



भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India

Information Utilities: A Key Pillar of Insolvency Proceedings Information Brochure



*“The problems are solved, not by giving new information,
but by arranging what we have known since long.”*

- Ludwig Wittgenstein, Philosophical Investigations

Insolvency and Bankruptcy Board of India

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About the Code

The Insolvency and Bankruptcy Code, 2016 (Code) provides for a time-bound, market mechanism for reorganisation and insolvency resolution of persons (companies, limited liability partnerships, partnership and proprietorship firms and individuals) in distress. The objective of such reorganisation and resolution is maximisation of value of assets of the persons to promote entrepreneurship, enhance availability of credit, and balance the interests of all stakeholders.

The resolution process begins with admission of an application filed by an entitled stakeholder in the event of a threshold amount of default. The Code envisages a calm period when the stakeholders endeavour to resolve the distress without fear of recovery or enforcement actions. In case of corporate insolvency, the creditors assess the viability of the corporate debtor (CD) and endeavour to rescue it through a resolution plan. Corporate Insolvency Resolution Process (CIRP) ends up either with an approval of a resolution plan rehabilitating the CD or an order for commencement of its liquidation.

In case of individual insolvency, the debtors and creditors negotiate a repayment plan, which is implemented under the supervision of a resolution professional. A bankruptcy process, entailing sale of the assets of the debtor, arise on failure of either the insolvency resolution process or implementation of repayment plan. The Code envisages a Fresh Start Process to discharge individuals with extremely limited means of their debt, where the chances of recovery is very less compared to the efforts involved.

The Code provides for an ecosystem comprising of four pillars to help the stakeholders to resolve their stress. First of these is a class of insolvency professionals. They play a key role in the efficient working of the insolvency, liquidation, and bankruptcy processes. The second pillar is a new institution of the Information Utilities (IUs). They store financial information about debtors in electronic database, eliminate information asymmetry and cut down on delays and disputes in insolvency proceedings. The third is the Adjudicating Authority (AA), namely, the National Company Law Tribunal in case of corporate insolvency and the Debt Recovery Tribunal in case of individual insolvency.

The fourth pillar is the regulator, namely, the Insolvency and Bankruptcy Board of India (IBBI). Set up as a unique regulator, it regulates a profession as well as processes. It has regulatory oversight over Insolvency Professionals, Insolvency Professional Agencies, Insolvency Professional Entities, and IUs. It writes and enforces rules for processes, namely, CIRP, corporate liquidation, fresh start, individual insolvency resolution and individual bankruptcy under the Code. It is also the 'Authority' under the Companies (Registered Valuers and Valuation) Rules, 2017 for regulation and development of the valuation profession. It registers and regulates registered valuers and registered valuers organisations.

Information Utilities

The success of insolvency proceedings critically depends on availability of complete, correct, and up-to-date information about the debtor. This information may not be available with every stakeholder in equal measure. The non-availability of the information may impede resolution and compromise the objective of value maximisation, while asymmetry of information may contribute to uneven sharing of the value. To address these issues, the Code envisages IU as repositories of financial information about debtors for expeditious completion of various processes under the Code. The IU, as visualised and implemented under the Code, has no parallel anywhere in the world.

The Bankruptcy Law Reforms Committee, which conceptualised the Code, envisaged a competitive industry of inter-operable IUs, rather than a centralised depository with the State. It elucidates the rationale: *“Before the IRP can commence, all parties need an accurate and undisputed set of facts about existing credit, collateral that has been pledged, etc. Under the present arrangements, considerable time can be lost before all parties obtain this information. Disputes about these facts can take up years to resolve in court. The objective of an IRP that is completed in no more than 180 days can be lost owing to these problems. Hence, the Committee envisions a competitive industry of information utilities who hold an array of information about all firms at all times. When the IRP commences, within less than a day, undisputed and complete information would become available to all persons involved in the IRP and thus address this source of delay.”*

An IU is required to maintain electronic database of information and provide authentic information to eliminate delays and disputes relating to claims and defaults. It is mandated to provide core services, such as:

- (a) acceptance of electronic submission of financial information;
- (b) safe and accurate recording of financial information;
- (c) authentication and verification of financial information; and
- (d) providing access to information stored with them to specified persons.

An IU is required to provide core services in respect of financial information, which include:

- (a) records of the debt of a person;
- (b) records of liabilities when a person is solvent;
- (c) records of assets of a person over which security interest has been created;
- (d) records, if any, of instances of default by a person against any debt;
- (e) records of the balance sheet and cash-flow statements of a person, and
- (f) such other information as may be specified.

