# ROLE OF INFORMATION UTILITIES IN INSOLVENCY RESOLUTION UNDER IBC

**Goriparthi. Naresh[1*], Yazhini Kuppusamy[2], V. Poojasree[3], Sanaka. Sampath Kumar[4]**

**Abstract**
The concept of information utilities under the Insolvency and Bankruptcy Code, 2016 was completely novel and without any parallels anywhere else in the world. It was meant to transform the Indian credit market by providing accurate and timely information about credit history and defaults, which would enable financial creditors to commence the insolvency resolution process under the Code without cumbersome burdens of proof under the earlier regime. This paper studies the concept, role, and responsibilities of information utilities by tracing the evolution of the concept and the need for such agencies. It also looks at the envisaged competitive industry of information utilities and makes certain comments on the regulatory and legislative framework.

[1*,2,3,4] athyabama University

***Corresonding Author:** Goriparthi. Naresh
*Sathyabama University

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**Introduction**

The Insolvency and Bankruptcy Code, 2016 (IBC/Code), marks a momentous shift in resolving insolvency and bankruptcy in India. The Code was a direct result of the work of the Bankruptcy Law Reforms Committee (BLRC), under the chairmanship of Dr. T. K. Viswanathan. One of thehallmark features of the IBC, proposed by the BLRC, was the completion of the insolvency resolution process (IRP) within 180 days.[1] Even before initiating IRP, Parties want precise and indisputable data. about existing credit, collateral that has been pledged, etc. However, considerable time can elapse in obtaining this information, creating problems in completing the process within 180 days. To address this problem, BLRC envisioned a competitive industry of "information utilities" (IU/IUs), which would hold an array of information about all firms at all times and provide undisputed and complete information to all persons involved within less than aday of the commencement of IRP.[2]

The role of IUs is to record, create, store and authenticate financial information, as defined under the Code.[3] This would ensure creditors make better decisions and urge debtors to be more disciplined[44]. The challenge before the authorities is to realize the goal of a competitive industry of IUs and make the information accessible to all stakeholders, keeping in mind the strict time constraints. As of now, only one IU, National E-Governance Services Limited (NeSL), has beenregistered under the Code[5].

The paper is divided into five parts. The first part looks at the problem of information asymmetry, which is cited as the primary reason behind the development of IUs. The second parttraces the evolution of the concept of IUs and looks at previous regimes for credit information and how IUs are different from these regimes. The third part looks at the regulatory framework for setting up an IU. The fourth part deals with the functions of an IU as provided under the Code and regulations framed by the Board. The fifth part examines the proposal for a competitive market for IUs, made by the BLRC, and whether this can translate into reality. Finally, in conclusion, the paper makes certain comments on the legislative framework and journey of the law so far.

**1. The problem of information asymmetry**

The theory of "information asymmetry" posits that when buyers and sellers have insufficient information, inefficient results result. In his seminal 1970 article, "The Market for Lemons: Quality Uncertainty and the Market Mechanism," George Akerlof developed the hypothesis for the first time. It was further developed in the 1970s and 1980s as a credible explanation for a number of occurrences that mainstream general equilibrium economics couldn't explain in inefficient market circumstances.[6]

Because borrowers have more information about the risk connected with the firm than lenders, the notion of information asymmetry has been shown to have a negative impact on credit markets. This leads to issues such as adverse selection (when a lack of symmetric information prior to a transaction between a buyer and a seller causes inefficiency in the price and quantity ofgoods and services) and moral hazards (when a party to a transaction provides misleading information or changes their behavior because they believe they will not face any consequences for their actions). Asymmetric knowledge causes adverse interest rate selection and credit rationing. This limits the amount of credit available on the market and leads to higher interest rates.

[1] SEC 5(15), Insolvency and Bankruptcy Code, 2016 ('IBC'); Bankruptcy Law Reforms Committee, The report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design (Nov. 4, 2015), see Executive Summaryat p. 11, available at http://ibbi.gov.in/BLRCReportVol1_04112015.pdf ('BLRC report')

[2] BLRC report, see Executive Summary at p. 15.

