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Preface

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Description

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RECOGNISING DATA AS AN INSOLVENCY ASSET: LEGAL GAPS, VALUATION CHALLENGES, AND THE ROAD TO REFORM UNDER THE IBC

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016 was enacted to maximise asset value and resolution outcomes for creditors. As India transitions into a data-driven economy, a critical gap has emerged and the IBC provides no framework for identifying, disclosing, or valuing data as a corporate asset. The IBBI (Registered Valuers and Valuation) Regulations, 2017 recognise only three asset classes, namely Land and Building, Plant and Machinery, and Securities, none of which accommodate data. Information Memoranda carry no disclosure obligation for data holdings and the Section 53 liquidation waterfall presupposes valuation without any mechanism to value data. Data-rich enterprises therefore enter and exit insolvency without their most commercially significant asset being recognised.

This paper examines this gap across three dimensions whether data qualifies as property under Indian law, how the IBC framework fails to engage with data across Sections 14, 31, 53, and 238 and what barriers prevent effective data valuation in insolvency. Drawing on comparative frameworks from the United States, the United Kingdom, and the European Union, it proposes statutory recognition of data as an asset class, mandatory disclosures in Information Memoranda, expanded Registered Valuer competency standards, and a mechanism to reconcile the DPDP Act, 2023 with insolvency objectives.

Keywords: Insolvency and Bankruptcy Code 2016, data as asset, IBBI valuation regulations, Digital Personal Data Protection Act 2023, corporate insolvency resolution process, Section 53 liquidation waterfall, registered valuers, data valuation, intangible assets.

CHAPTER 1: INTRODUCTION

1.1 Data as the New Economic Reality

When Byju's, once India's most valuable startup, collapsed into insolvency in 2024, its resolution proceedings exposed a striking paradox. A company whose entire enterprise value rested on proprietary learning algorithms, user engagement datasets, and digital content libraries was being assessed primarily based on its physical assets and receivables.¹ The data that Byju's possessed, arguably its most valuable asset, found no place within the resolution framework. This was not an anomaly. It was a symptom of a structural failure in Indian insolvency law.

Data has displaced physical infrastructure as the primary driver of enterprise value across the global economy. In India, the digital economy is projected to surpass USD 1 trillion by 2029, with fintech, e-commerce, health tech, and edtech constituting an increasingly dominant share of corporate activity.² Enterprises in these sectors generate vast repositories of customer profiles, transaction logs, trained machine learning models, and behavioural datasets that often exceed physical assets in commercial worth. When such enterprises enter financial distress, the question of what happens to their data is not peripheral but central to the integrity of the resolution process.

1.2 The Problem: IBC's Silence on Data Assets

The IBC requires the Interim Resolution Professional to take control and custody of all assets of the corporate debtor, including intangible assets, under Section 18(1)(f).³ Yet neither the IBC nor the IBBI regulations define data as an asset class, mandate its disclosure in the Information Memorandum, or provide a valuation mechanism. The IBBI (Registered Valuers and Valuation) Regulations, 2017 recognise only three asset classes, namely Land and Building, Plant and Machinery, and Securities, within none of which data can be coherently placed.⁴

This silence operates at two levels. The first is legal recognition: Indian law vests no unified right of ownership in data. The Information Technology Act, 2000 addresses data in a protective register while the DPDP Act, 2023 creates obligations on data fiduciaries but establishes no transferable property right.⁵ The second is valuation: data presents methodological challenges including non-rivalrous characteristics, contextual dependency, decay risk, and personal data encumbrances that may render portions of a debtor's dataset entirely untransferable in insolvency. Together, these gaps mean that data-rich companies routinely enter and exit insolvency without their most

commercially significant asset ever being identified, assessed, or realised.

1.3 Research Questions and Objectives

This paper is guided by three research questions. First, whether data qualifies as a legally recognisable asset under the existing IBC framework. Second, what barriers prevent effective valuation of data assets in insolvency. Third, what reforms are necessary to integrate data as a recognised asset class within the IBC, including resolution of the conflict between the DPDP Act and insolvency objectives. The paper aims to establish the doctrinal basis for treating data as a legally cognisable asset, map gaps in the IBC and IBBI regulations with textual precision, identify valuation barriers, draw comparative lessons from the United States, the United Kingdom, and the European Union, and propose concrete IBC-grounded reforms.

