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The Information Utility-the IP's Personal Assistant (PA)



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Synopsis:

The IU has comprehensive information about the debt of corporates, use of the IU, can help at every stage of the CIRP.

Information Utility: The fourth pillar of the IBC

The Insolvency and Bankruptcy Code, 2016 (IBC) is commonly known to rest on four pillars. The three pillars the IBBI, the AA and the IP are fairly well known as they are often in the news. The fourth pillar is a little less known but equally important and is the Information Utility or the IU. As on date National E-Governance services Limited (NeSL) is the only IU registered with the IBBI. When the implementation of the IBC commenced, the IU was not ready, so the IBC started with 3 pillars. However, now that the IU is ready with comprehensive information about the debt of corporates, use of the IU, as the fourth pillar can help at every stage of the Corporate Insolvency Resolution Process (CIRP).

The IU: An Indian Innovation

The three pillars draw their inspiration from insolvency legislation in advanced jurisdiction, but the IU has no parallel anywhere in the world. The IU is an Indian innovation, and we should all be proud of it. The other day the team at NeSL was making a presentation on Digital Document Execution (DDE) product and they were asked, if there is there any comparable product in the developed world. The reality is, that today, we no longer need to look at the developed world for inspiration. UPI, the indigenous payment systems has set an example for the world, we also developed our own COVID 19 vaccine when the country needed it most. This is a brave new India, not afraid to innovate and set examples for the world to emulate. When the IU was set up in 2017, there was no precedent to follow, it was all uncharted territory for NeSL. But today, NeSL, as an IU, can make a difference to the credit ecosystem in general and to the insolvency framework in particular.

The ROD can expedite admission of CIRP

At the pre-admission stage of CIRP, use of the Record of Default (ROD) of the IU expedites admission of CIRP by the AA. The ROD of the IU captures all important information required by the Adjudicating Authority to decide if an application for initiation of CIRP can be admitted, like amount of default, date of default, acknowledgement of debt (proposed), pre-existing disputes, details of communication with the debtor and status of authentication. In the matter of *Vipul and others v. Teco Industries and others* (18th May, 2022), the NCLAT held that in case, the record of IU shows that there is a debt, which is in default, the Adjudicating Authority or Appellate Authority are not required to further examine the record maintained by the IU, more so, when the record of the IU is deemed to be authenticated and no dispute or refutation of said record has been done by the Corporate Debtor earlier.

The IU in CIRP

The IU can also assist the IP during the CIRP. The Code provides that all FCs shall submit information to the IU, RBI has issued advisories to banks/NBFCs and ARCs in 2017 and in 2019 to comply with the provisions of the Code regarding submission to the IU. As a result, for

the corporate segment almost the entire data submitted by banks/NBFCs/debenture trustees and even some operational credits/private financial creditors is stored with the IU. Verification of claims is one of the responsibilities of the IP, the IP can access the IU and compare it with the claims filed by the creditors, after the public announcement. In *EFPO v. Subhodh Kumar Agarwal* (NCLAT, Company Appeal No 116 of 2022), NCLAT was of the opinion that when the IRP/RP come into knowledge of orders against the Corporate Debtor or notice against the Corporate Debtor of ongoing CIRP, he should be under obligation to include it in the Information Memorandum and bring the same into the notice of the CoC to enable the CoC to take a wholesome view of entire sequence of facts and circumstances. In this case the claims were not accepted as the law still provides for submission of claims to the IU, however, if the IP becomes aware of claims either from the records of the CD or from that of the IU, he can take up with the creditors, bring it to the knowledge of the COC and there can be avoidable litigation.

The legal framework

Sec 17(2)(c) of IBC provides the authority to IRP to access the electronic records of CD from IU having financial information of the CD. Regulations 7, 8, 8A, 9 & 9A of the CIRP Regulations state that existence of debt due to Financial Creditors, Operational Creditors, Creditors in a class, workmen, employees and other creditors may be proved on the basis of records available with IU

Submission of Claims to the IU

The IU Regulations provide that creditors update their claims on a monthly basis and information of default has to be submitted within 7 days. It is possible that in future, the law might provide for submission of claims to the IU. So if a CIRP is initiated on say 15th May, the FC has to simply update the information for 15 days (30th April to 15th May) and submit to the IU. OCs can also submit their claims to the IU after following a simple process of registration which involves identification of the person submitting the information. NeSL already has a DDE platform and gradually as DDE gets popular, even the documents, which are evidence to the creation of debt can be made available to the IP.

IU: A source of undisputed information related to debt

The uniqueness of the IU is that the information stored is not just the creditors' version of the truth. Information submitted by a creditor is delivered to the concerned debtor who has the option to dispute or accept the same. He can of course choose to ignore the same, but in either case, the details of the IU's communication with the debtor becomes part of the credit history of the debtor stored with the IU and can be retrieved. In the case of *Vipul and others v. Teco Industries* [NCLAT, company Appeal 470 of 2022, dated 18-5-2022] NCLAT noted that the corporate debtor "*chose to neither reply to the said e-mail nor forwarded them to the appropriate addressee.*" It concluded that "*On the basis of these facts and analysis we are inclined to hold that the corporate debtor cannot deny the existence of a financial debt as defined in section 5(8) of the IBC as present in the record of the information utility.*" A reference is also made to Section 99(3) of the IBC which states that where the debt is registered with the IU, the debtor shall not be entitled to dispute the same. This section is relating to individual insolvency which in any case not yet been notified except for Personal Guarantors to Corporate Debtor, but the intent of the law seems to be v clear. If a debtor was given an opportunity to accept or dispute a debt and he has not done so, he cannot be allowed to dispute it later.

