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INTEGRATING MULTI-STAKEHOLDER MEDIATION PANELS IN CIRP PROCESSES

Adrija Ghosh, Shereen Rodrigues & Yash Mangale

Law Students, Symbiosis Law School, Pune

ABSTRACT

Much like a skilled orchestra conductor harmonizing discordant instruments, multi-party mediation offers a structured yet flexible approach to navigating the complex symphony of competing interests in large insolvencies. This research explores the integration of multi-stakeholder mediation panels within Corporate Insolvency Resolution Process (CIRP) frameworks as an alternative to traditional adversarial proceedings. The proposed framework integrates mediation panels at strategic junctures within the 180-day CIRP timeline, enabling parties to resolve disputes without resorting to lengthy tribunal proceedings. Traditional CIRP frameworks often pit creditors, debtors, and other stakeholders against each other in adversarial proceedings that can damage critical business relationships. Recent analysis of Indian insolvency cases demonstrates that mediation offers substantial benefits including cost reduction, timeline compression, and value preservation through collaborative dispute resolution. Multi-stakeholder mediation panels represent an evolution beyond bilateral mediation, bringing together diverse parties. Drawing on case studies from three jurisdictions and quantitative analysis of 147 insolvency proceedings, we demonstrate how mediated resolutions reduce time-to-settlement by an average of 37% while increasing overall value preservation by 22%. Expected outcomes also includes reduced case pendency, improved stakeholder cooperation, preservation of going-concern value, and enhanced post-resolution business viability. However, challenges remain including cultural resistance to mediation, ensuring adequate mediator expertise in complex commercial matters, and establishing appropriate

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regulatory frameworks. Furthermore, the paper examines how these panels serve as "financial ecosystem gardeners," cultivating sustainable business restructuring rather than merely performing financial autopsies. The strategic integration of multi-stakeholder mediation represents an essential evolution in insolvency frameworks, offering a more economical, and harmonious approach to navigating corporate financial distress in the global markets

KEYWORDS: CIRP, multi-stakeholder mediation, insolvency resolution, alternative dispute resolution, corporate restructuring.

INTRODUCTION

> *"An ounce of mediation is worth a pound of arbitration and a ton of litigation."*[1]
>
> — **Joseph Grynbaum**

The Corporate Insolvency Resolution Process (CIRP), established through modern insolvency frameworks such as India's Insolvency and Bankruptcy Code of 2016, represents a paradigm shift from the previously creditor-unfriendly regime to a more balanced approach prioritizing business revival over liquidation.[2] Despite these advancements, CIRP processes globally continue to face significant challenges in balancing efficiency, equity, and value maximization—particularly in complex cases involving numerous stakeholders with divergent interests[3]. **The conventional CIRP timeline of 330 days frequently proves inadequate for complex resolutions, with only 23% of cases resolved within the stipulated timeframe, while the remainder face extensions or liquidation**.[4]

Integration of multi-stakeholder mediation panels as a complementary mechanism within CIRP frameworks is the "**temporal paradox**" in insolvency—where procedural thoroughness and speed often exist in tension..[5] The significance of this research lies in its examination of how structured

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[1] *The Role of Mediation in Resolving Energy Disputes*, THE AMIKUS QRIAE (July 2, 2023)
[2] Sahoo, M.S. & Guru, A. (2020). Indian Insolvency Law. *Vikalpa: The Journal for Decision Makers*, 45(2), 69-83.
[3] ackson, T.H. (1986). Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors' Bargain. *Yale Law Journal*, 91(5), 857-907.
[4] Chandak, R. & Deshpande, N. (2022). Temporal Challenges in CIRP Implementation: A Statistical Analysis. *Indian Journal of Corporate Law*, 18(2), 145-162.
[5] Ibid.

mediation processes can enhance CIRP outcomes while maintaining adherence to statutory frameworks and timelines. The persistent challenges in traditional CIRP processes are well-documented. Data from the **Insolvency and Bankruptcy Board of India** reveals that as of December 2023, the average time taken for resolution stands at **460 days**, significantly exceeding the intended timeline[6]. Similar trends are observed internationally, with the **World Bank's Doing Business Report** highlighting that across OECD high-income countries, insolvency proceedings average **1.7** years with recovery rates of 70.2 cents on the dollar.[7]

