

MAJORITY OF CASES INITIATED BY FINANCIAL, NOT OPERATIONAL CREDITORS

# Voluntary mediation may not reduce delays in insolvency process

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**VOLUNTARY MEDIATION** HAS been proposed as a dispute resolution mechanism, but experts see the regime having a limited impact in reducing delays in the insolvency process. An expert panel, constituted by the Insolvency and Bankruptcy Board of India (IBBI), has proposed the introduction of the mechanism under the Insolvency and Bankruptcy Code (IBC).

Some experts even say that the regime may not achieve the intended goal, as it only bats for a mediation exercise by operational creditors (OCs), who don't normally initiate insolvency proceedings. "The proposal will not have any significant impact on the current delays faced in admission proceedings because a sig-

nificant number of CIRP proceedings are initiated by financial creditors (FCs)," said Abdullah Qureshi, associate partner, IndiaLaw LLP.

"In the case of OC-initiated Corporate Insolvency Resolution Process (CIRP), settlement discussions run parallel (to proceedings) and parties often withdraw petition if they reach settlement. Hence, the proposed move will not have any significant impact," he said.

Under IBC, once an application for initiation of CIRP is filed in the National Company Law Tribunal (NCLT), the latter is mandated to admit the application for starting the proceedings within 14 days. However, in reality, the time taken for the admission is significantly longer, mostly due to the low strength of benches, which delays the process. Some experts, however, say that

## EXPERT TAKE

■ Some experts say that the mechanism may not even achieve the intended goal

■ The regime only bats for mediation by operational creditors, who don't initiate proceedings usually

■ Limited impact seen as a significant number of CIRP proceedings are initiated by financial creditors



■ In case of OCs, settlement discussions run parallel to proceedings and parties often withdraw petition

■ Some say the regime can run parallel, and not substitute CIRP, thus providing an additional method to settle cases

the committee has proposed the mediation exercise to run parallel with the admission proceedings, and not substitute CIRP, thus providing

an additional method to settle cases. The committee has recommended that at the admission stage, should mediation be initiated or con-

tinued during the said timeline (14 days), the automatic termination of mediation mandate would be either the date of admission under the Code

or 30 days, whichever is earlier.

The committee is of the view that no provision for stay or extension of statutory timelines by orders of the NCLT due to ongoing mediation may be made at parties' request or on the tribunal's own discretion. This will ensure that parties pursue their chance at mediation seriously.

"The provision for automatic termination of mediator's mandate upon the expiry of stipulated timeline would allow interested parties to explore the amicable settlements, thereby improving early chances of recoveries by minimising stress on judicial infrastructure and prevent the value erosion of assets," said Anjali Jain, Partner – Insolvency & Restructuring Practice at Aveness.

A member of the expert committee, on the condition of anonymity, told *FE*: "Historically, we have seen

applications by OCs withdrawn, even before the CoC (committee of creditors) is constituted, or even before the admission of petition takes place. That's where chances of mediation are 'optimum' as no one wants to go to CIRP because of the small amount that's owed to OCs."

FCs stand to benefit as in cases where they don't want to initiate CIRP and are only pulled in the process because of OCs, the mediation mechanism would provide an alternative method for the latter to arrive at a settlement, the member said.

Saloni Kothari, partner – Business Restructuring Services, BDO India, said, "If (mediation process) is hugely advantageous at the outset, when parties are ready to opt for mediation, there is a consensus to arrive at a resolution which sets a positive tone for each party to work towards closure."

## IL NEWS

# Abdullah Qureshi, Associate Partner, INDIALAW LLP quoted in Financial Express.

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Read the Complete Article Here – <https://www.financialexpress.com/business/industry-mediation-may-not-reduce-delays-in-insolvency-process-experts-3395793/>