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# Can Alternative Dispute Resolution Reduce Non-Performing Assets? Arbitration, Mediation and Banking Debt Recovery in India: A Preventive and Integrated Approach

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RISHAV ROY\*

## ABSTRACT

*Non-performing assets (NPAs) remain a significant challenge for the Indian banking sector. Although the legal framework for recovery has become progressively more sophisticated through the Recovery of Debts and Bankruptcy Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the Insolvency and Bankruptcy Code, 2016 (IBC), recovery-oriented mechanisms often become central only after financial distress has already hardened into default. This article examines whether alternative dispute resolution (ADR), particularly mediation and arbitration, can operate earlier in the life cycle of banking stress and thereby reduce the progression of viable stressed accounts into prolonged recovery disputes. It argues that mediation has stronger preventive potential than arbitration because it can facilitate confidential, interest-based negotiations concerning restructuring, repayment, compromise and the preservation of going-concern value. Arbitration remains useful for arbitrable contractual disputes, but its scope is constrained where legislation assigns jurisdiction to specialised statutory forums. The article analyses the Mediation Act, 2023, the RBI framework on stressed-asset resolution and compromise settlements, and the interaction of ADR with the SARFAESI Act, the Debt Recovery Tribunal (DRT) and the IBC. It also examines the 2026 Patna High Court decision in M/s EAEI Transformers Private Limited v. Reserve Bank of India as a practical illustration of the value and limits of consensual, ADR-assisted banking recovery. The article proposes a ten-stage banking mediation model linking early-warning identification, viability assessment, mediation, institutional approval, settlement documentation and monitoring, while preserving statutory recovery remedies if negotiations fail. The central proposition is that ADR should not replace statutory recovery; rather, it should form a time-bound, selective and commercially informed layer within a graduated banking recovery architecture.*

**Keywords:** Arbitration, Mediation, Recovery of Banking Debts, NPAs

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\* Author is a Research Scholar at Department of Legal Science, Techno India University, Kolkata, West Bengal, India.

## I. INTRODUCTION

The relationship between a bank and a borrower is fundamentally contractual, but its consequences extend beyond the immediate parties. Banks mobilise deposits and deploy capital through credit facilities to households, businesses and industries. When advances become stressed and subsequently non-performing, the problem therefore concerns not only debt recovery but also the recycling of capital, provisioning, liquidity and the capacity of the financial system to extend fresh credit.

The economic cost of delay is particularly relevant to secured business lending. Prolonged recovery proceedings can increase legal expenditure, complicate interest calculations, reduce the value of security and, in the case of an operating enterprise, destroy going-concern value. A legally successful enforcement process may consequently produce a commercially inferior outcome where a viable business could have generated a greater recovery had its operations been preserved.

Indian banking law contains specialised statutory mechanisms for responding to default. The Recovery of Debts and Bankruptcy Act, 1993 provides the framework for recovery through the DRT. The SARFAESI Act permits secured creditors, subject to statutory requirements, to enforce security interests without first obtaining a conventional civil decree. The IBC establishes a collective insolvency-resolution framework directed towards resolution and value maximisation.<sup>1</sup> These mechanisms are indispensable where enforcement or insolvency resolution is necessary.

The existence of strong post-default remedies, however, does not dispose of the policy question of whether intervention should occur earlier. Financial distress frequently begins before an account reaches the legal threshold of an NPA. Cash-flow disruption, delayed receivables, loss of customers, input-cost shocks, project delays or a temporary market contraction may affect an otherwise viable borrower. At that stage, a bank may have a choice between immediate enforcement and an informed attempt to preserve repayment capacity.

This article advances the proposition that ADR can provide a complementary early-intervention layer. Mediation is especially suited to this function because it is facilitative rather than adjudicatory and permits the parties to explore commercial options without abandoning their legal rights. Arbitration has a narrower role: it can efficiently determine contractual disputes

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<sup>1</sup> The Recovery of Debts and Bankruptcy Act, No. 51 of 1993, INDIA CODE (1993), §§ 17, 19; The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, INDIA CODE (2002), § 13; The Insolvency and Bankruptcy Code, No. 31 of 2016, INDIA CODE (2016).

where the subject matter is legally arbitrable, but it cannot displace statutory jurisdiction merely because a financing contract contains an arbitration clause.

