

# ADDRESSING CHALLENGES OF INFORMATION ASYMMETRY IN FINANCIAL SECTOR USING INFORMATION UTILITY

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## I INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 has brought about a paradigm shift in the insolvency regime in India. The introduction of the law allowed India to improve its rankings from 142 in 2014 to 63 in 2021<sup>1</sup> on the Ease of Doing Business Rankings Report annually published by the World Bank. The tectonic changes brought about by the law in terms of introduction of Insolvency Professionals as special officers, a single regulator in terms of the Insolvency and Bankruptcy Board of India, a unified adjudicatory mechanism in terms of National Company Law Tribunal and Information Utility as financial information equaliser have brought about this meteoric change in the insolvency regime in India. In the current paper the researcher has made an attempt to analyse the working of Information Utility as the single most important factor resulting in information symmetry in the financial sector within the corporate economy. In this paper the researcher will analyse the structure and functioning of Information Utility, importance of Information Utility, the manner in which helps improve financial information symmetry, and the challenges faced by it going forward.

### A *The Concept of Information Utility*

Information Utilities<sup>2</sup> are a new concept enunciated in the Insolvency and Bankruptcy Code, 2016(hereinafter referred to as the Code). It is a one of its kind

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<sup>1</sup> Government of India, 'Ease of Doing Business- Scaling New Heights', 5<sup>th</sup> November, 2021, India ranks Press Information Bureau of India, available at <https://pib.gov.in/FactsheetDetails.aspx?Id=148568>

<sup>2</sup>T.K. Vishwanathan, *Banking Legislative Reforms Committee Report*, Report by Banking Law Reforms Commission, 2015, available at: [https://ibbi.gov.in/BLRCReportVol1\\_04112015.pdf](https://ibbi.gov.in/BLRCReportVol1_04112015.pdf)

concept creating a repository of financial information specifically pertaining to credit facilities being extended and sought by the creditors and debtors respectively.<sup>3</sup> An Information Utility as envisioned and executed under the Code is one of a kind of an institution having no similarities anywhere in the global financial sector.<sup>4</sup> The Banking Legislative Reforms Commission Report<sup>5</sup> while introducing the concept elucidated the rationale in the following words:

*“Before the Insolvency Resolution Process (hereinafter referred to as **IRP**) can commence, all parties need an accurate and undisputed set of facts about existing credit, collateral that has been pledged, etc. Under the present arrangements, considerable time can be lost before all parties obtain this information. Disputes about these facts can take up years to resolve in court. The objective of the Code that an IRP be completed in no more than 180 days can be lost owing to these problems. Hence, the Committee envisions a competitive industry of information utilities who hold an array of financial information about all firms at all times. When the IRP commences, within less than a day, undisputed and complete*

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<sup>3</sup>Information Utility is actually giving a face to the concept envisioned way back in 1970's. Sackman H, Boehm BW, *Planning community information utilities*, (AFIPS Press 1972), Montvale and Sackman, *The information utility and social choice*, (AFIPS Press 1970), It is pertinent to note that in 1970's some futuristic scientists at Rand Corporation in collaboration with scientists at Stanford University proposed creation on a nationwide network of information where people could get access to information without going through the bureaucratic process of the state. The idea behind it was to push for information symmetry according to all stakeholders equal opportunity to access information.

<sup>4</sup> Ibd, However, it has been defined with respect to other sectors as, “the information utility was defined by its originators “as mass communications systems in which the consumer interacts directly with a central computer and its associated information files from a remote terminal at his home, office, or school – in his natural environment – in a manner such that he received the information at his terminal almost immediately after requesting it.” The information utility also includes contributing physical elements such as “television displays, communications lines, computers, data stores, and support facilities”. Chen, R., Kraemer, K. & Sharma P, ‘Google: The World’s First Information Utility?’ 2009 (1) *Business Information System Engineering* 53–61. <https://doi.org/10.1007/s12599-008-0011-6>.

<sup>5</sup> *Supra* note i, The Banking Law Commission Report was commissioned under the Chairmanship of Mr. T.K. Vishwanathan, by Government of India. The report suggested sweeping changes to the insolvency regime of India which resulted in introduction of the Insolvency and Bankruptcy Code, 2016. An analysis and overview of the Insolvency and Bankruptcy Code, 2016 can be found at Ankeeta Gupta, ‘Insolvency and Bankruptcy Code, 2016: A paradigm shift within Insolvency Laws in India’, (2018) 36(2) *Copenhagen Journal of Asian Studies* 75.

*information would become available to all persons involved in the IRP and thus address this source of delay.”*

It is an established fact that the success of corporate insolvency resolution proceedings critically depends on availability of complete, correct, and upto-date information about the debtor. This information may not be available with every stakeholder in equal measure. The non-availability of the information may impede resolution and compromise the objective of value maximisation, while asymmetry of information may contribute to uneven sharing of the values. To address these issues, the Code envisages Information Utilities as repositories of financial information for expeditious completion of various processes under the Code.

Availability of adequate and reliable financial information on the prospective borrower is vital for taking decisions in relation to sanctioning of credit. In the case of lending by banks, the basis for the credit decision is the information furnished by borrowers; for a corporate customer, availability of audited balance sheet, income and expenditure and other audited financial statements bestow certain amount of authenticity to the information furnished, which facilitate an objective and commercial decision with regard to sanctioning of credit facilities. Thus an institution of the nature of Information Utility is most suited for creating a transparent, efficient system of collecting, storing, collating and disseminating of credit data suitable for the purposes of the creditors as well as debtors.

As pointed out earlier that Information Utility is one of its kind institution to have been designed and executed moving beyond the conceptualisation table which has found no parallel in the world of financial services. In India there is only one registered Information Utility and functions under the name and style of National E-Governance Systems Limited (hereinafter referred to as **NeSL**). NeSL being the first Information Utility has done a commendable job of implementing the BLRC vision in firmly establishing the Information Utility as the flagship organisation which has paved the path for others to follow. NeSL has faced various legislative and technical challenges, which have been addressed with tremendous zeal and

dedication. Yet, it is pertinent to point out here that NeSL is the actual embodiment of the concept of Information Utilities which thus mandates that the general laws, rules and regulations must be read in conjunction with the bye-laws of NeSL and the analysis of Information Utilities concept be conducted in tandem with the factual description of NeSL.

In the forgoing sections the organisation structure, process, functioning, obligations of the Information Utility will be discussed in detail as those enumerated within the Insolvency and Bankruptcy Code, 2016, Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (hereinafter referred to as “IU regulations”), and the bye-laws drafted by NeSL for the purpose.

### B *Why Information Utilities*

The philosophy behind Information Utilities is to provide a reliable source of authentic and verifiable financial data pertaining to both the debtors and the creditors. All the participants within the insolvency process as laid down by the Code have been assigned specific roles which cannot be fulfilled unless there is parity of information amongst them all. This information essentially pertains to the credit worthiness of the debtors as well the ledger account of the debtor in terms of the debt undertaken by him. Access to this information by the stakeholders essentially allows them to take informed decisions which have a bearing not only on continuation or liquidation of the company but also for restructuring of the company.<sup>6</sup> It has been pointed out at various fora that implementation of the Information Utilities will help expedite CIRP process and help preserve the time value of funds. It has been found from various studies that information asymmetry within banking sector and consequent financial matters

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<sup>6</sup> KVR Murthy, *Working Group Report on Information Utilities*, Report by the Working Group, Ministry of Corporate Affairs, 2017 available at <https://www.ibbi.gov.in/wg-04report.pdf>

has resulted in lopsided decision making over the past years.<sup>7</sup> Financial Information in the hands of few to the prejudice of others has often resulted in financial losses which were attributed to business or commercial prudence but nevertheless eroded the faith of the stakeholders in the entire credit system. It is pertinent to note that an effective Information Utility would in-effect reduce the informational gaps and allow decentralised flow of data amongst the stakeholders, thereby promoting financial information symmetry.

