

# Registration of Security Interest and Rights of Secured Creditors under IBC

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- Vinod Kothari and Company, company secretaries, is a firm with more than 34 years of vintage
  - Based out of Kolkata, Mumbai, New Delhi and Bengaluru
- We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

***Our Organization's Credo:***

***Focus on capabilities; opportunities follow***

# Overview

- Registration of Security Interest
  - Understanding the concept of security interest
    - meaning, forms, types, etc.
  - Creation and perfection of security interest
  - Laws dealing with security laws
    - variation in terms of applicability, type of borrower, type of lender, etc.
  - Multiple repositories for registration of security interest
  - Other debt information repositories
- Rights of secured creditor under IBC
  - Meaning and scope of secured creditor
  - Rights during resolution process
    - moratorium provisions
    - proof of claim
    - rights and priorities under resolution plan
  - Rights during liquidation process
    - realisation vs. relinquishment
    - proof of claim
    - rights under distribution waterfall
  - Effect of non-registration under various laws on -
    - eligibility to make application
    - prove itself as secured creditor

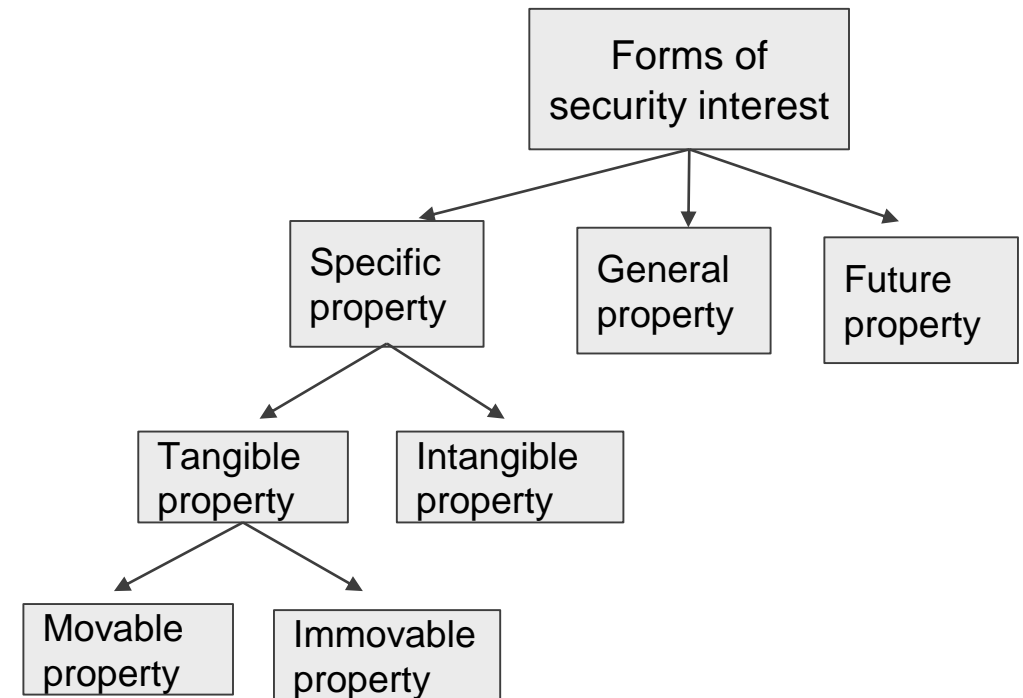


# Understanding Security Interest



# What is security interest?

- Defined u/s 2(zf) of SARFAESI Act, 2002
  - means right, title or interest over a property
  - created in favour of a secured creditor
  - as collateral for financial assistance granted
  - security interest includes -
    - Mortgage (Sec 58 of Transfer of Property Act, 1882)
    - Charge (Sec 2(16) of Companies Act, 2013 & sec 100 of Transfer of Property Act, 1882)
    - Hypothecation (Sec 2(n) of SARFAESI Act, 2002)
    - Assignment (Sec 130 of Transfer of property Act, 1882)
    - Lien



