



E-INSOLVENCY: EXPEDITING IBC PROCEEDINGS USING ONLINE DISPUTE RESOLUTION

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC) was brought into action to have a timely and effective resolution of the insolvency process in India. Nevertheless, it has been hampered by delays, sluggish procedures, and growing caseloads in application. Against this backdrop, the concept of Online Dispute Resolution (ODR) provides a good opportunity to enhance the speed of the insolvency process with the help of digital innovation. ODR incorporates technology in the process of dispute resolution, allowing virtual hearings, electronic filing, and online negotiation to minimise the barriers of time and cost. This paper discusses the opportunities of ODR as a supplementary instrument in the framework of IBC, specifically the optimisation of the process of Corporate Insolvency Resolution (CIRP) and the faster agreement to be achieved between creditors and other stakeholders. It also examines the digital dispute resolution trends in the global arena and how technologies like artificial intelligence and data-driven platforms can be used to improve efficiency and transparency.¹ Although beneficial, the ODR implementation in insolvency practice is associated with such challenges as the absence of legal acceptance, infrastructural issues, as well as data security and digital literacy issues. The paper concludes by stating that ODR implementation into the IBC by means of specific reforms will enable this country to substantially enhance its insolvency regime by turning it into a more efficient, more accessible, and future-proof one.

Keywords: Bankruptcy and Insolvency Code (IBC), Online Dispute Resolution (ODR), E-Insolvency, CIRP. Digital Justice.

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¹ Indian Institute of Corporate Affairs, *Insolvency Ecosystem in India* (2021).

INTRODUCTION

The Insolvency and Bankruptcy Code (IBC) has been one of the pioneer laws in India, which seeks to streamline and harmonise the laws regarding reorganisation and insolvency settlement of corporate personalities, partnerships and individuals on a time-limited basis. The IBC has, since its enactment in 2016, played a critical role in enhancing a culture of credit discipline and helped to recover debts in a timely and efficient way. The conventional courtroom-based dispute resolution process has, however, been ridiculed as being very time-consuming and inefficient, thus creating delays and higher expenses for all the concerned parties.² It is here that the Online Dispute Resolution (ODR) enters the picture, which presents a possible remedy in speeding up the insolvency procedures in the IBC. The process of resolving insolvency is a traditional manner of action, which implies the participation of various stakeholders such as creditors, debtors, or other interested parties. This is usually done through a series of time-consuming and, most times, controversial hearings in the court, which can be quite time-consuming and expensive. As the count of the insolvency cases that are being filed in the IBC continues to shoot up, the established method of dispute resolution process is becoming extremely challenged in relation to capacity, efficiency and effectiveness. On the contrary, ODR is more efficient, cost-effective and convenient than the traditional dispute resolution methods. Through technology and online platforms, ODR helps parties to solve their conflict in a peaceful, economical and non-time-sensitive manner.³

RAPID INSOLVENCY PROCEEDINGS BY USE OF ODR

ODR integration in insolvency proceedings under the IBC can save a lot of time and cost that is incurred by using the traditional dispute resolution procedures. Through technology, ODR platforms could be used to help in online negotiations, mediation and arbitration, whereby the stakeholders could resolve the dispute in a more efficient and cost-effective form. Moreover, ODR may also increase transparency and accountability of the insolvency resolution process and make sure that all stakeholders can gain access to the information concerning the matter and are involved in the decision-making process.⁴

² Ministry of Law and Justice, *E-Courts Mission Mode Project Phase II Report* (2019).

³ Asian Development Bank, *Insolvency Reforms in Asia* (ADB 2018)

⁴ UNCITRAL, *Model Law on Cross-Border Insolvency* (1997).

KEY BENEFITS OF E-INSOLVENCY

Greater Efficiency: ODR has the potential to cut the time required to handle disputes by far, and thus, insolvency proceedings will be resolved within a shorter time.

Cost Savings: ODR can also assist in saving money by lessening the processes of physical hearings, as well as by reducing the participation of the court personnel in the traditional approaches to resolving a dispute.