It has been suggested that the sustained use of Information Utilities will lead to the creation of financial database of all commercial entities allowing further transparency in extending and availing credit to and by the enterprises. Further availability of data in such transparent mechanism will also help develop a greater financial discipline amongst both the lenders and the borrowers, which in the light of various scams involving money laundering and financial irregularities is the need of the hour.

### C Importance of Information Symmetry<sup>8</sup>

Over the years with the increase in industrialisation and development of credit markets, the credit ecosystem has witnessed a growing asymmetry in the financial information available in the hands of the stakeholders. Even though debt contracts are created establishing the rights and obligations of the parties the underlying information supporting the basis of the debt obligations has come to resemble zero sum games<sup>9</sup> played between the creditors and the debtor each trying to outsmart and out manoeuvre the other in seeking the maximum benefit for itself from the

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<sup>7</sup> Mahdi Salehi, Vahab Rostami, and Hamid Hesari, 'The Role of Information Asymmetry in Financial Methods' (2014) 12(1) *Managing Global Transitions* 43-54 <https://core.ac.uk/download/pdf/25688215.pdf>

<sup>8</sup> Global Financial Development Report 2014: Financial Inclusion, World Bank.

<sup>9</sup> J. F. Nash, 'Non-cooperative Games' (1951) 54 *Annals of Mathematics* 286-295; Von Neumann J, Morgenstern O, *Theory of Games and Economic Behaviour*, (Princeton University Press 1944)

agreement so executed.<sup>10</sup> The lack of information symmetry amongst the stakeholders while taking decisions has of late been understood as a cause of disarray within the credit ecosystem resulting in unnecessary delays in grant of credit facilities, realisation of debts and increased disputes and conflicts amongst the stakeholders.

Information Asymmetry manifests itself in varied forms viz<sup>11</sup>: adverse selection, moral hazards and monitoring costs resulting in skewed and imbalanced credit norms. The normativity within the credit economy is fact driven allowing the stakeholders a semblance of certainty w.r.t. the terms and conditions which guide the debt agreements. Information asymmetry jeopardises this normativity leading to significant chaos impairing economic growth and development in the long-run. There has been significant research to indicate that the deeper the credit information index, deeper is the credit penetration<sup>12</sup> (support to industrial growth and development), thereby prompting us to inculcate the mechanisms and institutions to promote information symmetry within the credit ecosystems.

Information sharing helps the creditors to not only screen debt seekers but also helps in monitoring credit risks with reduced cost of intermediation, facilitating transparent, efficient and sustainable lending with certainty in terms of realisation of debts.<sup>13</sup> Thus availability of reliable information with real time efficiency is of paramount importance which can be achieved by establishing such repositories of financial data with authenticated and verified data allowing all stakeholders equal access to financial information. It is the case of the researcher that Information Utilities form the fulcrum ensuring sustained credit realisation further

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<sup>10</sup> Eatwell, J. M, Milgate and P. Newman(eds), *Allocation, Information and Markets*, (The New Palgarve, London, Macmillan 1989);

<sup>11</sup> Ricardo N. Bebczuk, *Asymmetric Information in Financial Markets: Introduction and Applications*, (Cambridge University Press 2003)

<sup>12</sup> Ease of Doing Business Report, World Bank (2012)

<sup>13</sup> Giovanni Dell' Ariccia, *Asymmetric Information and Market Structure of the Banking Industry*, IMF Working Paper, WP/98/92, June 1998, available at <https://www.imf.org/external/pubs/ft/wp/wp9892.pdf>

accentuating credit delivery within the credit economy of India on account of the collection, collation and dissemination of real time financial data.

#### D Establishment of Information Utility

Information Utility has been defined to mean an institution registered as such under section 210 of the Code<sup>14</sup> as defined in section 2(21) of the Code. Section 210 lays down the over-arching process of registration of an entity as an Information Utility with the IU Regulations detailing specifics as discussed below. NeSL the only Information Utility in India is headed by Mr. Debajyoti Ray Chaudhari, Managing Director and CEO.<sup>15</sup>

##### 1 Shareholding Pattern<sup>16</sup>

The law mandates that an Information Utility can only be a Public Company with a minimum net-worth<sup>17</sup> of INR 50 crore and shareholding of each shareholder<sup>18</sup> capped at 10% provided a declaration of fit and proper person is accompanied with request for shareholding exceeding 5%<sup>19</sup>. Thus, NeSL is a Government Company with 51% shareholding from government or government owned institutions with requisite paid up share capital.<sup>20</sup> Each of the shareholders have kept their shareholding under 10% except for Bank of Baroda which has 14% stake on account of merger of Vijaya and Dena Bank<sup>21</sup>, in view of the legislative capping

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<sup>14</sup> Insolvency and Bankruptcy Code, 2016 (India) S 2(21): (21) "information utility" means a person who is registered with the Board as an information utility under section 210;

Insolvency and Bankruptcy Code, 2016 (India) Section 210: Registration of information utility.

<sup>15</sup> The National E-Governance Services Limited, details about the board of NeSL available at <https://nesl.co.in/the-board/>

<sup>16</sup> See Table T1: Shareholding Pattern of NeSL

<sup>17</sup> Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 r 3.

<sup>18</sup> Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 ch III r 8 Shareholding includes individual, Person acting in concert, directly or indirectly in the total voting or equity stake.

<sup>19</sup> Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 r 3(g).

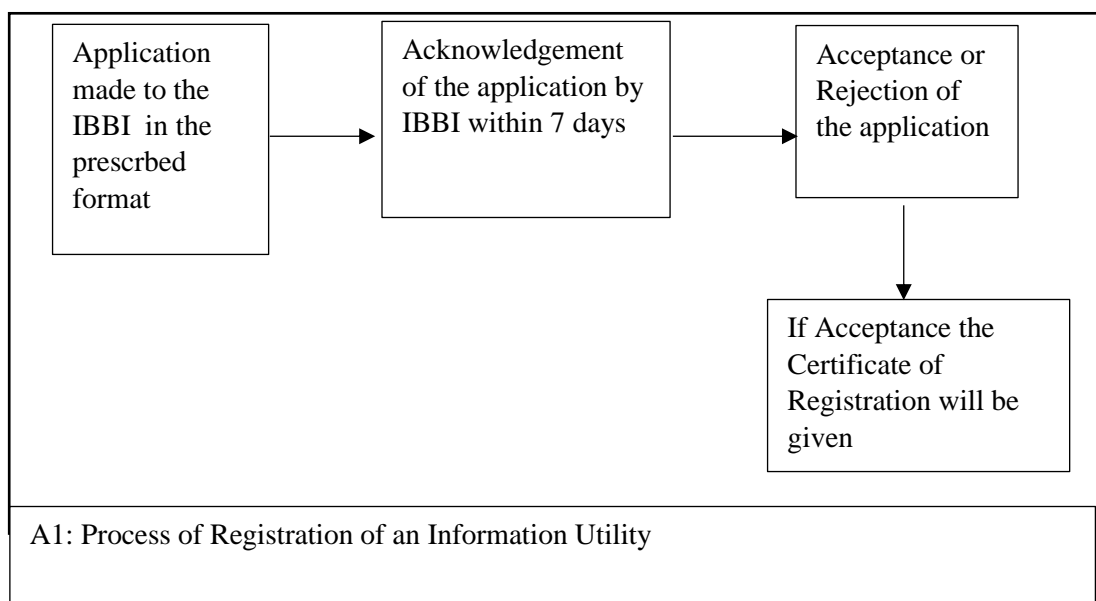
<sup>20</sup> The compliance report of 2019-20 submitted by NeSL to IBBI available at <https://nesl.co.in/wp-content/uploads/2020/12/Annual-Compliance-Certificate-2019-20.pdf> ; As per Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 ch III r 8

