

# Data As An Insolvency Asset In The Digital Age: Balancing Data Valuation, Asset Maximisation Under The Ibc And Dpdp Act.

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**Abstract-** The digital age has placed data as an extraordinary intangible asset in the insolvency domain, yet its monetization sharply collides with the protective measures that provide privacy. The Insolvency and Bankruptcy Code (IBC) of 2016 has made it mandatory for corporate debtors to maximize the value of the asset, usually through asset-wise sale under CIRP Regulation 29 or liquidation. This would include digital assets such as customer databases and proprietary user data. High-profile cases like Jet Airways have shocked the international community with the lifeblood of the company in question, viz. JetPrivilege: Passenger Data; eventually, such information is furnished for sale, raising questions on how it could be misused. Valuing such data is a Herculean task, given the varied methodologies followed—be it market, income, or cost approach—emulating the peculiar difficulties in IP asset valuation. Concurrently, the Digital Personal Data Protection Act (DPDP) of India 2023 provides wide-ranging rights to data principals and sets out obligations for data fiduciaries regarding consent, purpose limitation, and cross-border transfers. Enforcement will fall upon the newly set-up Data Protection Board. Some insolvency-related data processing (for example, through NeSL) might be spared from the full reach of the Act's legitimate-uses carve-out. The conflict between the creditor-oriented goal of maximizing asset value and the demands of data privacy creates a regulatory dilemma. This study proposes a synchronized legal framework, consisting of valuations standardized uniformly, specifications setting out IBC interfaces with DPDP, and procedural safeguards enabling speedy insolvency resolutions while safeguarding individual privacy rights.

**Keywords:** Data as an asset, Insolvency and Bankruptcy Code (IBC), Personal Data Protection (DPDP) Act, Data valuation, Data monetisation, proceedings, Resolution professional, valuers, Committee of Creditors (CoC).

## I. INTRODUCTION

The rise of the information economy has vaulted data—from customer records to transaction logs to proprietary analytics—onto possibly the most priceless intangible asset a company might possess. In such insolvency scenarios, these digital assets assume considerable weight in determining the recovery value. Under the IBC, 2016, the Committee of Creditors is under an obligation to maximise asset recoveries; hence every asset class must undergo rigorous evaluation.

Until now, this valuation framework concerned itself only with consideration for physical and financial assets. However, in as much as business models have become heavily digitized, unconventional resources possessing tremendous value—user databases and metadata—deserve similar scrutiny.

Valuation of these intangible assets is an intricate task. In accordance with the IBBI regulations<sup>1</sup>, fair value—alleged value could hypothetically be an arm's length transaction with the liquidation value—triggered by a distressed sale—must both have independent valuers registered with the IBBI. The assessments then go to the CoC to guide the latter's strategic decisions.

A third valuation takes place when there is a significant difference of 25% or more between the first two valuers. The final valuation is determined as the mean of the two closest estimates. Yet, such valuation models have not been set up with digital assets as the focus, causing awkwardness in pricing data dependent on a huge radius for either regulation or on the issue of privacy sensitivities.

The Digital Personal Data Protection (DPDP) Act is India's first statutory regime for digital data governance.<sup>2</sup> The DPDP Act tightly circumscribes a consent-based processing model, identifies the roles of data principals and data fiduciaries, and delineates boundaries on purpose limitation, retention, and data transfers. Significantly, it prevents the transfer of personal data

except where explicit consent or applicable exemptions exist—a challenge for insolvency professionals seeking to monetize data assets.

These developments in airline insolvencies, in particular, the Jet Airways case, expose the friction point in the process: while passenger databases were viewed as potentially monetizable assets, the transfer may breach the DPDP statutory obligations on data privacy. This tension between the creditor-driven desire for data monetization and the individual's desire for privacy rights underscores the immediate need for a regulatory and procedural framework that marries strictures of valuation with compliance safeguards.

Dividing this paper is an investigation of sharing data-as an intangible asset-by extending the reach of valuation frameworks and regulatory codes. It attempts to harmonize IBC-driven maximization and data handling aligned to DPDP to achieve structured, legal, and procedural solutions for this modern insolvency paradox.

## II. UNDERSTANDING DATA AS AN INTANGIBLE ASSET IN INSOLVENCY PROCEEDINGS

The data that comprise customer databases, metadata, analytics, and proprietary algorithms, in today's digital economy, make up often not mere adjunct information but

also an intangible asset that frequently becomes central to business value. It is very important to recognise data's status as an asset under the Insolvency and Bankruptcy Code (IBC) of India, 2016, where Section 36 states that “all the assets” appearing in the balance sheet of a corporate debtor create its liquidation estate. Recent cases decided by the NCLAT clarify that the liquidation estate does cover even intangible assets like the spectrum rights in telecom or brand trademarks.

