

Insolvency and Bankruptcy Law in India

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Lecture 36

Welcome to all.

As part of the course on insolvency and bankruptcy law in India, we will discuss the concept of information utilities under the IBC today. In the previous class, we discussed insolvency professionals, and before that, we covered insolvency professional agencies. As we have already discussed, insolvency professionals, insolvency professional agencies, and information utilities. These are all considered the foundations of IBC. They will play a key role in the liquidation or CRP process. Today, we will discuss Information Utilities.

Let us recap what we discussed in the previous class. In the previous class, we discussed the legal framework relating to insolvency professionals. We then discussed the enrollment of insolvency professionals who can be registered as such. Then we discussed the eligibility requirements for becoming an insolvency professional, such as having a minimum of 10 years of experience as an advocate. Alternatively, a CA, CS, CMA, or 10 years of experience in management after completing your PG can also qualify. We discussed the eligibility criteria in this manner. Then we discussed the functions and obligations of insolvency professionals. Then we discussed the powers of insolvency professionals. So, these powers are not actually in one place. The powers of insolvency professionals are provided in various sections that are scattered throughout. However, we try to discuss them under the CRP process and under the liquidation process. Additionally, there are judicial interpretations that have recognized the role of insolvency professionals in the liquidation and CRP process. This is what we previously discussed.

Today, in this class, we will discuss information utilities. So, let me call it IUs. From now on, I will try to call it IUs. So, what is the importance of IUs? So, IUs are entities registered with the IBBI. As we have already discussed, every entity, whether an insolvency professional or an insolvency professional agency, is one of these IUs. Everyone must be registered with IBBI only. So, what is the purpose of these IUs? The purpose of this IU is to store, authenticate, and provide access to financial information. They will act as a debtor bank, storing, authenticating, and providing financial information that helps resolve insolvency cases. When dealing with insolvency cases,

financial information is crucial. Okay, to whom does the corporate debtor owe the money? Who all has claims? What are all the assets of the corporate debtor? This is very, very important. That's why IU is the entity that will provide all this information. Therefore, it is very important for this reason. That is why the role of IU is crucial in establishing debt and default. We have already discussed the meanings of debt and default in the previous classes. Therefore, in establishing debt and default, the role of IU is very crucial.

Then let us look at the statutory framework dealing with IU, ok? So, IBC provisions include various sections, like section 209, which speaks about the registration of information utilities; then section 210 discusses the application for registration, section 211 outlines the conditions for registration, section 212 addresses the cancellation of registration, section 213 covers the core services of information utilities, and we are going to discuss all these things in detail; section 214 pertains to the obligations of information utilities, then section 215 relates to the duty to submit resolution financial information, and section 216 concerns access to financial information. Now, let us discuss in detail. So, if you observe the regulatory framework, apart from the sections under the IBC, we have IBBI information utilities regulations, IU regulations 2017. Therefore, if you adhere to these regulations, they will establish a governance structure. So, how must the governance system be in IUs? Then, technical standards and debtor security: how are you expected to maintain the technical standards? How do you protect the debtor? Then how do you submit the debtor? How do you authenticate the debtor? Because the financial creditors are going to upload the information to the IU, then how do you submit and authenticate the debtor? So, all these things are in the regulations. Then, retention and confidentiality protocols: they are not supposed to share the information with everyone.

So, how am I going to retain the information and maintain confidentiality? All these things are in the IBBI IU Regulations 2017, okay? Then, who is the authorized IU in India? The NESL National E-Governance Survey System is the only IU authorized by the IBBI in India. Ok, no person can function as an information utility without a certificate of registration. Now, let us look at the sections. So, as per section 209, which provides that, save as otherwise provided in this legislation in this code, no person shall carry on its business as an information utility under the code without the certificate of registration. Therefore, without this section, it is not possible to offer IU services without registration from IBBI, as no one can act as an information utility. Then, Section 10 of the IBC addresses registration. So, whenever you want to act as an IA or IU, you are expected to make an application for registration. It shall be submitted to the IBBI, the board, in the prescribed formats. Once you submit an application to the IBBI, the IBBI is expected to respond within a period of seven days.