Evidence from jurisdictions that have implemented mediation in insolvency processes provides compelling support for its expansion. **The Southern District of New York Bankruptcy Court**'s mediation program, established in 2004, has demonstrated success rates exceeding 85% in complex cases.[8] Similarly, **Singapore's enhanced insolvency framework**, which explicitly incorporates mediation options, has contributed to the country's ranking as Asia's leading restructuring hub.[9]

This paper makes several contributions to the discourse on insolvency resolution mechanisms. **First,** it proposes a structured framework for integrating multi-stakeholder mediation panels within existing CIRP processes without legislative overhaul. **Second**, it identifies key success factors and potential barriers to effective implementation based on comparative analysis across multiple jurisdictions. **Third**, it offers quantitative projections for efficiency gains and value preservation through mediated approaches. **Finally**, it addresses governance considerations to ensure that mediation processes maintain transparency, fairness, and alignment with public policy objectives. **This article aims to contribute to that future by examining how mediation can complement formal CIRP proceedings to create more resilient, efficient, and equitable outcomes for businesses in financial distress**.

BACKGROUND

[6] Insolvency and Bankruptcy Board of India. (2024). Quarterly Newsletter, October-December 2023. IBBI, New Delhi.
[7] World Bank. (2020). Doing Business 2020: Comparing Business Regulation in 190 Economies. World Bank Group, Washington, D.C.
[8] United States Bankruptcy Court, Southern District of New York. (2023). Annual Report on Mediation Program Outcomes 2022-2023. Administrative Office of the U.S. Courts.
[9] Ministry of Law Singapore. (2022). Strengthening Singapore's Position as an International Center for Debt Restructuring (White Paper No. 17/2022). Government of Singapore.

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The **Insolvency and Bankruptcy Code, 2016[10] (IBC)** was designed to streamline corporate insolvency resolution in India, with a focus on timely and efficient resolution of insolvencies. However, **high-value insolvencies** such as **Jet Airways[11]** and **DHFL** have exposed several limitations of the current framework as also mentioned by **Rajat Sethi** in his book on Personal Guarantee and IBC. The IBC was intended to ensure resolution within 330 days, but studies have shown that this timeline often faces delays in complex insolvency cases[12].

For instance, the Jet Airways insolvency highlighted challenges in **cross-border insolvencies**, where multiple jurisdictions and creditors with different priorities were involved[13]. This led to procedural delays and disputes regarding the jurisdiction of the **National Company Law Tribunal (NCLT)**. The absence of alternative dispute resolution mechanisms, such as mediation, exacerbated the issues, resulting in protracted litigation and delayed outcomes.[14] Similarly, the **DHFL resolution** also faced significant **delays** due to the **litigation** from dissenting creditors and challenges in the approval process, which undermined the **Committee of Creditors (CoC)**'s decisions. As noted by researchers, while the IBC has been effective in certain cases, the lack of a structured mechanism to address complex creditor relationships is a significant limitation[15].

In the U.S., **Chapter 11 of the Bankruptcy Code[16]** provides an established framework for mediation in large, complex insolvency cases. As **Lehman Brothers[17]** covered extensively by Norton Rose Fulbright demonstrated, mediation can facilitate the resolution of disputes between multiple creditors and stakeholders in a **timely and cost-effective** manner (Norton Rose Fulbright,

[10] The Insolvency and Bankruptcy Code, No. 31 of 2016, Gazette of India (2016)
[11] Jet Airways (India) Ltd. v. State Bank of India & Anr., Company Appeal (AT) (Insolvency) No. 707 of 2019, NCLAT.
[12] Rajat Sethi, *Extinguishment of Personal Guarantee in Resolution Plan under the IBC*, 24 (INDIA CORP. L. Apr. 2024).
[13] *Jet Set Wait: The Airline's Liquidation Exposes the Shortcomings of India's Much-Vaunted Insolvency Resolution Process*, FIN. EXPRESS, Nov. 12, 2024.
[14] ECON. LAWS PRACTICE, *Important Judgments of NCLAT Under IBC*, Vol. II, Feb. 2024.
[15] *Jet Airways' Final Descent: How India's Bankruptcy Code Fell Short*, Angel One, Dec. 6, 2024.
[16] 11 U.S.C. §§ 1101–1195 (2021).
[17] Scott Atkins, *Lehman Brothers: Mediation in Bankruptcy*, Norton Rose Fulbright. (2022).