The article therefore asks three principal questions. First, can mediation operate as a preventive mechanism before financial stress becomes a deeply entrenched NPA? Second, how should ADR interact with the SARFAESI Act, DRT proceedings and the IBC without frustrating statutory remedies? Third, what institutional safeguards are necessary to prevent mediation from becoming a device for delaying recovery?

The article's contribution is a proposed banking mediation model based on early-warning identification, viability assessment, specialised mediation, institutional approval and post-settlement monitoring. The model treats ADR not as an alternative to enforcement in every case, but as one stage in a graduated recovery architecture.

## **II. RESEARCH METHODOLOGY AND SCOPE**

The article adopts a doctrinal and analytical research methodology. Primary materials include Indian statutes, regulatory frameworks and judicial decisions concerning banking recovery, arbitration, mediation and insolvency. Secondary materials include standard texts on banking law and ADR and publicly available institutional materials.<sup>2</sup> The analysis is principally India-focused, with comparative references used only to frame the broader policy rationale for mediation and commercial dispute resolution.

The paper does not contend that mediation statistically reduces the NPA ratio across the Indian banking system. The legal materials examined here do not establish such a causal relationship. Instead, the article develops a normative and institutional proposition: appropriately designed mediation may reduce the probability that certain categories of viable financial distress will progress into prolonged and value-destructive recovery disputes. The distinction between a legal mechanism's potential contribution and a demonstrated macroeconomic effect is deliberate.

## **III. UNDERSTANDING THE NPA PROBLEM**

An NPA is not merely an accounting label. It may be the visible manifestation of an underlying financial problem. A borrower can experience repayment difficulty because of temporary liquidity constraints, delayed receivables, the loss of a major customer, an unexpected increase

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<sup>2</sup> See generally M.L. TANNAN, *TANNAN'S BANKING LAW & PRACTICE IN INDIA* (29th ed. 2025); P.N. VARSHNEY, *BANKING LAW AND PRACTICE* (25th ed. 2025); AVTAR SINGH, *LAW OF ARBITRATION AND CONCILIATION AND ALTERNATIVE DISPUTE RESOLUTION SYSTEMS* (Saurabh Bindal ed., 12th ed. 2024); O.P. MALHOTRA & INDU MALHOTRA, *THE LAW AND PRACTICE OF ARBITRATION AND CONCILIATION* (3d ed. 2014).

in input costs, regulatory changes, project-implementation difficulties or market contraction. At the same time, not every default represents a temporarily distressed but viable enterprise. Some borrowers may have structurally unviable business models, inadequate repayment capacity, a history of diversion of funds or other circumstances in which restructuring merely postpones failure.

This distinction is central to any proposed role for ADR. The purpose of mediation should not be to insulate every defaulting borrower from legitimate recovery. It should be to identify those cases in which the borrower, the business or the secured asset retains sufficient economic value to make a negotiated solution rational. The bank's decision to mediate should therefore be informed by expected recovery, viability and risk rather than by a blanket preference for settlement.

The RBI's Prudential Framework for Resolution of Stressed Assets, 2019 reflects the regulatory importance of early recognition of stress and time-bound resolution. It requires lenders to recognise incipient stress by classifying accounts as special mention accounts, to review a defaulting account within thirty days of default and to implement a resolution plan within prescribed timelines. The framework supports the broader policy proposition that financial distress should be addressed before deterioration becomes entrenched. Early intervention is also commercially rational where the preservation of cash flow and productive assets can increase the expected recovery available to the lender.<sup>3</sup>

The central question is consequently one of timing. If intervention begins only after security enforcement, multiple proceedings and severe deterioration of cash flow, the bargaining space may already have narrowed considerably. By contrast, at an early-stress stage the borrower may still possess functioning operations, receivables, customers, employees, productive assets and future cash-flow capacity. Mediation can be most valuable during this window.