# Types of security interest

- Mortgage
  - Defined u/s 58 of Transfer of Property Act, 1882
  - Transfer of interest in specific immovable property
  - For securing loan advanced or to be advanced; existing or future debt; performance of engagement which may give rise to pecuniary liability
- Charge
  - under Companies Act, 2013
    - Defined u/s 2(16) of Companies Act, 2013
    - interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage
  - under Transfer of Property Act, 1882
    - sec 100
    - interest created on immovable property for securing payment
    - does not amount to mortgage
- Hypothecation
  - Defined u/s 2(n) of SARFAESI Act, 2002
  - Charge on any movable property, existing or future by the borrower as a security for financial assistance provide
  - without delivery of possession to the creditor
- Assignment
  - Section 130 of Transfer of property Act, 1882
  - Transfer of actionable claim through an instrument in writing duly executed
- Lien
  - Right to keep the possession of a property
  - until the underlying debt is satisfied

# Perfection of Security Interest

- Creation of security interest is the first step towards securing debt
  - However, security creation alone may not suffice
  - Therefore, required steps are to be taken to make the same enforceable by law
- Registration is a manner of giving “public notice”, see -
  - sec. 77-81 of the Companies Act
  - sec. 26C of SARFAESI Act
- Similar provisions in other countries as well
  - Article 9-310 of UCC in the US (perfection by filing of all security interest and agricultural lien)
  - Section 859A of Companies Act, 2006 in the UK (charges created by a company)



# Multiple registrations requirements of security interest for various assets

Nature of assets	Registration requirements
<b>Immovable properties</b>	<ul style="list-style-type: none"> <li>● Registration with CERSAI</li> <li>● Under Registration Act, e.g. equitable mortgage needs to be registered in <u>Maharashtra</u></li> <li>● Submission of financial information with IU (eg. NeSL)</li> <li>● In case of borrower being a company, registration of charge creation with RoC</li> </ul>
<b>Dematerialized securities</b>	<ul style="list-style-type: none"> <li>● Pledge of demat securities to be registered with Depository - Reg. 79 of SEBI (Depositories &amp; Participants) Reg., 2018</li> <li>● Submission of financial information with IU (eg. NeSL)</li> <li>● In case of borrower being a company, registration of charge creation with RoC</li> </ul>
<b>Motor vehicles</b>	<ul style="list-style-type: none"> <li>● Registration under Motor Vehicles Act, 1988- Sec 51 of the Act (Vahan Portal) and impact on CERSAI registration</li> <li>● Submission of financial information with IU (eg. NeSL)</li> <li>● In case of borrower being a company, registration of charge creation with RoC</li> </ul>
<b>Movable properties apart from motor vehicles</b>	<ul style="list-style-type: none"> <li>● Submission of financial information with IU (eg. NeSL)</li> <li>● In case of borrower being a company, registration of charge creation with MCA in form CHG-I (In case of borrowers apart from co., if financial information not submitted to IU, debt may be proved through the agreement)</li> </ul>



# Laws dealing with security interest



# Laws dealing with security interest

1

- Companies Act, 2013: Chapter VI Registration of Charges

2

- SARFAESI Act, 2002: Sections 22, 23, 26B read with section 26D SARFAESI Act

3

- Section 215 of the Code read with reg. 21, 21A of the IBBI (Liquidation Process) Reg., 2016 and reg. 13 of IBBI (Insolvency Resolution Process for Corporate Persons) Reg., 2016

4

- Common laws including Transfer of Property Act, 1882, Sale of Goods Act, 1930, Motor Vehicle Act, 1988, etc.

# Registration of charges under the Companies Act, 2013

- Chapter VI of CA, 2013 (sections 77 to 87) - Registration of charges
- Section 77:
  - sub-section (1): borrower company to register charge
  - Third proviso: Any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered.
  - (Sub-section 3): Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator **appointed under this Act or the Insolvency and Bankruptcy Code, 2016, as the case may be**, or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2).
  - In *Volkswagen Finance v. Shree Balaji Printopack*, the NCLAT held that registration of security interest (charge by way of hypothecation) with Motor Vehicle Authority u/s 51 of MV Act was not sufficient; a charge had to be registered in accordance with sec 77 of CA, 2013 in order for a creditor to be treated as a secured creditor.
- Charge to be registered within-
  - 30 days of its creation - with normal fees
  - 60 days of its creation - with additional fees
  - 120 days of its creation - with *advalorem* fees
- Primary responsibility to register the charge on borrower
  - If borrower fails to register within 30 days of creation
  - Lender may register the same (Sec 78)
- Modification of charges - section 79; satisfaction of charges - section 82
- Deemed notice of a registered charge: section 80
  - Where any charge on any property or assets of a company or any of its undertakings is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.
- Registration of charge with MCA applicable only when
  - borrower is a company
  - borrower is an LLP (optional) [see MCA FAQs](#)
- Charge is registered in form
  - CHG-1 (for other than debentures) & CHG-9 (for debentures) - In case of companies
  - Form-8 in case of LLPs
- If a company contravenes any provision relating to charge creation, penalty is levied on
  - company- Rs. 5,00,000 & officer in default- Rs. 50,000