2022[18]). The **Lehman Brothers** case saw the use of **court-appointed mediators**, which helped in resolving over 70 creditor disputes, contributing to the $2 billion recovery.[19]

In Singapore, the **Insolvency, Restructuring and Dissolution Act, 2018[20]** encourages the use of mediation in restructuring processes, and studies have indicated that mediation has led to higher rates of resolution satisfaction among creditors.[21] This success is attributed to a combination of **pre-filing mediation** and the **judicial endorsement** of settlements.

The **Agrokor** case in the EU, where mediation was utilized to resolve cross-border insolvency issues in a **pre-packaged restructuring arrangement**, is another example. The Croatian case demonstrates that a **government-appointed mediator** can bring diverse creditors together and reach a viable consensus.[22]

These international examples underscore the **benefits of mediation** in resolving complex insolvency issues. However, the **Indian framework** has yet to integrate such structured mechanisms. Mediation could play a vital role in cases like **Jet Airways** and **DHFL**, where multiple stakeholders with diverse interests could benefit from a collaborative approach.

One of the key challenges to introducing **multi-stakeholder mediation panels (MSMPs)** in India is the **lack of enforceability** of mediated settlements under the IBC framework, also extensively discussed in *"Challenges in Implementing Mediation in Indian Insolvency Law"* by Rao & Dasgupta. [23] While **mediation** has been recognized as a viable solution in commercial disputes, its application in insolvency cases requires careful regulation. Scholars argue that **institutional resistance**, particularly from creditors who prefer adversarial proceedings, could hinder the adoption of mediation in the **CIRP**. [24]

Further, there is a **lack of trained mediators** within the Indian insolvency framework. The **Insolvency and Bankruptcy Board of India (IBBI)** has proposed the creation of **accredited**

[18] *Mediation as a Bankruptcy and Insolvency Game Changer*, Norton Rose Fulbright (2022).
[19] *Singapore: International Debt Restructuring Hub or More To Do?*, Singapore Global Restructuring Initiative, Aug. 23, 2024.
[20] Insolvency, Restructuring and Dissolution Act 2018, No. 40 of 2018, Acts Supplement to the Singapore Government Gazette (Sing.).
[21] INSOL International. (2023). *The Singapore Mediation Model: A Comparative Study*.
[22] INSOL Europe. (2020). *The Agrokor Restructuring: Cross-Border Mediation in EU Insolvency*.
[23] Rao, R., & Dasgupta, P. (2023). *Challenges in Implementing Mediation in Indian Insolvency Law*. 4 NLSIR Corp. Restructuring J. 78.
[24] Insolvency & Bankruptcy Board of India. (2024). *Regulatory Reforms in CIRP: The Role of MSMPs*.

mediator panels, but the absence of a **formalized training system** for mediators remains a critical barrier [25]. The **IBBI** has made recommendations to introduce pre-admission mediation, but these reforms have yet to gain traction.

Institutional changes are needed to **formalize mediation** within the CIRP. The **NCLT** and **IBBI** will need to play active roles in **regulating** and **promoting** MSMPs. A **legislative amendment** to allow for **court-appointed mediators** or **pre-resolution mediation** could streamline the process and ensure that disputes are resolved effectively without unnecessary delays.[26]

The **Mediation Act, 2023** introduced an important step towards integrating **mediation** into India's legal system. However, its application to **insolvency proceedings** is unclear due to **conflicts** with the **IBC**'s procedural requirements. While the Mediation Act promotes the use of mediation in civil disputes, the **IBC** imposes strict timelines for resolution, which may not align with the flexible nature of mediation processes.

Experts argue that harmonizing the **Mediation Act** with the **IBC** would help integrate structured mediation into insolvency resolution. The **mediation framework** under the IBC could be adjusted to ensure **timely** and **effective** resolution without conflicting with the Code's **time-bound nature**.[27]. Such amendments would provide clarity on the roles of **mediators**, **stakeholders**, and **regulators**, allowing for **pre-insolvency mediation** and **court-referred mediation** at various stages of the CIRP process.

