

# Digital Assets in Corporate Insolvency: Emerging Challenges for Valuation, Custody, and Recovery under the IBC Framework



**Hiten Abhani**

The author is an Insolvency Professional (IP) Member of IIIPI. He can be reached at [habhani@gmail.com](mailto:habhani@gmail.com)

*The growing prevalence of digital assets—such as cryptocurrencies, non-fungible tokens (NFTs), and other blockchain-based instruments—has introduced a new dimension to corporate finance. As Indian companies increasingly engage with these assets for investment, fundraising, and operational purposes, their presence in insolvency proceedings has become inevitable. However, the IBC and its related regulations do not expressly provide procedural mechanisms for the identification, valuation, custody, or realisation of digital assets. This regulatory gap creates significant practical challenges for Insolvency Professionals during the CIRP and liquidation process. This paper examines the intersection of digital assets and the IBC framework by analysing procedural ambiguities, operational difficulties faced by IPs, and comparative global practices. It recommends strengthening procedural clarity under the IBC to ensure value preservation, enhance creditor confidence, and build a future-ready insolvency regime. **Read on to know more...***

## 1. Introduction

The rise of digital assets—cryptocurrencies, non-fungible tokens (NFTs), and other blockchain-based instruments—has redefined corporate balance sheets worldwide. Once considered speculative or peripheral, such holdings are now increasingly integrated into mainstream corporate portfolios. In India, listed

companies and start-ups alike have experimented with digital tokens for investment, marketing, or cross-border transactions. Consequently, when such companies enter financial distress, questions regarding the treatment of digital assets inevitably arise within the framework of the Insolvency and Bankruptcy Code, 2016 (IBC or the Code).

Digital assets are inherently borderless, decentralised, and pseudonymous, with ownership and transfer evidenced through cryptographic mechanisms rather than physical possession. Under Indian law, their legitimacy has progressively crystallised at a broader level. Virtual digital assets are expressly recognised under the Income-tax Act, 1961, and the Supreme Court has acknowledged crypto-related activity as a legitimate business activity. Although cryptocurrencies were originally conceived as currencies, they are not recognised as legal tender by central banks, largely for economic and monetary policy reasons rather than legal invalidity. In this context, the principal challenge has shifted from questions of legal recognition to the absence of procedural clarity governing the treatment of digital assets within regulatory and insolvency frameworks.

For Insolvency Professionals (IPs), this presents a distinct practical challenge: how can one effectively identify, take control of, value, or liquidate assets that are not recognised as legal tender and are not regulated in the same manner as traditional securities? These concerns are not merely theoretical. Global insolvency proceedings, including *in re FTX Trading Ltd*<sup>1</sup>, and *in re Celsius Network LLC*<sup>2</sup>, illustrate the significant complexities associated with custody, valuation, and ownership of crypto-assets in insolvency.

This article examines the intersection of digital assets and India's insolvency framework, analysing their treatment under the IBC, valuation and recovery challenges, forensic and avoidance implications, and the need for calibrated regulatory or procedural guidance, drawing where relevant on comparative global experience.

## 2. Understanding Digital Assets and their Legal Position in India

Digital assets encompass a spectrum of instruments—cryptocurrencies (like Bitcoin or Ether), stablecoins, NFTs, and other tokens representing value, rights, or contractual claims recorded on distributed ledgers. A key feature distinguishing these assets from

traditional forms is their decentralised ownership and cryptographic proof of possession via private keys. Some digital assets may also constitute “contractual rights,” depending on their structure and underlying agreements.

***A key feature distinguishing digital assets from traditional forms is their decentralised ownership and cryptographic proof of possession via private keys.***

India's legal stance on such assets remains ambiguous. The Reserve Bank of India<sup>3</sup> (RBI) has consistently expressed concerns regarding volatility and systemic risks of cryptocurrencies, and issued a Circular in 2018, restricting banks from dealing with entities engaged in virtual currency transactions. Although the Supreme Court struck down this circular in *Internet and Mobile Association of India v. RBI*<sup>4</sup> (2020), the absence of enabling legislation means that digital assets are neither expressly prohibited nor formally recognised as legal tender.

