

Insolvency and Bankruptcy Board of India

Sub: Amendment to the IBBI (Information Utility) Regulations, 2017.

Despite the best of efforts and intentions, a regulator may at times not fully have the appreciation of the ground realities, as much and as early as the stakeholders and the regulated may have, particularly in a dynamic environment. The stakeholders could, therefore, play a more active role in making regulations. They may contemplate and deliberate at length, the important issues in the extant regulatory framework that hinder transactions/processes and offer solutions to address them, in addition to responding urgently to draft regulations proposed by the regulator. This is akin to crowdsourcing of ideas. This enables every idea to reach the regulator. Consequently, the universe of ideas available with the regulator is much larger and the possibility of a more conducive regulatory framework much higher. Keeping this in view, the IBBI invited comments from public, including the stakeholders and the regulated, on the regulations already notified under the Code. It was indicated that the comments received between 4th July, 2017 and 31st December, 2017 shall be processed together and following the due process, regulations will be modified to the extent considered necessary. It was also indicated that it would be the endeavour of the IBBI to notify modified regulations by 31st March, 2018 and bring them into force on 1st April, 2018.

2. The above invitation sought comments on the IBBI (Information Utilities) Regulations, 2017. A total of 8 comments were received on these regulations, in addition to suggestions from NeSL and IBA. Summary of the comments and suggestions are placed at Annexure A. These comments and suggestions were placed before the Advisory Committee on Service Providers at its meeting held on 26th February 2018. The Committee did not find much merit in these suggestions. It, however, expressed the view that the suggestions at serial number 9 regarding access to other databases, serial number 11 regarding presumption about information and serial number 12 regarding using information for other purposes, in Annexure A may be referred to Insolvency Law Committee for its consideration.

3. As per IUs Regulation 21(2a) and (2b), Information Utilities, on receipt of information of default would expeditiously undertake the process of authentication and verification of the information and after completion thereof, shall communicate the information of default to registered users who are creditors of the debtor who has defaulted and parties and sureties, if

any, to the debt in respect of which the information of default has been received. The Indian Banks' Association (IBA) has represented that such a communication of default to operational creditors by IU, especially if it is temporary or insignificant in nature, may lead to blocking of essential supplies to the debtors, thereby hampering day-to-day operations. The Advisory Committee deliberated on this issue at length and felt that information of any default needs to be communicated to all stakeholders so that corrective action, including initiation of Insolvency Resolution Process could be initiated at an early date. The Bankruptcy Law Reforms Committee Report dated November 2015 had taken the view that the sooner the stress was known to the creditor community, the swifter would be the resolution of insolvency. Thus, it is important that the event of default is visible to creditors as soon as it takes place. In view of this, no further action in this regard is proposed.

4. The provisions in regulation 42 of the IBBI (Information Utilities) Regulations, 2017 seem to be inconsistent with the provisions of section 211 of the Code. These provisions are reproduced hereunder:

“211. Appeal to National Company Law Appellate Tribunal. - Any information utility which is aggrieved by the order of the Board made under section 210 may prefer an appeal to the National Company Law Appellate Tribunal in such form, within such period, and in such manner, as may be specified by regulations.”

“42. Appeals. - An appeal may be preferred under Section 211, within a period of thirty days of receipt of the order, in the manner prescribed in Part III of the National Company Law Tribunal Rules, 2016”.

5. Section 211 refers to National Company Law Appellate Tribunal, while regulation 42 refers to the National Company Law Tribunal Rules. The Advisory Committee on Service Providers in its meeting held on 26th February, 2018 suggested modification to regulation 42 to make it consistent with the Code. It is proposed to substitute the words ‘National Company Law Tribunal Rules, 2016’ by ‘National Company Law Appellate Tribunal Rules, 2016’.

6. It has been brought to the notice of the Board that the words "Part II" in Annexure to Form A is missing after Part I of Form A of the IBBI (Information Utility) Regulations, 2017. It appears to be an inadvertent mistake. The words “PART II” may be inserted in the Annexure to Form A of the IBBI (IUs) Regulations, 2017 after the point 5 of Part I and before the sentence “Memorandum of Association, Articles of Association and Bye-Laws”.