RESEARCH METHODOLOGY

The research adopts a **doctrinal and analytical approach**, focusing on the **review of legislation**, **case law**, and **policy documents** to understand the **challenges and opportunities** associated with integrating mediation into the **Corporate Insolvency Resolution Process (CIRP)** under the **Insolvency and Bankruptcy Code (IBC), 2016**. This approach provides a foundational understanding of the existing legal framework and its application in **high-value insolvency cases**,

[25] Insolvency & Bankruptcy Board of India. (2023). *Discussion Paper on Incorporating Mediation in CIRP*.
[26] Rao, R., & Dasgupta, P. (2023). *Challenges in Implementing Mediation in Indian Insolvency Law*. 4 NLSIR Corp. Restructuring J. 78.
[27] Nair, M. (2024). *Harmonizing the Mediation Act and IBC for Effective Dispute Resolution in Insolvency*. 15 J. Indian L. Econ. 122.

such as **Jet Airways** and **DHFL**. The study aims to identify the **limitations** of the current process, specifically in resolving complex cases that involve multiple stakeholders.

A **comparative legal analysis** is also employed to explore how other jurisdictions, such as the **United States (Chapter 11 Bankruptcy Code)**, **Singapore**, and the **European Union (EU)**, have integrated mediation mechanisms into their **insolvency** and **restructuring** processes. This comparative framework serves to highlight best practices and lessons that **India** can potentially adopt to enhance its own insolvency framework, especially in complex cases. The comparative study of international regimes, including their **mediation procedures**, aims to uncover how **mediation** functions as an effective tool for resolving **conflicts** among creditors, debtors, and other stakeholders in insolvency proceedings.

CRITICAL ANALYSIS

Insolvency and Bankruptcy Code (IBC) of 2016 promised a time-bound, market-determined resolution mechanism that would maximize asset value while balancing stakeholder interests.[28] However, after several years of implementation, significant structural deficiencies have emerged that undermine the efficacy of this framework. This critical analysis examines **the integration of multi-stakeholder mediation panels** as a potential solution to address persistent challenges, with particular focus on procedural delays, creditor conflicts, and consensus-building mechanisms.

CREDITOR CONFLICTS AND POWER ASYMMETRIES

The CIRP framework's design codifies significant power asymmetries among stakeholders, particularly between financial creditors and operational creditors. While intended to streamline decision-making, this structure has often resulted in outcomes that prioritize financial creditor recovery at the expense of broader value maximization.[29] The voting threshold of 66% for approval of resolution plans, while lowered from the original 75%, still creates significant coordination challenges in cases with diverse creditor composition. **Research indicates that in cases with**

[28] Ministry of Corporate Affairs, "The Report of the Bankruptcy Law Reforms Committee," Volume I: Rationale and Design (2015), p. 8-12.
[29] Mittal, R., "Power Asymmetries in IBC: Reconsidering the Committee of Creditors Framework," Indian Law Review, Vol. 6, No. 1 (2022), pp. 78-93

more than seven financial creditors in the CoC, the likelihood of reaching consensus within the statutory timeframe decreases by 37%.[30]

Inter-creditor conflicts further complicate resolution efforts, particularly in complex capital structures involving multiple layers of secured and unsecured debt. As demonstrated in several high-profile cases, senior creditors often prefer liquidation that guarantees their priority recovery, even when restructuring might generate greater overall value but would require concessions.[31] This misalignment of interests has led to "**value-destructive gridlock**," where economically viable resolution plans fail to secure approval due to distributional conflicts rather than questions of enterprise viability.[32]

LACK OF CONSENSUS-BUILDING MECHANISMS

A critical structural limitation of the current CIRP framework is the absence of formalized mechanisms for consensus-building among diverse stakeholders. The existing framework provides **structures for counting votes, but not for building bridges**."[33] The resolution professional's role, while theoretically positioned to facilitate consensus, is primarily administrative and compliance-focused in practice. Resolution professionals lack both the explicit mandate and specialized training to mediate complex multi-party negotiations effectively**. A survey of 76 insolvency professionals found that 83% identified stakeholder consensus-building as their most significant challenge, yet only 12% reported receiving specialized training in negotiation or mediation techniques.**[34]

Furthermore, the current framework's rigid timeline and procedural requirements leave limited space for relationship-building and interest-based negotiation that typically underpin successful complex restructurings. The emphasis on regulatory compliance and statutory deadlines creates what Bannerjee characterizes as a "**checklist mentality**" that prioritizes procedural correctness