Then, there is a checklist, so the formats are prescribed, along with the form, which requires you to attach certain documents. Once IBBI is satisfied that the form is complete, the board may, upon being satisfied, grant the registration certificate in such cases. Then, the certificate of registration must be issued in the prescribed format, as the rules and regulations are in place; therefore, only the IBBI is expected to issue this certificate. Renewals will be issued periodically, so you are expected to review them regularly. Then, the suspension or cancellation of the certificate is necessary. If the information utility fails to satisfy the conditions, it is because when the IBBI grants the registration certificate, it must have prescribed certain conditions, and obviously, these conditions will be specified for the information utility to follow. Suppose the information utility fails to follow the conditions prescribed by IBBI, then IBBI can cancel the certificate issued to it. Apart from this, there are prescribed terms and conditions under which you can cancel the certificate. The IBBI, which is the board that has obtained it, may cancel the registration if it believes that the information utility has obtained it by making a false statement, misrepresentation, or any other unlawful means.

So, if IU, while applying for registration or obtaining it from the IBBI, has obtained the registration by providing false information, misleading information, or through any unlawful means, then in such cases. Okay, IBBI can cancel the certificate of registration. Alternatively, if they fail to comply, as we have already discussed at the time of issuing the certificate, IBBI will prescribe the terms and conditions, internal bylaws, and other relevant details. If IU fails to follow the terms and conditions, the registration will be canceled in such cases. Or else, if IU, as per the act, they are supposed to follow the rules and regulations; okay, they are supposed to follow the law. So if IU fails to follow the law that is IBC, if they contravene any of the provisions of the Act and the rules made thereunder, then they can also cancel the certificate of registration or any other grounds as may be specified by the regulations. In the regulations, detailed grounds are given. If IU fails to follow the terms and conditions, then in such cases, IBBI can cancel the certificate of registration.

Then let us discuss the governing board of the information utility. So how should it be governed? Section 212 of the IBC provides for the governing board of the information utility. So, the board may require every information utility to set up a governing board with such number of independent members as may be specified by the regulation. So, section 212 provides the information utility they are expected to form a governing board. So, this governing board must have such number of people as may be prescribed under the rules and regulations. So, let us look at the rule level. If you read only the section, you cannot understand, okay? At the rule level, the terms and conditions are prescribed. So, if you look at Rule 9 of the Insolvency and Bankruptcy Board of India (IBBI) Information Utilities (IU) regulations 2017. So, how must the governing board be? So, the governing board must consist of a managing director, independent directors, and shareholder

directors. Okay, so the governing board must have, so this is similar to the IPAs, okay, so insolvency professional agencies, okay. So, the governing board shall consist of a managing director, independent directors, and shareholder directors. Then, provided that more than half of the directors are citizens of India and are residents in India, another condition is that more than half of the directors on the governing board of the information utility must be residents in India. So, this is the composition of the governing body in IU.

Now, let us discuss the obligations of IU. What are they supposed to do? They are supposed to create and store financial information in a universally accessible format. So, in a universally accessible format, they are supposed to store the information, maybe in PDF documents. So, they are supposed to store information about the corporate debtor and the companies. Then they are supposed to accept the electronic submissions of financial information. So, under the legislation, certain categories of people, such as financial creditors, corporate debtors, and resolution professionals, are all expected to submit the information to the information utility. So, whoever has an obligation to submit the information, if they are submitting, IU is supposed to accept the electronic submissions. Then accept, in the specified format, specified form, and manner, electronic submission of financial information from the person who intends to submit such information; if any other person wants to submit any information to the IU, yes, you can accept the information from such a person also, okay. Then please remember they are expected to meet the minimum service quality standards. Okay, so the minimum service quality standards are going to be prescribed by the board from time to time, so you are expected to meet the minimum service quality standards as may be prescribed by the regulations.

Then let us look at other obligations. Section 214 of the Act provides that they are expected to get the information received from various persons authenticated by all concerned parties before storing such information. Whenever they are receiving any information from another person, they are supposed to authenticate it beforehand. They are supposed to verify it, ensuring that it is verified by proper sources. They are supposed to maintain all the information. Then provide access to the financial information stored by it to any person who intends to access such information in such manner as may be prescribed by the regulation. If any person involved in the CRP process wants to have access to the information, that is why even if you observe the application made by the operational creditor, you will see that we have discussed this in the previous classes. So, when an operational creditor is making an application to the NCLT under section 9 of the IBC, one of the attachments that he can provide is information from the information utility. This information or debtor from the IU is considered to be authenticated; okay, so this will act as evidentiary value. That's why the IU is supposed to provide access to the financial information that is stored by it to any person who intends to access such information during the process. Then they are supposed to publish such statistical

information as may be specified by the regulations. Okay, so from time to time, IBBI is going to spread, by rules and regulations, which information is to be published. Okay. Then we have interoperability with other information utilities. Okay, so in India right now, we have only one information utility. Suppose in the near future they recognize other IUs; then interoperability must be there with other information utilities. Okay.