<sup>21</sup> Press Trust of India, *Bank of Baroda concludes three-way amalgamation with Dena, Vijaya banks*, 20<sup>th</sup> December, 2020. <https://www.business-standard.com/article/pti-stories/bank-of-baroda-completes-integration-of-erstwhile-dena-vijaya-banks-with-itself->

mandated in the 2017 regulations<sup>22</sup>. It is noteworthy that all the shareholders in the Information Utility are either Banks, Financial Institutions or Insurance companies. There is requirement of a governing board with a managing director, shareholder director and independent directors. This requirement is an extension of the requirement of the board composition in the Companies Act, 2016.<sup>23</sup>

## 2 Registration Process

It is pertinent to note that section 210 provides for the general guidelines w.r.t process to be followed while registering an information utility which indicates that an application be made to the regulator in accordance with rules laid down in IU Regulations, 2017 which must be acknowledged by Insolvency and Bankruptcy Board of India (hereinafter referred to as IBBI) within 7 days. The process is as depicted in the diagram A.1



[120122000502\\_1.html#:~:text=In%20a%20first%20three%2Dway,Baroda%20from%20April%201%2C%202019.&text=%22We%20have%20successfully%20completed%20integration,faced%20under%20the%20COVID%20environment.](#) Accessed on 10<sup>th</sup> May, 2021

<sup>22</sup> Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 ch III r 8

<sup>23</sup> Companies Act, 2013(India) s149,



Any interested person or entity is allowed to make an application<sup>24</sup> for registration with the IBBI requesting for registration as an information utility along with a prescribed fee of INR 5,00,000<sup>25</sup>. The application requires various particulars to be disclosed over and above the business plans, shareholding pattern, capital, exit management plan etc., the technical standards viz: the technical sturdiness of the organisation in terms of technology to be employed, data security, facilities for housing data centre and method in place for grievance Redressal.

This information according to Rule 5<sup>26</sup> will help the Board decide whether or not the registration shall be granted to the applicant. In case of rejection the Board is mandated to inform the applicant within a period of 45 days from the date of receipt of the application. It has further been highlighted that the Board may allow the applicant to either clarify or rectify any of the deficiencies in the application whereby the registration could still be granted. However, in case any such clarification is sought, it will be excluded from the rejection time frame provided by the rules. In case no such information is provided the application will be deemed to have been accepted.

Once the application is accepted and the registration has been granted the Information Utility applicant will be required to make a payment of INR 50 lakh as annual charges. After registration is complete the Information Utility is duty bound to follow the rules and regulations as identified within the Code as well as the IU rules. It is further required to be noted that IBBI will have to be kept informed of any material changes taking place within the registered Information Utility as it may have significant repercussions on the continuance of registration. Having discussed the features of the Information Utilities the next segment will discuss the process followed by Information Utility.

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<sup>24</sup> Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 r 4 as prescribed in Form A.

<sup>25</sup> Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 r 4: Non-refundable fee of INR 5 lakh

<sup>26</sup> Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017

### *3 Process followed by Information Utility*

The role of Information Utility is to collect, collate and disseminate information amongst the stakeholders with a view to provide transparency within the credit ecosystem. Since it is a new set-up the operational modalities as listed in the rules and regulations can be understood in the following categorisation:

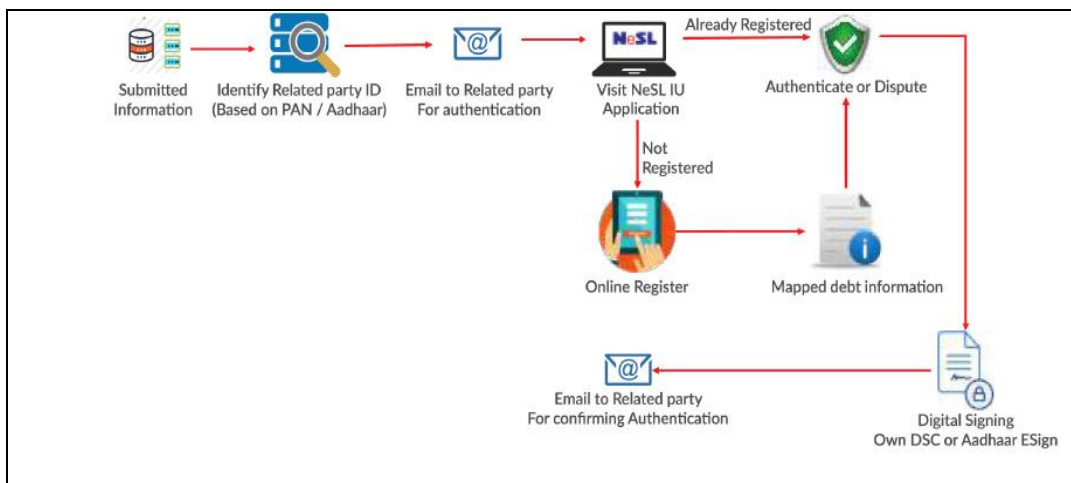
1. Registration of Users
2. Creation of Unique Identifier Method
3. Submission of Information
4. Verification of Information
5. Data Integrity
6. Consent framework for sharing information

It has been further provided within the IU Rules that the Information Utility must abide by a set of technical standards as highlighted within the Code by Regulation 13. These regulations may pertain to the Application Programming Interface, terms of service, registration of users along with method for unique identification for each record and each user, submission, verification and authentication of information and stakeholders, data integrity and security including systemic security and consent framework for providing access to information to third parties. It is pertinent to note here that the rules allow every entity desirous of becoming an Information Utility to frame its own technical methods and standards while remaining under the over-arching rules established under the Code and the IU Regulations.

### *4 The Underlying Concept Of Working of Information Utility*

NeSL has on its website explained working of Information Utility as an institution which stores verified and authentic financial data from the stakeholders. The first step is registration of users on the IU portal using electronic authentication in the form of digital signatures/adhaar authentication etc. which creates a unique id and a system account for storage of financial information. Once registration is

complete the stakeholder can at anytime submit any financial information on the portal through the unique Id and account so created. The financial information so submitted will then authenticated by the IU by sending confirmatory emails to the concerned stakeholders. Once the concerned stakeholders confirm the information so submitted is classified as verified and authenticated. Any information that is not verified by the authenticating party is given a deemed authenticated certification after three unanswered reminders to the counterparty.<sup>27</sup> The process has been pictographically shown in A.2 and each of the stages have been discussed below in detail.