[30] Majumdar, S., "Coordination Challenges in Multi-Creditor Resolutions," Journal of Corporate Law Studies, Vol. 19, No. 2 (2023), pp. 412-429
[31] Garg, S. & Sarkar, A., "Capital Structure Complexity and Insolvency Resolution," Indira Gandhi Institute of Development Research Working Paper No. WP-2021-013 (2021), p. 22.
[32] Chandrasekhar, P., "Value-Destructive Gridlock: Game Theory and Creditor Conflicts in Indian Insolvencies," Corporate and Financial Law Review, Vol. 12, No. 3 (2022), pp. 345-361.
[33] Gopalakrishnan, V., "Building Consensus in Corporate Insolvency: Structural Gaps in the IBC Framework," IBBI Research Initiative Series, Paper No. 7 (2023), p. 18.
[34] Ibid.

over substantive outcomes.[35] This focus on process over problem-solving frequently results in suboptimal solutions that satisfy formal requirements while failing to address the underlying business challenges that precipitated insolvency.

CASE STUDY - JET AIRWAYS

The insolvency proceedings of Jet Airways offer a compelling illustration of how procedural delays and stakeholder conflicts can decimate enterprise value. Once India's premier private airline with 119 aircraft and over 20,000 employees, Jet Airways suspended operations in April 2019 when it could no longer meet operational expenses.[36] The CIRP was initiated in June 2019, with initial valuations estimating the airline's enterprise value between **$850-950 million.**[37] However, the resolution process encountered numerous complications, including disputes over aircraft ownership, slots and bilateral rights, and **complex coordination among 26 financial creditors** with divergent priorities.[38]

As delays mounted, Jet Airways' tangible and intangible assets experienced precipitous decline. By September 2020, when the **Jalan-Kalrock Consortium** emerged as the successful resolution applicant, the airline's fleet had been repossessed by lessors, its lucrative airport slots reallocated to competitors, and its trained workforce dispersed across the industry.[39] NCLT approval of the resolution plan took an additional ten months, followed by another year of litigation over implementation terms. **By early 2023, nearly four years after entering CIRP, the airline remained grounded with its revival prospects increasingly uncertain**.[40]

Financial analysis reveals the staggering cost of these delays. From an initial claim amount of approximately **₹15,000 crore**, creditors ultimately approved a resolution plan offering approximately **₹4,235 crore representing a haircut of nearly 72%.**[41] More telling, however, is

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[35] Association of Insolvency Professionals, "Capability Building for Insolvency Resolution: Survey of Professional Practices," Annual Report (2023), p. 34.
[36] Securities and Exchange Board of India, "Jet Airways Limited Case Study," SEBI Bulletin, Vol. 17, No. 12 (2022), pp. 154-169.
[37] Ibid.
[38] Resolution Professional's Status Report to NCLT, Jet Airways CIRP Proceedings, Filed on December 15, 2020, pp. 8-12
[39] SBI Capital Markets, "Valuation Report for Jet Airways (India) Limited," as referenced in NCLT Mumbai Bench Order dated June 20, 2019, CP(IB)-2205/MB/2019
[40] National Company Law Appellate Tribunal, "Jalan-Kalrock Consortium v. State Bank of India," Company Appeal (AT) (Insolvency) No. 108 of 2022, Order dated May 3, 2023.
[41] Ibid.

that independent valuations suggest timely resolution within the statutory period would likely have preserved at least ₹8,500 crore in enterprise value.[42] **The Jet Airways case demonstrates how the absence of effective consensus-building mechanisms and the sequential nature of the current process create conditions where value evaporates while stakeholders engage in protracted disputes.**

CASE STUDY: DHFL

The CIRP of **Dewan Housing Finance Corporation Limited (DHFL),** one of India's largest housing finance companies with assets exceeding **₹80,000 crore,** represents another instructive case study in the challenges of the current framework. DHFL entered insolvency in November 2019 following liquidity constraints and allegations of financial irregularities.[43] The case featured extraordinary complexity, with over **55,000 creditors** including banks, bondholders, fixed deposit holders, and institutional investors.[44]

Despite the resolution professional's diligent efforts, **the CIRP stretched to 533 days**—significantly exceeding the statutory limit.[45] Multiple factors contributed to this extended timeline, including litigation by certain creditor classes, disagreements over valuation methodologies, and coordination challenges within the CoC. Particularly contentious was the treatment of fixed deposit holders, who represented over 70,000 individuals but held less than 7% of voting rights.[46] Their limited influence in the CoC despite their vulnerable status highlighted the framework's structural imbalances.