Now, let us look at the core functions of IU, okay. So, the core functions of IU, I mean, we can divide into various categories. So, the first category will be collection and storage, okay. So, the information utility is going to collect debtor related to financial statements or financial information, such as records of debts and default records. So in the case of a corporate debtor, how much debt is there, how much of it is in default, and what is the security? Whether the corporate debtor created any charge in favor of that, okay? So is there any modification in the charges? Is there any satisfaction in the charges? Did they file with the ROC or not? So, all this debtor will be there with the IU. Then, security interest, then balance confirmation. So, what is this balance confirmation? Corporate debtor owes some amount to fund financial creditor. So, how much amount has already been cleared, and how much amount is pending? This balance confirmation, repayment history, and details of how the payment was made, among other information, will all be available or collected from various sources. This is one of the core functions of the information utility, and the information provided will be useful when dealing with CRP or liquidation proceedings before the NCLT. Then the second core function is authentication, so the first core function is collection and storage. The second core function is authentication. The financial information submitted has been authenticated by all relevant parties. So, how will they authenticate it? The information will be authenticated only by relevant parties, which include creditors or possibly debtors, to ensure debtor integrity. This is because the information utility cannot disclose the debtor to third parties; instead, they can only verify the debtor from financial creditors, operational creditors, and corporate debtors. Generally, they will verify and authenticate all the debtor from them only.

Another core function is the access and sharing of debtor stored. This is handled by the IU, which shares the debtor with anyone who requires it or grants them access. So, with whom are they going to share the access to the insolvency professionals first, because he is a professional who is going to deal with the management of the corporate debtor and who is going to do all the work. That's why insolvency professionals can have access to the information. Then, creditors and the adjudicating authority, which is the NCLT, are the ones who will approve it, so they are supposed to have access, okay? Then the corporate debtor is okay with authentication and record verification, so the corporate debtor also has access to the information stored with the information utility. So, these are all considered to be core functions: core functions include collection, storage, authentication, access, and sharing. These three are considered to be core functions of IU.

Now, let us look at a few judicial pronouncements that recognize the IU. So, in the case of Swiss Ribbons Private Limited versus Union of India, the Supreme Court recognized the importance of IU. Because they have recognized that, I mean, they stated that IU is helpful in reducing delays and ensuring debtor accuracy. IU is very helpful in reducing delays because the time frame under the IBC is very, very essential. So, if you want to complete the process within the time frame, the availability of the debtor is very, very crucial. So, IUs is a mechanism that provides the debtor. So, that is why, okay, it is going to play an important role in reducing the delays and ensuring the debtor accuracy, as we have already discussed. The debtor is going to be authenticated; they are going to verify it from the various parties: financial creditors, operational creditors, and the corporate debtor, so it is going to be accurate. And they are going to validate the use of authenticated I.U. records as evidence of default. So whenever a creditor is claiming default, how is he going to authenticate it? He is going to authenticate it with the help of I.U. records only.

In another case, Kotak Mahindra Bank versus A. Balakrishnan and another, the NCLAT held that whether an applicant under section 7 of the IBC can be rejected due to lack of IU record is a question. So, the court held that the record of default in an IU is not mandatory. Although not all debtor may be available at IU, if it is, it will contribute to the evidence. Other valid documents can also be provided, and even with the other documents, you can prove the default. This is one of the additional options available to creditors. While IU records are preferred, they are not the sole mode of proving the default. So, you have to understand that IU is established to maintain the debtor, but there is a possibility that the corporate debtor may not give the debtor to the IU, share the debtor with the IU, or even share the debtor with financial creditors, operational creditors, and all the creditors; they may not share the debtor with the IU. So that's why it is only additional for now.