#### **IV. WHY CONVENTIONAL RECOVERY MAY NOT ALWAYS BE SUFFICIENT**

Statutory recovery mechanisms provide certainty, authority and enforceability, but enforcement does not resolve every commercial problem. Consider a manufacturing borrower whose operating business remains commercially viable but which faces a temporary liquidity shortage. Immediate enforcement may disrupt working capital, suppliers may withdraw credit, employees

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<sup>3</sup> RESERVE BANK OF INDIA, *Prudential Framework for Resolution of Stressed Assets*, RBI/2018-19/203, DBR.No.BP.BC.45/21.04.048/2018-19 (June 7, 2019), <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11580&Mode=0>. The framework requires early recognition and reporting of stress through special mention account classification (para. 6), a review of the borrower account within thirty days of default (para. 9) and implementation of a resolution plan within 180 days of the end of the review period for larger exposures (para. 11).

may leave and the enterprise may become incapable of generating the cash required to repay the debt.

The same concern arises where the secured asset has greater value as part of a going concern than as an isolated item. A factory, hotel, hospital, educational institution or operating commercial undertaking may derive value from licences, workforce, customer relationships, goodwill and operational integration. Dismantling the enterprise can therefore destroy value that cannot easily be recreated through the sale of individual assets.

Litigation can also produce positional behaviour. Once the lender-borrower relationship becomes adversarial, communication may narrow to formal notices and pleadings. Each party may focus on protecting its legal position rather than on identifying a commercially workable outcome. Mediation changes the procedural environment by providing a neutral forum in which the parties can test assumptions, exchange proposals and consider structured solutions without requiring either party to concede the underlying legal merits.

This does not mean that enforcement is undesirable. Where a borrower is non-cooperative, the business is unviable, security is at risk or statutory action is otherwise necessary, enforcement may be the appropriate response. The argument is narrower: the existence of an enforcement power should not prevent a lender from considering whether a viable account can yield a better recovery through a controlled and time-bound negotiated process.

## **V. MEDIATION AS AN EARLY-WARNING AND NPA-PREVENTION MECHANISM**

Mediation has greater preventive potential than arbitration because its primary function is to facilitate agreement rather than to determine rights. A banking mediation process could be triggered when an account displays predetermined indicators of stress, subject to the bank's regulatory and internal credit policies.

A preliminary assessment could examine: (1) the cause of the financial difficulty; (2) current and projected cash flow; (3) the viability of the underlying business; (4) the nature and value of the security; (5) the borrower's willingness to cooperate; (6) restructuring possibilities; (7) the existence of other creditors; and (8) the comparative expected recovery under enforcement and under a negotiated resolution.

Where the account satisfies appropriate criteria, referral to specialised mediation could produce outcomes such as the rescheduling of instalments, a temporary moratorium, restructuring of repayment obligations, additional working capital subject to safeguards, modified interest-payment arrangements, the sale of non-core assets, negotiated repayment plans, partial

settlement, one-time settlement, substitution or enhancement of security, fresh equity or management changes where commercially appropriate, and phased repayment linked to future cash flows.

The Mediation Act, 2023 strengthens the legal infrastructure for this approach. The Act recognises mediation agreements, pre-litigation mediation, confidentiality, time limits, mediated settlement agreements and online mediation.<sup>4</sup> Section 15 requires the mediator to assist the parties in an independent, neutral and impartial manner and to protect the voluntariness, confidentiality and self-determination of the parties.<sup>5</sup> Section 16 separately defines the role of the mediator as a facilitator who neither imposes a settlement nor gives any assurance of a particular outcome. These statutory safeguards are particularly relevant to banking disputes involving sensitive financial information and commercially confidential restructuring proposals.

A banking mediation process should nevertheless remain time-bound. The Mediation Act provides a structured statutory framework, but the commercial design of banking mediation should additionally specify eligibility criteria, disclosure requirements, the delegated authority of bank representatives, documentation standards and the consequences of failed negotiations. Participation should not prevent the bank from preserving limitation periods or taking protective measures available under law.