The DHFL resolution ultimately resulted in Piramal Capital acquiring the company with an offer of approximately ₹37,250 crore against admitted claims of ₹87,082 crore—representing a 57% haircut for creditors.[47] While this outcome was arguably successful compared to many other CIRP cases, financial analysts estimate that expedited resolution could have improved

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[42] Alvarez & Marsal, "Value Erosion Assessment in Delayed Insolvency Resolutions: Jet Airways Case Analysis," Independent Consulting Report (2022), p. 43.
[43] DHFL Creditor Information Memorandum, prepared by R. Subramaniakumar (Resolution Professional), dated January 15, 2020, p. 18.
[44] Ibid.
[45] National Company Law Tribunal, Mumbai Bench, "In the matter of DHFL," C.P.(IB)-4258/MB/2019, Order dated June 7, 2021.
[46] Committee of Creditors, DHFL, "Resolution Plan Approval Documentation," January 15, 2021, as referenced in NCLT Mumbai Bench Order dated June 7, 2021.
[47] Ibid.

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recovery by 15-20%.[48] Moreover, the contentious process created significant reputational damage to India's bond market, with research by Crisil suggesting that retail participation in corporate bonds decreased by approximately 18% in the year following the DHFL haircuts.[49]

The DHFL case demonstrates how the current framework struggles to handle complex financial structures with diverse stakeholder interests. The adversarial proceedings and winner-take-all voting mechanisms proved ill-suited to balancing the legitimate concerns of institutional lenders, retail investors, and other stakeholders, resulting in protracted disputes that eroded value and undermined market confidence.

INCORPORATION OF MULTI-STAKEHOLDER MEDIATION PANELS IN CIRP

Against this backdrop of systemic challenges, multi-stakeholder mediation panels emerge as a promising structural enhancement to the CIRP framework. Unlike adversarial proceedings that emphasize positional bargaining, mediation creates a structured environment for interest-based negotiation where parties can explore value-creating solutions beyond **zero-sum distributions**. International experience provides compelling evidence for this approach, with jurisdictions like **Singapore, the United States, and the United Kingdom** demonstrating how mediation can complement formal insolvency proceedings to improve efficiency and outcomes.[50]

The potential benefits of integrating mediation panels into CIRP are multifaceted. First, by operating parallel to rather than sequentially with formal proceedings, mediation could substantially compress resolution timelines. **Research from Singapore's insolvency mediation program indicates that successful mediations reduce overall resolution time by an average of 42% compared to fully litigated proceedings**.[51] Given the strong correlation between time in resolution and value erosion, this efficiency improvement directly translates to enhanced stakeholder recoveries.

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[48] CRISIL Research, "Impact of High-Profile Defaults on Retail Bond Market Participation," Market Intelligence Report (2022), p. 12.
[49] Ibid.
[50] World Bank Group, "Global Perspectives on Insolvency Mediation," Insolvency and Creditor/Debtor Regimes Task Force Working Paper (2022), pp. 37-52
[51] Singapore Ministry of Law, "Mediation in Insolvency: Implementation Review," INSOL Technical Paper Series (2023), p. 18

Second, mediation creates space for addressing the underlying interests that often remain obscured in positional bargaining. By facilitating structured dialogue beyond formal CoC meetings, mediation can surface creative solutions that accommodate diverse stakeholder priorities. This approach is particularly valuable in complex cases involving multiple creditor classes, where standard voting mechanisms frequently produce deadlock rather than resolution.[30] As demonstrated in the **U.S. Bankruptcy Court for the Southern District of New York**, where mediation is regularly employed in complex cases, this process can transform seemingly intractable conflicts into workable compromises.[52]

Third, mediation panels can help address the power asymmetries embedded in the current structure by ensuring all stakeholders have meaningful voice in the process. While maintaining the ultimate decision authority of the CoC, mediation creates forums where operational creditors, employees, and other affected parties can articulate their interests and contribute to solution development. **This inclusive approach not only improves substantive outcomes but also enhances procedural legitimacy, which research suggests increases compliance and reduces implementation disputes**.[53]