7. It is submitted for consideration and approval by the Governing Board.

| PUBLIC COMMENTS ON THE IBBI (INFORMATION UTILITIES) REGULATIONS, 2017 | | | | | | |
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| S. No. | Stakeholder | Kind of Comments | Comment Option | User Comment | Remarks | |
| | | | | | Remarks | Advice of the Advisory Committee |
| 1 | Others | General | Any provision that should have been provided in any regulations, but has not been provided | I am surprised at to how in case of a listed company, the entire IBC proceedings has been aborted without notice to the shareholders. Surprisingly no details are posted in the NCLAT website of this case alone. Seriously doubt if it is managed. | Not Relevant | Not considered as it was not relevant |
| 2 | Others | General | Inconsistency, if any, between the provisions in any regulations with those in the Code | There is No forum is provided to decide any dispute arising between the creditor and debtor regarding default that the final discretionary decision to IU, a non-statutory agency, that without hearing and determining disputed questions raised. | As per IUs Regulation 21(2a&2b), Information Utilities on receipt of information of default expeditiously undertake the process of authentication and verification of the information and after completion shall communicate the information of default to registered users who are creditors of the debtors who has defaulted and parties and sureties, if any, | The Advisory Committee deliberated on the issue and recommended no further action. |

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| | | | | | to the debt in respect of which the information of default has been received. | |
| 3 | Others | Specific | | I booked a flat with Jayee Infratech in 2010. I have paid 50 Lakhs for the same. The promised date of delivery of my unit was Sep, 2013. Now, the builder is undergoing liquidation. What protection do I have as a buyer of a flat in their project? | Not Relevant | Not considered as it was not relevant |
| 4 | Academics | General | Any difficulty in implementation of any of the provisions in any regulations | The committee for Information Utility has been formed. When will the information utilities actually come into force? | The IBBI has already registered one Information Utility. | Not considered as NeSL has already been given certificate of registration by the IBBI. |
| 5 | Others | General | Any difficulty in implementation of any of the provisions in any regulations | IU which are going to play a huge role in liquidation process have to collect financial information about defaulters is a big task and also it will take a huge time to recover money from Nilaami of assets held by defaulters | Not Relevant | Not considered as it was not relevant |
| 6 | Insolvency Professional | Specific | | IU Rule 42 stipulates appeal as per NCLT Rules. Whereas Sec 211 states appeal to NCLAT. Pls note | Placed before the advosoiry committee for consideration. | The Advisory Committee deliberated on the issue and recommended thatIBBI (IU) Rule 42 may be amended. The aggrieved person may approach the |

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| 7 | Insolvency Professional | Specific | | Part II of the Annexure to form A is missing. Please note. | The word "Part II" shall be inserted in the Annexure to Form A of IBBI (IUs) Regulations, 2017 after the point 5 of Part I general and before the ""Memorandum of Association, Articles of Association and Bye-Laws."" | None |
| 8 | Others | General | Inconsistency, if any, between the provisions in any regulations with those in the Code | There is No forum is provided to decide any dispute arising between the creditor and debtor regarding default that the final discretionary decision to IU, a non-statutory agency, that without hearing and determining disputed questions raised by the c. | As per IUs Regulation 21(2a&2b), Information Utilities on receipt of information of default expeditiously undertake the process of authentication and verification of the information and after completion shall communicate the information of default to registered users who are creditors of the debtors who has defaulted and parties and sureties, if any, to the debt in respect of which the information of default has been received. | The Advisory Committee deliberated on the issue and recommended no further action. |

| NeSL and IBA Comments | | | | | | |
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| 9 | NeSL | Specific | Portability of information from other repositories | It is to be noted that Section 214 of the IBC only talks about the obligations of the IUs in India without providing for any provision relating to the rights of such IUs . Considering the same, NeSL propose that a new 'Section 214A' pertaining to the rights of IUs in India could be introduced after Section 214 in the IBC, on the lines prescribed herein below for reference: "214A. Right of information utility to access information - Every information utility registered with the Board shall be entitled to access information by way of inter-operability with public networks like Goods and Services Tax, Central Registry of Securitisation Asset Reconstruction and Security Interest (CERSAI), Ministry of Corporate Affairs or any other electronic network as existing or as may exist in the future, provided the same is notified as such by the Board." | This was placed before the Advisory Committee for consideration. | The Committee did not find much merit in these suggestions. It, however, suggested that it may be referred to Insolvency Law Committee for its consideration. |
| 10 | NeSL | Specific | Authentication of financial information / Documents by Corporate Debtors | IU is supposed to get the financial information submitted by the Creditors authenticated by all other parties concerned to the debt before storing. However, the borrowers are | This was placed before the Advisory Committee for consideration. | The Advisory Committee deliberated on the issue and |