The crucial distinction is between mediation as a process and settlement as a commercial decision. The mediator should facilitate communication and help to structure options; the bank's authorised decision-making body should determine whether a proposed restructuring, compromise or settlement is permissible under the applicable law, regulatory requirements and the bank's internal policy.

## **VI. NEGOTIATED SETTLEMENTS AND THE RBI FRAMEWORK**

A negotiated settlement should not automatically be equated with a concession by the bank. In suitable cases, a settlement may maximise expected recovery by reducing enforcement expenditure, avoiding prolonged litigation and bringing forward the timing of cash recovery. The RBI's Framework for Compromise Settlements and Technical Write-offs, issued in 2023,

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<sup>4</sup> The Mediation Act, No. 32 of 2023, INDIA CODE (2023), §§ 4–5, 18–19, 22, 27, 30. The Act provides a statutory framework for mediation agreements (§ 4), pre-litigation mediation (§ 5), the time limit for completion of mediation (§ 18), mediated settlement agreements (§ 19), confidentiality (§ 22), enforcement of mediated settlement agreements (§ 27) and online mediation (§ 30).

<sup>5</sup> The Mediation Act, No. 32 of 2023, INDIA CODE (2023), §§ 15–16. Section 15 concerns the conduct of mediation: sub-section (2) requires the mediator to assist the parties in an independent, neutral and impartial manner, and sub-section (3) requires the mediator to protect the voluntariness, confidentiality and self-determination of the parties. Section 16 defines the role of the mediator.

recognises compromise settlements within the resolution framework and requires regulated entities to put in place board-approved policies governing such settlements.<sup>6</sup>

This framework is significant because a mediator should not decide the amount of a compromise. Instead, the mediator can help the parties to formulate a proposal that remains within the bank's approved policy and delegated authority. A proposal might, for example, identify a substantial immediate payment, future instalments, security arrangements and the consequences of default. The commercial decision remains with the bank's authorised structure.

A credible mediation model therefore requires institutional authority. If the bank representative attending the mediation has no meaningful ability to negotiate, mediation may become merely procedural. Conversely, unrestricted settlement authority may create governance and accountability concerns. The appropriate solution is delegated authority bounded by board-approved policy, credit parameters and regulatory requirements.

## VII. THE MEDIATION ACT, 2023 AND BANKING DISPUTES

The Mediation Act, 2023 gives mediation a clearer statutory identity within India's dispute-resolution architecture. Section 5 addresses pre-litigation mediation, while section 6 identifies the disputes or matters that are not fit for mediation.<sup>7</sup> Section 7 empowers a court or tribunal, at any stage of a proceeding, to refer the parties to mediation and to pass a suitable interim order to protect the interest of any party where necessary. Sections 18 and 19 address the time limit for completing mediation and mediated settlement agreements, while section 27 provides for enforcement. Chapter VII addresses online mediation.

These provisions matter to banking disputes because financial institutions require more than an informal conversation. A lender needs a process that protects confidentiality, records the terms of any settlement and provides a legally enforceable pathway where an agreement is reached. At the same time, mediation cannot be used to override statutory exclusions or to frustrate the jurisdiction of specialised forums.

The Act therefore supports a complementary conception of banking mediation. The lender may explore a consensual resolution while preserving statutory remedies, subject to the requirements of the applicable legislation and any orders of a competent court or tribunal. If mediation fails,

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<sup>6</sup> RESERVE BANK OF INDIA, *Framework for Compromise Settlements and Technical Write-offs*, RBI/2023-24/40, DOR.STR.REC.20/21.04.048/2023-24 (June 8, 2023), <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12513&Mode=0>. Paragraph 1 of the framework requires regulated entities to put in place board-approved policies for undertaking compromise settlements with borrowers and for technical write-offs.