From an insolvency perspective, the IBC defines “assets” broadly to include all property, tangible or intangible, movable or immovable, owned by the corporate debtor<sup>5</sup>. Accordingly, cryptocurrencies, NFTs, and other virtual assets—whether representing ownership, value, or contractual rights—may qualify as “intangible assets” capable of being included in the insolvency estate. The primary challenge lies not in their inclusion under the IBC but in establishing control, access, and realisation mechanisms.

## 3. Relevance of Digital Assets in Corporate Insolvency Resolution Process

During a Corporate Insolvency Resolution Process (CIRP), the Interim Resolution Professional (IRP) or Resolution Professional (RP) is tasked with taking custody and control of the corporate debtor's assets.

<sup>1</sup>Reserve Bank of India, *Circular on Virtual Currencies*, RBI/2017-18/154, April 6, 2018.

<sup>2</sup>*In re FTX Trading Ltd.*, U.S. Bankruptcy Court, District of Delaware, Case No. 22-11068 (JTD), 2022.

<sup>3</sup>*In re Celsius Network LLC*, U.S. Bankruptcy Court, Southern District of New York, Case No. 22-10964 (MG), 2023.

<sup>4</sup>*Internet and Mobile Association of India v. Reserve Bank of India*, (2020) 10 SCC 274.

<sup>5</sup>IBC, s. 18(1)(f) read with s. 3(27).

This ordinarily involves seizing bank accounts, books, and physical property. However, when a debtor holds crypto wallets, the mechanism of control shifts entirely—access depends on private keys, which may be stored digitally, held by third-party custodians, or even permanently lost.

Some companies may also have indirect exposure to digital assets through investments in blockchain platforms, tokenised equity, or NFT-based marketing assets. While these may possess economic value, they are often difficult to trace. Without clear statutory or regulatory guidance, IPs risk omission or misvaluation of such assets in the insolvency estate.

In liquidation, Section 35 of the IBC empowers the liquidator to realise and distribute assets. Yet the liquidation of digital assets raises practical questions regarding jurisdiction, conversion, and regulatory compliance. For instance, should cryptocurrencies be sold through exchanges—potentially triggering KYC/AML obligations—or transferred peer-to-peer? How are proceeds recorded for audit and tax purposes?

The IBC and its current regulations provide no specific guidance on these issues, and the IBBI has not issued formal instructions on identifying, securing, or disposing of digital assets. Internationally, bodies like the Financial Stability Board have highlighted the systemic and operational risks of crypto-assets, which underscores the need for clear procedural frameworks in insolvency contexts<sup>6</sup>.

#### 4. Valuation and Realisation Challenges

Valuation of digital assets represents a significant challenge for IPs, though it is not insurmountable. Under the IBC, two registered valuers must determine the fair and liquidation value of the corporate debtor's assets<sup>7</sup>. While the Companies (Registered Valuers and Valuation) Rules, 2017, primarily address tangible or financial assets, valuation procedures are available to assess all forms of digital assets at a given point in

***In Re Gatecoin Ltd., Hong Kong (2022), the High Court affirmed that digital assets belong to the estate but emphasised the importance of secure and specialised custodianship.***

time, such as the Insolvency Commencement Date (ICD). Price volatility, therefore, while notable, does not preclude valuation, as even traditional assets like currency or gold fluctuate over time.

Nonetheless, practical issues remain. The absence of standardised exchanges or reliable price feeds can complicate reliance on market data, and illiquid or highly bespoke tokens—such as certain NFTs—may require specialised approaches. Custody and control also pose major hurdles. Without access to private keys, IPs cannot move or liquidate tokens, and if keys are lost or retained by management personnel under suspension, recovery may become impossible.