1.4 Scope and Methodology

This paper is confined to data assets in CIRP and liquidation proceedings under the IBC. Personal insolvency, pre-packaged insolvency under Sections 54A to 54P, cross-border insolvency, cryptocurrencies, and NFTs fall outside its scope.⁶ The methodology is doctrinal and comparative, examining the IBC, IBBI regulations, and Indian statutes alongside NCLT and NCLAT jurisprudence, and drawing on frameworks from the United States, the United Kingdom, and the European Union to extract principles transferable to the Indian context. Chapter 2 examines data as a legal asset. Chapter 3 analyses the IBC's statutory treatment of data. Chapter 4 addresses valuation challenges. Chapter 5 draws comparative lessons. Chapter 6 proposes reforms and concludes.

CHAPTER 2: CONCEPTUALISING DATA AS A LEGAL ASSET: **FOUNDATIONAL QUESTIONS**

2.1 Data, Information, and Intellectual Property: Drawing the Distinction

The terms "data", "information", and "intellectual property" are often conflated in legal and commercial discourse, yet they occupy distinct conceptual categories. Data refers to raw, unprocessed facts such as figures, records, and signals that acquire meaning only when contextualised. Information is the product of that processing. Intellectual property is a legal

category attaching rights of exclusivity to certain creations of the mind.⁷

For insolvency purposes, the distinction is critical. A customer database may attract copyright protection as a literary work under Section 13 of the Copyright Act, 1957, provided it demonstrates requisite skill and judgment in selection or arrangement as established in *Eastern Book Company v. D.B. Modak*.⁸ However, the underlying data points attract no such protection. Proprietary algorithms may qualify as trade secrets, but India lacks a dedicated trade secret statute and protection rests on a fragmented combination of contract law and common law principles of breach of confidence, a gap acknowledged by the 22nd Law Commission in its March 2024 report proposing a draft Protection of Trade Secrets Bill.⁹ Behavioural datasets and aggregated transaction logs fall entirely outside existing IP coverage regardless of their commercial value.

2.2 A Working Typology of Data Assets for Insolvency Purposes

This paper proposes the following classification of data assets held by a corporate debtor, each carrying a distinct legal status, transferability profile, and commercial value.

Customer and personal data encompasses profiles, preferences, and behavioural records linked to identifiable individuals. This category carries the highest commercial value but is most heavily encumbered. The DPDP Act, 2023 subjects such data to consent and purpose limitation requirements under Sections 4 and 6, raising a genuine question as to whether bulk transfer to a resolution applicant constitutes processing beyond the original consent. While Section 17(2)(e) exempts processing pursuant to court or tribunal approved schemes of compromise or transfer of undertaking, it remains unsettled whether a resolution plan approved under Section 31 of the IBC falls within that exemption.¹⁰

Proprietary business data includes transaction logs, pricing models, and operational datasets that do not identify individuals. This category is generally transferable but subject to contractual restrictions and decay risk during CIRP pendency.

Trained artificial intelligence and machine learning models constitute a distinct category encompassing training datasets, model weights, and inference infrastructure. These carry high proprietary value, acute obsolescence risk, and present valuation difficulties that existing registered valuer competencies cannot address.

Licensed third-party data refers to datasets obtained under licence from external providers. These cannot be transferred without licensor consent, a point Resolution Professionals must assess at the

outset of CIRP.

2.3 The Property Question Under Indian Law

No Indian statute expressly vests ownership in data. The Information Technology Act, 2000 engages with data in a protective rather than proprietary register under Sections 43 and 72A, stopping well short of conferring any ownership right.¹¹ The DPDP Act, 2023 vests rights of correction, erasure, and grievance redressal in data principals under Sections 12 and 13, but these are regulatory entitlements rather than property rights capable of assignment or encumbrance.

Indian courts have historically declined to recognise property in information. As the Delhi High Court held in *Navigators Logistics Ltd. v. Kashif Qureshi*, confidential information and trade secrets are not equated to property in India.¹² The cause of action rests in the obligation of confidence, not in any proprietary interest in the information itself.