Greater Transparency: ODR platforms would be capable of providing up-to-date information and making all the parties concerned aware of the information, which would facilitate transparency and accountability in the insolvency resolution process.

Enhanced Accessibility: ODR can allow the stakeholders to be involved in the dispute resolution process via distancing and this will eliminate the physical presence, which will make the stakeholders in distant or remote locations more accessible.⁵

THE USE OF E-INSOLVENCY BY THE IBC

To successfully implement e- insolvency as a part of IBC, the following steps can be undertaken:

The creation of ODR Platforms: The creation of dedicated ODR platforms, which may assist in online negotiations, mediation and arbitration. This may be done through collaboration with technology providers to come up with bespoke ODR platforms that meet the needs of the insolvency proceedings pursuant to IBC.

Training and Capacity Building: Training and capacity-building of insolvency experts, Judges, and other stakeholders are necessary to make sure that they know how to utilise ODR-based systems and are familiar with the online dispute resolution system.

Development of Standard Operating Procedures: This needs the development of standard operating procedures on how the ODR platforms should be used in insolvency proceedings, such as document submission procedures, communication procedures, and resolution of dispute timelines.

⁵ Vidhi Centre for Legal Policy, *Strengthening Insolvency Framework in India* (2020).

Assuring Data Security and Confidentiality: It is essential to provide strong data security, which will guarantee data confidentiality and integrity on the ODR platform and will help prevent unauthorised access or data leakage.

Pilot Testing and Evaluation: Pilot testing of ODR platforms on a few insolvency cases to test their effectiveness, areas of improvement, and perfect the e-insolvency framework.

These measures will help the Indian insolvency regime to successfully leverage ODR to speed up the insolvency process, save on costs and increase transparency and accountability. The inclusion of ODR in insolvency proceedings as a project within the IBC can also be adopted as the model to be followed by other countries aiming to reform their insolvency laws to enhance efficiency in the dispute resolution process. Online dispute resolution (ODR) has the capacity to transform the Indian insolvency regime in the context of incorporation into insolvency proceedings in the Insolvency and Bankruptcy Code (IBC). ODR can be used to hasten insolvency proceedings, lower costs, and also increase transparency and accountability with the use of technology to support online negotiations, mediation, and arbitration.⁶

FUTURE DIRECTIONS

With the Indian insolvency regime still being in the process of development, there is a need to tackle the challenges and obstacles since the implementation of ODR. There are possible research and development opportunities, such as:

Addressing the Digital Divide: The digital divide is one of the important issues related to the implementation of ODR. Not all the stakeholders, especially in rural or remote communities, might have access to a good internet connection or have the required digital literacy to do efficient online dispute resolutions. To overcome this challenge, there is a need to identify measures that improve the level of digital access and digital literacy, including the establishment of digital literacy initiatives or alternative dispute resolution mechanisms.⁷

Ensuring Cybersecurity: The cybersecurity and protection of data are also issues that accompany the usage of ODR platforms. Strong cybersecurity policies need to be established to facilitate strong security for sensitive data and to avert information leaks. This is possible

⁶ Srikrishna Committee, *Report of the Committee of Experts on a Data Protection Framework for India* (2018)

⁷ Vidhi Centre for Legal Policy, *Strengthening Insolvency Framework in India* (2020).

through the implementation of high-level encryption solutions, regular security audits and the implementation of incident response protocols.⁸

Evaluating Effectiveness: Lastly, it is imperative to consider how effective ODR is in insolvency proceedings according to the IBC. This is possible through regular reviews and assessments.