### A. Definition and Classification: Personal vs Non-Personal Data

Understanding data as an asset starts with this division: personal data (data that identifies individuals) and non-personal data (aggregate, anonymized, or proprietary). This duality becomes most pressing, given that personal data receives its historical protection from privacy laws such as the DPDP Act of 2023, while other data is usually fairly straightforward to monetize unless fettered by contract or fiduciary constraints. The insolvency professionals must<sup>343</sup>, therefore, perform diligence on the type of data contained or referred to in the insolvency process in order to determine its applicable treatment.

### B. Legal Recognition under IBC

The IBC does not mention “data” as an intangible asset, but digital properties such as user databases and IP are encompassed in the phrase “all assets in the balance sheet.” While any provisions for intangible assets vary globally, in the U.S. Bankruptcy Code, intellectual property and databases fall under the distinction of unique assets within any Chapter 11 bankruptcy. Like-wise protections exist in Japanese insolvency law.<sup>3</sup>

Indian regulators have advanced the incorporation of digital dimension in insolvency matters with the introduction of Information Utilities, of which NeSL is one.<sup>4</sup> Information Utilities administer a repository of electronic debt records along with their attendant metadata. Although these did not acquire ownership, they protect the data and act by assuring data integrity and admissibility under the Evidence Act. These utilities show an emerging approach of the legal system to tackling digital information in insolvency.

### C. International and Indian Examples



Across the global stage, intangible assets play pivotal roles in insolvency proceedings. The insolvencies of Aircel and Vodafone in India demonstrated that spectrum and telecom licenses, which are digital rights conferred by the government, can be taken as marketable assets, given that they gain necessary regulatory clearances and clear up any dues.

Within India's digital economy, the Jet Airways insolvency provided another instance of its JetPrivilege data, which included passenger profiles and loyalty program usage that was treated as an asset with market value and a potential resale<sup>5</sup>. Unlike physical assets, however, such data needs a balancing act between monetisation possibilities and privacy considerations, especially when personal data comes into play.

#### **D. Challenges and Implications**

Treating data as an insolvency asset introduces complex challenges:

**Valuation ambiguity:** Unlike tangible assets, data's value is dynamic and often context-specific—dependent on user base size, data depth, and integration capabilities. Traditional valuation methods under IBC struggle here without tailored frameworks.

**Privacy compliance:** Under the DPDP Act, personal data can only be processed if consent exists or exemptions apply, such as legitimate use in insolvency. This restricts data transfers during asset sales.

**Regulatory gap:** IBC lacks explicit guidelines on handling data assets, leading to inconsistent practices and potential undervaluation.

Through harmonising accounting, legal transparency, and privacy compliance, insolvency proceedings can harness digital assets effectively while upholding statutory protections.

### **III. VALUATION, MONETISATION, AND LEGAL COMPLIANCE: INTERPLAY BETWEEN IBC AND DPDP ACT**

In the contemporary digital economy, data has emerged as a crucial intangible asset, often surpassing traditional physical assets in value. With the advancement of digital technologies, companies are generating large stores of personal, transactional, and behavioural data, which they might monetise in a variety of ways. However, in cases of insolvency, corporate resolution under the IBC poses a big challenge from the perspective of valuing and monetising data assets while ensuring compliance with privacy laws, especially the DPDP Act, 2023. The growing number of digital firms going through insolvency has made this dynamic more acute since the worth of customer or user data usually constitutes a decent chunk of their value proposition.

#### **A. Valuation of Data under the IBC: In Superlative Detail**

Valuation of a corporate debtor under the IBC involves appointing two registered valuers who are to assess both the fair value and liquidation value of the assets belonging to the corporate debtor. Here, it is worth mentioning that these norms mainly apply to tangible or financial assets. The critical point regarding valuation of data as an intangible asset stems from its nature as intangible and context-specific. Valuation of data, therefore, involves a shift from traditional accounting methods, as it requires knowledge of the potential future income streams that such data could generate, the quality of the data, user engagement levels, and the technological infrastructure supporting it<sup>6</sup>. There are currently no agreed guidelines under the IBC for the valuation of digital assets, and thus in practice resolution professionals tend to use either market-based or income-based methods; both come with the demerit of being subjective and speculative. Discrepancies in valuations by appointed valuers may result in delays in the Corporate Insolvency Resolution Process (CIRP), as seen in several recent cases. The lack of established precedents and technical expertise further complicates the process.