Internationally, courts have recognised crypto-wallets as property of the bankruptcy estate. In *Re Gatecoin Ltd., Hong Kong*<sup>8</sup> (2022), the High Court affirmed that digital assets belong to the estate but emphasised the importance of secure and specialised custodianship. For Indian practitioners, the absence of a regulatory framework for crypto-custody increases the risk of misappropriation or cyber-theft during CIRP.

Moreover, valuation and realisation challenges intersect with reporting obligations. As the OECD has highlighted in its Crypto-Asset Reporting Framework<sup>9</sup> (2022), accurate record-keeping and disclosure of holdings, transactions, and conversions are essential, adding another layer of complexity for RPs.

#### 5. PUF Transactions Involving Crypto

Sections 43 to 66 of the IBC empower the RP or liquidator to challenge Avoidance or Preferential,

<sup>6</sup>Financial Stability Board, *Assessment of Risks to Financial Stability from Crypto-assets* (2023).

<sup>7</sup>IBC, s. 46; Companies (Registered Valuers and Valuation) Rules, 2017, r. 8.

<sup>8</sup>*Re Gatecoin Limited* [2022] HKCFI 914 (High Court of Hong Kong).

<sup>9</sup>Organisation for Economic Co-operation and Development (OECD), *Crypto-Asset Reporting Framework* (2022).

Undervalued, Fraudulent and Extortionate (PUFE) transactions. When digital assets are involved, tracing and proving such transactions becomes more complex due to their pseudonymous nature. Although blockchain transactions are publicly recorded, identifying the beneficial owner of a wallet often requires specialised forensic tools and cooperation from foreign exchanges or custodians. Where a corporate debtor has transferred crypto-assets to promoters or affiliates prior to the CIRP, the RP must establish both intent and value differential, a task complicated by fluctuating market values of tokens and the absence of standardised valuation benchmarks.

International experience demonstrates potential approaches. In *In re Celsius Network LLC* (2023), U.S. courts were able to “claw back” crypto transactions using blockchain analysis. While the Enforcement Directorate (ED) and Serious Fraud Investigation Office (SFIO) in India have begun employing blockchain forensics in financial crime investigations<sup>10</sup>, insolvency practitioners currently lack comparable institutional support for recovery and investigative exercises in CIRP.

A further consideration is cross-border recoveries. Crypto-assets transferred to foreign wallets may fall outside India’s jurisdiction, but Section 60(5) of the IBC grants NCLTs broad powers to adjudicate avoidance proceedings. Nonetheless, effective enforcement remains dependent on international cooperation, foreign legal frameworks, and exchange regulations.

## 6. Cross-Border and Regulatory Dimensions

Digital assets rarely remain confined within a single jurisdiction. A corporate debtor’s crypto holdings may be stored in offshore wallets or with exchanges operating under foreign law. In such cases, traditional cross-border insolvency mechanisms, including principles under the UNCITRAL Model Law on Cross-Border Insolvency (2019), become relevant.

<sup>10</sup> Financial Intelligence Unit–India, *Use of Blockchain Forensics in Financial Crime Investigations* (2023).

Although India has not formally adopted the Model Law, the Ministry of Corporate Affairs released a draft framework for cross-border insolvency in 2018. Recent proposals under the IBC (Amendment) Bill, 2023, seek to clarify procedural mechanisms for cross-border asset recognition and cooperation, which could directly impact digital asset realisation.

In the absence of such statutory recognition, Indian IPs face challenges in seeking assistance from foreign courts to freeze or recover crypto holdings abroad. Exchanges may refuse to cooperate without a clear legal mandate, exposing the insolvency estate to potential value erosion and asset leakage.

