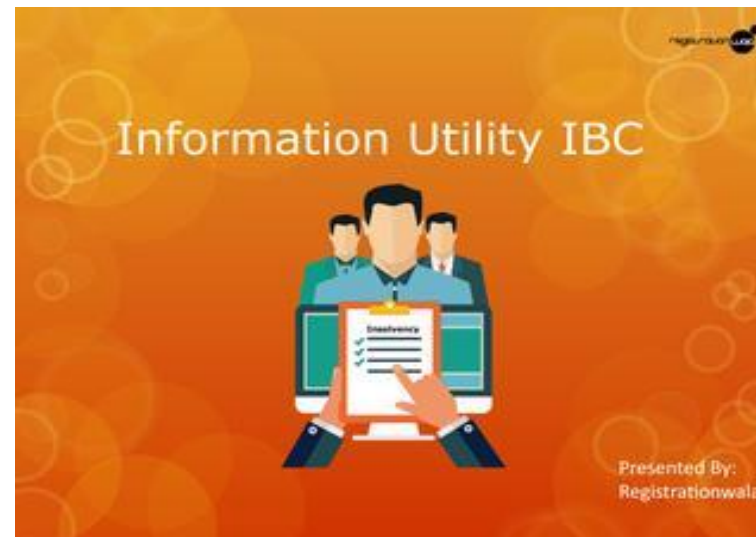


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Information Utility



The Insolvency and Bankruptcy Code, 2016 ("**Code**") provides for Information Utility ("**IU**"), a professional organization, which is required to be registered under section 210 of Code with the Insolvency and Bankruptcy Board of India (**IBBI**).



IU acts as an entity that stores (electronically records) and authenticates information about debts and debtors and also provide access to such financial information to the persons as may be specified (e.g., creditors, Adjudicating Authority and other persons having interest in the information). In other words, an IU acts like a *data base* for financial transactions providing authenticated information about debts and defaults and will assist the Adjudicating Authority to ascertain the existence of a default.

IU are governed by the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 ("**IU Regulations**"), which, *inter alia*, provides for eligibility criteria for registration of an IU (*Regulation 3 of the IU Regulations*). The eligibility criteria includes (i) the sole object should be to provide core services and other services under the IU Regulations, and (ii) it should have a minimum net-worth of Rs.50 crores (Rupees five hundred million).

Role of IU



Regulation 21 of the IU Regulations requires IU to expeditiously authenticate and verify the information of default as soon as it is received. The IU is obligated to remind the debtor at least three (3) times for confirmation of information of default. In case the debtor does not respond, the IU has to allow three (3) days each time for

the debtor to respond. Thereafter, the IU has to convey the information of default or reminder, as the case may be and upon completion of the verification, the IU shall record the status of authentication of information of default. (As per the FAQs on the website of National E Governance Services Limited (NeSL)¹, all the parties connected to the debt need to digitally verify and authenticate the information so submitted with the IU. Further, in the event where the borrower has not authenticated such information in relation to the debt or the default within seven (7) days, the IU will refer it back to the Financial Creditor for resolution.)



Upon completion of the process of authentication, the IU has to record the status of authentication of information of default as indicated hereinbelow:

| No. | 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 |

The IU can also rely on information available at MCA 21 portal or CERSAI and can mark it as deemed to be authenticated by relying upon such information.

Upon completion of the recording of the status of authentication, the IU has to communicate the status of authentication to (i) the creditors of the debtor who has defaulted and (ii) parties and sureties, if any, to the debt in respect of which the information of default has been received. Thus, it can be said that it is the duty of the IU to verify and authenticate the information of debt so submitted by the financial creditor in order to avoid the entire loop and cause unnecessary delay.

¹ As on date there is only one functional registered Information Utility i.e. National E-Governance Services Limited (Union Government Company).

Such information stored with the IU is treated as evidence in the insolvency resolution process and liquidation, such information also assists the Adjudicating Authority in ascertaining facts of borrowing and facts of default. It is a settled position that once the debtor has admitted the debt, then the debtor cannot challenge it at a later stage.

Order on record of default from IU

As per the Order dated May 12, 2020 issued by the Hon'ble National Company Law Tribunal, no new petition by a financial creditor will be entertained where the record of default has not been filed from the data base of the IU. Further, this Order also states that the petitions filed by financial creditors which are pending for admission will also not be entertained where the record of default is not provided from the IU prior to the next date of hearing of the said petition. This Order only applies to financial creditors and not to operational creditors.

Section 215(2) of the Code makes it obligatory on the financial creditor to file the information with the IU at the time of the creation of the debt itself. Although, there are other means for proving record of default; *however*, pursuant to the Order, it is now made compulsory for financial creditors to record the information in relation to

the debt in order to enable them to file a petition under the Code.



Conclusion

The Report of Working Group on Information Utility, Ministry of Corporate Affairs, Government of India sets out that *raison d'etre* for establishing IUs is to "*provide high-quality authenticated information about debts and defaults*". IUs are set up to do away with confusion, irregularity in respect of information, to create a reliable data base for financial information, to reduce the dependency on the debtor's management in order to avoid the deliberate delays and boundless loops caused by notorious debtors. The NCLT Order will assist the Adjudicating Authority to understand whether any default

exists; and if the said default exists, whether it come under the ambit of the Code. However, the implications of the NCLT Order will not be visible as of now due to the suspension of new filings under the Code, as announced by the Finance Minister in her recent address.



The submission or filing of the giving a debt and security creation to IU is in addition (and not a substitute) to other filings with Sub-Registrar of Assurances (in case of mortgage over immovable assets), Registrar of Companies (where a company is a borrower), depository (in case of pledge of shares) and such other regulatory or statutory authorities prescribed under other applicable laws.

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