[3] SEC 214, IBC.

[4] Kumar Saurabh Singh, Rajeev Vidhani, et al, Insolvency And Bankruptcy Code: Go Ahead For Information Utilities, MONDAQ (April 27, 2017), available at http://www.mondaq.com/india/x/589092/Insolvency+Bankruptcy/Insolvency+And+Bankruptcy+Code+Go+Ahead+For+Information+Utilities, accessed 09-05-2022, 02:10 pm.

[5] Information Utilities (IUs), INSOLVENCY & BANKRUPTCY BOARD OF INDIA, available at https://ibbi.gov.in/service-provider/information-utilities, accessed 09-05-2022, 02:19 pm

[6] The Theory of Asymmetric Information in Economics, INVESTOPIDIA, available at https://www.investopedia.com/ask/answers/042415/what-theory-asymmetric-information-economics.asp, accessed 09-05-2022, 02:45 pm.

From the perspectives of financial stability, supervisory, financial inclusion, and economic policy, the Reserve Bank of India (RBI) has also stated that sharing credit information is in the public interest. Accurate credit information is required to ensure credit market efficiency, whichbenefits both creditors and borrowers. A well-established credit reporting system also aids creditors in properly pricing loans and lending at more appealing rates by allowing them toassess the borrower's credit risk and be confident in the borrower's capacity to pay.

## II. Evolution of the concept of IUs

Although credit information is collated by different agencies in different jurisdictions, the concept of IUs under the IBC is novel and unique, without any exact equivalents in other jurisdictions.[7] While the concept was first proposed by the BLRC report in 2015,[8] the need for arepository of credit information focused on insolvency resolution was felt even in 1993 in the Omkar Goswami report, where it was noted -

*Our scheduled banks and financial institutions have a basic problem in that they do not preserve even rudimentary records of the promoters' creditworthiness. As a result, it is advised that, in the first place, all financial institutions construct a common data pool of enterprises that have defaulted on term lending dues, as well as a list of the founders of such firms. [..] All financial institutions and scheduled banks should have access to this information, which includes promoter risk ratings, and it should be used to make lending choices and project risk assessments.*

*[..] In other words, there is a growing consensus that failing promoters should not be able to obtain low-cost finance due to insufficient information flows*[9].

RBI resultantly took several steps to remedy information asymmetry in India's credit market bysetting up repositories of credit information. In 1999, RBI constituted a Working Group for setting up Credit Information Bureau in India under chairmanship of N.H. Siddiqui.[10] The Working Group's recommendations led to the establishment of credit information companies (CICs), starting with Credit Information Bureau (India) Ltd. (CIBIL).[11] With the enactment of the Credit Information Companies (Regulation) Act, 2005, more CICs were set up.[12] Central

Repository of Information on Large Credits (CRILC), was established in 2014[13] to facilitate exchange of information about big loans, having exposure in excess of Rs. 5 crores. The RBI also maintains a comprehensive Basic Statistical Return (BSR-1) database, which contains information on the borrower's occupation/activity and organizational sector, as well as the type of account, interest rate, credit limit, and outstanding balance for each loan account from Scheduled Commercial Banks. in India.[14] Under Section 20 of the

[7] Ministry of Corporate Affairs, Government of India, Report of the Working Group on Information Utilities (Jan. 10, 2017), see Executive Summary.

[8] BLRC report, see §4.3.

[9] Steven Nickolas, Moral Hazard vs. Adverse Selection: What's the Difference?, INVESTOPEDIA (Mar.26, 2019), available at https://www.investopedia.com/ask/answers/042415/what-difference-between-Moral-hazard-and-adverse-selection.asp, accessed 09.05.2022, 02:50 pm.

[10] RBI, Report of Working Group for setting up Credit Information Bureau in India (Nov. 01, 1999), available at https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/9621.pdf.

[11] RBI, Report of The Working Group to Examine the Role of Credit Information Bureaus in Collection and Dissemination of Information on Suit-filed Accounts and Defaulters (Jun 05, 2002), ¶1.4, available at https://rb+idocs.rbi.org.in/rdocs/PublicationReport/Pdfs/29666.pdf.