TIMELINES AND DISPUTE RESOLUTION STATUTORY FRAMEWORK (IBC)

The IBC sets very tight schedules of insolvency and bankruptcy proceedings: a CIRP should be completed in 180 days after it has started, with an extension of 90 days, and a maximum time frame of 330 days (Section 12). Even after an approved plan, these limits have been repeatedly considered, even mandatory by the Supreme Court - e.g. *Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta and Ors.* (2018) held that with a plan approved after 270 days, the process could not legally proceed beyond 270 (pre-amendment) without breaching the Code. The Code also limits the liquidation periods (Section 33) and stipulates prompt claims settlement. Any petition (under Sections 7, 9, 10, etc.) and result (approval or rejection) falls under the clock of Section 12, and any appeal to NCLAT must be disposed of under Section 61 in a time-bound manner.⁹

Online Dispute Resolution is not explicitly stated in the Code, but it allows and promotes online processes. Indicatively, Section 12(4) (amended) ensures that any time spent in legal action or suspension does not have the effect of stopping the 330-day limit - a fact that even disputes have to be solved in a very short period. Proportionate liability over insured debt is permitted by section 238A (added 2020) (based on the recognition that contemporary insurance data may be used). Notably, Section 73 obligates RPs to invite electronic claims and Section 29 obligates CoC meetings to provide effective notice and capture proceedings, which, by regulation (see below), is an option of video conferencing. Overall, the statutory framework of the IBC requires a fast decision. The Act does not define ODR, yet the focus on timelines and information technology (e.g. making e-filing portals mandatory) in the Code gives an implicit directive to capitalise on technology.¹⁰

⁸ Ethan Katsh and Orna Rabinovich-Einy, *Digital Justice: Technology and the Internet of Disputes* (OUP 2017)

⁹ NCLT, *E-Courts and Digital Filing Guidelines* (2021)

¹⁰ Colin Rule, *Online Dispute Resolution for Business* (Jossey-Bass 2002).

VIRTUAL PROCEEDINGS- IBBI REGULATIONS AND TRIBUNAL PRACTICE DIRECTIONS

The Insolvency and Bankruptcy Board of India (IBBI) has incorporated the use of digital processes in the regulations of CIRP. The Insolvency Resolution Process Regulations (2016) by the IBBI clearly permit video conferencing of Committee of Creditors (CoC) meetings and hearings. To illustrate, Reg 23 is such that the CoC meeting notices should include an option to attend the meeting by video conferencing or other audio and visual methods, and the Resolution Professional is responsible for providing uninterrupted audio-visual connection, proceedings recording, and security. Such regulations also occur in Fast Track and Pre Pack regulations (e.g. PPIRP Reg. 32).

Moreover, the IBBI (and associated) regulations imply electronic submissions. Petitions, claims and plans must be uploaded by financial creditors through the NCLT e-filing portal (as per the requirements of Insolvency Board filings). IT compliance has also been introduced in the format of the IBBI circulars, requiring that the data centre be integrated with the National Informatics Centre (NIC). In 2024, IBBI suggested regulations on pre-filing mediation, which indicated a trend towards ADR (as publicised in the media).¹¹

Virtual hearings have been operationalised by several Practice Directions issued by the National Company Law Tribunal (NCLT) and Appellate Tribunal (NCLAT). Both agencies went to 100% e proceedings during COVID 19. As an example, an official NCLAT order (May 2020) required all urgent appeals to be heard by video as of June 1, 2020, and filings to be submitted by email and fees paid online. The NCLAT SOP made parties agree to the virtual mode in applications and restricted them to filed documents.

Similarly, NCLT Press Releases and orders recommended the specific application of video conferencing during the pandemic. Dec 2021 NCLT SOP clearly gave that the mode of hearing of cases will be virtual and filing of cases will be by e-filing mode (SOP) on Jan 3-31, 2022. In its SOP of 18 Dec 2021, NCLT once again stipulated that at any point, litigants had the right to use physical or virtual hearings, and even hybrid hearings by the Bench order. It also ensured that all filings will be done through the NCLT e-portal. Following the relaxation of COVID restrictions, NCLT and NCLAT have been carrying on with primarily hybrid operations (a physical Bench here and there, a virtual one here and there) but with a strong underlying ICT

¹¹ Pablo Cortés, *Online Dispute Resolution for Consumers in the European Union* (Routledge 2011).

infrastructure (see Table below of platforms such as Vidyo, CISCO WebEx, etc.). This same Supreme Court also required access to VC universally (e.g. Suomoto WP of 2020 on hybrid hearings).¹²

