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Information Utility under the Insolvency and Bankruptcy Code (IBC)

India's 1st Information Utility for Bankruptcy cases under the Insolvency and Bankruptcy Code

National E- Governance Services Limited (NeSL) has became the first Information Utility for bankruptcy cases under the IBC.

What is an Information Utility?

1. Information utility is an information network which would store financial data like borrowings, default and security interests among others of firms.

2. The utility would specialize in procuring, maintaining and providing/supplying financial information to businesses, financial institutions, adjudicating authority, insolvency professionals and other relevant stake holders.

Importance of Information Utility and how useful it is?

1. The objective behind information utilities is to provide high-quality, authenticated information about debts and defaults, as per the report of the Working Group on Information Utility published by the Ministry of Corporate Affairs.

2. Information utilities are expected to play a key role as they allow storage of financial information of registered users and expeditiously process and verify information received.

3. Moreover, the database and records maintained by them would help lenders in taking informed decisions about credit transactions.

4. It would also make debtors cautious as credit information is available with the utility. More importantly, information available with the utility can be used as evidence in bankruptcy cases before the National Company Law Tribunal.

What are the Rules Governing Information Utilities?

1. Information utilities are governed by the Insolvency and Bankruptcy code 2016 and IBBI (Information Utilities) Regulations 2017.

2. The Insolvency and Bankruptcy Board of India (IBBI) overseas aspects such as registration and cancellation of these entities, their shareholding and governance among others.

3. Recently, IBBI eased norms for information utilities, allowing Indian firms listed on stock exchanges to hold 100% in such firms.

4. It also allowed individuals to hold 51% in the utility for a period of three years.

How will the utilities help stakeholders in the insolvency process?

1. **Financial creditors** (banks which provide loans to the company): It is mandatory for financial creditors to provide financial information to the information utility.
2. When they initiate insolvency proceedings against the defaulting firm (known as corporate debtor), the utilities may help as they would act as a centralized platform for accessing data.
3. **Operational Creditor** (Suppliers of goods and services to the firm in question): Unlike financial creditors, it is optional for the operational creditor to provide financial information to the utility.
4. While the idea behind information utility is to have a financial data repository, it has to be seen to what extent firms provide data with regard to dues owed to operational creditors and how the utility is going to help the operational creditors during insolvency process.

What are the key challenges for these utilities?

While the onus is on financial creditors, operational creditors and corporate debtors to provide the required information, procuring authentic information might be a challenge due to the sensitivity involved. There may also, be resistance in sharing information. Since it is a digital database, there is the risk of exposure to data piracy and data theft.

What are the services provided by the Information Utilities?

IUs provide the core services and other services under IU Regulations in accordance with IBC Code. (Section 3(9). "Core services" means services rendered by an information utility for-

1. Accept electronic submission of financial information.

2. Safe and accurate recording of financial information.

3. Authenticating and verifying the financial information submitted by a person.

4. Providing access to information stored with the information utility to persons as may be specified.

What are the functions of Information Utility?

The obligations & functions are as under:

1. Create and store information in a universally acceptable format.

2. Accept electronic submissions of financial information from persons who are under obligation to submit the financial information under sub section (1) of Section 215 of IBC, 2016, in such form and manner as may be specified by Regulations.

3. Accept in specified form and manner, electronic submission of financial information from persons who intend to submit such information.

4. Meet such minimum service quality standards as may be specified by the Regulations.

5. Get the information received from various persons authenticated by all concerned parties before storing such information.

6. 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.

7. Publish such statistical information as may be specified by Regulations.

8. Have inter-operability with other information utilities.

Whether any registration is required to act as Information Utility?

1. Yes, an Information Utility shall be registered with Insolvency and Bankruptcy Board of India (IBBI), as specified in IBC, 2016, to carry on business as an Information Utility and has to obtain a Certificate of Registration from IBBI.

2. The details of eligibility criteria etc., are furnished in Regulation 3 of Insolvency and Bankruptcy Board of India (Information Utilities) Regulations 2017.

3. They need to be complied with while applying for registration.

What is the procedure for submission financial Information to Information Utility?

Any person may submit financial information to the information utility or access the information from the information utility on payment of requisite fee in such form and manner as may be specified by IU Regulations.

Before submitting the financial information, the person/entity has to enroll itself as a “User”with the Information Utility by declaring its identity and producing the identity documents like- Aadhaar, PAN, CIN Number etc.

NeSL would be verifying the identity and only thereafter, User Registration will be done and User Id informed, by e-mail. For Institutions like- Banks/FIs, a Super

User would be created with a facility to create sub-users. Details would be communicated to individual banks/FIs.

For further details on User Registration and Submission of Information, please refer to "Detailed guidelines on User Registration Form" published in NeSL's Website
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As per Section 3 (23), the word "Person" includes- an individual, a Hindu Undivided Family, a Company, a Trust, a Partnership, a Limited Liability Partnership; and any other entity established under a statute and includes a person resident outside India.

What Information can be submitted in Information Utility?

information in relation to a person, means, one or more of the following categories of information, namely

1. Records of the debt of the person;
2. Records of liabilities when the person is solvent;
3. Records of assets of person over which security interest has been created;
4. Records, if any, of instances of default by the person against any debt;
5. Records of the balance sheet and cash flow statements of the person; and
6. Such other information as may be specified.