A2: Functioning of an Information Utility

### 5 Registration of Users

NeSL mandates that each user will register with the Information Utility and pay the requisite fee.<sup>28</sup> Thereafter the registered user will submit requisite identification documents in order to ensure that there is no duplication of registration. For this purpose, it is pertinent to note that that once the system generates a clearance report about the user seeking registration, a unique

<sup>27</sup>Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 r 8, NeSL Bye-laws available at <https://nesl.co.in/wp-content/uploads/2020/11/Amended-NeSL-Bye-laws-wef-23-11-2020.pdf>

<sup>28</sup> NeSL Bye-laws r 4, available at <https://nesl.co.in/wp-content/uploads/2020/11/Amended-NeSL-Bye-laws-wef-23-11-2020.pdf>

identification number is generated. For this purpose the de-duplication exercise will not be limited to NeSL alone but all the Information Utilities that exist in India, thus inter-connected IU services have been envisioned.

Once the registration and unique identity generation have been completed an authorised representative a unique identifier<sup>29</sup> of the registered user is enabled to carry out the functions of supplying and examining information. Since the process is completely electronic digital signatures, adhaar based e-sign ins are envisaged to help evaluate and authenticate the financial data so provided. In this process the email id and mobile phone verification of the authorised representative shall also be used thereby allowing for direct connect, contact and accountability. There may also be server based credibility checks since it is used for data storage and identification. There shall be continuous monitoring of financial data and information shared by the user in order to ensure authenticity of the process.

#### *6 Supply and Verification of Information*

The bye-laws state that the financial information shall be supplied by the registered user in the prescribed format<sup>30</sup> i.e. form C which would be in pdf version, scanned pages or others as specified by the information utility. The debt information is to be accompanied by security details as well as third party connections to the debt in question. The documents and information on default can be submitted at any time by the registered user provided it has the unique identifier stamping and is supported by the digital signature already registered and verified by the IU.

NeSL has in its rules stated that the financial information can be submitted in multiple modes of covering batch upload of multiple records (e.g. manual upload of file or automated server to server file transfer using Simple Object Access Protocol based API service or push from creditor's server to a designated Secure

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<sup>29</sup> NeSL Bye-laws r 5, available at <https://nesl.co.in/wp-content/uploads/2020/11/Amended-NeSL-Bye-laws-wef-23-11-2020.pdf>

<sup>30</sup> NeSL Bye-laws r 6, available at <https://nesl.co.in/wp-content/uploads/2020/11/Amended-NeSL-Bye-laws-wef-23-11-2020.pdf>

Shell File Transfer Protocol server) or even screen based entry of one record at a time.<sup>31</sup>

Once the information has been supplied, NeSL mandates acknowledgements of the receipt of such data. It also envisions that a default may be intimated by the creditor in the same manner as prescribed above and NeSL may make use of data stored with the Ministry of Corporate Affairs<sup>32</sup> in order to verify the default claimed by the creditor apart from verification from the debtors themselves.

Once the information pertaining to default by the debtor has been received the Information Utility communicates the status of authentication to the registered users, i.e.:

- (a) creditors of the debtor who has defaulted, and
- (b) parties and sureties, if any, to the debt in respect of which the information of default has been received.

After receiving the financial information, IU proceeds to verification stage by sending the information shared by the user to the other counterparties. The other counter-parties may within the stipulated time either verify, dispute or maintain silence over the information shared with them. If the debtor responds agreeing to the debt, it stands verified and in case of any default may be used as a valid record of evidence before the adjudicating authority. However, in case the debtor responds in the negative the Information Utility will flag it as a problematic case and colour code it red as depicted below:

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<sup>31</sup> NeSL Bye-laws r 6, available at <https://nesl.co.in/wp-content/uploads/2020/11/Amended-NeSL-Bye-laws-wef-23-11-2020.pdf>

<sup>32</sup> Ministry of Corporate Affairs collects data from companies across the India on its portal MCA services <https://www.mca.gov.in/mcafoportal/viewCompanyMasterData.do>. This data can be used to verify the information supplied by the corporate debtors to the Information Utilities.

| <i>Table Sl. No.</i> | <i>Response of the Debtor</i>                      | <i>Status of Authentication</i> | <i>Colour of the Sta</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                   |

A3: Authentication process followed by NeSL

It is further pointed out that NeSL plays no role in case a dispute between the parties w.r.t debt occurs in terms of settlement of the issue, and the parties will have to settle the dispute separately. It is further indicated that in case of silence from the verifying parties NeSL will have no power to compel verification by the counter party. However, NeSL has the power to categorise cases either as verified, disputed or non-responsive allowing for future amendments to the information so submitted. Having discussed the modicum of data registration and verification, the next section focusses on understanding maintenance of data integrity.

### *7 Data Integrity*

As the name suggests an information utility is a repository of financial information and any compromise with the integrity of the data can jeopardise not only the future of the corporate debtor but also the integrity of the entire the Information Utility, it is thus imperative that an immutable and tamper proof system with robust data recovery mechanism that can neither be hacked nor destroyed nor result in incorrect verification of data be established. There is thus a need for robust capacity planning policy as envisioned within the rules laid down by the IU regulations. As per the NeSL bye-laws data integrity would include security of the system, security of information and storage of information.

It is pertinent to note that NeSL is mindful of the threats that may arise in case of collecting, storing and using financial data in electronic form and thus proposes that there shall be appropriate mechanisms in place to ensure that breach of storage facilities and servers is avoided by using adequate technological devices etc. It categorically highlights that systems in place would be sufficiently advanced so as to be able store, collate and disseminate the financial data without fear of any compromise or misuse. For this purpose, the system envisioned is to have multi-tier security features with access restricted to only authorised personnel. In order to fight the vulnerabilities of being internet run, sever based, electronic digital data manager secure coding standards will be put in place to ensure highest level security of the financial data in possession of NeSL.

As part of further protection, secure data access shall be enabled through *sftp*<sup>33</sup> for bulk transfer and https for browser based access and network security shall be enforced using Firewall, Intrusion Detection/ Protection System, Antibot, Antivirus/ Anti malware/ Anti-Spam etc. NeSL aims to use operational standards such as Uptime Institute's Tier standards alongwith ISO 27001 certificate adoption. In order to ensure sovereign rights over the data including intellectual property etc. all the financial data so collected by NeSL would be stored in Indian Servers having exclusive jurisdiction of Indian regulators and authorities. The NeSL also seems to have put in place the Disaster Recovery Business Continuity Plan to ensure recovery and protection of data in case of unauthorised access. It is thus clear that the information utility has been developed to be a technologically sound and secure database centre, with importance being accorded to sovereignty and security of financial data.

### E Functions of the Information Utility

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<sup>33</sup> Secure File Transfer Protocol: A secure method using encryption and cryptography used for transferring bulk files over the internet. The system allows access only via server authentication thus securing content from unauthorised and middlemen based attacks.