THE MOST IMPORTANT CASE LAW VIRTUAL HEARINGS AND TIMELINES

A few of these judgments indicate the conflict between IBC timelines and delays (COVID-related or otherwise), though not many of these actually discuss ODR per se. In *Arcelormittal v.*, the Supreme Court decided that the 270-day period (before the amendment of 2018) was sacrosanct and could not be prolonged in respect of pendency of other cases (Satish Kumar Gupta, 2018). In the same respect, *Innovent Infrastructure v. Suo Motu (IBC) orders* were used by IVRCL Ltd. (2020) to prove that the timelines do not take into account the lockdown period, essentially acknowledging that forced shutdowns (and consequently, delays) are not included.

Another prominent Supreme Court order (March 2020) post COVID extended all the limitation periods, which indirectly applied to IBC deadlines; the Court later repealed such orders in Oct 2021, pressuring tribunals to speed up cases. In *SBICAP Trustee Co. v. UBI* (2021), the Supreme Court once again stated that the CIRP is not allowed to exceed the maximum of the IBC, even in the case of a pandemic, and reset the timelines after lockdowns. Such instances underscore the fact that virtual hearings should not be a loophole to postpone, but rather to take place within the stipulated period of time.¹³

The NCLAT has at times made indirect comments on the virtual mode at the appellate level. As a case in point, ODR flexibility was identified by the NCLAT that permitted the cross-examination of a witness through a video conference, i.e., *Midas Safety (I) Pvt. Ltd. v. Deputy Director, RBI and Ors.* (2020). In *K. Srinivas v. The NCLAT* affirmed that insufficient awareness of a virtual meeting by the management of a debtor would allow the adjournment of that meeting - that is, VC access is a due process consideration (*Uttam Galva Steels*, 2021).

On the whole, there are no landmark cases that have positively associated ODR with shorter resolution. Rather, the courts have paid attention to the imposition of deadlines (e.g. *Arcelormittal*, *K. Srinivas*, *SBICAP v.* UBI), which means that quicker dispute resolution (through ODR) is required, rather than acceptable delays. The consensus has been that

¹² IMF, *Orderly and Effective Insolvency Procedures* (IMF 1999).

¹³ N L Mitra, *Law of Insolvency and Bankruptcy* (Eastern Law House 2020).

ODR/virtual hearing is not substituting the IBC timelines; it is one of the means of assistance to achieve them.

EMPIRICAL INFORMATION ON THE RESOLUTION TIMES (ODR VS IN-PERSON)

Specific Indian data is being compared with online and in-person proceedings of IBC. What it has is aggregate: according to IBBI, whereas the IBC requires 330 days, the average time spent on a CIRP has been about 679 days (more than twice as much). This is a deficit that indicates delays in courts, auctions, litigation, etc. A study that isolates the effect of virtual hearings in reducing the same is not published.¹⁴

In the global case, ADR research indicates substantial returns on the online techniques. A 2025 comparative study of online mediation against face-to-face mediation revealed that online mediation is turning out to be more time and cost-effective as compared to face-to-face mediation. The benefits that were mentioned by the participants were reduced travel times, convenience, cheaper scheduling, and easier time management. Although this is not specific to insolvency, it would follow that ODR can also help to reduce the time of resolving disputes. When, as an example, e-commerce sites (such as ODR at eBay) settle a buyer-seller payment dispute in days or weeks, instead of months at court (see [International: eBay ODR statistics, UNCITRAL reports, etc.]). Online resolution within 90 days (since 2016) is made possible by the EU consumer ODR (among the very few that have been uptaken).¹⁵

Without experiments of our own, we observe in India: (a) IBC 2.0 proposals (e.g. pre-admission mediation) seek to solve a significant number of claims before the tribunal, which could save months of litigation.

(b) In 2020 21, courts found that the virtual hearing lists were less likely to be adjourned, implying that cases were more likely to be resolved quickly once the technology became more mature.

