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INFORMATION UTILITY: A KEY PILLAR OF INSOLVENCY AND BANKRUPTCY CODE

Padma Ghatame

Research Scholar,

Post Graduate Teaching Department of Law,
RTM Nagpur University, Nagpur (Maharashtra, India)

E-mail: chobe.padma@gmail.com

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Abstract:

The concept of information utilities, which had not before existed in any other nation or region of the world, was first established in the Insolvency and Bankruptcy Code of 2016. It was meant to revolutionise the Indian credit market by spreading accurate and fast information about credit history and failures and release financial creditors from the onerous proof requirements of the old system to begin the insolvency resolution procedure under the Code. Access to accurate financial information on a debtor should be available to all parties involved in the insolvency or bankruptcy proceedings of a debtor. Asymmetry of information, however, was impeding the current procedure. Establishing the debt and default's existence cost valuable time. Equitable talks between debtors and creditors are also hampered by knowledge asymmetry.

The IBC mandates the development of a regulated information industry in the form of IUs in order to address these difficulties. In order to solve these challenges, the IBC mandates the creation of a regulated information industry in the form of IUs. The resource that has increased the viability of Code's purpose is Information Utility (IU). Additionally, it offers accurate and reliable financial data on the relevant Code Participants, assisting the bank or other lenders in deciding how to proceed with credit transactions. Notably, the information utilities' data can be utilised in court as evidence. An alternative perspective asserts that "IU" operates as a barrier to the approval of data regarding the assets, credit transactions, claims, and active contracts. Information utility is a unique concept. Information utility is one of IBC's core principles. By tracing the conceptual evolution of information utilities and the demand for such organisations, this paper investigates the notion, purpose, and obligations of such organisations. It also looks at the projected information utilities market competition and provides some comments on the governance and legal framework.

Keywords: IBC, Information Utility (IU), CIRP, IP, NCLT, BLRC

INTRODUCTION:

The Insolvency and Bankruptcy Code, 2016 (IBC/Code) has significantly altered how insolvency and bankruptcy matters are handled in India. The Bankruptcy Law Reforms Committee

(BLRC), under the direction of Dr. T. K. Viswanathan, directly contributed to the designing of the Code. According to the BLRC, one of the distinguishing features of the IBC was its ability to complete the insolvency resolution process (IRP) in less time than 180 days. Even before begin an IRP, parties are required to provide accurate and uncontested information regarding any prior credit, promised collateral, etc. It is challenging to complete the process in time for the 180-day deadline because acquiring this information can take a while. In order to solve this problem, BLRC envisioned a market of "information utilities" (IU/IUs) that would compete with one another and, within a day of the start of IRP, provide uncontested and thorough information to all parties involved while maintaining a variety of information about all firms at all times. Financial information must be recorded, created, kept, and authenticated by IUs in accordance with the Code's definition. This would ensure better judgement on the part of creditors and encourage debtor discipline.

The obstacles that the authorities confront are realising the goal of a competitive IUs industry and making the information accessible to all stakeholders while keeping strict time constraints in mind. The Code currently only authorises National E-Governance Services Limited to register as an IU (NeSL). Under Section 210 of the 2016 Insolvency and Bankruptcy Code, NESL (National E-Governance Services Ltd.) was created as the Information Utility to make information symmetry in Indian corporations' operations. It was founded as a central government organisation with a 30 crore rupee authorised paid-up capital and a bigger number of shareholders, including PSUs and banks. It is made up of SBI, LIC, ICICI Bank, HDFC, Canara Bank, and NABARD among other financial institutions.

Historical Perspective of 'Information Utilities'

Prior to the creation of IUs, there was an existing system of Credit Information Companies (CICs) and the Central Registry of Securitization Asset Reconstruction and Security Interest (CERSAI) that provided credit-related information services, including facts and details of security interests.

