument is

wider application in the markets of fast-evolving.

However, as Mintah et al. (2025), Kamalnath and Kaul (2022), and Boon (2018) may rightly say, implementing mediation in the CIRP framework is subject to complexities arising from both law and business, and, therefore, it necessitates clear regulations, competent mediators with substantial knowledge in finance and law, and the government's resolve to support such a mechanism to make it viable and maintain stakeholder trust.

7. Conclusion

In conclusion Corporate Insolvency Resolution Process (CIRP) elaborated as per the Insolvency and Bankruptcy Code, 2016, has fundamentally changed India's approach by introducing a structured, time-bound resolution mechanism, shifting control to creditors, but the procedure is unable to achieve its maximum effectiveness due to the existing problems of delay, excessive litigation, and conflict among stakeholders, which leads to long cases, poor asset recovery price, and reduced assets. The discoveries point out that with the help of mediation in this context, the challenges can be tackled in a very efficient manner, offering a platform that is collaborative, confidential, and flexible, where the negotiations between creditors and debtors can take place, and the formulas mutually acceptable can be reached, thus reducing the dependence on the courts for the case to be concluded and reducing the burden on the inquiries of the facts. A well-structured mediation mechanism that is in the safe hands of professionals who are well experienced, in matters of finance and law, and further, is legally supported by a set of clear statutory guidelines, would close the rifts existing by aiding the early resolution of disputes, improving the co-ordination among the creditors, and ensuring that the resolutions are both timely and off course, commercially sound. The success through the process of combining these factors is that there is a necessity of the institutional capacity construction of such a scale that can be solidly based the building of the enforceable procedural rules, as well as fostering the culture, where cooperation and trust is the key between all parties involved. By and large, introducing mediation into the CIRP is not only going to simplify the issue of insolvency resolution process, but it is also going to create a better trust relationship, maintain the economic value, and boost India in its journey of aligning with the global standards that are efficient and fair.

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