However, there were initial sluggishnesses in some tribunals because of technical teething issues. We speculate, on ample evidence, that ODR and virtual hearings can significantly reduce elapsed time at least in administrative processes (e.g., filing petitions, electronic

¹⁴ Ministry of Corporate Affairs, *Report of the Insolvency Law Committee* (2020).

¹⁵ OECD, *The Use of Technology in Insolvency Proceedings* (OECD 2021).

exchange of evidence, virtual CoC voting). Until India gathers data (e.g. measures average days to file before vs after VC adoption), then explicit impact numbers are an open question.¹⁶

PROBLEMS-PROCEDURAL, TECHNICAL, ACCESS-TO-JUSTICE

There are several challenges to ODR implementation in insolvency: Evidence Preservation and Authentication. Virtual hearings present a strong imperative to implement the integrity of digital evidence. E documents should be time-marked and include proof of tampering. A large number of Indian litigants continue to use paper documents; e-submission norms must be tightened. Signatures authentication (e.g. PKI-based DSC) is required but is not commonly used, which casts doubt on valid filings. VCs can be cross-examined (NCLT Rules 2016, Rule 40, allow affidavit and video evidence), but litigants are concerned about the authentication of the identity of the witnesses when the camera is off, and even the possibility of recording testimony (at present, this is also not allowed by SOP). Without formal guidelines and technology (verified videoconferencing systems with recording), there will be questions of admissibility of evidence and a dispute over digital glitches.¹⁷

Procedural Coordination: Not every stakeholder can be as tech-savvy. It can be complicated to organise virtual CoC meetings - several IRPs/RPs have noted that it is challenging to achieve quorum in cases where some members are not well connected. The quorum of the IBBI regulations (Reg. 22 CIRP) permits VC members, but the IRPs are frequently expected to phone missing creditors during the meeting. It is logistically straining to be sure that all parties receive notice and are able to participate.¹⁸

DIG IT & Expenditure: Solid internet/bandwidth is not evenly spread. The parties and lawyers in remote locations might experience difficulties in video calls. Video equipment in many older courts has been obtained very recently; congestion with hearings often arises when a large number of benches share a limited number of VC lines. Although the Delhi/Mumbai benches have been strong in terms of VC, smaller benches (Kolkata, Kochi, etc.) have had to suffer outages. The government, as well as law firms/unrepresented parties, incur costs in technology (hardware, licensed software, cybersecurity).¹⁹

¹⁶ Richard Susskind, *Online Courts and the Future of Justice* (OUP 2019).

¹⁷ Rizwaan Jameel Mokal, *Corporate Insolvency Law: Theory and Application* (OUP 2005).

¹⁸ Thomas H Jackson, *The Logic and Limits of Bankruptcy Law* (Harvard University Press 1986).

¹⁹ World Economic Forum, *Shaping the Future of Technology Governance: Dispute Resolution* (2021).

Language & Literacy: Indian insolvency proceedings are frequently characterised by multi-state and multi-lingual parties. Some creditors can be disadvantaged as virtual hearings are usually conducted in English or Hindi. The IBC Rules are not obligatory to interpret the services. ODR systems (such as e-filing portals or IU logs) are largely English and restrict access. There is also unequal digital literacy: of 886 million Indians using the internet, as of 2024, a huge percentage of rural internet users use voice or local language. Smaller operational creditors (MSMEs, homebuyers) may not take part in complex electronic forms and portals.²⁰

Access to Justice: There is a possibility that ODR (particularly, compulsory pre-filing ADR or rigid electronic protocol) might discriminate against smaller, tech-competent creditors in favour of individual claimants or under-resourced RP. Unbanked and poor people can be excluded from online systems. Judicial bodies should strike a balance between efficiency and fairness: e.g. they should be able to have face-to-face hearings in case remote connectivity is not possible. The Supreme Court (in the case of Salem Advocates) cautioned that any court may not refuse reasonable access to videos.

Conclusively, although digital processes seem efficient, there should be safeguards: a clear guideline on e-submissions, e-user training, infrastructure bridging, and clauses (e.g., authorising digital signatures, multi-lingual options) so that no party is left behind.

