Mediations for Settling Corporate Disputes

What is the issue?

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- Insolvency proceeding can be tough due to the imminent financial strain involved.
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- An inclusive mediation process would help in democratising insolvency proceedings and also create a space that benefits all parties
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What is the current case?

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- Recently, Supreme Court used its special powers under Article 142, to mediate a conciliatory discourse in a creditor-debtor dispute.
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- The case involved filings by some companies before the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code (IBC).
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- The collective nature of the impact of insolvency, which looks to settle debts of all the creditors, was what mainly drove the conciliatory approach.
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- It is to be noted that only financial creditors are allowed to participation in IBC proceeding and non-financial operating creditors are not allowed.
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- Operating creditors include workers, employees, buyers and suppliers who’ve their money at stake with the liquidating company.
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- The only protection for them is the clause that their share of compensation can’t be lesser than what financial creditors have got.
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- This highlights that despite the IBC’s streamlined processes, there is enough room for a mediation and can be done during the initial stages.
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Why mediation matters?

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- Two things are vital to any insolvency proceedings - the smallest acceptable compensatory amount for the creditor and constrains of the debtor.
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- **The Concept -** Mediated discussions with creditors can help put together a resolution plan that is the least resistive for everybody’s interests.
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- Notably, there are several enactments that safeguard interests of special constituencies of operational creditors that the debtor has to address —
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  - Housing allottees under - Real Estate Act, 2016
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  - Workers and employees under - Employees Provident Fund Act, 1952
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  - Startups, Micro and Small Industries under - MSME Act, 2006
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- While the formal process of insolvency resolution disregards these special interests, mediation creates the space for discussing these legal obligations.
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- Another aspect where mediation is important, is in dealing with receipts from debtors of the company (those who’ve borrowed from the insolvent company).
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- Hence, in the ultimate resolution plan, mediated settlements are also more effective in terms of compliance, since the resolution is consensual.
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- **Structural Advantages -** As trained neutral peace brokers are involved, the responsibility of structuring discussions is eased on the contesting parties.
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- Also, in direct bilateral negotiation, parties are reluctant to share

information and their interests, for fear of being exploited.
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- Hence, those discussions are limited to their demands and expectations on how an issue should be resolved.
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- Significantly, skilled mediators can potentially take advantage of dissimilar interests and needs amongst groups of creditors to tailor a suitable settlement.
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What is the way ahead?

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- The IBC gives extensive powers to the committee of creditors in the insolvency resolution process, including veto against resolution plans.
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- Mediation should therefore be under the initiative of the committee of creditors and the insolvency resolution professional.
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- Notably, mediation can be a time bound process, which fits into the strict timelines for insolvency resolution under the Code.
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Source: Business Line

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