#### **B. Regulatory Obligations under the DPDP Act**

Resolution Professionals (RPs) act as key players in collecting, securing, and presenting data assets to the Committee of Creditors (CoC). Their duties include ensuring that data is stored securely and that any proposed processing or transfer of data is done in compliance with the consent under which the data was collected. In October

2023, the DPDP Act imposes stringent obligations on entities involved in the collection, storage, or processing of data. Specifically, the Act frames such terms as data principals and data fiduciaries, and other governing principles like purpose limitation, consent-based processing, data minimisation, and storage limitation that would keep changing. Of great importance is the fact that transfer or process of data belonging to persons cannot be done without explicit and informed consent of the data principal, unless that is done for some specific legal purpose or exempted by the Act.

In short, in the context of insolvency, the sale or transfer of the customer data without valid legal basis or consent may amount to a contravention of the DPDP Act. Such a transfer, even when permissible under IBC for the maximisation of asset values, is restricted by the DPDP to an extent that it may contradict general objectives of insolvency.

Thus, to lawfully process and transfer data during insolvency, it is required that the resolution professional conduct a comprehensive data audit to note what data counts as personal data under the DPDP Act. If a data subject consented for a particular business purpose previously, transferring that data for commercial sale would normally require new consents unless that data gets transferred in deals that qualify under certain exemptions, like legitimate interest and legal compliance. The DPDP Act has imposed exorbitant penalties for violations, with fines extending up to ₹250 crores for a single breach. This significantly raises the stakes for the insolvency professionals and creditors, as this now implies that any data monetization scheme will take into consideration the prospect of regulatory action.<sup>7</sup>

### **C. Ensuring Legal and Ethical Data Monetisation**

Moreover, potential buyers of data assets should be adequately re-evaluated to ensure data protection. Generally, privacy protections, retention limitations, and anonymization or pseudonymization mechanisms should be outlined in the resolution plan itself in order to comply with the law. Failing to provide such safeguards may result in reputational damage, regulatory intervention, or even the nullification of the resolution plan by a court of law. This means that the context of valuation and transfer of data

under IBC cannot be expressed in isolation from that of the legal compliance framework enacted by the DPDP Act.

Therefore, as India firms up its data protection regime, in insolvency situations, the monetisation of data must change to match this new legal reality. Asset maximisation under IBC must also equally happen with privacy rights enshrined in the DPDP Act. Without clear harmonisation around these laws, resolution professionals, creditors, and prospective buyers operate in a legally ambiguous environment. Hence, there is a pressing need to create standard valuation methodologies for data, data-specific due diligence protocols, and incorporate privacy measures in resolution plans. Only then can India truly realise the financial benefits of data as an asset in insolvency, while at the same time protecting the rights of its citizens in the digital age.

## **IV.. TENSION BETWEEN DATA ASSET MAXIMISATION AND INDIVIDUAL PRIVACY RIGHTS**

In insolvency proceedings, creditors would be entitled to the greatest possible value obtainable from the debtor's assets under the Insolvency and Bankruptcy Code (IBC), 2016. More than ever, personal data, such as customer records, behavioural analytics, and usage patterns, has developed into an intangible asset with potentially enormous monetary value. Creditors and resolution professionals hope to financially benefit from these datasets in asset maximisation strategies. However, by the Digital Personal Data Protection (DPDP) Act, 2023, a stringent system of consent-based processing, data minimisation and purpose limitation has been proposed. This, in turn, leads to legal tensions between the cliché of data monetisation and the individual's right to privacy.

### **A. Ethical Conflicts in the Commercialisation of Personal Data**

Other than mere adherence to the law, the very nameable ethical questions arise in monetising personal data during insolvency. The commoditisation of an individual's travel history, purchasing preferences, and demographic profile—against their knowledge or will—breaks the trust and commodifies persons.<sup>8</sup> The doctrine of informed

consent lies at the heart of privacy rights and cannot simply be wished away by a company that goes into bankruptcy. Moreover, the DPDP Act puts an onus on data fiduciaries to process data only for reasonably specified lawful purposes. Repurposing personal data for reselling or third-party use in the context of a resolution or liquidation could be seen as not only unethical but barely a short step away from criminality.

### **B. Case Law and Regulatory Uncertainty**

The uncertainty in this area is aggravated by the absence of definite court orders and regulatory guidance. While the DPDP Act permits the Data Protection Board of India to address grievances and mete out penalties up to ₹250 crore, critics have raised their eyebrows towards the independence of the board itself and clarity on enforcement.<sup>9</sup> As there are no clear instructions on data handling in the context of insolvency, resolution professionals work within 9 Rohit Menon, "DPDP Act: ₹250 Crore Ceilings Raise Stakes for Corporate Monetisation," *Business Standard* (May 5, 2025), <https://www.business-standard.com/government-policy/dpdp-penalty-high-stakes> (last visited July 13, 2025).

a grey area where attempts to monetise data could lead to litigation or sanctions. Judges in courts particularly tend to intervene in insolvency-related cases involving heavy data-oriented concerns, such as airlines or companies involved in e-commerce, whenever they sense an infringement of rights brought about by the personal data act, as was hinted at in the Jet Airways resolution plan discussions.

