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**TRANSFORMATIVE INFLUENCE OF DATA-DRIVEN BUSINESS**  
**MODELS ON CORPORATE INSOLVENCY**

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**INTRODUCTION**

Historically, corporate insolvency in India had been an affair dominated by asset-dominated approaches, focusing on physical assets such as real estate, machinery, and inventory. The enactment of the Insolvency and Bankruptcy Code 2016 marked a shift from the above-fragmented regimes to a unified, time-bound one designed to maximize asset value and stakeholder equity. However, the digital economy has moved away from this traditional philosophy. Companies today operate on data-intense business models in which their most important assets are conceptual. Consumer datasets, algorithms, predictive analytics, as well as proprietary platforms are examples. Data's transformative character in insolvency is two-sided. First, it is an asset in itself that is frequently more valuable than the actual infrastructure. The ability to capitalize on consumer data, apply customer knowledge, and utilize predictive algorithms has a big influence on the value of an asset. Second, it is a platform that improves a proceeding's trajectory by promoting predictive analytics, early-warning alerts, and algorithmic-based judgments in repositioning strategies. In both cases, data converts insolvency from being reactive to predictive. Nevertheless, the Indian insolvency system lacks formal recognition for information as an asset class and does not represent the method of enterprise or bankruptcy treatment-enlightenment resolution procedures. Section 14 of the IBC, which bans further business continuation, which raises issues with data firms.

Otherwise, does an RP allow the usage of cloud-centered platforms? Can software or data licensing contracts be kept in place? Traditionally, structured societies and emerging businesses represent a crucial void.<sup>2</sup>

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<sup>2</sup> Insolvency & Bankruptcy Code, No. 31 of 2016, § 14 (India).

## **LITERATURE REVIEW**

1. Indian Scholarship. Vandana Gupta investigates the predictive role of machine learning (ML) models in bankruptcy prediction of Indian companies under IBC. Her comparison of logit, decision tree, random forest and support vector machine models based on a 10-year dataset identifies the random forest model as the most accurate. The study reveals that insolvency hazards constitute not only financial ratios, but also ownership factors, firm size issues and market phenomena. Gupta's study highlights how data-led tools can out-source better risk management and credit decisions. Atul Grover, in like manner, emphasises the creating of a Data Driven Culture" in insolvency administration. He highlights shortcomings in data integration (from varying formats across firms and institutions), and support for standardisation for improving efficiency, transparency and accuracy. Grover also points to the use of A.I. in early-warning systems and conflict resolution. But he cautions against heavy reliance on algorithms, which runs the risk of superseding human judgment and ethical concerns.<sup>3</sup>
2. International Perspectives. The International Monetary Fund (IMF) has drawn attention to the long-standing problem of insolvency regimes: a lack of empirical work. In Garrido et al. call for holistic data collection mechanisms to assess insolvency regimes and claim that the lack of robust datasets has prevented reforms from being truly effective across the globe. The paper offers a best practices approach to developing sound insolvency data, presenting a conceptual model which is particularly relevant in the context of India's changing regime.<sup>4</sup> Comparatively, Andrej Fedek notes the permanence of big data to future bankruptcies and forecasts USD 17.1 billion global financial analytics market by 2028. He places big data as a necessary tool in bankruptcy prediction, restructuring strategy and value maximization and urges for appreciating cargo de fact that excluding it will harm the efficacy of insolvency law.
3. Technology and Business Models. Academics also explore the broader move from relying on traditional to data-driven business models. An example is that of Cavanillas, Curry and Wahlster in Europe (2016), who emphasise the need to develop a 'data ecosystem' which will drive cross-industry innovation. In contrast, in fragmented regimes (such as India where sectoral regulators and insolvency frameworks often operate in silos), the

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<sup>3</sup>Insolvency & Bankruptcy Code, No. 31 of 2016, § 14 (India).