2.4 The Threshold Conclusion: Data as a Sui Generis Asset Class

Data is not intellectual property in the traditional sense, not personal property in the common law sense, and not accommodated within any existing Indian statutory framework. Yet it is economically valuable, commercially transferable, and treated by enterprises as indistinguishable from any other productive asset. The Supreme Court in *Vikas Sales Corporation v. Commissioner of Commercial Taxes* defined property broadly to include everything of exchangeable value, whether tangible or intangible.¹³ Data satisfies this economic definition entirely even as it resists every existing legal category. The appropriate legislative response is to recognise it as a sui generis asset class requiring tailored treatment within the IBC framework.

CHAPTER 3: DATA UNDER THE IBC: STATUTORY AND JURISPRUDENTIAL ANALYSIS

Having established in Chapter 2 that data possesses sufficient characteristics of an asset to warrant legal recognition, this chapter maps precisely where the IBC and IBBI regulations fail to engage with it across six distinct points of statutory silence.

3.1 Section 18 and the Asset Custody Framework

Section 18(1)(f) of the IBC obliges the Resolution Professional to take control and custody of all assets of the corporate debtor, including intangible assets and intellectual property.¹⁴ On a plain reading, this obligation is capable of encompassing data. However, the IBC provides no operational mechanism for doing so. There is no prescribed procedure for identifying distributed databases, securing cloud-hosted datasets, or preserving proprietary algorithms. The Section 18 obligation as applied to data therefore remains aspirational rather than actionable.

3.2 Information Memorandum: The Disclosure Gap

Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 requires the Resolution Professional to prepare an Information Memorandum disclosing the corporate debtor's assets and liabilities as on the insolvency commencement date.¹⁵ While asset disclosure is broadly required, the regulation provides no category, description standard, or valuation methodology specific to data assets. A technology company with a multi-crore customer dataset may enter CIRP and have that dataset entirely unmentioned in its Information Memorandum, directly depressing resolution plan quality and creditor recovery.

3.3 The Section 14 Moratorium and Data: An Unresolved Tension

Section 14 imposes a moratorium upon CIRP admission, prohibiting transfer, encumbrance, or disposal of the corporate debtor's assets.¹⁶ Its application to data creates conflicts the IBC leaves entirely unaddressed.

Where a data principal submits a valid erasure request under Section 12 of the DPDP Act during the moratorium, the corporate debtor is legally obligated to comply. Yet active deletion of estate data may itself constitute disposal of an asset under Section 14, pulling the two statutes in directly opposite directions. Similarly, migration of data infrastructure undertaken to preserve asset value during CIRP may amount to a prohibited transfer, and creditor access to data systems for due diligence purposes may constitute an encumbrance, neither of which has been judicially examined. No NCLT or NCLAT decision has addressed any of these conflicts, leaving Resolution Professionals to navigate a genuine legal vacuum without authoritative guidance.

3.4 Resolution Plans and Data Transfer: Who Gets What

When a resolution plan is approved under Section 31, the IBC does not specify whether data assets automatically vest in the resolution applicant, nor does it require the plan to address data expressly.¹⁶ A resolution applicant may therefore have no clear picture of what data it is acquiring. Customer consent obtained by the original debtor may not survive the change of data fiduciary. Licensed third-party data may lapse upon change of control if the licence contains a standard assignment restriction.

3.5 IBBI Valuation Regulations: The Missing Asset Class

The IBBI (Registered Valuers and Valuation) Regulations, 2017 prescribe valuation under three asset classes: Land and Building, Plant and Machinery, and Securities or Financial Assets.¹⁷ Data falls within none of them.¹⁸ There is consequently no category of Registered Valuer competent or obligated to value data in insolvency proceedings. Even a Resolution Professional who wishes to ensure proper data valuation has no regulatory framework within which to commission or present it.

3.6 The Section 53 Liquidation Waterfall and Unrealised Data

Section 53 prescribes distribution priority for liquidation proceeds on the premise that assets have been identified, valued, and realised.¹⁹ Where data assets remain unidentified, which the preceding analysis shows is presently the norm, they cannot be realised and their value is entirely lost to the liquidation estate. A liquidator confronting a defunct fintech company has no regulatory guidance on how to identify, package, or sell the debtor's data holdings.

