

Insolvency and Bankruptcy Board of India

8th April, 2022

Discussion Paper on “Enhancing effectiveness of Information Utility”

This paper seeks to enhance effectiveness of Information Utility (“IU”) to address the issue of delay in admission of application for initiation of corporate insolvency and resolution process (CIRP). The Standing Committee on Finance in its 32nd Report noted that one of the main reasons for delay in the insolvency resolution process is delay in admission of applications in NCLT. As per IBC, the admission process should ordinarily be completed in 14 days from the date of filing application. However, there are large delays in admission of applications and IU can assist by providing credible information.

Serious consequences of delay in Admission

2. The delay in admission of application causes asset erosion. Asset erosion can lower the perceived value of the business, as it lowers the book value of the assets associated with the company and which is detrimental to the stake holders. Asset erosion happens on account of following counts: -

- a. Preferential, Undervalued, Fraudulent, and Extortionate transactions causes diversion of the assets;
- b. Delay in imposing moratorium provides window for the Corporate Debtor to extract the valuable assets;
- c. The forum shopping by the Secured Creditors leads to filing of number of applications in other jurisdiction delaying the admission further;
- d. Adverse implication on the recovery rate from stressed assets thereby reducing expectation of creditors for good recovery;
- e. Destruction of the assets as the distressed companies face difficulty to get fund for operation of the companies as a going concern.

Strengthening the information provided by IU will help in speeding up the admission process. In this regard the following are proposed:

Issue-I: Streamlining the format of Information of Debt/Default

3. The provisions under section 7(3)(c) and section 9(3)(d) of the Code, *inter alia* provides for the financial creditor and the operational creditor to furnish with IU, any other record in support of their claims, as part of their application for initiation of CIRP.

As per regulation 20 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (“IU Regulations”), a creditor needs to submit financial information to the IU in Form C of the schedule. The documents to be uploaded as evidence for ‘debt’/ or ‘default of debt’, have been specified by the Board in Form C. Documents which show acknowledgment of debt by the debtor will assist in faster admission of applications.

Proposal

4. It is proposed to expand the list of documents evidencing the debt or default information in the Form C to include “Records of acknowledgment of debt by the debtor”.

Issue –II: Information of default under regulation 21 of the IBBI (Information Utilities) Regulations, 2017.

A) Authentication in case of Financial Creditors

5. As per Regulation 21 of IU Regulations, for authentication for Information of default, three flags have been distinctly identified for creditors (irrespective of their class) as Green (authenticated), Red (Disputed) and Yellow (deemed to be authenticated), as under :-

<i>SI. No.</i>	<i>Response of the debtor</i>	<i>Status of authentication</i>	<i>Colour of status</i>
(1)	(2)	(3)	(4)
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 aforesaid provision is applicable to all class of creditors. However, in case of financial creditors which are Banks included in the second schedule of the Reserve Bank of India Act, 1934, the information of default is based on audited books of accounts. As such financial creditors, which are Banks included in the second schedule of the Reserve Bank of India Act, 1934, are on a different footing, than the other class of creditors.

As per the existing provisions, the record of default is “*deemed to be authenticated*” after issuing of three notices to the corporate debtor after allowing three days each time for the debtor to respond.

Proposal

6. It is proposed that category of ROD issued by IU with “*deemed to be authenticated status*” with ‘yellow flag’ may be removed in case of financial creditors which are Banks included in the second schedule of the Reserve Bank of India Act, 1934. To meet the ends of natural justice, debtor will be served three notices inviting him to raise objections, if any, and submit proof to establish that information about his debt is not correct. Further, in cases of default, debtor shall submit proof that his default amount is less than the threshold level prescribed under the Code to get his status recorded in the disputed category.

In case of FCs which are Banks included in the second schedule of the Reserve Bank of India Act, 1934, the IU will record the status of authentication of information of default in two categories as listed below:

<i>SI. No.</i>	<i>Response of the debtor</i>	<i>Status of authentication</i>	<i>Colour of status</i>
(1)	(2)	(3)	(4)
1	(a)Information on debt and default as received from creditors along with relevant documents of proof, or (b) Debtor does not respond even after three reminders	Authenticated	Green
2	Debtor disputes and establishes the information of default being less than threshold level.	Disputed	Red

The existing provision regarding authentication will continue to apply to all creditors other than financial creditors which are Banks included in the second schedule of the Reserve Bank of India Act, 1934.

