

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 3

2020

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Information Utilities are Game changers

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ABSTRACT

Information Utility is a platform that stores the financial information of various firms and companies. One of the foremost objectives of the Insolvency and Bankruptcy Code, 2016(hereinafter referred to as IBC) is resolve in a fixed time period. Information Utility (hereinafter referred to as 'IU') is the tool that has made this objective of the Code more viable. Furthermore, it provides authentic and undisputed financial information of the relevant stakeholders of the Code that helps the bank or other lenders in taking rationale decisions of their credit transactions. Notably, the information provided by the Information Utilities act as evidence before the Adjudicating Authority. "IU" is also believed to act as a barrier to bestow established facts about the assets, credit transactions, claimants and contracts in force. The intent of this paper is to examine the purpose and role of the Information utilities and also how it is a game changer in the IRP. As it is serving the Code to accomplish its object of time bound resolution.

Index Terms: Stakeholders, Information utilities, Insolvency Resolution Process etc.

I. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 is a structural reform with far-reaching implications on the Indian economy. Prior to the enactment of this Act, India did not have any proactive law dealing with Insolvency. It helped the large corporates with high non-performing assets to bring back as it was. The main object of the IBC is to resolve insolvency in fixed time period stipulated in Code and the Information utilities act as a catalyst for the same. They contribute to a great extent for the accomplishments of the Code. The present paper focuses on how information utilities serve the interests of the Code.

II. AN OUTLINE OF INFORMATION UTILITIES

Information utilities are the platforms that store financial data of various firms or businesses namely their borrowings, security interests, defaults etc. and provide the access of the data or information to RP appoint by AA, the person who gave debts to the debtors and other stakeholders in the Insolvency Resolution Process that guides them to make decisions based

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stored information. Chapter V of the IBC, 2016 deals with the registration, rights and obligation etc. of information utilities.

By exercising the powers given under sections 196, 209-216 read with section 240 of the Code, the Insolvency Bankruptcy Board of India enacted legislation on Information Utilities viz. IBBI(IU) Regulations, 2017.³

The term 'financial information' is defined as the definition given under the Code⁴. And the Code includes the following as financial information stored by information utilities⁵- it records debts, balance sheet, cash flow statement, liabilities, default against any debt, security interest created over assets and any other information.

(A) Role and Functions of Information Utilities:

It works as a regulated information agency which accept, record, get authentication or verification, maintain and provide access to financial information or recorded data to the creditors, Adjudicatory Body or authority and any other persons having interest in the information.⁶

The obligations and functions of IU are as under⁷:

1. Create and store information & accept that submission of financial information from persons. Submission must be in the prescribed form and ensure its meets the minimum service quality standards.
2. Verified or authenticated that information which has received from the persons before storing the information because it is the very essential information.
3. Maintain and provides that information to the person who needs or requires that financial information.
4. Publish such data or information and have conformity with other IU.

(B) Services provided by Information Utilities:

The services provided by IU's are specified under the Code and the Regulations on IU, 2017. Firstly according to the Code, the IU provides core services⁸ that includes- the first and foremost work is to accept the accepting the information in the prescribed form. Secondly,

³Preamble, Insolvency & Bankruptcy Board of India (Information Utilities) Regulations, 2017, India code, 1.

⁴ Regulation 2(1) (h), Insolvency & Bankruptcy Board of India (Information Utilities) Regulations, 2017, India code, 2

⁵ Section 3(13), Insolvency & Bankruptcy Code, Act No.31 of 2016, India Code (2016).

⁶ FAQs on IU, National E-Governance Service Limited, <https://www.nesl.co.in/faq-iu/>

⁷ Section 214, Insolvency & Bankruptcy Code, Act No.31 of 2016, India Code (2016).

⁸ Section 3 (9), Insolvency & Bankruptcy Code, Act No.31 of 2016, India Code (2016).

provide a correct information and verify & certify before storing the financial information. Lastly, give access to information stored.

In addition to this provision, Chapter V of Insolvency and Bankruptcy (Information Utilities) Regulations, 2017 specifically deal with core services provided by IUs. The same is elucidated in the subsequent chapter.

(C) NeSL- First Information Utility setup under the Code:

NESL is the Information Utility setup under Section 210 the Insolvency and Bankruptcy Code, 2016. It was incorporated as a central government company with an authorized paid-up capital of Rs. 30 Crores with larger no. of shareholders are with Banks and PSUs. These financial institutions are part of it such as, SBI, LIC, ICICI Bank and HDFC, Canara Bank, NABARD⁹.

Since, NeSL is the first IU registered under the Code, it expected to serve the needs of the stake holders by storing information. All the financial information which are stored in a Main server in India which governed by Indian laws.

III. OVERVIEW OF INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INFORMATION UTILITIES) REGULATIONS, 2017:

The Code envisages that information utilities will provide core services as defined in the code besides other services and incidental services. The Board has issued IBBI (IU) Regulations, 2017 providing a framework for registration and regulation of IU.¹⁰ The regulations in its entirety deals about various aspects of Information utilities viz. registration, core services, duties and other associated aspects.

(A) Core Services:

The core service includes acceptance of financial information, ensuring correct and safe recording of financial data or information, certifying and verifying and give access to the data stored by the information utility. The eligibility conditions state that sole object of the information utility is to provide core services and other services under the IBBI (IU) Regulations, 2017, and discharge such functions which are necessary for providing these services.¹¹

The Regulations prohibit the information utility to outsource the provision of core services to

⁹<https://www.negsl.co.in/latest-news/negl-becomes-indias-first-information-utility-under-insolvencybankruptcy-code/> last accessed in July 2018

¹⁰ Enforced with effect from 1 April 2017 vide Notification No. IBBI/2016-17/GN/REG009 dated 31-3-2017.