<sup>4</sup> Vandana Gupta, Bankruptcy Prediction Using Machine Learning Techniques: Evidence on Indian Companies Under Insolvency and Bankruptcy Code, 16 J. Predict. Mark. 77 (2022).

possibility of using big data effectively is hindered. Their study indicates that a coordinated ecosystem supported with cooperation between firms, regulators and research institutions is necessary for successful incorporation of data into insolvency work.<sup>5</sup>

4. Gaps in Literature. Although these studies contribute much, they appear with some gaps. First, to date the recognition of data as an asset in insolvency is not yet systematic under Indian jurisprudence and statutory interpretation. Second, the IBC Section 14, important because it is deeply associated with CIRP, has received little attention when data-driven companies are considered. There are also few pieces which detail the push and pull between innovation (predictive analytics, AI) and ethics (privacy, bias, accountability) within insolvency. This article seeks to fill these holes by placing data at the centre of insolvency law. It consolidates and draws on Gupta's predictive models and Grover's data-integration schema, framed within section 14 moratorium challenges to identify comparative lessons from the U.S. and U.K. in order to argue for reform of India's regime.<sup>678</sup>

### **DATA AS AN ASSET IN INSOLVENCY LAW**

Its raison d'être is value maximization; the idea that the debtor's estate must be preserved, administered and distributed in such a way that it generates maximum returns to all stakeholders. The estate itself, in the traditional sense, has been synonymous with tangible assets factories and machinery and financial securities. But in today's economy, some of the most valuable firms especially those in tech and services don't have much in the way of tangible assets. Instead, their value isn't in the assets on the balance sheet but the data: user information, proprietary algorithms, predictive analytics tools and curated digital conduits.

The Elevation of Data to the Status of an Asset is Not Unique in Comparative Systems. The General Data Protection Regulation (GDPR) of the European Union treats personal data not as information but as the subject of property-like protections, with rights and obligations in

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<sup>5</sup>Atul Grover, Data Driven IBC, 3 IIPI 46 (2023), <https://www.iiipicai.in/iiipi-e-journal-july-2023-pdf-download/>.

<sup>6</sup>Jose M. Garrido et al., The Use of Data in Assessing and Designing Insolvency Systems, IMF Working Paper No. 19/27 (2019), <https://www.elibrary.imf.org/view/journals/001/2019/027/article-A001-en.xml>

<sup>7</sup>Andrej Fedek, Big Data to Play Key Role in Future of Bankruptcy Proceedings, SmartData Collective (Dec. 4, 2022), <https://www.smartdatacollective.com/big-data-play-key-role-future-of-bankruptcy-proceedings/>

<sup>8</sup>José María Cavanillas, Edward Curry & Wolfgang Wahlster, *New Horizons for a Data-Driven Economy: A Roadmap for Usage and Exploitation of Big Data in Europe* (Springer 2016).

collecting, retaining, disclosing, and other uses.<sup>9</sup> Concurrently, in the US, bankruptcy courts have increasingly defined the sale or transfer of consumer data as part of the debtor's estate, subject to privacy protection.<sup>10</sup>

But in India, the law is weak. The Digital Personal Data Protection Act, 2023 (DPDP Act) introduces principles for the lawful processing of personal data but it does not provide whether that data is an asset in an insolvency process.<sup>11</sup> Also, the IBC, 2016 does not specifically list data under "property" or "assets" of the corporate debtor. This gap gives rise to valuation and operational issues when companies that rely on digital assets are subject to insolvency.

As an example, in CIRP, let's take the perspective of an e-commerce business. The physical assets could be dwarfed by the company's consumer database, recommendation algorithms and transaction history. There are a couple of concerns that RPs have. And one of them is if they do not formally take cognizance of these as assets, are you saying then (that) I am never being given the ability to look at something and value it and in turn transferring it to a SRA? And beyond this, non-recognition threatens to devalue the debtor, as these cases offer little credit to the mandate of value maximization in the Code.

Valuing data as an asset also brings ethical and regulatory considerations. Should individuals get a vote over how their information is transferred in the event of insolvency? What protections are necessary to prevent abuse? The United States resolves this tension by permitting transfers of consumer data subject to adhering to the debtor's privacy policies and supervising courts or regulators. A same balance can be achieved in India through the imposition of condition on RPs that they should do transfer property as per DPDP ACT and authorize the Insolvency and Bankruptcy Board of India (IBBI) to formulate guidance on valuation and transfer data assets.