Regulation of IUs

Keeping in view the importance of services of an IU in various processes, the Code read with the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (IU Regulations), provides for stringent norms for registration as an IU. An IU must have: (a) the sole object to provide core services under the Code, (b) a minimum net worth of Rs.50 crore, (c) ‘fit and proper’ persons as promoters, directors, key managerial personnel, and shareholders holding more than 5% of shares, (d) independent directors who constitute not less than 50% of the governing board, (e) shareholding pattern in accordance with the IU Regulations (f) reliable and recoverable secure systems for information flows along with business continuity plans, (g) data processing systems which prevents unauthorised access, alteration, destruction, disclosure or dissemination of information, (h) functionality to ensure privacy and

confidentiality of information; and (i) its operations in compliance with Technical Standards laid down by IBBI.

To ensure accuracy of information and to prevent raising disputes about claims and defaults, the Code mandates that such information be authenticated by the concerned parties. A set of Technical Standards apply to submission of information, authentication of information, data integrity, etc. These measures ensure that the information with IUs is admissible as evidence. After recording the status of information of default, the IU communicates the status of authentication to the registered users, who are: (a) creditors of the debtor who has defaulted, and (b) parties and sureties, if any, to the debt in respect of which the information of default has been received.

To ensure that IUs capture the information necessary for the resolution of insolvency and bankruptcy, the Code makes submission of information mandatory for financial creditors. To take advantage of the services rendered by IU, the Reserve Bank of India has advised all financial creditors regulated by it to put in place appropriate systems and procedures to ensure compliance with the provisions of the Code and the regulations made thereunder. Similarly, Securities and Exchange Board of India has advised debenture trustees to use the IU. The RBI amended the Credit Information Companies Regulations, 2006 on the 11th August, 2017 to enable IUs to access the information with Credit Information Companies as specified users. Further, regulation 26 of the IU Regulations enable an IU to import information from such registries as may be notified by the IBBI from time to time.

Obligations of IUs

For the purposes of providing core services to any person, an IU shall—

- (a) create and store financial information in a universally accessible format;
- (b) accept electronic submissions of financial information from persons who are under obligations to submit financial information, in such form and manner as may be specified by regulations;
- (c) accept, in specified form and manner, electronic submissions of financial information from persons who intend to submit such information;
- (d) meet such minimum service quality standards as may be specified by regulations;
- (e) get the information received from various persons authenticated by all concerned parties before storing such information;
- (f) provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by regulations;
- (g) publish such statistical information as may be specified by regulations; and
- (h) have inter-operability with other IUs.

An IU shall—

- (a) establish an appropriate risk management framework in accordance with the Technical Standards, if any, which provides for matters, including—
 - (a) reliable, recoverable and secure systems;
 - (b) provision of core services during disasters and emergencies; and
 - (c) business continuity plans which shall include disaster recovery sites.

Duties of IUs

An IU shall—

- (a) provide services with due and reasonable care, skill and diligence;

- (b) hold the information as a custodian;
- (c) provide services without discrimination in any manner;
- (d) provide services to a user based on its explicit consent;
- (e) guarantee protection of the rights of users;
- (f) establish adequate procedures and facilities to ensure that its records are protected against loss or destruction;
- (g) adopt secure systems for information flows;
- (h) protect its data processing systems against unauthorised access, alteration, destruction, disclosure or dissemination of information; and
- (i) transfer all the information submitted by a user, and stored with it to another IU on the request of the user.

An IU shall not-

- (a) outsource the provision of core services to a third-party service provider;
- (b) use the information stored with it for any purpose other than providing services under these Regulations, without the prior approval of the IBBI;
- (c) seek data or details of users except as required for the provision of the services under the IU Regulations.

Registered Users

For submitting information to or accessing information stored with an IU, a person needs to register itself with an IU. A person once registered with an IU shall not register itself with any other IU. Different parties to the same transaction may use different IUs to submit, or access information in respect of the same transaction.

An IU provides a functionality to enable users to access information stored with any IU, which they are entitled to access. It enables the user to view- (a) the date on which the information was last updated; (b) the status of authentication; and (c) the status of verification while providing access to the information. The IU shall provide every user an annual statement of all information pertaining to the user, free of charge.

The IU charges uniform fee for providing the same service to different users. It discloses the fee structure for provision of services on its website. In case, it intends to increase its fee, the IU must disclose the proposed increase in the fees for the provision of services on its website at least three months before the increase in fees is effectuated. The fee charged by an IU for providing services shall be a reasonable reflection of the service provided. The fee for providing access to information shall not exceed the fee charged for submission of information to the IU.

An IU shall make adequate arrangements, including insurance, for indemnifying the users for losses that may be caused to them by any wrongful act, negligence or default of the IU, its employees, or any other person whose services are used for the provision of services under the Regulations.