[12] K C Chakrabarty, Transforming Credit Information into Action: Issues and Challenges, a Keynote address by Dr K C Chakrabarty, Deputy Governor of the Reserve Bank of India, at the Sixth Annual Credit Information

[13] RBI, Early Recognition of Financial Distress, Prompt Steps for Resolution and Fair Recovery for Lenders: Framework for Revitalising Distressed Assets in the Economy (Jan. 30, 2014), available at https://rbidocs.rbi.org.in/rdocs/content/pdfs/NPA300114RFF.pdf. .

[14] RBI, Press Release: RBI releases Basic Statistical Returns of Scheduled Commercial Banks in India – Volume 43 (May 08, 2015), available at https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/IEPR235684281C6FCB084A1C90CE7F64F342DBEE.PDF.

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), the Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI) was established to prevent fraud by storing information about the creation, modification, or satisfaction of security interests by any type of mortgage or hypothecation.[15]

Collection of data relating to credit in India, however, has remained highly fragmented, with various agencies collecting credit information, viz. CICs, RBI, CERSAI, and now IUs under the IBC, tasked with collecting credit information. Other agencies like Ministry of Corporate Affairs (MCA) also collect data that is important for credit decision making.[16] In 2017, the RBI constituted a High-level Task Force to examine the current state of credit information in India and propose a plan for building a transparent, efficient credit system. comprehensive and near real-time Public Credit Registry (PCR) for India.[17] RBI also aims to link PCR to ancillary credit information systems for effective supervision of the credit information market.[18] In this context, it is imperative to see how IUs are different from all existing channels of credit information and why linkage of all credit information is crucial for the functioning of IBC.

All previous systems were focused on helping banks to make better lending decisions by ensuring credit-worthiness of the borrower and only meant as a preventive measure to deal with the problem of mounting NPAs. Their only purpose was credit risk assessment (as in case of CICs, CRILC and BSR-1) or prevention of fraud (as in case of CERSAI). IUs, on the other hand, would assist banks not only in preventing NPAs, but also actually resolving NPAs as information stored with IUs serves as evidence before the Adjudicatory Authority for establishing that a default has occurred and commencing IRP.

Conference, organized by CIBIL - Credit Information Bureau (India) Ltd -, Mumbai, (Mar. 20, 2014), available at https://rbidocs.rbi.org.in/rdocs/Speeches/PDFs/CIB210314FLS.pdf.

Previously, demonstrating a default required proof under the Indian Evidence Act of 1872, as well as exemptions under the Bankers' Books of Evidence Act of 1891 (which allowed for the admission of copies of bankers' books as evidence) and the Information Technology Act of 2000.(which enabled admission of electronic books in evidence). However, under the IBC, a financial creditor may only submit a record of a default recorded with any IU to begin the corporate insolvency resolution process (CIRP), and the Adjudicating Authority must determine the existence of a default from the records of an IU within fourteen days of receiving the application.According to the Supreme Court, the scope of investigation under 7before the The Adjudicating Authority's role is limited to examining the financial creditor's documents to ensure if a default has occurred.[19]

Traditional modes of establishing information involve “paper-based processes”, which are slow and require proof that the documents in hand are true copies. Recent advancements in technology, however, have created an opportunity to reduce the cost and complexity of managing information and eliminate delays and frictions in resolving insolvency. BLRC felt thatIndia could ‘leapfrog’ to the status of advanced countries with sound insolvency and bankruptcyresolution systems by utilizing its information technology infrastructure.[20] Keeping this in mind,the BLRC proposed a newly regulated industry of IUs to capitalize on this opportunity.

## III. Regulatory framework Setting up an IU

3(21) of the IBC defines an IU as a person who is registered as an IU under 210 with the Insolvency and Bankruptcy Board of India (IBBI/Board). No one can work as an IU without a certificate of registration, according to section 209. As a result, IU registration is required. Only those who meet the requirements of Regulation 3 of the IBBI (Information Utilities) Regulations, 2017 (IU Regulations) are eligible to become IUs.