As discussed above the role of Information Utility is to function as a depository of financial information for the benefit of the credit economy. In this regard the Information Utility's function have been defined as core functions and other or ancillary functions required to be carried out for the purposes of the helping or aiding the core functions.<sup>34</sup>

As per the Code the core functions that the Information Utility is supposed to perform<sup>35</sup> have been identified in section 2(9). The core functions include:

1. accepting electronic submission of financial information in such form and manner as may be specified;
2. safe and accurate recording of financial information;
3. authenticating and verifying the financial information submitted by a person; and
4. providing access to information stored with the information utility to persons as may be specified;

In the same narrative it will be worthwhile to analyse the definition of financial information as defined under section 2(13) of the Code. The provision lists the following as financial information for the purposes of the Code. These have been further clarified by the IBBI in its information brochure<sup>36</sup> w.r.t Information Utilities as follows:

- (a) records of the debt of a person;
- (b) records of liabilities when a person is solvent;
- (c) records of assets of a person over which security interest has been created;
- (d) records, if any, of instances of default by a person against any debt;
- (e) records of the balance sheet and cash-flow statements of a person, and
- (f) such other information as may be specified

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<sup>34</sup> Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 r 17

<sup>35</sup> Insolvency and Bankruptcy Code, 2016 (India) s 213; Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 r 17.

<sup>36</sup> *Information Utilities: A Key Pillar of Insolvency Proceedings*, Information Brochure, 30<sup>th</sup> November, 2020, IBBI, <https://www.ibbi.gov.in/uploads/publication/ee64e0a0330c81c11c0ab538b5e4b946.pdf>



It can thus be safely stated that the law envisions the financial information of the nature of debt of an entity in a manner that permits evaluation of debt payments a comparative assessment of the extent of defaults and at the same time ensures that no other information is either sought or supplied. Further, in the landmark judgment of *Swiss Ribbons*<sup>37</sup> the Supreme Court of India clarified that the information stored with the Information Utility is an evidence of default by the corporate debtor and the judicial authorities are empowered to rely on it as part of evidence. With the functions listed above the Information Utility has also been mandated with observing certain obligations as discussed in the next segment.

#### F *Obligations of an Information Utility*

As per the law the information utility is obligated to set up a viable infrastructure in order to be able to perform the functions that they are required to perform. The Code<sup>38</sup> has broadly highlighted the obligations to include establishment of an inter-operable, reliable infrastructure meeting requisite technical qualifications, wherein financial information will be stored supplied by people obligated as well as desirous of supplying financial information. There will also be a mechanism whereby the such financial information will be supplied to the such persons desirous of accessing it as such according to the rules laid down by the law. The Information Utility will also provide statistical information of the credit and debt status to the Board as per the requirements. As per the bye-laws created by NeSL the Information Utility will have duties in addition to those mentioned above<sup>39</sup>.

The Information Utility is duty bound to work as a custodian of the data so shared with it using reasonable skill, care and diligence devoid of any discrimination in provisioning of services. The data collected by the IU is consent based and thus it must ensure that the rights of the stakeholders are protected. The IU is also obligated to ensure that the computer systems are safe and secure against data breach, destruction, manipulation, or misuse and at the same time provide for

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<sup>37</sup> *Swiss Ribbons v. Union of India* (2019) 4 S.C.C. 17

<sup>38</sup> Insolvency and Bankruptcy Code, 2016(India) Section 214.

<sup>39</sup> NeSL Bye-Laws r 16.

systematic methods of information flows. The IU will also ensure that they will not outsource services, engage in commercial dissemination of financial data. The IUs will also have to set up systems allowing for inter-IU transfers. An analysis of the obligation imposed upon the Information Utilities indicates imposition of a strong ethical principles via rules and regulations, ensuring that at no stage on account of any loophole the rights of the stakeholders be jeopardised on account loss or misuse of financial information. This in turn indicates that the vision with IU was commissioned is achievable and that symmetry in financial information within the corporate economy is not a distant dream.

## II ANALYSIS OF WORKING OF NATIONAL E-GOVERNANCE SERVICES LIMITED

NeSL, the first Information Utility of India incorporated in the year 2017 has in a short span of 4-5 years registered impressive numbers. This sustained growth is indicative of positive implications for the credit economy and has far exceeded the expectations in terms of value addition to the insolvency process under the auspices of IBC. Given below are some observations w.r.t functioning of NeSL: As per the compliance report<sup>40</sup> submitted by the NeSL to IBBI NeSL has 4 promoters i.e. ICICI Bank, State Bank of India, Canara Bank, and Union Bank of India and the shareholding pattern includes 16 institutions, 12 out of which are financial creditors as depicted below in Table T.1. It is pertinent to note that having the support of financial creditors is of paramount importance for the sustenance of the Information Utility, as most authentic and speedy data can be provided by these institutions in the context of the debt details by corporate debtors. The active participation by financial creditors further promotes trust in the institution of Information Utility amongst the stakeholders, as financial creditors deal with

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<sup>40</sup> Annual Compliance Certificate of National E-Governance Services Limited, Information Utility (IU) for the year ended 31.3.2020 under regulation 11(3) of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 available at <https://nesl.co.in/wp-content/uploads/2020/12/Annual-Compliance-Certificate-2019-20.pdf>

maximum sensitive and confidential data pertaining to all the corporate debtors. Their support infact implies and suggests a robustness in the entire IU process in particular and institution in general.

| <b>Table: T1: Shareholding Pattern of NESL</b> |   |                            |
|--|---|----------------------------|
| S. No.   | Name of the Organisation                | Percentage of Shareholding |
| 1.   | State Bank of India                     | 10%                        |
| 1.   | Canara Bank                             | 10%                        |
| 2.   | Bank of Baroda                          | 14%                        |
| 3.   | ICICI Bank Ltd.                         | 9.9%                       |
| 4.   | Axis Bank Ltd.                          | 9.5%                       |
| 5.   | Karnataka Bank Ltd.                     | 6%                         |
| 6.   | Life Insurance Corporation of India     | 6%                         |
| 7.   | HDFC Holdings Ltd.                      | 5%                         |
| 8.   | Indian Bank                             | 5%                         |
| 9.   | Punjab National Bank                    | 5%                         |
| 10.  | New India Assurance Company Ltd         | 5%                         |
| 11.  | Union Bank of India                     | 5%                         |
| 12.  | Central Depository Services (India) Ltd | 4%                         |
| 13.  | NABARD                                  | 2%                         |
| 14.  | United India Insurance Company Ltd      | 2%                         |
| 15.  | SIDBI                                   | 1.6%                       |

Registrations and agreements executed with NeSL indicate that the concept is yet to pick up amongst the stakeholders within the corporate economy. It is pertinent to note that Information Utility in general and NeSL in particular has received lot of support from the State run institutions in terms of integrating it with corporate

economy. The Reserve Bank of India vide a notification<sup>41</sup> in 2017 mandated all the Financial creditors registered with it (Scheduled Commercial Banks, NBFCs, Cooperative Banks etc.) to register their debts with the Information Utility. Thus, it was commendable to note that the NeSL has managed to execute 284 agreements with financial creditors seeking compulsory sharing of financial information with the intention of storage and dissemination. This execution of data sharing agreements has in fact helped NeSL secure trust of stakeholders as depositories of financial information.

| <b>Table T2</b>               | <b>Agreements with NeSL</b>                    |
|-------------------------------|--|
| At the end of the year /month | Financial Creditors having agreement with NeSL |
| 2018-19                       | 174  |
| June 2019                     | 209  |
| Sept 2019                     | 226  |
| Dec 2019                      | 246  |
| March 2020                    | 267  |
| June 2020                     | 269  |
| Sept 2020                     | 276  |
| Dec 2020                      | 284  |

Further analysis of the data indicates that as on December 2020 a total of 587 financial creditors and 654 operational creditors submitted credit information to NeSL. Further as per the NeSL website as on 31<sup>st</sup> March 2021<sup>42</sup> data pertaining to

<sup>41</sup>Submission of Financial Information to Information Utilities, RBI/2017-18/110 DBR.No.Leg.BC.98/09.08.019/2017-18 dated 19<sup>th</sup> December, 2017, Reserve Bank of India. It states,

1. According to Section 215 of Insolvency and Bankruptcy Code (IBC), 2016, a financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, to an information utility (IU) in such form and manner as may be specified by regulations.

