



IBC KNOWLEDGE CAPSULE 17

Framework for Information Utilities under IBC

Introduction:

Information Utilities(IU) are entities which are registered with IBBI under Section 210 of Insolvency and Bankruptcy Code (IBC) as per the eligibility criteria, act as data repositories of financial information which receive, authenticate, maintain and deliver financial information pertaining to a debtor with a view to facilitate the insolvency resolution process in a time bound manner. Access of the same is made available to the Resolution Professionals, Creditors and other stakeholders in the Insolvency Resolution Process so that all stakeholders can make decisions based on the same information. National e-Governance Services Ltd. (NeSL) in mid-2017 became the first Information Utility registered with IBBI for insolvency cases under IBC.

IU is expected to play the key role as on one hand they store the financial information of the users helping the lenders in taking the informed decision about the credit transaction, on the other hand, it would also make debtor cautious as the financial information is available with the utilities. Its major contribution is in the creation of evidence; the information can also be used as evidence in bankruptcy cases before the NCLT and needless to say, that in many other as well. The information to IU shall/may be submitted by financial creditors, operational creditors and corporate debtor. Under Section 215 of IBC, there is an obligation that the Financial Creditors have to submit the information to IU(NeSL).

The Chapter V of IBC from section 209 to section 216 provides provisions relating to Information Utilities. The available legal framework for IU under IBC with important provisions and Regulations is summarized in the table below.

The table has been color coded as follows:

Provisions of the Code	
Rules/Regulations	
Case laws	
Circulars/Notifications and Others Statutes	

TABLE: Information Utilities under IBC

Source	Details	Explanation
Section 3(9)	"core services" means services rendered by an information utility for— (a) accepting electronic submission of financial information in such form and manner as may be specified; (b) safe and accurate recording of financial information; (c) authenticating and verifying the financial information submitted by a person; and (d) providing access to information stored with the information utility to persons as may be specified;	This Section mentions the services that an Information Utility is supposed to provide.
Section 3(21)	" information utility " means a person who is registered with the Board as an information utility under section 210;	An Information Utility under Insolvency law has to be registered as per Section 210 of the Code as per the eligibility criteria.
Section 7(3)(a)	The financial creditor shall, along with the application furnish – (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;	A financial creditor at the time of filing it Section 7 application, has to submit record of default i.e. evidence as per the information available with IU or other evidence of default as may be specified. Further, as per Section 7(4), The Adjudicating Authority also shall ascertain the existence of default from the records of IU or on the basis of other evidence furnished by financial creditor.

Section 9(3)(d)	The operational creditor shall, along with the application furnish- (d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available	An operational creditor at the time of filing it Section 9 application, has to submit record of default i.e. evidence as per the information available with IU if available.
Section 17(2)	The interim resolution professional vested with the management of the corporate debtor, shall- (c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;	The Resolution Professional has the right to access the information of corporate debtor available with IU.
Section 209	No person to function as information utility without certificate of registration Save as otherwise provided in this Code, no person shall carry on its business as information utility under this Code without a certificate of registration issued in that behalf by the Board.	A person shall be eligible to carry a business as IU only if a certificate of registration is obtained from the Board.
Section 210	Registration of information utility. (1) Every application for registration shall be made to the Board in such form and manner, containing such particulars, and accompanied by such fee, as may be specified by regulations: Provided that every application received by the Board shall be acknowledged within seven days of its receipt. (2) On receipt of the application under sub-section (1), the Board may, on being satisfied that the application conforms to all requirements specified under sub-section (1), grant a certificate of registration to the applicant or else, reject, by order, such application. (3) The Board may issue a certificate of registration to the applicant in such form and manner and subject to such terms and conditions as may be specified. (4) The Board may renew the certificate of registration from time to time in such manner and on payment of such fee as may be specified by regulations. (5) The Board may, by	A certificate of Registration shall be issued if all the technical formalities are completed as prescribed by the Board. The same shall be suspended or cancelled if obtained through making a false statement or misrepresentation or by any other unlawful means or has failed to comply with regulation of Board or provisions of code.

	<p>order, suspend or cancel the certificate of registration granted to an information utility on any of the following grounds, namely:— (a) that it has obtained registration by making a false statement or misrepresentation or any other unlawful means; (b) that it has failed to comply with the requirements of the regulations made by the Board; (c) that it has contravened any of the provisions of the Act or the rules or the regulations made thereunder; (d) on any other ground as may be specified by regulations: Provided that no order shall be made under this sub-section unless the information utility concerned has been given a reasonable opportunity of being heard: No person to function as information utility without certificate of registration. Registration of information utility. Provided further that no such order shall be passed by any member except whole-time members of the Board.</p>	
Section 213	<p>Core services, etc. of information utilities.</p> <p>An information utility shall provide such services as may be specified including core services to any person if such person complies with the terms and conditions as may be specified by regulations.</p>	<p>IU shall provide services which include core services to any person if such person complies with the terms and conditions of the regulations.</p>
Section 214	<p>Obligations of information utility.</p> <p>For the purposes of providing core services to any person, every information utility 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 under sub-section (1) of section 215, 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</p>	<p>It lays down the obligations of the Information Utilities</p>

	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; (h) have inter-operatability with other information utilities	
Section 215	<p>Procedure for submission, etc. of financial information.</p> <p>(1) Any person who intends to submit financial information to the information utility or access the information from the information utility shall pay such fee and submit information in such form and manner as may be specified by regulations. (2) A financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, in such form and manner as may be specified by regulations. (3) An operational creditor may submit financial information to the information utility in such form and manner as may be specified</p>	It lays down procedure for submission, etc., of financial information.
Section 216	<p>Rights and obligations of persons submitting financial information</p> <p>(1) A person who intends to update or modify or rectify errors in the financial information submitted under section 215, he may make an application to the information utility for such purpose stating reasons therefore, in such manner and within such time, as may be specified.</p> <p>(2) A person who submits financial information to an information utility shall not provide such information to any other person, except to such extent, under such circumstances, and in such manner, as may be specified.</p>	It lays down the rights and obligations of persons submitting financial information.
Insolvency and Bankruptcy Board of India (Information	<p>Important Regulations:</p> <p>Regulation 3: Eligibility for registration.</p> <p>Regulation 6: Conditions of registration.</p> <p>Regulation 9: Composition of the Governing Board.</p>	These regulations regulate the functioning and registration of the Information Utilities.