GETTING THE PROCESS DESIGN AND BEST PRACTICES OF ODR IN CIRP/LIQUIDATION/PRE-PACK

Workflow Integration: ODR can be combined in several steps:

Pre-Initiation Mediation/ODR: Following the suggested IBBI model, the parties (particularly, operational creditors and corporate debtors) may be directed to an online mediation module before the filing of a Section 9/10 petition. The video tools would allow the mediator to make settlement attempts and create a report in case of failure to do so, to place it in the IBC petition (as per IBBI draft). This may sieve small disputes, which block tribunals.

E Filing & Document Sharing: In the first place, all initial petitions, plans and claims are to be submitted via the e portal (as already required). One best practice here could be to supplement this with an RP document management system to provide CoC meeting documents (agenda, financials) to a secure shared portal early (before the meeting) rather than bringing a

²⁰ eCommittee, Supreme Court of India, *Phase III Vision Document for e-Courts Project* (2023).

hard copy. A standard CoC e-binder platform with indexed documents could be offered by Resolution Professional Councils.

Virtual Hearings: IRPs/Resolution Professionals ought to make a practice of asking for VC hearings on routine procedural orders (extensions, appointments, interim directions). In case of complex plan approval hearings, hybrid hearings (partly physical, partly VC) would be considered. The SOP of NCLT (Dec 2021) expressly allows counsel to select either VC or physical; tribunals may persuade by email or video consent forms. Bench-standardisation should be used on the application of stable and encrypted VC platforms (Vidyo, CISCO WebEx, Zoom for Government). All witnesses/videography can be directed by the judges to adhere to the rules of identification and decency established in NCLAT SOP.

VC: CoC Voting: CoC members may vote through V CIRP, Reg. 23. In practice, e-voting portals (via RPs or third-party platforms) have been effectively leveraged by many CoCs. Best practice: CoC Regulations mandating e-voting to contain time scales and audit history. This eliminates the physical meetings, which are adjourned. In case of NCLT or CoC approval of vote counts, the RP should prepare a digital record of votes and share it with all the stakeholders.

Documents: To hearings, provide e-bundles of documents as paginated documents (as in courts). Digital notarization should be allowed in courts. In case there is a necessity for cross-examination, permit the video deposition beforehand, so that primary hearings can be dedicated to major issues. CoC meetings (Reg. 24) in minutes need to record the difference between those who attended virtually and physically. Recording (with consent) might be held in secret (ban on recordings nowadays might be changed to permit court-made recordings).

Liquidation and Auctions: Indian auctions have already shifted to the online bidding platform (e-auction portals). ODR instruments can be used to deal with minor creditor claims in liquidation: e.g. providing allottees (homebuyers) with an online claims submission and summary resolution system through an ADR body and minimise litigated claims.

Pre-Pack Process: The new pre-pack regime (as of 2021) is quite compatible with ODR: the whole pre-pack application and consent requisitions may be performed electronically. The PPIRP Regulations (2021) already reflect the CIRP regulations of CoC video conferencing.

Online negotiation can be added to pre-packs with protective measures since they are confidential procedures.²¹

TRENDS IN THE WORLD AND ARTIFICIAL INTELLIGENCE-BASED DISPUTE RESOLUTION

The current trends in digital dispute resolution across the globe represent a radical change to technology-based systems that subscribe to efficiency, accessibility, and transparency. Online Dispute Resolution (ODR) has become, across jurisdictions, a complementary device in the contemporary system of dispute management and a key element of this system.²² Digital processes, like virtual hearings, e-filing and electronic case management, have been integrated by institutions like the International Chamber of Commerce and Singapore International Arbitration Centre as a way of facilitating arbitration proceedings. On the same note, the uptake of ODR structures that are based on the United Nations Commission on International Trade Law has promoted harmonisation and worldwide recognition of technology-based dispute resolution.