3.7 Section 238 IBC versus the DPDP Act: The Hierarchy Question

Section 238 of the IBC provides that its provisions shall have effect notwithstanding anything inconsistent in any other law.²⁰ The Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank* confirmed that this non-obstante clause operates in the widest terms to ensure no right under any other law impedes the Code.²¹ Where the DPDP Act prohibits transfer of personal data without data principal consent, and the IBC requires realisation of all corporate debtor assets, the question of whether Section 238 overrides the DPDP Act's consent requirement becomes directly live.

The answer is not straightforward. In *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.*, the Supreme Court held that a clear inconsistency must exist before the non-obstante clause operates, and that the scope of an earlier enactment cannot simply be cut down by resort to Section 238.²² The DPDP Act's consent requirement may therefore be characterised not as inconsistent with the IBC but as a lawful regulatory condition on the manner of transfer, analogous to environmental clearances that resolution applicants routinely inherit. This conflict is the most jurisprudentially significant gap in the current framework and the one most likely to produce contested litigation as data-heavy CIRP cases reach the Tribunal.

3.8 Consolidated Assessment

The preceding analysis identifies six statutory silences that together constitute a structural lacuna. Section 18 imposes a custody obligation without operational mechanism. The Information Memorandum regulations mandate no data-specific disclosure. Section 14's moratorium creates unresolved tensions with DPDP Act obligations. Section 31 resolution plans address data transfer neither expressly nor by implication. The IBBI Valuation Regulations contain no data asset class. And the Section 53 waterfall presupposes realisation that the framework makes structurally impossible for data. Together, these ensure that data-intensive insolvencies are systematically resolved on an incomplete picture of the debtor's actual asset base.

CHAPTER 4: VALUATION OF DATA IN INSOLVENCY: METHODOLOGICAL AND REGULATORY CHALLENGES

The statutory gaps identified in Chapter 3 establish that data is presently not valued in insolvency proceedings. This chapter examines why, even if those gaps were remedied, valuation would remain a deeply complex undertaking.

4.1 Why Data Valuation is Structurally Different

Standard asset valuation rests on assumptions that data systematically violates. Conventional assets are rivalrous whereas data is non-rivalrous: the same dataset can be simultaneously used, licensed, and transferred to multiple parties without diminishment.²³ A liquidator cannot sell a dataset in the same way as machinery because the debtor can theoretically retain a copy after the

transaction. Data value is also contextual: the same dataset may generate radically different valuations depending on the identity and purpose of the prospective acquirer.²⁴ These characteristics have no analogue in the three asset classes currently recognised under the IBBI Valuation Regulations.

4.2 CIRP versus Liquidation: Why the Valuation Context Changes Everything

In CIRP, data is embedded in the operating enterprise and its value is best captured as a component of going concern value. In liquidation, data must be valued on a standalone basis, stripped of the operational context that generates much of its worth. A customer dataset that drives significant annual revenue within an operating business may realise a fraction of that figure when sold in isolation. This distinction has direct implications for any reformed valuation framework: a going concern standard is appropriate for CIRP while a forced sale standard is appropriate for liquidation proceedings.

4.3 Standard Valuation Approaches and Their Limitations

The cost approach values an asset at the cost of recreating it. For data, this systematically undervalues datasets whose worth derives from historical depth or network effects that cannot be economically recreated.²⁵

The market approach values an asset by reference to comparable transactions. For data, this fails at the threshold because there is no developed secondary market for data asset sales in Indian insolvency proceedings, and international comparables are scarce, heterogeneous, and frequently confidential.

The income approach values an asset at the present value of future economic benefits. While conceptually the most appropriate methodology for data, it requires reliable projections of future data utility, discount rates that account for obsolescence risk, and adjustments for DPDP Act encumbrances. In an insolvency context where the debtor's business model has already failed, constructing credible income projections presents inherent difficulty.²⁶

4.4 Data-Specific Valuation Barriers

Three barriers specific to data characteristics arise independently of the methodology adopted. First, data decay: the commercial value of data degrades at rates that are difficult to predict and

no depreciation schedule currently exists for data assets in Indian insolvency practice.