## **V. HARMONISING THE IBC AND DPDP ACT: WAY FORWARD FOR POLICY AND PRACTICE**

Clear safeguards need to be in place immediately to secure insolvency processes in terms of privacy, which is a bastion in India's rapidly advancing phenomenon. Very first, all resolution plans should absolutely refrain from including any personal data in asset sales without having gotten free, fully informed consent from the user of such data. In airline insolvencies such as Jet Airways, commentators insist that

"passenger data should not be monetisable or sellable...without their explicit and informed consent." When the essence of the data is related to the commercial continuance of a business, anonymity or pseudonymisation must be mandatory, lest the identification processes become susceptible to serious risk through de-anonymisation. The resolutions under the implementation of the professionals, they should build into contracts the safeguarding principles such as purpose limitation, data minimisation, and breach reporting against misuse and regulatory exposure to DPDP Act.

### **A. Role of Data Protection Board and Managers in Insolvency**

This new body-the Data Protection Board of India (DPBI)-makes this harmonisation imperative. As an adjudicating authority, with substantial penalties prescribed, it issues binding interim relief for monitoring the best practices of data handling while insolvencies are initiated. However, experts from the industry are of the recommendation that an adequate staff and autonomy are crucial for complex investigations.<sup>10</sup> IPs must proactively involve the DPBI in seeking for advisory opinions or voluntary undertakings before such data transfer to secure compliance and legitimize the process, thereby preventing disruption to the resolution timeline.

### **B. Legislative and Procedural Reforms**

Insolvency laws fail to clarify how certain data assets are to be legally treated during insolvency. There is a proposal for legislative reforms that not only directly harmonise the IBC and DPDP provisions but also create a legal carve-out for certain data. A possible solution is to amend the existing insolvency statutes to permit limited data transfer solely under DPDP-mandated safeguards, such as requiring fresh consent mechanisms, data minimisation thresholds, and privacy assessments of resolution plans.

recommendations for state-level Data Protection Boards to consumer forums would greatly decentralise the redress mechanisms, making oversight more accessible and highly responsive across jurisdictions.

Further, the IBC could include procedural rules for integrating data-privacy compliance steps, requiring, for



instance, that data audit certification be subservient to the resolution process<sup>11</sup>. A training module and accreditation for RPs on privacy compliance and data valuation, co-certified by IBBI and DPBI, is bound to enhance capacity. Lastly, judicial clearance from the NCLT or appellate channels can establish on a case-by-case basis interpretations, e.g., endorsement of cuts-off thresholds in anonymisation or enforcement patterns in data-transfer agreements in relation to resolution<sup>12</sup>.

accountability will be vital to striking a balance between economic recovery and the fundamental right to privacy of data.

### C. A Path Towards Balanced Insolvency Resolution

By embedding privacy-by-design principles into insolvency law, India can unlock the latent value of digital assets without compromising individual rights. Transparent, DPDP-compliant mechanisms will reduce regulatory risk, improve creditor confidence, and protect data principals. A pragmatic framework—combining legislative clarity, procedural integration, and institutional collaboration—will enable the IBC to achieve its mandate of asset maximisation while reinforcing India's data protection architecture in the digital age.

## IX. CONCLUSION

The growing importance of data in the digital economy has transformed the legitimacy of assets under insolvency law, triggering a detailed investigation into how personal and non-personal data may be valued, monetised, and transferred. The IBC, 2016, requires maximisation of value for creditors, whereas some of the very obligations imposed by the new DPDP Act, 2023, are based on individual rights. This creates competing legal and ethical forces that pit commercial interests against principles of data protection. Examples such as the case of Jet Airways' insolvency have revealed the everyday risks involved in trying to monetise data without adequate protections for personal privacy. The lack of any clear guidelines to value data assets in the IBC, coupled with the stringent restrictions on consent and processing laid down by the DPDP Act, has thus created a legal grey area. In order to harmonise the two, legislative and procedural reforms that facilitate responsible monetisation itself along with compliance with data protection standards must take place. The obligations stemming from this should largely fall on the shoulders of the Resolution Professionals and the Data Protection Board of India. Ultimately, a privacy-sensitive insolvency framework based on transparency, consent, and