Regulatory ambiguity surrounding the classification of digital assets—as “goods,” “securities,” or “currencies”—further complicates tax, accounting, and liquidation processes. The Finance Act, 2022, introduced a 30% tax on transfers of “virtual digital assets<sup>11</sup>” (VDAs), implicitly acknowledging their existence. For capital gains arising from the transfer of VDAs, set off against losses in the same category is permissible, but traditional concepts like depreciation do not apply, as these are intangible, non-depreciable assets. This distinction can create anomalies when liquidators attempt to sell or convert such assets into realisable value, highlighting the need for clear guidance in cross-border and regulatory contexts.

“Regulatory ambiguity surrounding the classification of digital assets—as “goods,” “securities,” or “currencies”—further complicates tax, accounting, and liquidation processes.”

## 7. Policy and Practice Recommendations

To bridge the existing gaps in the treatment of digital assets under the IBC, several reforms and practical measures can be considered:

<sup>11</sup> Finance Act, 2022, s. 2(47A) read with s. 115 BBH (Income-tax Act amendments).

- (a) **Regulatory Guidance by IBBI:** The IBBI may issue operational circulars or practice notes specifying procedures for identifying, safeguarding, and realising digital assets. This may include requiring IPs to engage certified crypto-custodians or auditors for secure management and transaction verification.
- (b) **Specialised Valuation Framework:** While registered valuers already have authority to value VDAs, the gap lies in the absence of specific guidance. The valuers' rules could be supplemented with recommendations on exchange averages, volatility adjustment factors, and disclosure of pricing methodology, ensuring consistent and transparent valuation practices.
- (c) **Training and Capacity Building for IPs:** IPs and registered valuers should undergo structured training on blockchain forensics, key management, and AML compliance in digital contexts, equipping them to address technical and operational challenges effectively.
- (d) **Coordination with Financial Regulators:** Collaboration among the IBBI, RBI, and FIU-IND can facilitate reporting interfaces allowing IPs to verify corporate crypto holdings with exchanges or custodians in compliance with KYC/AML norms<sup>12</sup>.
- (e) **Cross-Border Cooperation Mechanism:** Adoption of the UNCITRAL Model Law or interim protocols will empower Indian NCLTs to seek recognition of Indian insolvency proceedings in jurisdictions where crypto exchanges operate, mitigating cross-border enforcement risks.
- (f) **Standard-Form Disclosure and Audit:** Regulation 36(2) of the CIRP Regulations already mandates full disclosure of all assets—including tangible, intangible, and contractual assets—which technically includes VDAs. Blockchain audit certificates can support these disclosures, enhancing transparency for resolution applicants.
- (g) **Forensic and Investigative Support:** The government may empanel expert firms specialising in blockchain analytics to assist IPs in tracing, recovering, and verifying crypto-based

transactions, particularly those potentially falling under avoidance provisions.

“  
**The U.K. Law Commission in (2023) recommended recognising “data objects” as a distinct category of property, ensuring enforceability during insolvency.**  
 ”

Such measures will not only safeguard value for creditors but also prepare the IBC ecosystem for mainstreaming of digital assets<sup>13</sup>.

## 8. Comparative Insights: Lessons from Global Precedents

Recent crypto insolvencies in the United States and Asia offer instructive parallels. In *FTX Trading Ltd.*, courts had to distinguish between custodial and non-custodial wallets and whether customer deposits constituted property of the estate. In *Celsius Network* (2023), valuation of tokens under staking programs—debt-like versus equity-like instruments, posed significant challenges.

These cases underscore the need for clear definitions and robust record-keeping. Jurisdictions such as Singapore<sup>14</sup> and Hong Kong<sup>15</sup> permit IPs to appoint licensed crypto-custodians and transact via regulated exchanges. The U.K. Law Commission (2023) recommended recognising “data objects” as a distinct category of property, ensuring enforceability during insolvency. For India, adopting similar legislative recognition would reduce ambiguity around ownership and recovery of digital tokens.