B) 'Record of Default' applicable to all class of Creditors

7. Section 7(3) provides that financial creditor along with application shall furnish RoD. Similarly, Section 9(3)(d) provides that operational creditor along with application shall furnish a copy of any record with IU. Further, Regulation 21(4) of the IU Regulations provides that the IU shall communicate the information of default post authentication to the registered users which includes creditors. Though the IU is required to communicate the information of default by issuing a '*record of default*' (ROD), however, no format has been specified in the regulations for ROD to be issued by the IU. The information contained in the ROD is generally complex and contain information that may not be relevant for the purposes of admission of application. Due to the voluminous information contained in the ROD, its scrutiny gets delayed and hence the process of admission.

Proposal

8. To enhance effectiveness and admissibility of the ROD, it is proposed to specify the format containing minimum information which is to be provided in the ROD. IU regulations to include essential and relevant fields to ascertain the existence of default under the Code. The format for ROD would include amount of default, date of default and acknowledgment of default by the debtor. IU may also provide additional information as considered necessary by it.

Issue-III: Information asymmetry amongst creditors about filing of application by one of the several creditors of the Corporate Debtor (CD)

9. Section 7 of the Code provides for filing of application for initiation of corporate insolvency resolution process by financial creditor. Sub-section (3) of the Section 7 of the Code further provides that the financial creditor shall, along with the application furnish record of the default recorded with the IU or such other record or evidence of default as may be specified.

Further, in terms of Rule 4, 6 & 7 of Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 ("AA Rules"), copy of application filed by the financial creditor for initiating insolvency is to be served to the Board. However, AA Rules do not provide for any guidance to the Board about dealing with such applications.

Proposal

10. In order to address information asymmetry among the creditors, the following is proposed:-

- i. Creditors shall file 'information of default' with the IU and obtain ROD, prior to filing of insolvency resolution application under section 7 or 9 of the Code before the AA.
- ii. Application received by IBBI under Rule 4, 6 & 7 of AA Rules, filed by creditors under section 7 & 9 of IBC, will be shared with IU, which in turn will issue notice to the applicant creditor, requiring it to file 'information of default' in the specified format under IU Regulations.
- iii. To enable an Information Utility to issue notice to the applicant creditor, the creditor shall file details of his PAN and e-mail ID along with the application to Adjudicating Authority. Therefore, suitable amendments to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP regulations) may be made to mandate creditors to file such additional information in

terms of powers of Board under clause (c) of sub-section 3 of section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

- iv. The IU will process the ‘information of default’ for the purpose of issuing ROD and inform other creditors of the CD, as per the laid down procedures. This will speed up the admission of application and verification of claims by RP.

Rationale

11. A draft of amendment to the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2022 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is given as *Annexure-A and Annexure-B* respectively. The proposed amendment in regulatory framework seeks to attain the objective of enhancing the effectiveness and acceptability of the record of default issued by an information utility; speed up the process of admission application to initiate corporate insolvency resolution process. The framework will have a positive impact on faster admission of applications for initiation of insolvency resolution process, thereby, increasing the stakeholder confidence in the insolvency process and bring symmetry of information amongst various stakeholders.

Economic Analysis

12. The proposals deals with delay in admission of applications which will help in achieving the objective of the code for resolution of insolvency of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons. This will help in lowering erosion of assets of the corporate debtor resulting in balancing the interests of all the stakeholders.

Strengthening Information Utility

13. A financial information system (FIS), like the Information Utility (IU), addresses a fundamental problem of financial markets: asymmetric information between borrowers and lenders of finance, which may lead to adverse selection, credit rationing, and moral hazard problems. The FISs also encourage competition among producers of finance, thus reducing the cost of finance. In the multi FISs environment, it is important to seamlessly integrate these for better appreciation of credit risk by the financial system without any gap or overlaps, on the one hand, but to also reduce the compliance cost for the regulated entities as repetitive submission of such information under disparate systems is a deadweight loss for the economy and adversely affects the ease of doing business.

14. There are multiple institutions collecting “financial information” and “credit information”. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) was amended in 2016 to provide for a central database to integrate records of “property” registered under various registration systems with the central registry (CERSAI). Further, with a view to enabling the IU to access the existing database of credit information companies (CICs), so that a debt-default may be determined clearly and expeditiously in the resolution cases, RBI had amended the Credit Information Companies Regulations, 2006 on 11th August, 2017 to permit the IU and a Resolution Professional (RP) appointed under IBC to obtain credit information from the CICs by enabling them to become a “specified user”, which is defined to include a bank, a financial institution, CIC or any specified person by RBI. Regulation 26 of IU Regulations, 2017

enable the IU to import information from such registries as may be notified by IBBI. It is expected that the business models and cost structures of IU and CICs permit seamless and cost-efficient flow of information between the two. The Board will prepare a separate discussion paper on the integration of financial information across disparate FISs.