Second, breach and regulatory risk: a data asset's value may be suddenly impaired by a security breach or by the exercise of data principals' right to erasure under Section 12 of the DPDP Act, 2023, or by the automatic erasure obligation triggered under Section 8(7)(a) once the specified purpose is no longer being served.²⁷

Third, personal data encumbrances: personal data constituting a significant portion of commercially valuable datasets may be legally untransferable without consent.

A valuer must disaggregate the dataset before any meaningful valuation can be conducted, an exercise requiring legal analysis that falls well beyond the technical competence of any currently recognised Registered Valuer category.

4.5 Abandoned and Unmonetisable Data: The Deletion Problem

Where an entire dataset consists of personal data subject to DPDP Act consent requirements and no buyer can obtain the requisite consents at scale, the dataset has no realisable value in insolvency. The liquidator's options are to delete the data, which may be legally required under the storage limitation principle in Section 8(7)(a) of the DPDP Act,²⁸ or to retain it pending legal resolution, accruing ongoing compliance costs against the liquidation estate. Neither the IBC nor the IBBI (Liquidation Process) Regulations, 2016 provide any guidance on either course of action.

4.6 The Registered Valuer Competence Gap

The IBBI (Registered Valuers and Valuation) Regulations, 2017 prescribe eligibility criteria for Registered Valuers across the three recognised asset classes.²⁹ None contemplate expertise in data science, information economics, or data protection law. Chartered Accountants possess financial modelling competence but lack data-specific technical expertise. Information technology auditors possess technical knowledge but are not trained in valuation methodology or insolvency law. Two bridging options exist within the current regulatory architecture. The IBBI could create a fourth asset class covering digital and data assets with prescribed eligibility criteria. Alternatively, the IBBI could permit multi-disciplinary valuation panels for data-intensive insolvencies. Either option requires IBBI regulatory action rather than statutory amendment and is therefore achievable without legislative intervention.

CHAPTER 5: COMPARATIVE ANALYSIS: LESSONS FOR INDIA

No jurisdiction has yet enacted a comprehensive framework specifically addressing data as an insolvency asset. However, the United States, the United Kingdom, and the European Union have each developed partial responses to the questions identified in Chapters 3 and 4, and the principles that emerge from their experience are instructive for Indian reform.

5.1 United States: Chapter 11 and Digital Asset Practice

Under the United States Bankruptcy Code, the bankruptcy estate encompasses all legal or equitable interests of the debtor in property as of the commencement of the case.³⁰ Federal courts have consistently interpreted this formulation broadly enough to include data and digital assets. In practice, technology company bankruptcies under Chapter 11 have treated customer databases and proprietary datasets as assignable estate assets, subject to applicable privacy law constraints. The Federal Trade Commission has intervened in several bankruptcy proceedings involving personal data assets. In *FTC v. Toysmart.com LLC*, the Commission challenged the proposed sale of a customer database in bankruptcy on the ground that it would violate the company's privacy representations to customers.³¹ The eventual outcome, where no qualifying buyer came forward and the database was purchased solely for destruction, illustrated the limits of the conditional transfer model rather than its success. The more workable principle that emerged from subsequent FTC practice in cases such as *In re Borders Group, Inc.* is that personal data may be transferred in insolvency provided the acquirer commits to honouring the debtor's existing privacy representations, with the FTC reserving the right to intervene where that condition is not met.³²

5.2 United Kingdom: The ICO's Role in Administration

The Information Commissioner's Office has published guidance on the interaction between data protection law and insolvency proceedings, confirming that personal data constitutes an asset of the insolvent estate capable of transfer to a purchaser provided the transfer is consistent with the United Kingdom General Data Protection Regulation and the Data Protection Act, 2018.³³ The question of whether insolvency practitioners are automatically data controllers upon appointment remains unsettled, as the Cambridge Analytica administration proceedings demonstrated when administrators who declined to comply with an ICO enforcement notice faced judicial scrutiny

without clear resolution.³⁴

Two features of the United Kingdom approach are nonetheless instructive. First, the ICO's position is that a marketing list of a company should only be sold to an organisation intending to use it for the same purpose for which the data was originally collected. Second, liquidators may delete data where it cannot be lawfully transferred, treating deletion as a legitimate method of discharging the estate's compliance obligations rather than as a loss to creditors.