## 9. The Road Ahead: Integrating Digital Assets into the IBC Ecosystem

The rapid expansion of digital assets, ranging from cryptocurrencies and tokenised securities to NFTs, blockchain-based receivables, and smart contract-driven rights has challenged traditional assumptions

<sup>13</sup> World Bank, *Crypto-assets and Insolvency: Emerging Issues*, 2024.

<sup>14</sup> Monetary Authority of Singapore, *Consultation Paper on Proposed Regulatory Approach for Stablecoins*, 2023.

<sup>15</sup> Hong Kong Monetary Authority, *Guidelines on Custody of Digital Assets*, 2022

<sup>12</sup> FIU-IND, *Anti-Money-Laundering Guidelines for Virtual Asset Service Providers*, 2023.

underlying insolvency law. For India's IBC, recognising and integrating digital assets is critical for preserving enterprise value, protecting creditors, and maintaining the Code's relevance in a digital economy.

Digital assets are increasingly reflected in corporate treasuries, either as investments, transaction instruments, or operational tools. Their decentralised and borderless nature creates unique risks during insolvency process concerning discovery, preservation, valuation, and realisation. India requires a structured, multi-layered policy approach addressing immediate operational challenges while laying the foundation for long-term reforms<sup>16, 17</sup>.

**(a) Short-Term Priorities: Immediate Regulatory and Professional Action**

- (i) Issuance of clarificatory circulars by IBBI defining digital assets, specifying disclosure requirements, acceptable valuation methods, custodial controls, forensic procedures, and accounting treatment.
- (ii) Professional capacity building by ICAI, ICSI, and IPAs on blockchain fundamentals, wallet management, DeFi, token standards, and regulatory risks.
- (iii) Development of SOPs for locating and securing private keys, engaging blockchain forensic specialists, and ensuring safe custody to prevent asset dissipation.
- (iv) Integration of digital asset reporting into the Information Memorandum (IM), including wallet details, token types, blockchain networks, liquidity, smart contract obligations, and transaction history.

**(b) Medium-Term Reforms: Legal and Institutional Clarity**

- (i) Formal legislative recognition of digital assets as "property" or "assets" under the IBC and Companies Act, including tokenised rights and blockchain-based claims.
- (ii) Establishment of cross-regulatory coordination among IBBI, RBI, SEBI, and MeitY for custody, KYC/AML compliance, tokenised securities, and stablecoins.

- (iii) Empanelment of licensed custodians to manage private keys, monitor transactions, and execute controlled liquidation.
  - (iv) Standardised valuation frameworks considering liquidity, market behaviour, regulatory and technological risks, and historical trading patterns.
- (c) Long-Term Vision: Building a Mature Digital-Insolvency Ecosystem**
- (i) Creation of blockchain-based asset registries for insolvent entities to enhance transparency, track encumbrances, and reduce disputes.
  - (ii) Recognition of smart contracts as enforceable instruments under RP and NCLT oversight, allowing structured liquidation or revenue-sharing mechanisms.
  - (iii) Enabling technical expert panels to assist the judiciary in digital asset disputes, ensuring informed and consistent adjudication.

*By addressing regulatory gaps and equipping stakeholders with appropriate tools, the IBC can continue maximizing value in India's evolving digital economy.*

## 10. Conclusion

Digital assets are reshaping how economic value is created, stored, and transferred, posing new challenges and opportunities for insolvency frameworks. To remain effective and future-ready, the IBC must adopt a multi-layered policy approach. This should include immediate regulatory guidance to address classification and custody issues, medium-term statutory reforms to recognize digital assets within insolvency processes, and long-term institutional innovation for technological capacity building. By addressing existing regulatory gaps and equipping professionals, adjudicatory bodies, and creditors with appropriate tools, the IBC can continue fulfilling its core objective of maximizing stakeholder value in India's rapidly evolving digital economy.

<sup>16</sup> IBBI, *Handbook for Insolvency Professionals*, 2023 Edition.

<sup>17</sup> Deloitte, *The Future of Crypto Assets in Corporate Finance*, 2023.