<sup>7</sup> The Mediation Act, No. 32 of 2023, INDIA CODE (2023), §§ 5–7. Section 6 excludes from mediation the disputes or matters listed in the First Schedule; section 7 empowers a court or tribunal to refer the parties to mediation at any stage of a proceeding and to pass a suitable interim order to protect the interest of any party.

the matter should move efficiently to the appropriate recovery mechanism rather than remain indefinitely in negotiation.

### **VIII. ADR-ASSISTED NPA RESOLUTION: THE *EAEI TRANSFORMERS* CASE**

A recent illustration of the practical significance of consensual ADR in banking recovery is *M/s EAEI Transformers Private Limited v. The Reserve Bank of India*, Civil Writ Jurisdiction Case No. 6144 of 2025, decided by the Patna High Court on 2 February 2026.<sup>8</sup> The petitioner company's accounts with the State Bank of India had become irregular and were declared NPAs. A settlement was subsequently reached before the Lok Adalat of the DRT, Patna, which passed its award on 29 January 2011.

According to the judgment, an outstanding amount of approximately ₹17.11 lakh was settled for ₹11.80 lakh in full and final settlement. The borrower paid the agreed amount, following which the bank issued a no-dues certificate and released the securities. The dispute that reached the High Court arose years later and concerned the bank's credit reporting, the status of an ancillary bank-guarantee account and a fresh demand of ₹26,45,656 raised by the bank in 2024. The High Court held that the binding Lok Adalat settlement could not be undermined by the bank's subsequent internal lapses, quashed the demand and directed the bank and the credit information company to report both accounts as closed rather than as written off or settled.

The case is useful for this article for two reasons. First, it demonstrates how a consensual ADR mechanism can convert a contested NPA account into a completed settlement without requiring the parties to pursue prolonged adjudication of the underlying recovery dispute. Second, it demonstrates that ADR does not end when a settlement is signed. Implementation matters: payment schedules, discharge documentation, release of security and accurate credit reporting must follow the settlement.

The case should not, however, be overstated. It is not evidence that mediation or Lok Adalat proceedings statistically reduce India's NPA ratio. Nor does it establish that every NPA should be routed through ADR. Its value is illustrative: where a borrower can comply with a realistic settlement, consensual resolution can produce an enforceable recovery outcome while avoiding some of the costs and delays associated with contested enforcement.

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<sup>8</sup> *EAEI Transformers Pvt. Ltd. v. Reserve Bank of India*, Civil Writ Jurisdiction Case No. 6144 of 2025 (Patna H.C. Feb. 2, 2026) (India), <https://indiankanoon.org/doc/30857969/>.

## IX. ARBITRATION IN BANKING DISPUTES

Arbitration occupies a different position from mediation. Mediation is consensual and facilitative; arbitration is adjudicatory. An arbitral tribunal determines the dispute and renders an award that is final, binding and enforceable, subject to the Arbitration and Conciliation Act, 1996.<sup>9</sup>

Banking and financing contracts frequently contain arbitration clauses. Disputes may arise concerning contractual interpretation, interest calculations, repayment obligations, guarantees, restructuring arrangements, representations and warranties, and other contractual matters. Where the dispute is arbitrable, arbitration may provide a specialised mechanism for its determination.

However, the proposition that arbitration can itself reduce NPAs must be stated carefully. The existence of an arbitration clause does not make every dispute connected with banking arbitrable. In *Vidya Drolia v. Durga Trading Corporation*, a three-judge bench of the Supreme Court reaffirmed the importance of statutory and public-forum limits on arbitrability and held that claims of banks and financial institutions falling within the jurisdiction of the DRT under the Recovery of Debts and Bankruptcy Act are not arbitrable, overruling the contrary view of the Full Bench of the Delhi High Court in *HDFC Bank Ltd. v. Satpal Singh Bakshi*.<sup>10</sup> The principle prevents parties from using contractual arbitration to bypass a specialised statutory recovery mechanism.

Accordingly, arbitration is best understood as a tool for determining appropriate contractual disputes, not as a substitute for statutory debt-recovery jurisdiction. Its contribution to NPA management is therefore indirect and dispute-specific.