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| | | | | <p>under no obligation to authenticate the information. In view of this, Creditors are not in a position to impress upon the borrowers to authenticate the information.</p> <p>Explanation – In this section, the expression “authentication” shall mean the act of electronically authenticating the contents of a document, so that it may be admitted as evidence before the court of competent jurisdiction and/or any other competent judicial authority, as the case may be, by affixing signature on the document containing financial information and shall include the two-factor electronic authentication technique or such other techniques as prescribed under the Information Technology (Amendment) Act 2008 or any other law for the time being in force.”</p> | | recommended no further action. |
| 11 | NeSL | General | Presumption for authentication done correctly | <p>NeSL further propose that, in Section 216 of the IBC, new sub-sections relating to ‘Presumptions on data submitted’ under the said section could be included: ‘(3) Unless proven otherwise, it shall be presumed that-</p> <p>(a) authentication and verification of the financial information submitted</p> | This was placed before the Advisory Committee for consideration. | The Committee did not find much merit in these suggestions. It, however, suggested that it may be referred to Insolvency Law |

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| | | | | <p>was done by the authenticating person in the normal course of business and had requisite authority to act as such.</p> <p>Explanation - For the purposes of this sub-section, persons shall include any authorized representative such as agent, director etc.</p> <p>(b) every authentication has been done on such date and on such time as indicated in the message sent by the information utility server as the expiry date and time for such act of authentication.</p> <p>(c) the person authenticating the information cannot deny having made such authentication from the date on which it was made to the date of filing of the insolvency resolution proceeding or the corporate insolvency resolution proceeding as the case may be.</p> <p>(4) No person shall deny or be permitted to deny the validity of the information submitted originally or electronically unless proven, by any other law for the time being in force.</p> <p>(5) No person shall, in an insolvency resolution process, be permitted at a later date to deny its capacity to authorize or submit information at a later date nor shall it be permitted upon the commencement of an</p> | | Committee for its consideration. |
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| | | | | insolvency resolution process to deny its original digital signature.’ | | |
| 12 | NeSL | General | Enhancing the value of IU Services in other Courts | The records with the IU will serve as primary evidence with minimal possibilities of misinformation. Therefore, to determine “borrowing”, “default” and “security” in a civil court, records of IU can be made use of with ease and accuracy without much aid by submissions of creditor or debtor. | This was placed before the Advisory Committee for consideration. | The Committee did not find much merit in these suggestions. It, however, suggested that it may be referred to Insolvency Law Committee for its consideration. |
| 13 | NeSL | General | Cross Border Debt | While the Technical Standards provide for registering an Overseas Entity, clarification from IBBI is sought how such creditors will perform Digital Signature. Or if an Indian Entity must necessarily represent the Overseas Entity with regard to registering, data submission, authentication and information access including Digital Signature. Some Banks have requested clarifications if they are required to report debts where creditors are outside India (e.g. ECB from an Overseas Entity of an MNC Bank) while debtor and security are in India. | This was placed before the Advisory Committee for consideration. | The Advisory Committee deliberated on the issue and recommended no further action. |
| 14 | IBA | Specific | IUs Regulation 21(1) | As per IUs Regulation 21(2a&2b), Information Utilities on receipt of information of default expeditiously undertake the process of | This was placed before the Advisory Committee for consideration. | The Advisory Committee deliberated on this issue and felt that |

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| | | | | <p>authentication and verification of the information and after completion shall communicate the information of default to registered users who are creditors of the debtors who has defaulted and parties and suritites, if any, to the debt in respect of which the information of default has been received. According to the inputs received from the IBA, such a communication of default to operational creditors by IU may lead to blocking of essential supplies to the debtors, thereby hampering debtor's day to day operation. It is also highlighted that in certain cases the default might be temporary or insignificant in nature, which in turn could have serious ramification on the operation of the debtor if the supplies are blocked.</p> | | <p>information of any default needs to be communicated to all stake holders so that corrective action, including initiation of Insolvency Resolution Process could be initiated at an early date.</p> |
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