¹¹ Regulation 3, Insolvency & Bankruptcy Board of India (Information Utilities) Regulations, 2017, India code, 3

a third-party service provider.¹² Outsourcing means contracting out services to a third party.¹³ The outsourcing of core services is prohibited to ensure the safety and security of the sensitive financial information about the debtors.

(B) Duties of Information Utilities:

Chapter VI of the Regulations categorically directs the duties of Information Utilities. Some of the important duties are: first and foremost duty is to give services with reasonable care, skill and due diligence.¹⁴ Above mentioned services will give to person without discrimination.¹⁵ The most important responsibilities is to ensure that the information or records will be safe and protected from loss or destruction.¹⁶ Its duties is not to give any unauthorized access and protect its data from destruction, alteration etc.¹⁷ Lastly, Charge fees per the users.¹⁸

IV. INFORMATION UTILITIES- A ROADMAP FOR RESOLUTION PROCESS:

The Vishwanathan Committee¹⁹ recommended strong base of information utilities to support efficient implementation by recognizing that asymmetry of information is a critical barrier to fair negotiations, or ensuring swiftness of the process.²⁰ The Committee recommended the creation of this is to make available data or records information to stakeholders in resolving insolvency and bankruptcy.²¹ The purpose of setting up information utility under the Code is to bring the financial information about the debtors at one place and making it accessible to users.

(A) Exposition of the idea of Information Utility:

One of the major focuses of Code is ‘Sooner the formulation of resolution plan, the swifter the revival of the institution/person.’ It has now turned out to be a certitude goal of the Code

¹² Regulation 30(2) (a), Insolvency & Bankruptcy Board of India (Information Utilities) Regulations, 2017, India code, 20

¹³ Regulation 2(k), Insolvency & Bankruptcy Board of India (Information Utilities) Regulations, 2017, India code, 2

¹⁴ Regulation 28, Insolvency & Bankruptcy Board of India (Information Utilities) Regulations, 2017, India code, 19

¹⁵ Regulation 29, Insolvency & Bankruptcy Board of India (Information Utilities) Regulations, 2017, India code, 19

¹⁶ Regulation 30 (c), Insolvency & Bankruptcy Board of India (Information Utilities) Regulations, 2017, India code, 20

¹⁷ Regulation 30 (e), Insolvency & Bankruptcy Board of India (Information Utilities) Regulations, 2017, India code, 20

¹⁸ Regulation 32 (a), Insolvency & Bankruptcy Board of India (Information Utilities) Regulations, 2017, India code, 20

¹⁹ Bankruptcy Legal Reforms Committee set up under the chairmanship of Shri TK Vishwanathan in August, 2014.

²⁰ Chapter 3 – Economic Thinking, the Report of the Bankruptcy Law Reforms Committee, Vol I: Rationale and Design, November 2015.

²¹ Id.

owing to the role of information utilities. They venture to provide undisputed financial information that addresses the requirements during a resolution process.

The Vishwanathan Committee²² carefully studied the existing insolvency and liquidation process and observed that delays are caused due to non-availability of accurate information about the debtor. It noted that:

“Before the IRP starts, all parties need a correct and undisputed information about the credit which existed, about the collateral security, etc. it will take so much time to get the information and it affects the court for resolving the dispute.

With the objective to reduce asymmetry of information between creditors and debtors, the Committee suggested that the Code will enable the symmetry of information between creditors and debtors²³-

The law make sure that data collected or recorded must be available when its needs or requires and it is also available to all creditors either directly or through the RP. Apart from the creditors it is also gives access to third parties who is related with Resolution process through RP.

(B) Informational Utilities: A Major Revolution for the working of the Code

Information Utilities are one of the mainstays for the resolution process under the Code. It is also breakthrough for providing authentic information to the stake holders including Adjudicating Authority to ascertain sound and time-bound completion of the Insolvency Resolution Process.

For a sound and time-bound adjudication, undisputed facts are *sine qua non* and the later the undisputed information is available, the slower the adjudication process. This hitch was recognized by the legislators and established IU's to address the same. Consequently, the IU is the tool that filled the vacuum found in the resolution process. It is intended under the Code that the information provided by IU has evidentiary value in the eyes of law.

They are the repositories of financial information performing a crucial task in assisting resolution process in a time-bound manner and help in the revival of distressed businesses. These are pivotal to the quick disposal of cases and in their absence, the adjudication gets delayed which would ultimately lead to economic distress. The IU can act as an important agent in providing information regarding creditor's claims which will aid the formation of a committee of creditors within 14 days from the date of a case registration, as per the

²² Supra Note 9

²³ Id.

provisions of IBC.

V. CONCLUSION & SUGGESTIONS

In the wake of the distressed businesses, the information utility has put the Code in the Catbird seat. IUs are innovative concept. Information Utilities are the most important entities which store information or data and other entities which collect the data about debt or credit but not equal to IUs. The primary function that IUs provide verified and authenticated information about credit and defaults.

It is of valuable assistance for the Adjudicating Authority as it provides information quick as flash. In addition to this, it is a savior for creditors by enabling them to make sound choices. Not only these, it also makes the debtor cautious about his financial position. The information lacuna has been consistently an obstacle to an effective decision. This is now redressed by Information Utilities.

The information has been stored in information utilities acceptable in the court and there is no further proof required. It will be treated as evidence of the debt which existed therefore, the process of information must be stored strictly. There should be some regulatory requirements and risk management framework for the protection of important data which are stored in such entities such as insurance and some regulation for indemnification. If it is needed to transfer the data to another regulator then it must be transferred against the loss or damage.