This paper therefore submits that data needs to be expressly recognized as an intangible asset under the IBC, which must be valued, protected and transferred in a regulated manner. This

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<sup>9</sup>Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 Apr. 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation), art. 5, 2016 O.J. (L 119) 1 (EU)

<sup>10</sup>See, e.g., *In re Toysmart.com, LLC*, No. 00-13995-CJK, 2000 WL 565056 (Bankr. D. Mass. 2000).

<sup>11</sup>Digital Personal Data Protection Act, No. 22 of 2023, § 4 (India).

approach is consistent with the value maximization policy of the Code and also ensures that insolvency framework does not become redundant in data driven economy.

## **SECTION 14: MORATORIUM AND DATA BUSINESS DRIVEN MODEL**

### **A. Scope of Section 14**

**Moratorium at the Commencement of CIRP:** Section 14 of the Insolvency and Bankruptcy Code (IBC) address the moratorium imposed on filing cases, enforcing security interests, and discontinuing or terminating supply. The rationale behind the moratorium is to safeguard the interests of stakeholders and ensure the effective resolution of a corporate debtor rather than merely facilitating liquidation.<sup>12</sup> However, ambiguities arise concerning organizations that rely heavily on digital services an issue the drafters of the Code may not have anticipated.

For instance, can a resolution professional continue to utilize cloud services or software licenses essential for datadriven businesses? If the moratorium prohibits payments under such licenses does this effectively lead to their termination thereby destroying value precisely what the insolvency regime aims to prevent? The Code does not clarify what constitutes a "vital service." Are digital services, particularly data hosting and Software as a Service (SaaS) models, considered "essential" alongside utilities such as electricity, water, and telecommunications?

### **B. Judicial Approaches**

To date Indian courts have adopted a conservative interpretation of Section 14. In *Innovative Industries v. ICICI Bank*, the Supreme Court emphasized that moratorium must be mandatorily imposed to preserve the corporate debtor's assets and ensure equitable treatment of all creditors.<sup>13</sup> Similarly, in *Swiss Ribbons v. Union of India*, the Court affirmed that the moratorium supports the guiding principles of the Code namely resolution and maximization of value. However, these rulings do not address the complexities surrounding data-related services.<sup>14</sup>

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<sup>12</sup>Insolvency & Bankruptcy Code, No. 31 of 2016, § 14 (India).

<sup>13</sup>*Innoventive Indus. Ltd. v. ICICI Bank*, (2018) 1 SCC 407 (India)

<sup>14</sup>*Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17 (India).

<sup>15</sup>Several National Company Law Tribunal (NCLT) decisions have acknowledged broader exceptions, permitting 'services essential to the survival' of a debtor to continue despite the moratorium. Notably, digital services have not been explicitly recognized by resolution professionals; ceasing payments could lead to service termination, while continuing payments may violate the moratorium.

### C. Comparative Insights

In the United States, bankruptcy courts allow digital services to operate temporarily to maintain business continuity. For example, software and data licenses are classified as executory contracts under Section 365 of the Bankruptcy Code, which can be assumed or assigned, thereby protecting creditors and preserving going concern value.<sup>16</sup>

Similarly, the UK's Insolvency Act 1986, through case law and statutory developments recognizes that certain contracts including IT services, are crucial for the viability of a business and cannot be terminated solely due to insolvency. These comparable legal frameworks suggest that India should clarify Section 14 to encompass services of a digital, data-centric nature.<sup>17</sup>

### D. Proposal for Reform

This paper proposes a three-tiered reform of Section 14 for data-driven enterprises:

1. **Statutory Amendments:** Include a provision in Section 14(2) that explicitly defines "essential services" to encompass services related to the digital ecosystem.
2. **IBBI Guidelines:** Empower the Insolvency and Bankruptcy Board of India (IBBI) to issue guidelines for managing data contracts (such as cloud storage, analytics platforms, and licensing arrangements) during the Corporate Insolvency Resolution Process (CIRP).
3. **Judicial Discretion:** Encourage tribunals to adopt a purposive interpretation of Section 14 allowing the continuation of data services when necessary to preserve the debtor's value.

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<sup>15</sup>See, e.g., *Dakshin Gujarat Vij Co. Ltd. v. ABG Shipyard Ltd.*, (2019) 4 SCC 179 (India).