Use in verification of claims by the IP

The information regarding disputes can be extremely useful to the IP. As per the records of NeSL, the number of disputes recorded with the IU are increasing, which is a positive development as the corporates are increasingly becoming aware of importance of registering on the IU platform and giving their confirmation or recording their dispute. If the corporate debtor has recorded a dispute against information submitted by a creditor, it would alert the IP about the same and apply increased due diligence in respect of the claim or even reject it if the evidence in respect of the same is not robust.

Process of Registration with the IU

There is a simple process for the IP to access the information in the IU. The IP has to get registered on the IU platform by identifying himself. Upon successful registration and providing evidence of having the

assignment and he will get access to the details filed by financial creditors in respect of the CD which is under CIRP.

PDA Services of the IU

NeSL has also been empanelled as a PDA service provider by IBBI. There should be a reason to use such services when there are other service providers in the market. I would like to state is that the issues relating to information and personal data protection are becoming increasingly important not just globally, but now in India as well. IU has data valued at more than Rs 155 lac crores and to protect that NeSL has invested heavily in information security infrastructure. When an IP uses the PDA services they get the same benefits. NeSL is ISO 27001:2013 certified, data is stored in a Tier 4 data centre (something which in India mostly banks have), primary and Disaster Recovery, sites are in different seismic zones. Moreover, the VDR services of NeSL are very cost effective with ease of navigation and access, besides high levels of security. Along with the above the IP has the comfort of transacting with an IBBI regulated entity.

End to End digitisation of the CIRP

NeSL also offers PDA ++ services which is an end to end digitisation of CIRP services. The IP can work from anywhere from any worry from data loss, all stake holders like COC, RV, RA can benefit from fully digital and secure platform. Confidentiality of valuation reports and resolution plans is matter of concern to AA, IBBI and RAs. Any compromise or laxity could lead to not just regulatory action, but also legal issues for the IP. With this facility it is ensured that the VR, resolution plans are uploaded in a password protected form directly in a platform with high end security.

Preservation of Records-A challenge for the IP

To give the importance of the storage services of NeSL, I will recount a small anecdote. We were talking to an IP and we enquired as to where the IP was storing all the voluminous records pertaining to CIRP. We were told that the records were so large in number and in view of the sensitive nature of the same it was placed in one of the apartments owned by the IP and locked up. Instead of blocking an asset valued at a few crores and still be worried about security, you can spend a few thousands and store records in the IU.

Storage services of the IU

The IBBI IU Regulations provide that an IP may submit reports, registers and minutes in respect of any insolvency resolution, liquidation or bankruptcy proceedings to an IU for storage. The IU shall not provide access to any person other than IP, IBBI or the AA. IBBI has also issued a Circular in this regard which provides that an IP shall preserve an electronic copy of all electronic records for a minimum period of eight years. To make it convenient for IPs and based on feedback from IPs the storage costs for the entire period can be paid upfront and taken as part of CIRP or Liquidation cost. Storing records in the IU also has another advantage, in future when IBBI permits, for purposes of IBBI inspection, the IP need not submit any information. IBBI can access it directly from the IU. As on date more than 600 IPs have registered on our platform and more than 100 are using the platform for their assignments. About 100 IPs are using the IU for storage services.

Future Ready

Since almost regulated FCs have submitted information to the IU, I can see a time in future when the IP can collate claims from the record of the IU. The public announcement may not even be required, but if its done, it may require submission of claims especially of OCs to the IU. Submission of claims directly in a secure manner makes it amenable to collation, analysis and verification. It can also be exported for viewing to submitters to know status of their claims The COC can be constituted immediately as FC data updated upto last month end is already available with the IU. The IM can also be compiled as almost all data like that of claims, security, balance sheet, documents related to creation of debt, related parties would be with the IU.

Information regarding guarantees and BGs

The information regarding guarantees and are extremely important to assess the contingent liabilities of a CD especially under the CIRP. In fact there is a discussion on a central repository of guarantee so that a creditor can see all contingent liabilities of a CD. When documents are executed through DDE all the details are available online and IP can be provided access to the same. DDE has already been launched for loan agreements and the personal or corporate guarantee is yet to gain

traction but is likely to get popular going forward due to the immense benefits for stakeholders. Similarly, e-BG which is likely to be launched soon, will be a central repository of all bank guarantee, the IP can see the BGs issued in favour of the CD and on behalf the CD and can take informed decisions in respect of contingent liabilities of the CD. He can use it to validate such claims in the form of contingent liabilities submitted by creditors.

IU: PA to the IP

With so much information available to the IP from the IU, I would therefore not be far from the truth if I say that the IU is like the personal assistant or PA to the IP. Therefore, it is imperative for the IP to use the services of the IU and reap the benefits.