Information of Default

An IU assigns a unique identifier to the information it receives from a user. It acknowledges receipt of the information and notifies the user of the unique identifier of information, the terms and conditions of authentication and verification of information, and the manner the information may be accessed by other parties.

As soon as an IU receives an information of default, it undertakes process of authentication and verification of the information. On completion of the process, the IU records the status of authentication as indicated in the Table below.

Sl.	Response of the Debtor	Status of Authentication	Colour of the Status
1	Debtor confirms the information of default	Authenticated	Green
2	Debtor disputes the information of default	Disputed	Red
3	Debtor does not respond even after three reminders	Deemed to be Authenticated	Yellow

After recording the status of information of default, the IU shall communicate the status of authentication in physical or electronic form of the relevant colour, to the registered users who are-

- (a) creditors of the debtor who has defaulted; and
- (b) parties and sureties, if any, to the debt in respect of which the information of default has been received.

Use of Financial Information

The Code envisions that financial information stored by the IU should help to establish defaults before the AA, verification of claims of creditors by the resolution professional, constitution of the committee of creditors, generation of information memorandum, etc. expeditiously and thereby facilitates completion of processes under the Code in a time bound manner. The illustrative uses of an IU are as under:

In Corporate Insolvency Resolution Process

(a) Section 7 of the Code requires that a financial creditor shall, along with the application for initiation of insolvency resolution process, furnish a copy of record of the default recorded with the IU or such other record or evidence of default. It further provides that the AA shall, within fourteen days of the receipt of the application, ascertain the existence of a default from the records of an IU or based on other evidence furnished by the financial creditor.

(b) Section 9 of the Code requires that an operational creditor shall, along with the application for initiation of insolvency resolution process, furnish a copy of any record with IU confirming that there is no payment of an unpaid operational debt by the CD, if available, to establish default for initiation of proceedings. This section also provides that the AA shall, within fourteen days of the receipt of the application, by an order, admit the application if no notice of dispute has been received by the operational creditor or there is no record of dispute in the IU.

(c) Rule 5(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) requires that a copy of demand notice or invoice demanding payment by an operational creditor shall be filed with an IU, if any.

(d) The Code read with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) enables the interim resolution professional or the resolution professional to access the books of account, records and other relevant documents and information, to the extent relevant for discharging his duties under the Code, of the CD held with IUs.

(e) Regulations 7 to 21 of the CIRP Regulations enable a creditor to prove the existence of debt based on the records available with an IU.

In Liquidation Process

- (a) The liquidation estate includes assets over which the CD has ownership rights as evidenced in the balance sheet of the CD or an IU.
- (b) Liquidator is empowered to access any information system, including an IU, for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the CD.
- (c) Regulations 17 to 20 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 enable a creditor or stakeholder to prove the existence of debt based on the records available with an IU.

In Individual Insolvency Resolution Process

- (a) Where the debt for which an application has been filed by a creditor is registered with an IU, the debtor shall not be entitled to dispute the validity of such debt.
- (b) A creditor may prove its claim based on records available in an IU, or any other documentary evidence which substantiates the existence of claim.

National e-Governance Services Limited

As on date, one IU, namely, National E-Governance Services Limited (NeSL), promoted by banks and insurance companies, is registered with the IBBI. Most of the institutional financial creditors are submitting financial information to it. The details of information available with NeSL at the end of November 2020 are as under:

At the end of Year / Month	Creditors having agreement with NeSL		Creditors who have submitted information		Debtors whose information is submitted by		Loan records on-boarded by		Amount of underlying debt (₹ crore)		User registrations (debtors) Total of FC+OC	Loan records authenticated by debtors (Total of FC+OC)	
	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs	FCs	OCs		No. of Debtors	Value (₹ crore)
2018 - 19	173	NA	114	169	1266445	230	1955230	316	4114988	16224	15148	13799	48429
Jun, 2019	209	NA	160	231	2531930	570	3911146	52766	4910552	20455	23565	22363	73707
Sep, 2019	226	NA	218	297	2737049	1764	4421280	86766	5625318	28016	32177	35621	83687
Dec, 2019	246	NA	321	408	2926030	2121	4803931	125526	6919463	32038	48551	68766	93853
Mar, 2020	267	NA	381	543	6551739	6191	9417317	167719	7873689	31910	73332	109726	118429
Jun, 2020	269	NA	456	574	7464854	8336	10721829	204568	9855538	33151	106840	149533	299294
Sep, 2020	276	NA	548	635	8228576	8979	12126772	206957	12299081	34374	120896	186091	373678
Nov, 2020	281	NA	572	648	8488578	9010	12955778	253939	12867220	35762	127137	202558	402204