<sup>16</sup>U.S. Bankruptcy Code, 11 U.S.C. § 365 (2018).

<sup>17</sup>Insolvency Act 1986, c. 45, § 233B (U.K.), inserted by the Corporate Insolvency and Governance Act 2020.

By recognizing the critical role of data in contemporary corporations these reforms would help ensure that the moratorium does not inadvertently undermine the value it seeks to protect.

## **COMPARATIVE PERSPECTIVE UNITED STATE & UNITED KINGDOM**

### ***UNITED STATES***

A noteworthy point of comparison for India is the U.S. Bankruptcy Code. Unlike the Insolvency and Bankruptcy Code (IBC) in India, American legislation explicitly recognizes the significance of executory contracts, including software and data licenses. Under Section 365, a debtor may, with court approval, “assume and assign contracts” during bankruptcy proceedings.<sup>18</sup> This flexibility has enabled U.S. courts to maintain the integrity and operation of businesses that derive value from data-related activities, thereby preserving their going-concern value and allowing them to continue functioning as usual.<sup>19</sup>

For instance, in the case of *in re Toysmart.com LLC* the bankruptcy court classified the transfer of consumer data as an asset of the debtor's estate while also implementing privacy protections in line with Federal Trade Commission recommendations.<sup>20</sup> This case demonstrates that data assets are not only capable of being monetized but are also subject to regulation during bankruptcy proceedings. Similarly, courts have affirmed that software licensing agreements can be assumed by asset purchasers, recognizing their critical role in business operations.

Another significant aspect of the U.S. system is the increasing utilization of predictive analytics in monitoring bankruptcy cases. The Auditing Program by the Office of the U.S. Trustee has become more data-driven, focusing on identifying anomalies in debtor filings that may indicate fraudulent activity. This institutional embrace of data analytics illustrates a broader understanding that insolvency involves not just asset distribution, but also the effective functioning of the system as a whole.<sup>21</sup>

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<sup>18</sup>11 U.S.C. § 365 (2018).

<sup>19</sup>*In re Toysmart.com, LLC*, No. 00-13995-CJK, 2000 WL 565056 (Bankr. D. Mass. 2000).

<sup>20</sup>See *In re Sunterra Corp.*, 361 F.3d 257 (4th Cir. 2004).

<sup>21</sup>U.S. Gov't Accountability Off., GAO-20-427, *Bankruptcy: Additional Information Could Help U.S. Trustees Identify Emerging Trends* (2020).

## ***UNITED KINGDOM***

The Insolvency Act 1986 serves as the foundation of the United Kingdom's insolvency framework and has evolved in response to the challenges posed by digitization. Recent amendments, particularly the prohibition established under Section 233B of the Corporate Insolvency and Governance Act 2020<sup>22</sup>, make it illegal for suppliers of essential services, including IT and data service providers, to terminate contracts solely on the grounds of a party's insolvency. This statutory protection also addresses issues similar to those faced by India under Section 14, thereby enabling data-driven businesses to navigate the reorganization process more effectively.

Furthermore, domestic insolvency practices in the U.K. are increasingly reliant on big data analytics to assess financial distress. Insolvency practitioners utilize predictive models to estimate potential recoveries for creditors and to evaluate the effectiveness of various restructuring strategies. Additionally, regulators such as the Financial Conduct Authority have emphasized the importance of incorporating AI based risk assessments into insolvency supervision.<sup>2324</sup>

## ***LESSONS FOR INDIA***

Both the U.S. and U.K. approaches point toward the importance of legislative clarity and regulatory creativity. The IBC regime in India has made tremendous progress in consolidating insolvency law but it still operates on an asset-based model. Lessons from comparison indicate that India must:

- Treat data as an executory asset (like software licenses) and allow for this to be assumed/assigned in CIRP.
- Introduce a measure like the U.K.'s Section 233B, which prohibits the termination of crucial digital services when a business becomes insolvent.
- Operationalise data-based oversight tools in IBBI and NCLT to facilitate proactive identification of stress /fraud.

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<sup>22</sup>Insolvency Act 1986, c. 45, § 233B (U.K.), inserted by Corporate Insolvency and Governance Act 2020.