2. All financial creditors regulated by RBI are advised to adhere to the relevant provisions of IBC, 2016 and IBBI (IUs) Regulations, 2017 and immediately put in place appropriate systems and procedures to ensure compliance to the provisions of the Code and Regulations.

<sup>42</sup> Data available on NeSL homepage <https://nesl.co.in/>

4.42 lakh defaults measuring to INR 21,46,448.336 crores as actual default in money terms has been shared. These figures are themselves indicative of the success of Information Utility's conception as such data was previously not available. There was no modicum of identifying the manner and amounts of default save as detailed by individual banks. With the IU multiple defaults by single debtors against multiple creditors can also be identified allowing the authorised personnel to take reasoned decisions in terms of credit extension and timelines. IU's data analysis also helps reach a conclusion that information symmetry in credit services sector may finally be achieved. Voluntary sharing of sensitive financial data by stakeholders to the IU is indicative of the trust reposed in them in the said organisation. Further having availability of this data within the secure confines of the IU available on request after verification of identities and intentions is also taking the corporate economy one step closer to achieving the dream of information symmetry in the financial economy. This would be possible as all stakeholders will have access to the same factual information resulting in appropriate decision making. The lopsided decision making on account of skewed information will be completely eliminated with the increased functioning of the IU.

Another success attributable to the conception of Information Utility is parity of rights between the financial and operational creditors, which was previously wholly unknown. With the coming of the IU the operational creditors<sup>43</sup> have also been able to assert their rights and claim realisation of their dues according to the waterfall mechanism provided by the code. This indicates a constant build-up of trust in IU by the stakeholders. Table T3 below has identified numerically the number of claims being filed by both the financial and operational creditors.

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<sup>43</sup> Also known as critical creditors/vendors. Douglas G. Baird, 'Bankruptcy from Olympus' (2010) 77, *The University of Chicago Law Review, Special Issue: Commemorating Twenty-Five Years of Judge Frank H. Easterbrook* 959-975.

| <b>Table: T3</b>              | <b>Submission of Claims by creditors to IU</b>   |                      |
|-------------------------------|--|----------------------|
| At the end of the year /month | Creditors who have submitted information to NeSL |                      |
|                               | Financial Creditor                               | Operational Creditor |
| 2018-19                       | 114  | 169                  |
| June 2019                     | 160  | 231                  |
| Sept 2019                     | 218  | 297                  |
| Dec 2019                      | 321  | 408                  |
| March 2020                    | 381  | 543                  |
| June 2020                     | 456  | 574                  |
| Sept 2020                     | 548  | 635                  |
| Dec 2020                      | 587  | 654                  |

Data given in Table 4 indicates the numbers of loans which have been authenticated by intervention IU.

| <b>Table: T4</b>              | <b>Loan Authentication</b>                      |                      |   |
|-------------------------------|---|----------------------|---|
| At the end of the year /month | Debtors whose information has been furnished by |                      | Loans records authenticated by debtors (both FC and OC) |
|                               | Financial Creditor                              | Operational Creditor | Debtors   |
| 2018-19                       | 12,66,445                                       | 230                  | 13,799  |
| June 2019                     | 25,31,930                                       | 570                  | 22,363  |
| Sept 2019                     | 27,37,049                                       | 1764                 | 35,621  |
| Dec 2019                      | 29,26,030                                       | 2121                 | 68,766  |
| March 2020                    | 65,51,739                                       | 6191                 | 1,09,726  |
| June 2020                     | 74,64,854                                       | 8336                 | 1,49,533  |

|           |           |      |          |
|-----------|-----------|------|----------|
| Sept 2020 | 82,28,576 | 8979 | 1,86,091 |
| Dec 2020  | 84,88,578 | 9010 | 2,02,558 |

The data given in T2 and T3 indicates that the creditors have over last three(3) years developed a semblance of trust in the institution of Information Utility, as they are now willing to share the information freely and voluntarily. While the data depicted here does not indicate a perfect match in terms of number of debtor and creditors making claims or there being a lack of 100% claim verification between the debtors and the creditors, the fact that the process has begun in itself is a ground for celebration. With increasing reposition of trust, growth of IU and improving maturity of the Indian Corporate Economy, perfect symmetries are likely to be achieved which would result in supply of symmetrical financial information to all the stakeholders in the near future.

It is commendable to note that the NeSL has introduced newer concepts<sup>44</sup> for enhancing digitisation of financial information, loan, and security documents with the help of Application Program Interface(API), Digital Documentation Execution (DDE)<sup>45</sup>, and Platform of Distressed Assets(PDA) respectively. These initiatives are intended to serve three fold objectives firstly to increase efficiencies in information storage, secondly to bring about a discipline amongst the stakeholders and thirdly to enhance use of smart contracts allowing for digital automation of loan records, easing of functions for asset reconstruction companies and liquidators permitting efficient resolution of insolvencies in the credit economy of India.

The above analysis is indicative of the fact that NeSL has been a trailblazer in implementing the vision of Insolvency and Bankruptcy Code, 2016 for achieving

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<sup>44</sup> Debajyoti Ray Chaudhari, DDE- A new Era of Contracting, *The SIBIL Edge*, 16.06.2022 available on <https://nesl.co.in/pm-modi-launches-jan-samarth-portal-for-credit-linked-govt-schemes/>