## X. ARBITRATION AND SARFAESI: COMPLEMENTARY, NOT NECESSARILY COMPETING REMEDIES

The relationship between arbitration and the SARFAESI Act requires separate analysis because the two mechanisms perform different legal functions. In *M.D. Frozen Foods Exports Pvt. Ltd. v. Hero Fincorp Ltd.*, the Supreme Court held that arbitration proceedings and SARFAESI

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<sup>9</sup> The Arbitration and Conciliation Act, No. 26 of 1996, INDIA CODE (1996), §§ 35–36.

<sup>10</sup> *Vidya Drolia v. Durga Trading Corp.*, (2021) 2 SCC 1, ¶ 36 (India). The Supreme Court recognised statutory and public-forum limits on arbitrability, held that claims of banks and financial institutions covered by the Recovery of Debts and Bankruptcy Act are non-arbitrable because the Act confers exclusive jurisdiction on the DRT, and overruled the Full Bench decision of the Delhi High Court in *HDFC Bank Ltd. v. Satpal Singh Bakshi*.

proceedings can go hand in hand, the former being the adjudicatory process and the latter the enforcement process, because they address different aspects of the lender's rights.<sup>11</sup>

Where an arbitrable contractual dispute exists, arbitration may determine that dispute. Separately, where the secured creditor is entitled to exercise statutory rights under the SARFAESI Act, the contractual arbitration clause does not necessarily extinguish those statutory remedies. The precise interaction will depend on the nature of the dispute, the statutory provisions involved and the procedural stage.

The practical lesson is that ADR mechanisms should be mapped to their legal function. Mediation may facilitate settlement; arbitration may adjudicate an arbitrable contractual dispute; the SARFAESI Act may enforce security; the DRT may exercise its statutory recovery jurisdiction; and the IBC may provide collective insolvency resolution. The question is not which mechanism is universally superior, but which mechanism is legally and commercially appropriate at a particular stage.

## **XI. WHY EARLY INTERVENTION MATTERS MORE THAN POST-NPA MEDIATION**

Timing may determine whether mediation creates value. Once an account has deteriorated substantially, working capital may have disappeared, security values may have declined and multiple creditors may have commenced proceedings. The borrower may also have lost the operational capacity necessary to generate repayment.

At an earlier stage, however, the enterprise may retain customers, employees, receivables, productive assets, licences and market access. A negotiated solution can then focus on restoring cash flow rather than merely distributing liquidation proceeds. This is the strongest economic rationale for connecting mediation with banks' existing early-warning systems.<sup>12</sup>

The proposed approach should not depend upon the borrower being permitted to delay statutory classification or enforcement contrary to the applicable law. Instead, mediation should occur within the regulatory framework, with clear triggers, short timelines and parallel preservation of the lender's legal rights. The objective is to create a structured opportunity for resolution, not an automatic moratorium on recovery.

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<sup>11</sup> *M.D. Frozen Foods Exports Pvt. Ltd. v. Hero Fincorp Ltd.*, (2017) 16 SCC 741 (India). The Supreme Court held that arbitration and proceedings under the SARFAESI Act can go hand in hand because they serve different legal purposes, arbitration being the adjudicatory process and SARFAESI the enforcement process.

<sup>12</sup> RESERVE BANK OF INDIA, *Prudential Framework*, *supra* note 3. The framework emphasises early recognition of financial stress and the implementation of resolution strategies rather than waiting for prolonged deterioration.

## **XII. A PROPOSED TEN-STAGE BANKING MEDIATION MODEL**

**Stage I: identification of stress.** The bank identifies accounts displaying early indicators of financial stress through its existing credit-monitoring and early-warning systems.

**Stage II: preliminary viability assessment.** The bank assesses whether the difficulty appears temporary, structural or attributable to other factors, and compares the expected recovery from enforcement with that from a negotiated solution.

**Stage III: mediation referral.** Eligible cases are referred to a trained banking mediator under a defined institutional protocol.

**Stage IV: financial disclosure.** The borrower provides sufficient information concerning cash flow, assets, liabilities, receivables, security and projected repayment capacity.