In this development, artificial intelligence (AI) is becoming more transformative. Artificial intelligence-based tools can be used to help review documents, conduct predictive analysis, and forecast the outcomes of cases, thus saving human efforts and shortening the time taken to make decisions. These technologies also improve efficiency in procedures that involve repetitive work by automating these processes and allowing the parties and arbitrators to focus on the substantive issues. Besides, AIs can detect trends in conflicts, which can assist institutions in enhancing predictability and minimising uncertainty in arbitration results.²³

Data-driven platforms also enhance transparency by guaranteeing real-time access to cases, procedural schedules, and records of evidence. Specifically, blockchain technology is becoming a tool that would facilitate ensuring data integrity and avoiding tampering to foster more trust in digital proceedings. The use of cloud-based systems also promotes cross-border participation, and dispute resolution is therefore more inclusive and more accessible, especially when dealing with complex international issues.

²¹ International Bar Association, *Guidelines on Insolvency Law* (IBA 2018).

²² Ministry of Corporate Affairs, *Ease of Doing Business Reforms in India* (2021)

²³ Sandeep Bhatt, *Law Relating to Insolvency and Bankruptcy Code* (Thomson Reuters 2021).

Nevertheless, there are issues of privacy and cybersecurity, as well as bias in the algorithm, which are also associated with these advances. To overcome these issues, there is a need to have strong regulatory mechanisms and ethical provisions to regulate the application of technology in the resolution of disputes. Generally, the tendencies in the global arena suggest that AI and data-driven system integration transform the concept of dispute resolution into a more rapid, transparent, and resilient approach to technological changes, which is harmonised with the new realities of a digital economy.²⁴

CHALLENGES

The implementation of Online Dispute Resolution (ODR) in the insolvency process has a lot of potential, but it is also characterised by several legal, technological and practical issues.

Among the major issues is the absence of statutory recognition. The Insolvency and Bankruptcy Code, 2016 (IBC) is silent on the ODR mechanisms, which makes it unclear how the digitally-conducted proceedings and the agreements may be enforced.

The other big issue is the digital divide and infrastructural constraints. Most of the stakeholders, especially small creditors and those in semi-urban or rural locations, might not have access to good internet connectivity or access to technology, thus restricting efficient engagement in digital proceedings.²⁵

There is also the threat to data privacy and cybersecurity. Incidents of insolvency contain very sensitive corporate and financial data, and any hacking or misuse of such data may bring down confidence in online platforms. This is also exacerbated by the fact that there are no well-developed data protection structures.

There is also a deficiency of technical skills and knowledge among the legal professionals, insolvency practitioners and adjudicating authorities. The gains in efficiency that ODR promises will not be fully achieved without appropriate training and knowledge of digital tools.

²⁴ UK Ministry of Justice, *Digital Justice Strategy* (2019).

²⁵ INSOL International, *Global Principles for Multi-Creditor Workouts* (INSOL 2017).

There is a lack of standardised procedures and platforms, which makes the implementation inconsistent. Varied institutions might embrace different technological systems, and this results in fragmentation and confusion of procedures.²⁶

Moreover, procedural fairness and due process issues are an issue in the virtual world. Problems like the lack of equality in access to technology, challenges in providing evidence, and the lack of cross-examination opportunities are issues that can have an impact on the quality of justice provided.

Finally, the legal system has a barrier in the form of resistance to change. The conventional use of physical hearings and distrust of technology tend to delay the use of alternative methods of dispute resolution.

WAY FORWARD AND RECOMMENDATIONS

ODR implementation into the Indian insolvency system needs a complex approach to reform that involves legal, institutional, and technological changes.