5.3 European Union: The Data Act 2023 and Insolvency Implications

The EU Data Act, Regulation (EU) 2023/2854, entered into force in January 2024 and applies from September 2025.³⁵ It represents the most advanced legislative attempt to regulate data access and transfer rights. Articles 5 and 6 establish statutory rights of access to data generated by connected products. Article 23 prohibits contractual terms restricting data portability where they amount to an abuse of bargaining power.

For insolvency purposes, the Data Act's most significant contribution is its recognition that data access rights can be legislatively prescribed rather than left entirely to contract or property law. A statutory right of access to corporate debtor data, vested in the Resolution Professional upon CIRP admission, could achieve the practical objectives of data asset recognition without requiring a comprehensive resolution of the property question.³⁶

5.4 Transferable Principles and India-Specific Constraints

Three principles emerge from the comparative analysis. From the United States: personal data may be transferred in insolvency provided the acquirer assumes the debtor's existing privacy obligations, with regulatory oversight rather than blanket prohibition. From the United Kingdom: purpose limitation on data transfers and liquidator deletion of untransferable data are workable and legally defensible mechanisms. From the European Union: statutory access rights vested in insolvency officeholders represent an achievable legislative technique that sidesteps the unresolved property question entirely.

Direct transplant would however be inappropriate. India's DPDP Act is not yet fully operationalised, the Data Protection Board has not been constituted, and the IBBI lacks a data specialist division comparable to the ICO or the FTC.³⁷ The reform proposals in Chapter 6 are therefore calibrated to India's current institutional capacity rather than to the more developed regulatory ecosystems

from which these principles are drawn.

CHAPTER 6: REFORM FRAMEWORK AND CONCLUSION

The preceding chapters have established that data is economically indispensable, legally unrecognised under the IBC, methodologically resistant to conventional valuation, and comparatively underserved. This chapter translates that diagnosis into a concrete reform agenda and answers the three research questions with which the paper opened.

PART A: REFORM PROPOSALS

6.1 Statutory Recognition: Amending the IBC and IBBI Regulations

The foundational reform is statutory recognition of data as an asset. The word "asset" used in Sections 18 and 25 of the IBC is not defined in the Code, and the Supreme Court has interpreted it by reference to Section 3(27), which defines property to include money, goods, actionable claims, and every description of interest whether tangible or intangible.³⁸ An express amendment to Section 3(27) to include "data assets" within the definition of property would provide the legislative foundation upon which all downstream regulatory reform rests. This is the one reform requiring parliamentary action and it is the necessary first step, because the Supreme Court has confirmed that IBBI's regulation-making power under Section 196(1)(t) read with Section 240 cannot create substantive rights not contemplated by the parent statute.³⁹ Once Section 3(27) is amended, the IBBI may by regulatory amendment under Section 196(1)(t) expressly include data assets within the Resolution Professional's custody obligation under Section 18 and the liquidator's realisation obligation under Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016.

6.2 Mandatory Data Asset Disclosure in the Information Memorandum

Regulation 36 of the IBBI (CIRP) Regulations, 2016 should be amended to require the Resolution Professional to include a Data Asset Schedule in the Information Memorandum, structured around the typology proposed in Chapter 2.⁴⁰ Each category of data asset, namely personal data, proprietary business data, trained artificial intelligence models, and licensed third-party data, should be disclosed with an indication of volume, format, encumbrances, and initial transferability

assessment. This disclosure obligation creates the informational foundation upon which resolution applicants can conduct meaningful due diligence and submit informed resolution plans.

6.3 Resolving the DPDP Act and IBC Conflict: A Harmonisation Mechanism

The paper proposes that the DPDP Rules, once finalised, include an express insolvency exemption modelled on Article 6(1)(c) of the EU GDPR, which permits processing necessary for compliance with a legal obligation.⁴¹ Specifically, the Rules should provide that personal data may be transferred to a resolution applicant or liquidation purchaser without fresh data principal consent where the transfer is pursuant to a resolution plan approved under Section 31 or a liquidation sale under Section 53, the transferee assumes all data fiduciary obligations of the corporate debtor, and data principals are notified with their existing rights preserved. This conditional transfer model resolves the conflict without subordinating data protection to insolvency objectives and is consistent with the comparative practice observed in the United States and the United Kingdom.