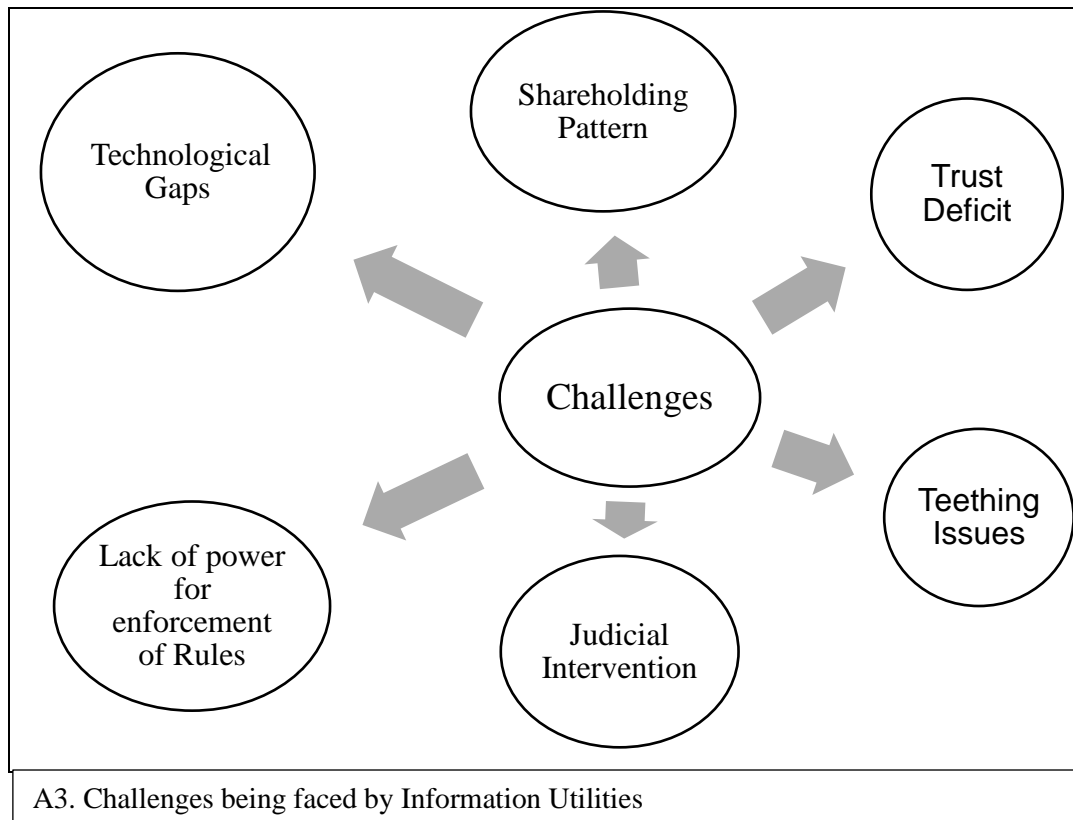
<sup>45</sup> Digital Document Execution has been envisioned on the lines of dematerialisation of shares so as to create dematerialisation of financial contracts. <https://nesl.co.in/dde/>

information symmetry within the corporate economy for promoting speedy and effective resolution of debts. The institution's support and success is not limited to only resolving the insolvency and bankruptcy matters but also bringing a uniformity and discipline in storing, analysing, and disseminating financial information within the corporate economy. The analysis is also indicative of how other Information Utilities as and when they are set up are likely to function. At this juncture it is also imperative to study and analyse the shortcomings plaguing the institution of IU and thereby likely to significantly hamper its functioning.

#### *A Challenge to Working of Information Utility*

From the above discussion it is clear that Information Utility in general and NeSL in particular even though performing very well are in nascent stages of development and are thus faced with various challenges. While some of these can be ironed out as being teething issues others are structural and implementation challenges that need rectification or whole scale modification within the legislative setup. The challenges can thus be depicted pictographically as below:





### B *Lack of Clarity on Technique Used*

Based on the information provided by the Insolvency and Bankruptcy Board of India and the sole Information Utility in India-NeSL there is no clarity in terms of the method that the organisation will use to store, authenticate, verify and disseminate the financial information supplied by various stakeholders. The IBBI Regulations and the NeSL bye laws state that digital signatures must be used for verification of data providers and data seekers. As per the compliance report submitted by NeSL for the year 2019-2020 ending on March 31, 2020 the NeSL<sup>46</sup> has developed an in-house software for storing and collecting data using a JSON<sup>47</sup> known to be a lightweight format used for storing and transporting data.

<sup>46</sup> Annual Compliance Certificate of National E-Governance Services Limited, Information Utility (IU) for the year ended 31.3.2020 under regulation 11(3) of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 available at <https://nesl.co.in/wp-content/uploads/2020/12/Annual-Compliance-Certificate-2019-20.pdf>

<sup>47</sup> JavaScript Object Notation

NeSL is mindful of the vulnerabilities of being internet run, sever based, electronic digital data manager and will thus ensure that secure coding standards be put in place to ensure highest level security of the financial data in possession of NeSL. As part of further protection secure data access shall be enabled through *sftp*<sup>48</sup> for bulk transfer and https for browser based access and network security shall be enforced using Firewall, Intrusion Detection/ Protection System, Antidot, Antivirus/ Anti malware/ Anti-Spam etc. NeSL aims to use operational standards such as Uptime Institute's Tier standards alongwith ISO 27001 certificate adoption.

Keeping the terminology and technological jargon aside, the NeSL bye- laws, compliance reports etc., do not inspire confidence in the stakeholders as to how their precious financial data will be stored. W.r.t technical standards there are some variations in the bye-law declaration and the compliance report detailing of the technology used by NeSL. Further, there is no explanation as to who can access the information, when can it be accessed and to what extent would it be shareable. As a lay person with no knowledge about technology the researcher understands that NeSL expects the stakeholders to register on the portal using digital/electronic signatures and or adhaar authentication. Once authentication is completed a profile/account of the stakeholder gets created where he/she is allowed to upload and share the data. Once the data is uploaded NeSL sends out automatic emails to the stakeholders for verification where it may or may not be verified and authenticated (a challenge discussed subsequently).

This summation of the functioning of the NeSL's working raises the following questions: -

- i. If the system boasts of being stakeholder friendly then why is all the focus of NeSL on Financial creditors in terms of shareholding and board representation, the detail accounting of agreements executed with the FCs

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<sup>48</sup> Secure File Transfer Protocol: A secure method using encryption and cryptography used for transferring bulk files over the internet. The system allows access only via server authentication thus securing content from unauthorised and middlemen based attacks.

etc. This undue focus on one set of stakeholders to the prejudice of other stakeholders is likely to not only raise questions but also create a trust deficit with the remaining stakeholders being understandably worried about the security of their data and position.

- ii. Of the people who register with NeSL who is allowed to access the information stored on the servers of the concerned IU?
- iii. Is it possible for the corporate debtor to be made aware that his financial information has been accessed by someone everytime the information is accessed?
- iv. How is transparency of the system to judged or analysed?
- v. Would data access be limited to only those insolvency resolution professionals who are actually engaged in a CIRP process or would it be available en-mass amongst all the insolvency professionals.
- vi. Can there be a mechanism to monitor the working of Insolvency Professionals on the portal and ensure that the data is not being used to the prejudice of the concerned corporate debtor leading to financial ruin.
- vii. What sanctions or punishments can be imposed on erring personnel who access the financial data without authority creating a mischief with the system?
- viii. Even though the servers of NeSL are claimed to be in India for ensuring sovereignty of the data can NeSL claim that there can be global interference and that data integrity can be maintained at all the times.

While some of these questions may seem harsh and even cynical yet it is clear that NeSL is unable to provide any clarification w.r.t the questions raised above either in their bye-laws or in their compliance report. NeSL has only made certain mother hood statements that the data integrity and security shall be ensured, the question of 'how' has not been answered. These statements in the light of security breaches, infringement and data thefts from various systems viz: Aarogya Setu Aap, UIDAI, ICICI Bank. Citi Bank etc. leaves a question as to whether we can blindly trust blanket statements and claims by institutions in-charge of sensitive financial data.

*C Information Verification Process is Lacking Teeth and Will Nullify the Whole Process*

The Code envisages that both the debtor and the creditor would authenticate the information so supplied on the information utility. Since both the parties are authenticating scope for disagreements is likely to be reduced. However, a crucial question that arises is the stage at which the information is to be supplied to the Information Utility. If the information is supplied after the dispute arises there is a possibility that the debtor may not share complete information and the creditor may supply inflated claims. This is likely to further amplify the dispute without any recourse to a viable solution. It is thus suggested that a timeframe be provided within the law itself as to when the information pertaining to credit and debt be uploaded.