To start with, statutory acknowledgement of ODR in the Insolvency and Bankruptcy Code, 2016 (IBC) is necessary. Clear guidelines to facilitate virtual hearings, electronic submissions and online creditor negotiations would grant legal clarity and lead to adoption. This would also bring the insolvency regime in India at par with the best practices of insolvency regimes in the world in terms of digital dispute resolution.²⁷

Secondly, it is important to institute specialised e-insolvency systems. An integrated online platform would enable an efficient exchange of information between the creditors, resolution practitioners, and adjudicating bodies, which would decrease the time lapses in the procedures. These platforms are to be equipped with such facilities as real-time case tracking, automated notifications, and secure document management systems.²⁸

Third, there should be a focus on capacity building and training through digital means. The use of digital tools should be taught to judges, insolvency professionals, and legal practitioners to

²⁶ Jay Lawrence Westbrook, *A Global View of Business Insolvency Systems* (Martinus Nijhoff 2010)

²⁷ UNCITRAL, *Legislative Guide on Insolvency Law* (UN 2005).

²⁸ European Commission, *Online Dispute Resolution Platform Report* (2020).

facilitate the implementation of the ODR mechanisms. Digitalisation cannot bring all the advantages unless the technical competence is sufficient.

Moreover, this can be greatly optimised by adopting artificial intelligence and data analytics. AI can help to verify the claims, assess the risks, and predict the resolution outcomes, whereas a data-driven system can enhance transparency and uniformity in decision-making.

It is also paramount to deal with the problem of data privacy and cybersecurity. Well-regulated systems should be established to protect fragile financial and corporate information used in insolvency cases so that there is confidence in online platforms.²⁹

Furthermore, the digital divide should be mitigated through enhancing the technological facilities and accessibility, particularly to the small creditors and stakeholders in remote locations. The e-insolvency mechanisms would not succeed without inclusivity.

Finally, the adoption of ODR in insolvency will be quickened by encouraging a pro-innovation regulatory attitude and collaboration of government agencies, arbitral institutions, and technology suppliers. Digital systems can be tested and refined by piloting and implementing them in phases before being put to large-scale use.

CONCLUSION

It is also reported that the introduction of the Online Dispute Resolution (ODR) into the system of the Insolvency and Bankruptcy Code, 2016, is a crucial move in bringing modernity to the Indian insolvency system. Although IBC was set up to guarantee time-constrained decision making, realities like delays, backlog and inefficiencies in the procedure have defeated its full potential. In this respect, e-insolvency has become a disruptive solution whereby technology has been used to improve processes, make them more accessible and affordable.

ODR solutions such as virtual courts, electronic submissions, and artificial intelligence solutions can accelerate the Corporate Insolvency Resolution Process (CIRP) and enhance the connection between stakeholders. Meanwhile, the processes in the world show that the use of technology in dispute resolution is becoming a part of an efficient legal system. Nonetheless, the e-insolvency transition is not smooth sailing. Legal recognition, data security, data digital

²⁹ M S Sahoo, 'Insolvency and Bankruptcy Code: The Journey So Far and the Way Forward' (2021) *Insolvency and Bankruptcy Board of India Journal* 5.

literacy, and infrastructural gaps are some of the issues that need to be considered to enforce fairness and inclusivity.

Finally, the use of an appropriate balance between legal reforms and institutional fortification, coupled with technological innovation, should be the key to the success of e-insolvency. The adoption of ODR as a part of the IBC framework would enable India to shift to an efficient, transparent, and future-oriented insolvency framework that is in line with international best practices and will lead to economic development.³⁰

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7. [World Bank – Resolving Insolvency Data](#) → Global benchmarking & efficiency indicators.
8. [UNCITRAL Technical Notes on Online Dispute Resolution \(Full Text\)](#)
9. [IBBI Annual Reports Archive \(All Years\)](#) → Historical development of IBC
10. [IBBI Quarterly Newsletter \(Data & Case Trends\)](#) → Empirical data for research arguments
11. [RBI Trend & Progress Reports \(Multiple Years PDFs\)](#) → Economic + insolvency ecosystem analysis
12. [UNCITRAL ODR Resources Portal](#)
13. [UNCITRAL Publications Library \(All Insolvency + Model Laws\)](#)
14. [UNCITRAL Annual Report \(54th Session PDF\)](#)

³⁰ Vanessa Finch and David Milman, *Corporate Insolvency Law: Perspectives and Principles* (3rd edn, CUP 2017).

15. [IBA Guidelines & Legal Reports Library](#)