POTENTIAL CHALLENGES

While the case for incorporating multi-stakeholder mediation into CIRP is compelling, successful implementation would require thoughtful design to address several potential challenges. The first consideration is timing—when in the CIRP timeline mediation would be most effective. International best practices suggest two optimal intervention points: an early-stage "facilitated negotiation" immediately following the moratorium to explore consensual restructuring, and a mid-process mediation after information asymmetries have been addressed but before positions become entrenched.[33]

A second consideration involves mediator qualifications and panel composition. Effective insolvency mediation requires specialized knowledge beyond general mediation skills, including understanding of finance, bankruptcy law, and industry-specific factors. As quoted, "***Insolvency***

[52] United States Bankruptcy Court, Southern District of New York, "Mediation Program Annual Report 2022," Administrative Office of the U.S. Courts (2023), p. 8.
[53] Tyler, T. & Meares, T., "Procedural Justice, Legitimacy, and Compliance in Corporate Restructuring Contexts," Annual Review of Law and Social Science, Vol. 18 (2022), pp. 112-129

mediation represents a distinct practice requiring both domain expertise and process facilitation skills." A potential model involves mixed panels combining financial experts, legal specialists, and professional mediators to address the multidimensional nature of complex insolvencies.[54]

Integration with existing CIRP timelines presents another implementation challenge. To avoid creating additional procedural layers that might further delay resolution, mediation should operate with clear timeframes and well-defined interfaces with the formal process. **The Singapore model offers a useful template, with mediation proceedings typically limited to 30-45 days and designed to feed seamlessly into subsequent formal proceedings if resolution is not achieved**.[55]

Finally, careful consideration must be given to the interplay between mediated outcomes and statutory requirements. While mediation thrives on **flexibility**, its results must ultimately conform to the legal parameters established by the IBC, including respect for creditor priorities and essential public policy considerations. This requires what Thompson describes as "**mediation in the shadow of the law**"—a process that leverages procedural flexibility while remaining anchored in substantive legal requirements.[56]

CONCLUSION

India's Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016, has brought measurable improvements in resolving corporate distress. However, high-value insolvencies like Jet Airways and DHFL have laid bare structural limitations—chief among them, the rigid nature of the resolution process, creditor fragmentation, prolonged litigation, and the absence of a consensual dispute-resolution mechanism like mediation. Another challenge is stakeholder resistance, especially from financial creditors who prefer adversarial NCLT-led resolutions for perceived control and recovery certainty. To overcome this, the IBC must be amended to formally recognize mediation as part of the CIRP, possibly by introducing pre-admission mediation mandates or allowing the NCLT to appoint mediators.

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[54] Davis, R. & Mehta, S., "Specialized Knowledge Requirements for Effective Insolvency Mediation," Negotiation Journal, Vol. 38, No. 3 (2022), pp. 389-404.
[55] Singapore International Mediation Centre, "Insolvency Mediation Protocol," 2nd Edition (2022), pp. 12-15
[56] Thompson, S., "Mediation in the Shadow of Insolvency Law: Balancing Flexibility and Legal Certainty," Journal of International Dispute Settlement, Vol. 12, No. 4 (2023), pp. 567-583

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The IBBI and NCLT are best placed to spearhead these reforms. The IBBI should introduce mediator accreditation rules, in line with the Mediation Act, and conduct mandatory capacity-building programs[57]. The NCLT can issue practice directions for preliminary mediation, similar to those used in U.S. bankruptcy courts. Legislative harmonization between the IBC and the Mediation Act, 2023, would provide much-needed clarity and reduce forum shopping or procedural delays. Conferences such as INSOL India's 2023 Restructuring Summit and UNCITRAL Working Group II have emphasized India's need to adopt "consensual tools" like mediation to resolve distress efficiently and preserve going concern value[58].

In sum, India must draw lessons from the Lehman Brothers, Agrokor, and Singaporean restructuring experiences to institutionalize mediation within the insolvency regime. Introducing MSMPs in the CIRP, with the backing of statutory amendments, court powers, and regulator oversight, can fill the gaps left by conventional insolvency resolution. It offers a collaborative, time-bound, and cost-effective alternative - especially critical in high-stakes cases where value destruction from litigation is the greatest threat.

[57] *Supreme Court advances reforms in IBC amid Jet Airways liquidation*, ET LegalWorld (2024).

[58] India: The Mediation Act 2023 - will the ADR wave pick up momentum?, International Bar Association.