<sup>23</sup>See Deloitte, *Big Data in UK Restructuring Practice* (2021)

<sup>24</sup>Financial Conduct Authority, *Artificial Intelligence in UK Financial Services* (2022).

Those reforms would bring India's insolvency regime in line with best practices around the world as well as facing up to some of the peculiar challenges associated with its fast-digitalizing economy.

## **CHALLENGES & ETHICAL CONCERNS**

The incorporation of data-driven business models in insolvency introduces legal, as well as ethical and practical questions. These issues need to be addressed so that innovation supports rather than undermines fairness, accountability and stakeholder rights.

### **A. Privacy Concerns**

The first challenge is privacy. There could be potential issues relating to the rights of individuals under the DPDP Act, 2023 and similar global things like GDPR involving shifting consumer data across as they go through insolvency.<sup>25</sup> By way of illustration, if a social media platform in CIRP transfers its user data to a resolution applicant for value, would the users have an information that they can opt out from? Should their consent be revalidated? So even in the face of strong public and political antipathy to data commodification, it may develop by default as a result of this loophole in insolvency law. And in the absence of proper statutory control, we could sleepwalk into trusting neither the insolvency system nor digital markets.

### **B. Algorithmic Bias**

Use of AI and predictive analytics can lead to bias. Algorithms that develop risk scores from historical financial data are likely to unfairly identify small, would-be borrowers and new businesses as high-risk, perpetuating systemic inequalities.<sup>26</sup> Prejudiced forecasts could have on creditor choices, valuation consequences or reorganization plans in insolvency. As Grover cautions, reliance on algorithmic outputs without human intervention would overly simplify insolvency into a mechanical task and deprive it of equitable judgment:<sup>27</sup>

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<sup>25</sup>Digital Personal Data Protection Act, No. 22 of 2023, § 4 (India); GDPR, supra note 7.

<sup>26</sup>See Arup Guha & N. Veeranjanyulu, Prediction of Bankruptcy Using Big Data Analytics Based on Fuzzy C-Means Algorithm, 8 IAES Int'l J. Artif. Intell. 168 (2019)

<sup>27</sup>Grover, supra note 3.

### **C. Regulatory Uncertainty**

A second order of difficulty is legal uncertainty. Indian law lacks clarity on:

- Ownership of data (the company's, the consumer's, or both?).
- Cross-border data flows (whether data stored in foreign servers can be transferred pursuant to an Indian insolvency process).
- Liability for misuse or abuse of data during CIRP (whether the RP is responsible or the debtor or Resolution applicant)
- Lack of clarity in its answers to these questions leads to uncertainty that dissuades investors from bidding for data-heavy companies under CIRP.

### **D. Compliance Burdens**

The DPDP Act, 2023 has onerous standards of compliance: gather consent, minimize data, report breach.<sup>28</sup> Such challenges may be too much for small and medium-sized enterprises "falling" into insolvency. Resolution professionals, who are already struggling to comply with statutory terms, may not be well-versed in intricate data protection regulations. Unless we bolster such institutional capacity, Pakistan's safeguard compliance will always be more a matter of aspiration than reality there.

### **E. Ethical Balance**

And then there is the larger issue of ethical balance. Bankruptcy law has typically tried to thread the needle between creditors' rights, continued existence of debtors and systemic stability. The filling of this equation with the data gives a new actor: the citizen in his role as data provider. Delighting in their rights means to embed ethical considerations transparency, accountability, fairness within insolvency processes. This requires cooperation between insolvency regulators (IBBI, NCLT) and data regulators (DPB under the DPDP Act).

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<sup>28</sup>DPDP Act, supra note 24, §§ 7–9.

## **SUGGESTION AND REFORM PROPOSAL**

This analysis above shows that the insolvency regime in India, as progressive it may be from a consolidation perspective of laws under the IBC, remains unready to face the challenges posed by data driven business models. In order to bring IBC at par with international best practices and make the Code more congenial to digital economy, this paper suggests following reforms: A Consideration of Information as an Asset

The IBC needs to be revised to include data as an intangible asset. Section 3(27), the definition of “property,” could potentially be clarified to cover “digital assets, such as consumer data, algorithms, and proprietary platforms.” This reform would facilitate the RPs to value, preserve and transfer data during CIRP in line with the spirit of maximization of value as espoused under Code. The IBBI should also prescribe methodologies for valuation of data assets. Valuation needs to include more than size: the quality, relevance and compliance of data Exploring why trillion-dollar company valuation” doesn’t make sense. It would also be possible to empanel independent data auditors who could help resolution professionals in such specialized functions.