In order for the system to be transparent there is a need for systems to be updated regularly rather than at the time when the dispute erupts between the debtor and the creditor. It is thus suggested that the information be shared with the Information Utility in real time i.e. at the time when the debtor avails of the line of credit and the creditor extends it. If this happens there will be a reliable and verifiable data which can at the time when dispute arises be used to authenticate the claims of all the parties/ stakeholders involved. This will also allow for the expeditious culmination of the CIRP process in a time bound manner as envisaged by the Code.

*D Trust Deficit Amongst Stakeholders*

There is extreme trust deficit in the eyes of all the stakeholders w.r.t to functioning of the Information Utility. the debtors, creditors and others have been trying to avoid transacting on the IU so much so that the NCLT in the matter of Univalue Projects v. UOI had to intervene and mandate filing of IU certificate as a proof of debt. The fact that the concept of IU has failed to generate any trust has been further vindicated by the August 20<sup>th</sup>, 2020 Order of Hon'ble High Court of

Calcutta which was forced to overturn the NCLT order as a collective representation was made by financial creditors challenging the order.

The trust deficit also emanates out of the fact that no clarification has been issued as to the stage at which the creditors and the financial creditors can share information with the Information Utility.<sup>49</sup> This ambiguity can have serious ramifications as sharing of information after dispute eruption may create a bias in the minds of the parties w.r.t genuineness of the claims being made thereby prolonging the dispute and the CIRP process.

### *1 Questionable Shareholding Pattern*

As depicted in Table T1 out of 16 shareholders of NeSL 12 are financial institutions who also find themselves as financial creditors during the insolvency and bankruptcy process. The trust deficit also seems to be emanating out of faulty shareholding pattern wherein financial creditors have 80 % of the shareholding, thereby causing reluctance in the minds of industry leaders as to the impartiality of the institution. As a researcher one cannot help but question the rationale behind having only banks as shareholders in the Information Utility. It is possible that that the corporates are likely to feel intimidated by the controlling ownership of the banks over NeSL. It is imperative to point out that there is no representation from the industry whatsoever either individually or through collective institutions viz: ASSOCHAM, FICCI etc. either on the governing Board or in Shareholding indicating that all stakeholders have not been given equal representation in NeSL. This lack of representation in view of the researcher is likely to create a trust deficit in the minds of corporate debtors as institutionally the system seems to be siding with the financial creditors having the highest record of Non-Performing Assets in India as indicated in Table T4. This seems to be a complete violation of the well

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<sup>49</sup> One of the reasons for failure of the Credit Information Companies in India was lack of submission of timely reports by banks and other stakeholders resulting in disputes arising on the fundamental question of the amount of debt itself. N.H. Siddiqui report

laid down principle that “Justice should not only be done but must be seen to be done”<sup>50</sup>.

| <b>Table: T4: Banks with Non-Performing Assets</b> |                      |   |
|--|----------------------|---|
| S. No.   | Bank                 | Amount of NPA <sup>51</sup> for 2019-2020 (Amount in Crore) |
| 1.   | State Bank of India  | 149091.85   |
| 2.   | ICICI                | 40829.09  |
| 3.   | HDFC                 | 12559.38  |
| 4.   | Union Bank of India  | 49085.31  |
| 5.   | Canara Bank          | 37041.15  |
| 6.   | Bank of Baroda       | 69381.43  |
| 7.   | Punjab National Bank | 73478.76  |
| 8.   | Axis Bank            | 26604.10  |
| 9.   | NABARD <sup>52</sup> | 703.90  |
| 10.  | Indian Bank          | 14150.84  |
| 11.  | SIDBI <sup>53</sup>  | 189.57  |
| 12.  | Karnataka Bank       | 2799.93   |

A close reading of the shareholding pattern of NeSL given in Table T1 and the level of non-performing assets owned to banks given in Table T4 indicates that

<sup>50</sup> *R v Sussex Justices, ex parte McCarthy* (Lord Hewart CJ), KB 256, EWHC KB 1

<sup>51</sup> Statistical Tables related to Banks in India, Reserve Bank of India, 2020, available at: <https://dbie.rbi.org.in/DBIE/dbie.rbi?site=publications>

<sup>52</sup> *Non-Performing Assets details*, Annual Report, NABARD, 2019-2020 available at: <https://www.nabard.org/auth/writereaddata/Flipbook/2020/Nabard-English-Annual-Report-2019-2020/index.html>

<sup>53</sup> *Non-performing Assets*, Annual Report, SIDBI, 2019-2020 available at: [https://sidbi.in/AnnualReport201920/pdf/SIDBI%20AR\\_PartII\\_English.pdf](https://sidbi.in/AnnualReport201920/pdf/SIDBI%20AR_PartII_English.pdf)

the banks and financial institutions of whom the corporate debtors would be weary have been given a place of importance in setting up Information Utility. This policy will be followed for all the future Information Utilities as well, meaning thereby that legislatively financial creditors have been given a higher right than the corporate debtors. This lack of equality between the two most important stakeholders is likely to create an imbalance which may impact the functioning of IUs in particular and IBC in general.

### *E Teething Issues and Judicial Intervention*

It is the case of the researcher that the Information Utility is bound to have teething issues and as discussed in the analysis segment some of the challenges emanate out of implementation gaps rather than issues of design. It is imperative that the judicial intervention resulting in dilution of the law should not be based on teething issues rather on structural and legislative gaps in the law. It is unfortunate that the Hon'ble Supreme Court in the celebrated case of *Swiss Ribbons*<sup>54</sup> agreed to do away with the requirement of furnishing debt records via Information Utility if any other evidence to the effect existed merely on account of the reluctance indicated by the stakeholders. This dilution of the legal provision by the honourable court has resulted in a further downgrading of the institution of IU. Certain stakeholders have interpreted this order as the hon'ble judges themselves suffering a trust deficit in the system thereby compounding the very problem they were asked to resolve.

## III CONCLUSION

Information Utility as a concept has been developed to bring about efficiency and effectiveness in the insolvency and bankruptcy processes in India under the new Insolvency law regime. The idea behind Information Utility has been to bring

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<sup>54</sup> *Swiss Ribbons v. Union of India* (2019) 4 S.C.C. 17

about parity in financial information available within the corporate economy. While the Indian Legislature has had a single point agenda behind setting up an IU, it has inadvertently given the world a trailblazer institution capable of bringing about symmetry in financial information available to all the stakeholders. The development of an institution capable of collecting, storing, analysing, and disseminating financial data in the most effective, efficient, safe and secure manner is the need of the hour to bring greater transparency in financial economy's functioning. An IU can be understood as a response to white collar corporate crimes, which occur primarily due to lack of transparency in information availability amongst the stakeholders. As any new institution is likely to face teething issues, such issues are being faced by NeSL as well which will be rectified over time. However, it is imperative to note that on account of teething issues the benefits emerging out of the great institution cannot be ignored. The numbers in terms of contracts executed, loans onboarded and data authenticated in a mere span of 5 years bears testimony to the fact that IU is a successful institution having the capability to bring about information symmetry within the corporate economy of world.