**Stage V: negotiation.** The mediator facilitates structured discussions between the borrower, the bank and, where appropriate, other relevant stakeholders.

**Stage VI: resolution proposal.** A restructuring, compromise or repayment proposal is formulated, with measurable milestones and consequences for default.

**Stage VII: institutional approval.** The proposal is placed before the competent authority within the bank in accordance with regulatory requirements and board-approved policies.

**Stage VIII: documentation.** The settlement is documented in a legally enforceable instrument and, where necessary, linked to appropriate security and discharge arrangements.

**Stage IX: monitoring.** Compliance is monitored against agreed payment and operational milestones.

**Stage X: failure and recovery.** If the settlement fails, the bank promptly exercises the statutory and contractual remedies available in law, without allowing mediation to become an indefinite shield against recovery.

## **XIII. SPECIALISED BANKING MEDIATORS**

Complex banking disputes require more than generic mediation skills. They may involve financial statements, security structures, consortium lending, guarantees, project finance, insolvency, restructuring, valuation and regulatory requirements. A specialised banking mediation panel should therefore include professionals trained in banking and finance, insolvency, restructuring, accounting, valuation, commercial contracts and dispute resolution.

Specialisation should not compromise neutrality. The mediator should facilitate the parties' negotiations rather than advise the borrower or the bank as counsel or make the bank's

commercial decision. A useful institutional design would therefore combine mediation expertise with access to technical financial expertise where the parties require it, while maintaining confidentiality and clear conflict-of-interest safeguards.

#### **XIV. LIMITATIONS AND RISKS OF ADR IN NPA RECOVERY**

ADR should not be presented as a universal cure for NPAs. First, mediation depends upon a minimum level of cooperation and meaningful disclosure. A borrower who deliberately withholds information may frustrate the process. Second, mediation cannot transform an economically unviable business into a viable one. Third, allegations involving fraud, diversion of funds or serious misconduct may require investigation and statutory action rather than consensual settlement.

Fourth, multiple-creditor situations can make bilateral mediation difficult because one lender's concession may affect the rights and expectations of other creditors. Fifth, mediation initiated too late may simply add another layer of delay while the secured asset deteriorates. Sixth, bank officials may hesitate to approve settlements because of accountability concerns. Transparent board-approved policies and documented decision-making are therefore essential.

The solution is selective mediation rather than mandatory mediation in every recovery case. Eligibility should be based on commercial viability, borrower cooperation, expected recovery and the legal suitability of the dispute for mediation. Time limits and clear exit mechanisms should be built into the process from the outset.

#### **XV. ADR AND THE INSOLVENCY AND BANKRUPTCY CODE**

The IBC represents a fundamentally different form of resolution. It is a collective insolvency framework rather than merely a debt-recovery mechanism. Nevertheless, negotiated resolution remains relevant before insolvency proceedings are commenced and, within the statutory framework, settlement may have procedural significance even after admission.

Section 12A of the IBC permits the withdrawal of an admitted insolvency application, subject to the approval of ninety per cent of the voting share of the committee of creditors. This demonstrates that settlement and insolvency proceedings are not conceptually irreconcilable. At the same time, mediation cannot be used to undermine the collective character of insolvency proceedings once the statutory process has assumed control of the debtor's affairs.<sup>13</sup>

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<sup>13</sup> The Insolvency and Bankruptcy Code, No. 31 of 2016, INDIA CODE (2016), § 12A (inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, No. 26 of 2018, INDIA CODE (2018)), concerning withdrawal of an application admitted under §§ 7, 9 or 10 with the approval of ninety per cent of the voting share of the committee of creditors.

The policy implication is that mediation may be particularly valuable before insolvency proceedings are initiated, when the creditor and the debtor can still explore consensual restructuring without prejudicing the rights of other stakeholders. Once collective insolvency resolution has commenced, the role of ADR must be understood within the boundaries of the IBC and the orders of the competent forum.

## **XVI. PRESERVING GOING-CONCERN VALUE**

One of the strongest arguments for early mediation is the preservation of going-concern value. The economic value of a business is not always equal to the sum of the liquidation values of its individual assets. A functioning enterprise may derive value from machinery, land, licences, employees, customer relationships, goodwill and operational integration.