The former Indian Finance Minister (Dr. Man Mohan Singh), who delivered his budget presentation in Parliament on February 28, 1994, stated that the Reserve Bank of India (RBI) would take action to implement processes for disseminating names of defaulting borrowers among the Banks and FIs. Similar warnings and instructions to watch out for customers who had missed payments to other loan providers were given to them. A working group was formed in response to the aforementioned announcement, led by Mr. N.H. Siddiqui, the RBI's Chief General Manager, and its report was delivered in 1999. The outcomes are: Credit Information Bureau (India) Ltd. (CIBIL) was subsequently founded in August 2000. Three more CICs were established in India after the enactment of Credit Information Companies (Regulations) Act 2005.

The RBI also established a second committee in 2013 to investigate the reporting structure of CIC and other pertinent issues, with Mr. Aditya Puri (Managing Director of HDFC Bank) serving as its chairman. The Commission's report streamlined the process for providing corporate, consumer, and MFI data while standardising the data formats utilised by all credit agencies to do so. The RBI directed to all financial institutions in 2015 to join all CICs, give up-to-date information on specific borrowers, and update them often. The establishment of a central registry of equitable mortgages was a topic covered by the former finance minister Pranab Mukherjee in his budget statement (2011).

To manage and govern a registration structure for the SARFAESI Act in fact the purpose of registering securitization dealings/contracts, asset reconstruction of financial assets, and creation of security interests over property, the Central Registry of Securitization Asset Reconstruction and Security Interest (CERSAI) was established in accordance with the same. CERSAI is providing a platform for banks and other financial institutions to file registrations, with the ability for other lenders and the general public to access its database.

The concept for establishing IUs appears to be the outcome of research and efforts to create a hybrid model specific to India by fusing the best elements of CICs, CERSAI, and other like organisations throughout the world that are engaged in providing financial information services.

Eligibility to be register as information utilities

Every IU is needed to be registered as a company under the Companies Act and must be a public entity in order to comply with the IBC. The Working Group on Information Utilities recommends that the minimum paid-up capital be Rs. 60 crores and the minimum authorised capital be Rs. 75 crores. It has additionally advocated a 49% FDI ceiling.

To register as an information utility, you must submit Form A of the Schedule, which is part of the IBBI (Information Utilities) Regulations, of 2017, to the IBBI.

Significance and efficacy of Information Utilities:

The BLRC, under the direction of Mr. T. K. Viswanathan, who created the IBC, envisioned four pillars of institutional infrastructure to support the IBC's processes. They are:

- (A) a private sector of insolvency professionals (IPs) under the supervision of private insolvency professional agencies (IPAs);
- (B) a private sector of information utilities (IUs); and
- (C) a private sector of financial institutions adjudication infrastructure at the National Company Law Tribunal (NCLT) and DRT, and
- (D) a regulator, i.e. the IBBI.

IU is a highly important institution for the smooth operation of the proceedings under IBC, as correctly stated by the BLRC.

The IBC was enacted with the mandate of harmonising and amending the laws governing the prompt reorganisation and insolvency resolution of corporations, partnerships, and individuals to maximise the value of their assets. In line with Section 12 of the IBC, the Corporate Bankruptcy Resolution Process (CIRP) of a corporate debtor (CD) must be finished within 330 days of the insolvency commencement date (ICD). This ambitious completion date for CIRP appears to be based on the assumption that all parties involved, such as creditors, adjudicating agencies, insolvency resolution experts, etc., will have simple access to information crucial to the process.

This assumption seems to be supported by legislators' confidence in the idea of IUs as it was conceived by the IBC. Only if the IUs are ready to supply all necessary information immediately can the strict deadlines set forth by IBC be met. According to the IBC's plan, once a CIRP is started against a corporate debtor, the Interim Resolution Professional (IRP) assumes control of the debtor's operations, and the Board of Directors' authority is suspended in favour of the IRP. There is a good chance that the Resolution Professionals may encounter non-cooperation from the management and the suspended Board of the corporate debtor at this phase when it comes to sharing pertinent financial information. An impartial and trustworthy third party that is a repository of verified information about debt/default and is able to provide the same swiftly can significantly improve the procedure in these instances. By granting IUs access to the information in the MCA-21 database and CERSAI portals, IBBI has now enhanced the function of IUs and sped up the debtor default authentication process. IBBI also provides the platform for rapid and trustworthy data for all the stake-holders in the processes under IBC by ensuring access to MCA-21 and CERSAI portal data to an IU. Also worth mentioning is that the RBI has ordered all Scheduled Commercial Banks (including RRBs), Small Finance Banks, Local Area Banks, Non-Banking Financial Companies, and All Cooperative Banks of the Nation to implement the necessary systems and procedures for submitting financial information to IUs.