To be eligible a person must be a public company with the sole object to provide core services and other services under the Regulations, and discharge such functions as may be necessary for

[15] Rule 4, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (CentralRegistry) Rules, 2011.
[16] RBI PCR Report, ¶2.1.
[17] Id., ¶1.19
[18] Id., ¶1.17
[19] Innoventive Industries Limited v. ICICI Bank Limited, Civil Appeal Nos. 8337-8338 of 2017.
[20] BLRC report, ¶4.3.

providing these services.[21] It's shareholding and bye-laws must be in accordance with the regulations and It must have a net value of at least fifty crore rupees. The individual, its promoters, directors, key managerial personnel, and anyone with more than 5% of its paid-up equity share capital or total voting power, directly or indirectly, must all be fit and proper people. Integrity, reputation, and character, the absence of a criminal conviction by a court, the absence of a restraint order by a financial sector regulator or the Adjudicating Authority, and financial soundness are all factors to consider when assessing if a person is fit and proper. [22]

The Working Group on Information Utilities (WG-4) advocated a Foreign Direct Investment (FDI) limit of 49 percent for IUs when drafting the IU Regulations. However, it stated that as 100 percent FDI is already permitted for CICs, there is little justification to impose FDI hurdlesfor IUs and that the recommendation was open to public comment. As a result, the regulations originally stated that the corporation could not be controlled by anyone outside of India.

However, the condition was later dropped.[23]

A registration application must be submitted to the Board in accordance with the regulations, andthe Board must acknowledge receipt of the application within seven days. The application must be filed in Form-A, along with a nonrefundable application fee of five lakh rupees, according to the IU Regulations. It must be accompanied by a copy of the applicant's memorandum of association, articles of organization, bylaws, business plan, and exit management plan The Board must provide the applicant an opportunity to be heard before dismissing the application. The applicant is to remove the deficiencies in the application, if any,[24] and submit additional documents or clarification, within a reasonable time.[25] Before granting the certificate of registration the Board must be satisfied that the applicant -

(a) is eligible under Regulation 3;
(b) has the technical competence and financial capacity required to function as an IU;
(c) has adequate infrastructure to provide services in accordance with the Code;
(d) has in its employment, persons having adequate professional and other relevant experience,to provide services in accordance with the Code; and
(e) has complied with the conditions of the certificate of registration, if he has submitted anapplication for renewal.[26]

If the Board is satisfied that the application meets all requirements, it may grant or renew the applicant's certificate of registration within sixty days of receipt, excluding any additional time granted by the Board. By order, the Board may also reject the application. However, the Board must first establish a prima facie opinion that the registration should not be granted or renewed and report that opinion to the applicant within 45 days of receipt of the application, excluding any additional time granted by the Board. After receiving the communication, the applicant has fifteen days to offer an explanation as to why their application should be allowed. The Board canthen accept or reject the application within a certain amount of time.[27]

## IV. Functions of an IU

An IU must provide 'core services' to everyone who complies with the regulations' terms and conditions. Core services are those provided by an IU for the following purposes: (a) accepting electronic financial information submissions; (b) accepting electronic financial information submissions; (c) accepting electronic financial information submissions; (d) accepting electronicfinancial information

(a) Accepting financial information submitted in electronic format;
(b) secure and accurate financial data recording;
(c) validating and confirming the financial information that a person has submitted; and
(d) granting individuals access to information held by the IU.

Records of debt, liabilities, assets over which a security interest has been created, defaults, and a person's balance sheet and cash-flow statements are all examples of financial information. 214 stipulates that every IU must — for the purpose of providing core services to any person.