Utilities) Regulations, 2017	Regulation 19: Use of Information Utilities. Regulation 23: Access to Information. Regulation 41: Disciplinary Proceedings.	
The Insolvency And Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2019	<p>Regulation 21: Deemed Authentication</p> <p><i>“(1) An information utility shall expeditiously undertake the process of authentication and verification of information of default as soon as it is received. (2) For the purpose of sub-regulation (1), the information utility shall- (a) deliver the information of default to the debtor seeking confirmation of the same within the time specified in the Technical Standards; (b) remind the debtor at least three times for confirmation of information of default, in case the debtor does not respond, allow three days each time for the debtor to respond; (c) deliver the information of default or the reminder, as the case may be, to the debtor either by hand, post or electronic means at the postal or e-mail address of the debtor- (i) registered with the information utility by him, failing which, (ii) recorded with any other statutory repository as approved by the Board, failing which, (iii) submitted in Form C of the Schedule.....”</i></p>	<p>The role of IU is strengthened by IBBI as it permits IU to access Corporate Debtor’s data through MCA21 database and Central Registry of Securitisation Asset Reconstruction and Security Interest (CERSAI) portal. Until recently, borrowers were overlooking IUs request to authenticate the information regarding ‘debts or defaults’.</p> <p>If Debtor confirms information of default – Colour of Status is Green; If Debtor disputes the information of default –Colour of Status is Red; If Debtor does not respond even after 3 reminders –Colour of Status is Yellow which leads to Deemed Authentication. Therefore, if debtor ignores the messages even after 3 reminders, then IU has the right to rely on information available at MCA 21 portal or CERSAI and IU could mark it as deemed to be authenticated.</p>
NCLT Order dated 12.05.2020	<p>NCLT vide its order dated 12.05.2020 directed Financial Creditors to file default record from Information Utility(IU) before initiating insolvency process under Section 7 of IBC. Now, no new petition would be entertained without record of default under section 7. In case of pending cases also, NCLT directed to file record of defaults from IU before the next date of hearing.</p>	<p>Before this order of NCLT, till date the default record from IU was not mandatory and even other documents or evidence were sufficient to demonstrate a default.</p> <p>NCLT Order mat be viewed at https://ibbi.gov.in/uploads/legalframework/e3daa98bab56a6098c4e9356b93095bb.pdf</p>
Swiss Ribbons Pvt.	“57. The aforesaid Regulations also make it clear that apart from the	While talking of Information Utilities the

<p><i>Ltd. & Anr. Vs. Union of India & Ors.</i> [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] Dated 25th January 2019</p>	<p><i>stringent requirements as to registration of such utility, the moment information of default is received, such information has to be communicated to all parties and sureties to the debt. Apart from this, the utility is to expeditiously undertake the process of authentication and verification of information, which will include authentication and verification from the debtor who has defaulted. This being the case, coupled with the fact that such evidence, as has been conceded by the learned Attorney General, is only prima facie evidence of default, which is rebuttable by the corporate debtor, makes it clear that the challenge based on this ground must also fail”</i></p>	<p>Supreme Court acknowledged it as the only prima facie evidence of default.</p>
<p><i>Provisions of Indian Evidence Act</i></p>	<ul style="list-style-type: none"> • <i>Section 65 B:</i> Information contained in any electronic record shall be deemed to be a document and shall be admissible in the Court of Law. • <i>Section 31:</i> It states that the admission of fact might not be a conclusive proof of fact but previous admission will act as an estoppel on such admission. • <i>Section 115:</i> When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representatives shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. 	<p>These provisions give authenticity to the information received from and by the Information Utilities to be <i>prima facie</i> used as evidence of default in cases of insolvency.</p>
<p>Report of the Working Group on Information Utilities</p>	<p><i>“One principle has been that courts and tribunals should accept the information in IUs as evidence. For this, once information is submitted to the IU, the IU should authenticate that information with all the concerned parties and only then store it. IUs need to follow restrictions in terms of the kind of information they can accept and the persons whom they can accept or authenticate information from. This ensures that the information in the IU is accurate, and that it cannot be disputed later. Another principle is that of standardisation</i></p>	<p>The full Report is available on: https://www.ibbi.gov.in/wg-04report.pdf</p>

— the regulator should specify applicable standards and all IUs should conform to those standards. In addition, the WG determined that debtors, creditors, and debts needed to be uniquely identified, and this report suggests how this can be done.”

Notes:

Abbreviations used:

IBBI: Insolvency and Bankruptcy Board of India
IPA: Insolvency Professional Agency
ICSI IIP: ICSI Institute of Insolvency Professionals
IP: Insolvency Professional
CIRP: Corporate insolvency resolution process
IRP: Interim Resolution Professional
AR: Authorised Representative
COC: Committee of Creditors
CD: Corporate Debtor
FC: Financial Creditor
OC: Operational Creditor
Code: Insolvency and Bankruptcy Code, 2016

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