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IU Core services:

- Approving financial data submitted electronically in the format and mode as stated;

- Secure and correct recording of financial data;
- Authenticating and verifying the financial information submitted by a person;
- Providing access to the information stored as may be specified.

Claim Verification and other Services to IP

- Code gives an authority to the Insolvency Professional (IP) to access information from IU.
- The IU can support the IP in following ways:
 - After receipt of claims he can compare the data with that in the IU
 - If any creditor has not submitted his claims, the IP can take it up with the creditor for the submission of their claims.
 - In case of any discrepancy, the IP can also take up with the creditor and ascertain the reason for the same.
- Recording of the dispute by the CD in the IU-
 - This would give an alert to the IP who can seek additional information to verify the claim.
 - For installments VDR and auction platform services under PDA impaneled by IBBI.
 - Data storage services as per the provision of the Code.

Mandatory information submission by financial creditors:

Section 3(13) of the IBC defines financial information to include the following:

1. Documents detailing the person's debt.
2. The person's liability records when they are financially sound.
3. Documents detailing the items over which security has been established.
4. Occurrences of the person failing to make payments on any loan.
5. The person's cash-flow and balance sheets.
6. Any more details that may be mentioned.

Information of Default:

An IU starts the process of information authentication and verification immediately after receiving a default information. When the procedure is finished, the IU logs the authentication status. as indicated in the Table below:

SR. NO.	Response of the Debtor	Status of Authentication	Colour of the Status
1	Debtor checks and confirms information regarding default	Verified and validated	Green
2	Debtor contests the default information	Conflicted	Red

3	Even after three reminders, the debtor doesn't answer.	Supposed to be validated	Yellow
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Default Alert Broadcast:

One of the very significant feature of the IU is the Default Alert Broadcast. On the completion of the process of authentication of default by the debtor, IU shall expeditiously communicate the information of default to the:

1. The creditors of the debtor who has defaulted;
2. Those who are parties or sureties to the debt for which notice of default has been received. It is use full to the creditors of the corporate debtor as, this is an early warning to all creditors for the potential insolvency action. It can help them to initiate the insolvency process. It is also useful as a use full information provides a claim verification to the Insolvency professionals. (IP)

Responsibilities of IUs:

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

- (a) Generate and store financial data in a format that is universally accessible;
- (b) Accept electronic financial data submissions from individuals who are required to do so in the form and manner specified by regulations;
- (c) Accept electronic financial data submissions from individuals who intend to do so in the form and manner specified by regulations;
- (d) Meet any minimum service quality standards that may be imposed.

Before storing the information, the IU must:

- (e) Obtain authentication from all parties involved;
- (f) Grant access to the financial information it has stored to anyone wishing to do so in a manner permitted by applicable regulations;
- (g) Publish any statistical data allowed by applicable regulations; and
- (h) Be interoperable with other IUs.

An IU must: (a) establish a suitable precautionary measures in accordance with any applicable Technical Standards, which addresses issues such as (a) dependable, recoverable, and secure systems; (b) the provision of essential services in the event of emergencies and disasters; and (c) business progression plans that must comprises disaster recperate sites.

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. Above mentioned services will give to person without discrimination. The most

important responsibilities is to ensure that the information or records will be safe and protected from loss or destruction. It duties is not to give any unauthorized access and protect its data from destruction, alteration etc. Lastly, Charge fees per the users.