6.4 Expanding the Registered Valuer Framework

Once Section 3(27) is amended to recognise data as property, the IBBI should exercise its power under Section 196(1)(t) read with Section 240 and Regulation 3 of the IBBI (Registered Valuers and Valuation) Regulations, 2017 to create a fourth recognised asset class covering Digital and Data Assets.⁴² Prescribed eligibility criteria should require a combination of recognised valuation qualification, demonstrable expertise in data systems or information economics, and familiarity with the DPDP Act. As an interim measure, the IBBI should permit multi-disciplinary valuation panels pairing an existing Registered Valuer with a certified data specialist for data-intensive insolvencies, which requires only a circular rather than a full regulatory amendment.

6.5 Data in the Liquidation Waterfall and the Deletion Protocol

Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016 should be amended to expressly include data assets within the liquidator's realisation mandate and to prescribe differentiated valuation standards: a going concern standard for CIRP and a forced sale standard for standalone liquidation.⁴³ A Data Deletion Protocol should be introduced alongside, requiring the liquidator to delete personal data that cannot be lawfully transferred within a prescribed period

and treating deletion as a discharge of compliance obligations charged to the liquidation estate rather than as an unrecoverable loss of asset value.

6.6 Scope for Further Research

Three areas warrant dedicated scholarly attention beyond this paper. First, the intersection of data asset recognition with cross-border insolvency as India moves toward adoption of the UNCITRAL Model Law on Cross-Border Insolvency. Second, the competition law dimension: acquisitions of distressed competitors' datasets by dominant players through resolution plans raise market concentration concerns that the Competition Commission of India's current framework is not equipped to address. Third, the treatment of data assets in pre-packaged insolvency under Sections 54A to 54P, where the compressed timeline creates particular urgency around data disclosure and valuation.

PART B: CONCLUSION

6.7 Summary of Findings and Answers to Research Questions

This paper set out to answer three research questions. On the first, whether data qualifies as a legally recognisable asset under the existing IBC framework, the answer is that it does not. Four structural silences account for this: Section 18's operational void regarding data custody, the Information Memorandum's complete absence of data disclosure obligations, the IBBI Valuation Regulations' missing asset class, and the Section 53 waterfall's presupposition of prior valuation that the framework makes structurally impossible for data. These silences are compounded by the unresolved Section 238 and DPDP Act conflict that no tribunal has yet addressed.⁴⁴

On the second question, what methodological and regulatory barriers impede data valuation, the paper identifies five. The non-rivalrous and context-dependent character of data defeats standard valuation assumptions. The absence of a market comparable base in India forecloses the market approach. Income-approach projections are inherently unreliable in a distressed context where the debtor's business model has already failed. Data-specific barriers of decay, breach risk, and personal data encumbrances compound these difficulties. And the institutional competence gap among Registered Valuers means that even where valuation is attempted, no framework exists within which to commission or present it.

On the third question, what reforms are necessary, the paper proposes five concrete measures. Statutory recognition through express amendment of Section 3(27) IBC provides the legislative foundation without which no downstream regulatory reform is legally sustainable. Mandatory Data Asset Schedule disclosure in the Information Memorandum creates the informational base for meaningful resolution plan quality. A DPDP Act harmonisation provision in the DPDP Rules enables conditional personal data transfer on terms that preserve data principal rights. A fourth Registered Valuer asset class for Digital and Data Assets addresses the institutional competence gap. And a Data Deletion Protocol resolves the fate of unmonetisable personal data in liquidation.⁴⁵

India's insolvency framework has, in the decade since the IBC's enactment, matured considerably in its treatment of physical and financial assets. The next frontier is the recognition and realisation of the intangible assets that increasingly constitute the most valuable component of modern enterprises. Data is the most significant of these. The reforms proposed in this paper are not aspirational. They are technically achievable within the existing architecture of the IBC and the DPDP Act, and they are the necessary first step toward an insolvency framework adequate to the digital economy it must now govern.