# Security interest under SARFAESI Act, 2002

- Forms of security interest under SARFAESI- Sec. 2(1)(zf) defines “security interest” as a right, title or interest created upon property. Forms of security interest include:
  - mortgage
  - charge
  - hypothecation
  - assignment
  - any other right, title or interest on tangible/intangible asset to secure payment
- Applicable only in case of ‘secured creditors’- defined in 2(1)(zd) as:
  - bank/financial institution holding an interest over an asset
    - NBFCs having asset worth Rs. 100 crore and above- entitled to enforce security interest in secured debts of Rs. 20 lac and above
  - debenture trustee appointed by a bank/finance institution; debenture trustee appointed for secured (listed) debt securities
  - asset reconstruction company
- Borrower as defined in sec. 2(1)(f)- can be any person which:
  - has been granted financial assistance by a financial institution;
  - who has given a guarantee;
  - created any mortgage or pledge as security for financial assistance granted by bank/financial institution;
  - has raised funds through issue of debt securities;
- Enforcement of security interest:
  - Enabled by section 13
    - Can be enforced by a secured creditor in whose favour any security interest has been created
    - Can be enforced without intervention of court or tribunal.
  - Notice:
    - Upon default by borrower, secured creditor may notify the borrower to discharge the liabilities within 60 days from the date of notice.
  - Measures of enforcement
    - take possession of secured assets, including right to transfer
    - takeover the management of borrower’s business, including right to transfer
    - appoint any person to manage the secured assets in possession of secured creditor
    - require through notice, a person who has acquired secured assets from borrower, to pay the secured creditor.

# Registration of Security interest under SARFAESI Act, 2002

- Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI)
  - Provisions dealing with CERSAI in Chapter IV of SARFAESI
  - Obligation to file creation of security interest comes from section 23.
  - U/s 24 and sec 25, secured creditors have to file records pertaining to modification and satisfaction security interest, respectively, registered with CERSAI.
- Besides, RBI mandate for filing of details of security interest with CERSAI
  - RBI issued a circular advising financial institutions to register the creation, modification or satisfaction of security interest to immovable (other than equitable mortgage), moveable and intangible assets.
  - RBI issued a circular for registration of security interest including mortgage by deposit of title deeds (equitable mortgage).
  - NBFCs have to register records of all mortgages, including equitable mortgage, created in their favour, with CERSAI as per NBFC Master Directions for SI & NSI)
- Prior to amendments in 2016, there was no provision disabling enforcement of security interest on account of non-registration.
- Several amendments vide SARFAESI Amendment Act, 2016 (Notification dated 16.08.2016) were introduced:
  - Sec 26C, registration of security interest has two effects:
    - it is deemed as public notice
    - claim of secured creditor who has the security interest registered with CERSAI has priority over any subsequent security interest created over the same property
  - **Sec 26D links right of enforcement with registration of security interest-** a secured creditor which has not registered the security interest with CERSAI cannot exercise the right of enforcement under SARFAESI.
  - Section 26E accords priority to secured creditors over revenue, tax, cess, and all other Govt dues.
    - exception on account of IBC - “ *it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code*”

## Inapplicability of SARFAESI in certain cases [section 31]

- lien on any goods, money or security given under
  - Indian Contract Act, 1872
  - Sale of Goods Act, 1930
  - Any other law for the time being in force
- Pledge on movables u/s 172 of Indian Contract Act, 1872
- Creation of any security in any aircraft
- Creation of any security in any vessel
- In case of unpaid seller under Sale of Goods Act, 1930
- Any property not liable to attachment
  - except the property specifically charged with the debt recoverable under SARFAESI Act
- Security interest for securing repayment of any financial asset  $\leq$  Rs. 1,00,000
- Security interest in agricultural land
- Where amount due is  $<$  20% of the principal amount and interest thereon