Evidentiary Value of Information with Information Utilities:

A debt or its default will be acknowledged by and between the parties to the debt or default if authenticated information about it is maintained by IUs. In light of this reality, several clauses of the Evidence Act of 1872 can be used to understand the evidentiary value of information that contains IUs. Information contained in any electronic record shall be deemed to be a document and shall be admissible in a court of law under Section 65-B of the Evidence Act. Additionally, according to Section 31 of the Evidence Act, admissions may serve as estoppels under the following circumstances but are not conclusive proof of the matters acknowledged. When discussing information involving IUs, it's important to note that Section 115 of the Evidence Act provides the following guidance: "When one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe and act upon a belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing."

The adjudicating authorities have the option of accepting records containing IUs as proof/evidence of debts and defaults, as can be seen when we look at the rules of IBC with regard to IUs as mentioned in the paragraphs before this one. Estoppel would be used in this case against the parties in accordance with the aforementioned Evidence Act requirements. In the landmark case *Indian Union v. Swiss Ribbons Pvt. Ltd.*, The Supreme Court of India reviewed the various IBC provisions' constitutional legitimacy. One of the defenses in the case was that the IBC allows for private information utilities to gather financial data as well as determine whether or not a default has occurred. Additionally, it was contended that the IUs' certification of debt or default resembled a preliminary decree that had been issued without a hearing or other kind of adjudication. The constitutionality of IBC in this case was contested on this issue as well as others. Although, the Supreme Court of India maintained the constitutional legality of IBC and noted at para. 57 of the ruling that the record of default with IU is simply a prima facie evidence of default, which is rebuttable by the corporate debtor, build on claims made by the then-Attorney General of India. Therefore, the records with IUs are simply prima facie evidence of default and not definitive proof, which the corporate debtor may in the dispute.

NeSL IU-THE PATH SO FAR

SR. NO.	TIMELINE	The Significant Notifications (IU)
1.	March, 2017	IU Regulation Notified
2.	September, 2017	NeSL's registration permitted by IBBI to start operations
3.	November, 2017	On-boarding by Operational Creditors started.
4.	December, 2017	RBI notifies banks/NBFCs to submit the information (credit) to IU
5.	March 2018	On-boarding by first bank (SBI)
6.	June, 2019	UK Sinha Committee was formed on MSME-suggested the use of IU
7.	July, 2019	IU, Reg. 21 amended to facilitate Deemed Authentication of default
8.	November, 2020	Communication of Public Announcement (PA) uploaded on IBBI platform to other creditors. Definition of financial information amended to include PA.
9.	April, 2021	Monthly submission of information specified under Reg. 27
10.	June, 2022	Form D introduced, different status of authentication for scheduled commercial bank, creditors are required to default information to the IU before filling an application to the Adjudicating Authority.

CONCLUSION:

Unquestionably, the creation of IU is a step towards ensuring that the IBC runs in a knowledge-rich environment. Unquestionably, IUs provide the essential infrastructure to guarantee that important financial information about debtors is accessible whenever and wherever required. The ability to make informed judgments is undoubtedly provided by this infrastructure, which also provides essential financial data for a quick insolvency resolution process. The IU regime discussed above aimed to reduce information asymmetry, but IUs also allow IBC processes to be finished within the strict deadlines that have been imposed. The value of the IUs can also be shown in their ability to improve credit risk evaluation and recovery processes. Even if the IUs' significance cannot be disputed, it could take some time before they begin to have the desired effect. As the first IU in the country, National E-Governance Services Limited, a Union Government company, was incorporated by IBBI on September 25, 2017. Having high hopes for the achievements to date, we

Due to some limitations the creditors no longer make extensive use of the information utilities. According to academics, if the creditors make considerable use of the information utilities, the creation of a financial information database for all credit-seeking firms, and more crucially, it will make it simpler to finish the corporate bankruptcy resolution process swiftly.

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3. *The suggested approach by the BLRC Committee, an Insolvency Resolution Process (IRP), can be begun and allowed to persist for up to 180 days following a default.*
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