### **Section 14 Moratorium clarification.**

Secondly, the interpretation of Section 14 needs to be defined. The legislature needs to pass new law that adds “digital and data services” for example as an essential service under Section 14(2) It would stop suppliers ending cloud storage, analytical platforms or SaaS subscriptions purely because the company involved ceases to be a viable concern. This reform would be similar to the U.K.’s approach in Section 233B, where there is a balance of protecting creditors’ rights with preserving business value through continuity. Additionally, tribunals should take a purposive approach to interpreting Section 14 and acknowledge that it is common practice for the termination of internet services provided by the debtor in today’s companies to be equivalent to liquidating the company’s key assets. Some judicial creativity, operating in conjunction with statutory clarity, is required if the moratorium is not to defeat its own purpose.

### **Integration of Predictive Analytics**

Third, bankruptcy institutions must incorporate predictive analytics to increase efficiency and monitoring. IBBI could create red flags based on financial, operational and market data to identify entities in distress early. Those tools would enable regulators and creditors to act much sooner, possibly bypassing formal insolvency entirely. Resolution professionals could also be equipped with algorithmic tools to simulate restructuring strategies, model recovery rates and aim negotiations among creditors. In order to foster innovation while dangers are reduced, the State could introduce a regulatory sandbox mechanism permitting RPs to experiment with AI tools in a safe space.

### **Consistency with Data Protection Legislation**

The reforms need to ensure that sensitive insolvency data driven compliance is undertaken in accordance with the DPDP Act, 2023 and international privacy best practice such as GPDR. Designate resolution professionals as ‘data fiduciaries’ under the DPDP Act, with clear obligations to protect personal data during CIRP. Flows of User Data Should

- i. be Anonymized or Pseudonymised where possible and
- ii. subject to the oversight of the proposed Data Protection Board of India (DPB).
- iii. This type of harmonization would both safeguard consumers and reduce the risk that data will be devalued as a monetizable asset. Without these protections, public confidence in the insolvency regime and digital markets more generally may be undermined.

### **Capacity-Building and Training**

Finally, successful reform needs resources for capacity building. Resolution professionals and insolvency tribunals have to be trained in data governance, privacy compliance and algorithmic accountability. The IBBI working with professional institutes (ICAI and IIIPI for example) can help in creating the capability of insolvency professionals to deal with nuances that data-led businesses demand.

## **CONCLUSION**

The rapid emergence of data-driven business models is a transformational change in the business world. Today, corporations derive much of their value not from physical infrastructure, but ideas and data. But insolvency in India is still based on a system built for the physical world of manufacturing.

This article has contended that the IBC, 2016 will need to adapt if it is intended to keep ticking in this digital age. Acknowledging data as an asset, narrowing the scope of Section 14 moratorium, infusing predictive analytics into insolvency practice and aligning with data protection laws is all India needs to do in order to emerge with a regime that ensures an equilibrium between value maximisation on one hand and fairness, transparency and privacy on the other.

Comparative examples from the U.S and U.K. show that reforms are not only possible, but necessary. The US approach demonstrates how digital service executory contracts can be left un-terminated, while the UK example also reveals that a statutory intervention could avoid termination of critical digital services. Both recommend embedding data-driven tools in insolvency systems.

At the same time, we should be cautious. Reliance on algorithms could introduce bias, and a lack of privacy protections could undermine trust. Reforms must therefore be based on efficiency as well as ethical and accountability considerations. Insolvency, however, is not just a commercial process; it is also a social construct seeking to mediate the interests of creditors, debtors and now individual data subjects.”

In other words, corporate insolvency in India will have rethink itself in a world shifting to data driven business models. By adopting innovation with sensitivity to rights, the IBC has the opportunity to establish itself as a modern, adaptive regime able to grapple with twenty-first-century challenges and to ensure insolvency law continues to serve its core purposes of resolution, value creation and systemic resilience.