A negotiated repayment or restructuring plan can therefore sometimes generate a better recovery than immediate enforcement. The proposition does not require banks to tolerate indefinite default. It requires the recovery strategy to consider expected economic value alongside legal enforceability. Mediation is suited to this exercise because it permits discussion of commercial interests that a strictly adjudicatory process may not be designed to accommodate.

## **XVII. RECOMMENDATIONS**

1. Banks should integrate early-warning systems with a defined internal referral mechanism for suitable accounts before prolonged default occurs.
2. A specialised banking mediation framework should be developed, with mediators trained in banking, finance, insolvency and restructuring.
3. Mediation should be strictly time-bound, with a defined commencement, review point and termination date.
4. Participation in mediation should not prevent the bank from preserving limitation periods or taking protective statutory measures where legally necessary.
5. Meaningful financial disclosure should be a condition for continued participation in mediation.
6. Banks should maintain transparent board-approved compromise and settlement policies and clearly delegated authority for representatives participating in mediation.
7. Settlement documents should contain precise payment milestones, security arrangements, monitoring provisions and consequences of default.
8. ADR should operate alongside the SARFAESI Act, the DRT and the IBC rather than in opposition to them.

9. Online mediation should be used where suitable, particularly where lenders, borrowers or other stakeholders are located in different jurisdictions.<sup>14</sup>
10. Success should be measured not only by the number of settlements but by actual recovery, time saved, reduction in enforcement expenditure, compliance rates and the preservation of viable businesses.

## XVIII. CONCLUSION

The question is not whether ADR can eliminate NPAs. It cannot. NPAs arise from multiple causes, including economic downturns, business failure, inadequate project planning, liquidity constraints, managerial difficulties and borrower misconduct. No single legal mechanism can address all of these causes.

The more defensible proposition is that ADR, particularly mediation, can help to reduce the progression of certain forms of financial stress into prolonged and costly recovery disputes. Mediation has the greatest preventive potential because it can create a structured opportunity for communication before positions become entrenched. It can facilitate restructuring, repayment planning and compromise while allowing banks to preserve their legal rights.

Arbitration has a narrower role. It can determine appropriate contractual disputes where a valid arbitration agreement exists and the subject matter is arbitrable. The jurisprudence on the RDB Act demonstrates, however, that contractual arbitration cannot displace jurisdiction assigned by legislation to specialised statutory forums.<sup>15</sup> Similarly, the SARFAESI Act, DRT proceedings and the IBC remain indispensable where their statutory functions are engaged.<sup>16</sup>

The future of NPA management should therefore move from a purely post-default recovery model towards a graduated resolution model that proceeds from early warning to financial assessment, then to mediation, then to restructuring or settlement, then to monitoring and, where necessary, to statutory recovery. Properly designed, this approach does not weaken the rights of banks. It may strengthen them by enabling lenders to distinguish between borrowers who genuinely require enforcement and borrowers whose businesses can still generate sufficient value to repay the debt.

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<sup>14</sup> The Mediation Act, No. 32 of 2023, INDIA CODE (2023), ch. VII, § 30, concerning online mediation.

<sup>15</sup> *Vidya Drolia*, *supra* note 10. The decision distinguishes contractual arbitrability from matters placed by legislation within the exclusive jurisdiction of specialised statutory forums.

<sup>16</sup> *M.D. Frozen Foods*, *supra* note 11; *see also Transcore v. Union of India*, (2008) 1 SCC 125 (India). The jurisprudence supports the proposition that statutory recovery mechanisms may coexist with other legal remedies where their purposes and fields of operation differ.

Ultimately, banking recovery should not be measured solely by the speed with which a legal remedy is invoked or a secured asset is sold. The stronger objective is legitimate recovery with the minimum avoidable destruction of economic value. ADR should accordingly be understood not merely as an alternative to litigation, but as a preventive and commercially oriented component of modern banking recovery law.

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