Public Comments

15. The proposals in the preceding paragraphs aim at achieving the objectives of the Code by expediting the admission of applications for initiation of insolvency resolution process. The proposal is in furtherance of the objective of Code, i.e. time bound resolution, maximization of value of the assets and balancing the interest of all stakeholders. This is issued in pursuance to regulation 4 of the Insolvency and Bankruptcy Board of India (Mechanism for Issuing Regulations) Regulations, 2018. The Board accordingly solicits comments on the following points:

- i. Should the Board go for amendment in the IU regulations?
- ii. Should the Board expand the list of documents evidencing the debt or default information in the form C?
- iii. Should the Board remove the “*deemed to be authenticated*” status for the financial creditors which are Banks included in the second schedule of the Reserve Bank of India Act, 1934?
- iv. Any observations on the proposal of filing “*information of default*” by the creditors with the IU for obtaining ROD?
- v. Any observations on IU processing the “*information of default*” for the purpose of issuing ROD in Form-D under schedule of the IU regulations to creditors of the CD?
- vi. Any general observations on the proposed amendment in the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017?
- vii. Any general observations on the proposed amendment in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016?

16. Comments may be submitted electronically by 29th April 2022. For providing comments, please follow the process as under:-

- i. Visit IBBI website, www.ibbi.gov.in;
- ii. Select ‘Public Comments’; and then select – ‘Discussion Paper on “*Enhancing effectiveness of Information Utility*”’;
- iii. Provide your Name, and Email ID;
- iv. Select the stakeholder category, namely, -
 - a. Corporate Debtor;
 - b. Personal Guarantor to a Corporate Debtor;
 - c. Proprietorship firms;
 - d. Partnership firms;
 - e. Creditor to a Corporate Debtor;
 - f. Insolvency Professional;
 - g. Insolvency Professional Agency;
 - h. Insolvency Professional Entity;
 - i. Academics;
 - j. Investor; or
 - k. Others.

- v. Select the kind of comments you wish to make, namely,
 - a. General Comments; or
 - b. Specific Comments.
- vi. If you have selected 'General Comments', please select one of the following options:
 - a. Inconsistency, if any, between the provisions within the regulations (intra regulations);
 - b. Inconsistency, if any, between the provisions in different regulations (inter regulations);
 - c. Inconsistency, if any, between the provisions in the regulations with those in the rules;
 - d. Inconsistency, if any, between the provisions in the regulations with those in the Code;
 - e. Inconsistency, if any, between the provisions in the regulations with those in any other law;
 - f. Any difficulty in implementation of any of the provisions in the regulations; and
 - g. Any provision that should have been provided in the regulations, but has not been provided; or
 - h. Any provision that has been provided in the regulations but should not have been provided.

And then write comments under the selected option.

- vii. If you have selected 'Specific Comments', please select para/regulation number and then sub-para/sub-regulation number and write comments under the selected para/sub-para or regulation/sub-regulation number.
- viii. You can make comments on more than one para/sub-para or regulation / sub-regulation number, by clicking on **More Comments** and repeating the process outlined above from point 16(v) onwards.
- ix. Click 'Submit', if you have no more comments to make.

**THE GAZETTE OF INDIA
EXTRAORDINARY
PART III - Section 4
PUBLISHED BY AUTHORITY
New Delhi, Day___, Date__**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION**

New Delhi, Date_____

Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2022

No. IBBI/2022-23/GN/REG/___— In exercise of the powers conferred by section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, namely:-

1. (1) These Regulations may be called the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2022.

(2) These Regulations shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, (hereinafter referred to as “the principal regulations”), in regulation 2, in sub-regulation (1), after clause (1), following clause shall be inserted namely :-

“(1a) “Record of Default” means the status of authentication of default issued in Form D of the Schedule.”

3. In the principal regulations, in regulation 20—

(i) after sub-regulation (1), the following sub-regulation shall be inserted, namely: -

“(1A) The information of default in sub-regulation (1) shall be filed by the user who is a creditor with the information utility before filing of application to initiate corporate insolvency resolution process under section 7 or 9 of the Code and the information utility shall process the information for the purpose of issuing record of default in accordance with Regulation 21 of these regulations.”

(ii) in sub-regulation (2), after the words and numbers “sub-regulation (1)” and before the words “the information utility shall”, the words and numbers “sub-regulation (1A), as the case may be” shall be inserted.