Then, in another case, Shubham Jain versus Gagan FerroTech Limited, the NCLT Kolkata bench held that the applicant submitted IU records with authenticated debt information. Therefore, when he submitted the authenticated information, admission was granted, as the IU record clearly established that there was a debt and a default. As we have previously discussed, debt and default are two of the primary essential conditions that must be satisfied when filing an application under the IBC. Therefore, IU records will clearly establish the evidentiary value. Okay, so evidence then in the case of State Bank of India versus Metenere Ltd. In this case, the NCLT principal bench held that IU records authenticated by debtor were given significant evidentiary value because they are considered to be an organization created solely for the purpose of debtor. Therefore, any debtor or document from IU will carry some evidentiary weight. So NCLT emphasized the sanctity of the debtor authenticated through the IU process.

Now, let us examine the importance of IU in the CRP process and how it will play a crucial role. So, IU is going to reduce its reliance on physical documentation. When discussing a resolution process, you are expected to collect and collate debtor from various sources, including financial institutions, operational entities, banking institutions, and workers. Therefore, it becomes very difficult for you to collect all the physical debtor, and they may not be willing to provide it either. That's why, when the debtor is uploaded to the IU website, it becomes very easy for you to download it. Additionally, ensure the speedy admission of insolvency applications by the NCLT, so that the NCLT can verify the debtor from the IU. Then they can admit the petition or admit the application based on the evidence. Then, strengthen trust in debtor due to the authentication mechanism, because we have a proper authentication mechanism in place. So, that is why trust in debtor can be improved. Then used as prima facie evidence, update, and default under the IBC.

Therefore, please note that debtor with IU is considered prima facie evidence. Then, how will it impact us practically, okay? Therefore, IU is increasing transparency in financial transactions, as there is no scope for hiding any information. Once it is uploaded, it is there. That's why it increases transparency and helps prevent fraudulent claims and disputed defaults. Therefore, if it is not supported by IU, your claim may not be easily proven, because it must follow the IU process, which is an authenticated process, so that you can prevent frivolous claims. This also helps support the efficient functioning of the NCLT in admitting CRP applications. These are all the practical measures that encourage better financial discipline among borrowers. Therefore, once the borrower borrows money from any financial creditor, this debtor will be automatically shared with IU. If such debtor is shared with IU, the borrower is cautious that the information is available in the public domain. Mean information is available with the IU, so anyone can have access, and he will be very cautious about that. Therefore, this caution and awareness in the corporate debtor or borrower will increase the tendency to repay the money promptly or according to the schedule. This is going to improve or facilitate financial discipline among borrowers.

Now, let's examine the challenges and criticisms. Therefore, there is limited awareness, despite the IU system being very effective. However, the fact is that awareness is lacking among small financial creditors and operational creditors. Okay, in the majority of cases, these operational creditors are small vendors, so they lack awareness of the IU. There is a basic problem, a major problem. Okay, they don't intimate IUs, then there is a tendency, there is a possibility they may lose their claims because of lack of evidence. Okay, so limited awareness among small financial creditors and operational creditors is one of the major problems that we are having. And one more problem is that right now we only have one IU, which is NECL.

This may lead to concerns about a monopoly. Whatever the player is saying can be final. Monopoly concerns can also be present. Then, debtor authentication is sometimes delayed. Whenever any document is uploaded, it has to be approved or authenticated by the debtor. He may not authenticate easily, so it is sometimes delayed, reducing its effectiveness. If this authentication process is delayed, it automatically reduces the effectiveness. These are the various challenges and criticisms we face in the IU system. So let us conclude. Therefore, information utilities under the IU are expected to play a pivotal role in driving innovation. So, they are mainly concentrating on transparency, speedy disposal of cases, and efficient disposal of cases. Additionally, NC will also assist the NCLT in collecting debtor, as it can directly access IUs, benefiting both corporate debtors and financial and operational creditors. So their authenticated records have emerged as a reliable and persuasive form of evidence, so while you are arguing the case or while you are submitting the resolution plan, this evidence will help you a lot. Therefore, this evidence, the IU debtor, will help streamline the process or proceedings before the NCLT. Thus, the IU plays a major role as a debtor bank. This is the importance of IU. Now, let us conclude with a recap. What did we discuss in class today? In today's class, we discussed the legal framework relating to information utility.

Then we discussed the registration of IU and how you are going to register. The governing board of IU is also important. In the governing board of IU, you are expected to have the managing director, shareholders, and independent directors. So, it should be that we have discussed the core functions of IU and identified three core functions. The importance of IU, why IU is important, how it plays an important role in IBC, and the challenges we face in this system are all the various topics we have discussed today.

Thank you.