[21] Reg. 3(a), Insolvency & Bankruptcy Board of India (Information Utilities) Regulations, 2017 ('IU Regulations').
[22] Explanation to Reg. 3(g), IU Regulations.
[23] Notification No. IBBI/2017-18/ GN/REG016 dated 29 September, 2017 (w.e.f. 29-09-2017).
[24] Reg. 5(1), IU Regulations.
[25] Reg. 5(2), IU Regulations.
[26] Reg. 5(4), IU Regulations.
[27] Reg. 5(7), IU Regulations

(a) generate and store financial data in a way that is universally accessible;
(b) accept electronic submissions of financial information from persons who are underobligations to submit financial information;
(c) accept electronic submissions of financial information from persons who intend to submitsuch information;
(d) meet such minimum service quality standards;
(e) get the information received from various persons authenticated by all concerned parties before storing such information;
(f) provide access to the financial information;
(g) publish such statistical information as may be specified;
(h) have interoperability with other IUs.[2828]

All financial creditors are required to provide financial information as well as information aboutassets in which a security interest has been created to an IU. All banks and financial institutions (including NBFCs) have been required to comply with this rule by the RBI. The submission of information to IUs is, however, only an option for operational creditors.

Information stored with the IU can only be accessed by certain people. The user who supplied the information, all debtors, the insolvency professional, the Adjudicatory Authority, and the Board are among them. The latter two are available for no charge. The IU must provide functionality that allows users to access information that they are entitled to while maintaining information privacy and confidentiality. While a reflection of the quality of the service offered It should be emphasized, however, that NeSL, the only recognized IU to date, charges separate costs for financial creditors, home buyers, and operational creditors to submit financial information. It also charges varied rates for the submission of data on financial creditors' loans tobusinesses, other commercial entities, and people. While the rates charged are not excessively high and may be an acceptable reflection of the service offered, it can be argued that NeSL is breaking the IU Regulations by charging different fees to different users for the same service.

## V. A competitive market of IUs

While proposing the concept of IUs, the BLRC envisaged a regulated market for IUs, competing with each other for providing core services under the Code to users. The reason for proposing such a model, in contrast to a central repository of credit information managed by the IBBI, was recorded succinctly by the BLRC -

*There is the possibility [..] of monopolistic profits accruing to a limited number of enterprises. As a result, this is supposed to be a free market with a single tariff (the price charged upon the person submitting information). Nothing should stand in the way of new players entering the market. [..] This pro-competitive climate would eliminate the possibility of abnormal gains. [..]Centralization of information is good from the standpoint of end-use [but] centralization has difficulties linked with monopolies' high profit margins and low-quality work. The Committee has decided on a strategy of disseminating information across several utilities.*

*WG-4 considered a variety of other models for the IU industry's organizational design, includingan IU within the regulator (IBBI), a monopoly IU, and a monopoly IU within a monopoly IU within a monopoly IU within a monopoly IU within a monopoly IU within a monopoly IU within a monopoly IU within a monopoly*[29].

Although the proposed model is laudable, it should be noted that currently there exists only one IU and thus the benefits of the model have not been realized. Several proposals have been made to set up new IUs and improve the architecture of IUs, including use of block-chain technology for use by IUs[30] and setting up of IUs by experienced players such as credit rating agencies and credit bureaus, as they're experienced in handling authenticated financial data and have access to the same.[3131]

[28] §214, IBC.
[29] Report of WG-4, ¶5.1, p. 51
[30] Technical Committee of IBBI, Report of the Technical Committee on Information Utilities (Aug. 16, 2017), p. 2.
[31] NITI Aayog, Champions of Change: Transforming India Through G2B Partnership, Synopsis of Participants' Inputs (Aug. 2017), p. 57, available at http://niti.gov.in/writereaddata/files/Booklet%20of% 20Synopsis%20-%20Aug%2022%20Final.pdf.

However, even after the liberalization of eligibility norms allowing foreign players toenter the market, no new IUs have been registered.

**Conclusion**

Access to authenticated financial information and records of defaults is vital to insolvency resolution under IBC. The information stored with IUs is meant to facilitate the IRP at all stages, from commencement to validation of claims to liquidation. Thus, IUs constitute one of the pillars supporting the institutional infrastructure of the IBC. However, with the industry of competitive IUs still not in place, there is a danger of market failure and monopolization. It is imperative to amend the legislative and regulatory framework to facilitate and promote registration of more IUs. It is also important that registered IUs have the technical and administrative capabilities to performs core services under the IBC.