4. In the principal regulations, in regulation 21—
- i. the heading of regulation, “information of default” shall be substituted, by “Authentication of default”;
 - ii. for sub-regulation (3) and (4), the following sub-regulations shall be substituted, namely: -

“(3) On completion of the process under sub-regulation (2), the information utility shall record the status of authentication of information of default as indicated in the Table 1 below:

TABLE-1

<i>Sl. No.</i>	<i>Response of the Debtor</i>	<i>Status of Authentication</i>	<i>Colour of the Status</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
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

Provided that in case of financial creditors which are Banks included in the second schedule of the Reserve Bank of India Act, 1934, the information utilities will record the status of authentication of information of default as indicated in the Table 2 below:

TABLE-2

<i>Sl. No.</i>	<i>Response of the debtor</i>	<i>Status of authentication</i>	<i>Colour of the status</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
1	(a) Information on debt and default as received from creditors along with relevant documents of proof, or (b) Debtor does not respond even after three reminders	Authenticated	Green
2	Debtor disputes and establishes the information of default being less than threshold level	Disputed	Red

- (4) After recording the status of information of default under sub-regulation (3), the information utility shall communicate the status of authentication in physical or electronic form of the relevant colour, as indicated in column (4) of the Table 1 & 2, by issuing a record of default as per Form D under the Schedule of these regulations, to the registered users who are-

- a) creditors of the debtor who has defaulted;
 - b) parties and sureties, if any, to the debt in respect of which the information of default has been received.”
5. In the principal regulations, in the Schedule, in Form C, in Para 87 under the heading “Debt” after clause e, the following clause shall be inserted, namely:-
- “f. Records of acknowledgment of debt by the debtor.”
6. In the principal regulations, in the Schedule, after Form C, the following Form shall be inserted, namely:-

FORM D*
RECORD OF DEFAULT

(Issued By Information Utility under sub regulation (4) of Regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This record of default is issued to the creditor _____ in respect of the default of debt as per details given below-

- a. Name of Corporate Debtor:**
- b. Unique Debt Identifier Number:**
- c. Registered Address:**
- d. Total debt amount:**
- e. Default amount remaining:**
- f. Date of default:**
- g. Status of Authentication of default:**

Filing of Default (Submission ID No.)	Submitted on (DD/MM/YY)	Status of Authentication (Authenticated/Disputed/Deemed to be authenticated) (Colour Code: Green or yellow or Red, as the case may be)	Authentication completed on (DD/MM/YY)

National E-Governance Services Ltd (NeSL) is authorized to issue this Record of Default (RoD) and has accordingly affixed its digital signature, as per the provisions of the Insolvency & Bankruptcy Code, 2016 read with IBBI (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services & Other Services under IBBI (IU) Regulations, 2017 & Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

Date:

Digital Signature of the Authorized Signatory

Note:

1. Technical details may be inserted by the respective Information Utility
2. List of supportive annexures may be enclosed by the respective Information Utility
3. Other details/documents, if any, may be enclosed by the Information Utility

**(Note: Information may be issued in this Form with necessary modifications as the information utility deems fit)*

Dr. Ravi Mital
Chairperson
[ADVT.- _____]

Note: The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 were published *vide* notification No. IBBI/2016-17/GN/REG009 dated 31st March, 2017 in the Gazette of India, Extraordinary, Part III, Section 4, No. 129 on 31st March, 2017 and were last amended by the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2021 published *vide* notification No. IBBI/2021-22/GN/REG072, dated the 13th April, 2021 in the Gazette of India, Extraordinary, Part III, Section 4, No. 175 on 13th April, 2021.

THE GAZETTE OF INDIA
EXTRAORDINARY
PART III - Section 4
PUBLISHED BY AUTHORITY
New Delhi, Day___, Date__

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
NOTIFICATION

New Delhi, Date_____

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022

No. IBBI/2022-23/GN/REG/___—In exercise of the powers conferred by clause (c) of sub-section (3) of section 7, read with clause (t) of subsection (1) of section 196 and section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely: -

1. (1) These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as “the principal regulations”), after regulation 2A, the following regulation shall be inserted namely :-

“Submission of information alongwith application.

2B. (1) For the purposes of clause (c) of sub-section (3) of section 7 of the Code read with sub-rule (1) of rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the financial creditor shall, along with the application furnish details of his—

- (a) Permanent Account number; and
- (b) Email-ID.

(2) For the purposes of sub-rule (1) of rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the operational creditor shall, along with the application furnish details of his—

- (a) Permanent Account number; and
- (b) Email-ID.”

Dr. Ravi Mital
Chairperson
[ADVT.- _____]

Note : The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 were published vide notification No. IBBI/2016-17/GN/REG004, dated 30th November, 2016 in the Gazette of India, Extraordinary, Part III, Section 4, No. 432 on 30th November, 2016 and were last amended by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2022 published vide notification No. IBBI/2021-22/GN/REG/080, dated the 09th February, 2022 in the Gazette of India, Extraordinary, Part III, Section 4, No. 82 on 09th February, 2022.