# Transfer of Property Act/Sale of Goods Act

- Transfer of Property Act, 1882
  - “Charge” explained u/s 100: *where immovable property of one person is by an act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter is said to have a charge on the property.*
  - “Mortgage” defined u/s 58: *a mortgage is a transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.*
  - Section 48 deals with priority of rights created by transfer of immovable property: *where rights are created over the same property by transfer at different times, all such rights cannot all exist or be exercised to their full extent together; each later created right shall be subject to the rights previously created, i.e., preceding rights shall have priority over the rights followed after it.*
- Sale of Goods Act, 1930
  - Unpaid seller defined u/s 45: *the seller of goods is deemed to be an “unpaid seller”-*
    - *when the whole of the price has not been paid or tendered;*
    - *when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.*
  - Rights of unpaid seller enumerated in sec. 46: (a) unpaid seller has a lien on the goods for the price while he is in possession of them; (b) in case of insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them; (c) right of re-sales.
    - where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.





# Provisions dealing with security interest under IBC



# Definition and scope under IBC

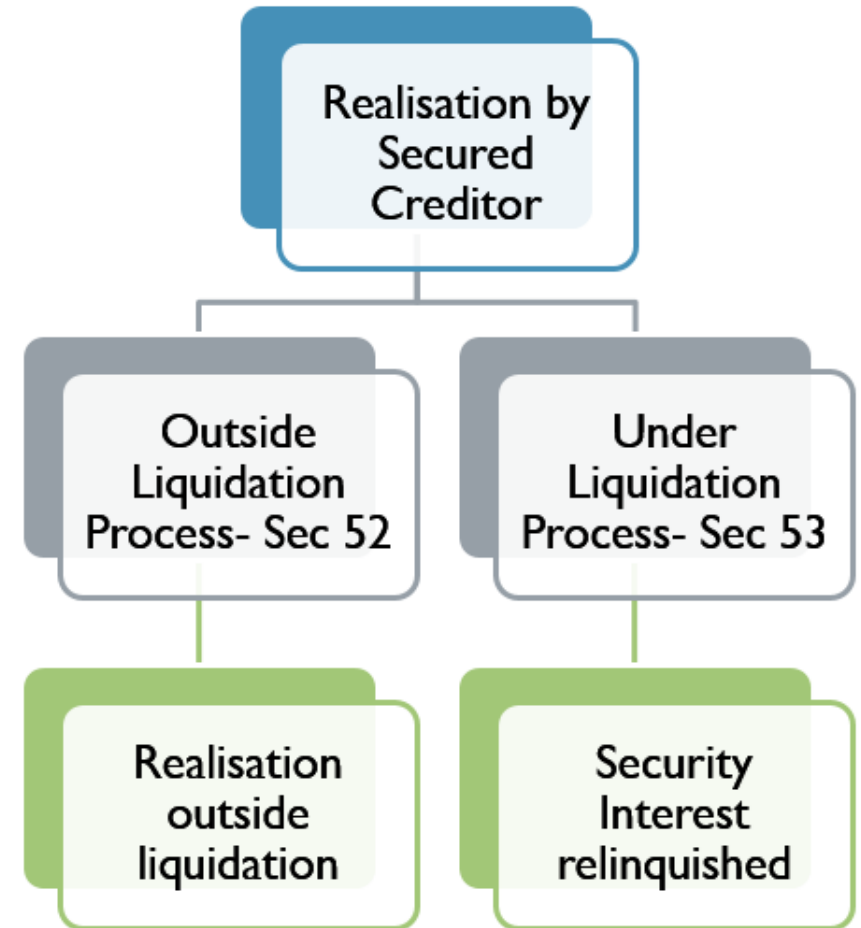
- 'Creditor' defined u/s 3(10)- includes:
  - financial creditor
  - operational creditor
  - **secured creditor**
  - unsecured creditor
  - decree holder
- 'Secured creditor' defined u/s 3(30) as *creditor in favour of whom security interest is created.*
- 'Security interest' defined u/s 3(31) as *right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes:*
  - *mortgage*
  - *charge*
  - *hypothecation*
  - *assignment*
  - *encumbrance*
  - *any other agreement or arrangement securing payment or performance of any obligation of any person.*
- Proviso to sec 3(31)- security interest shall not include performance guarantee
- In a recent ruling, tax authorities were held to be secured creditors - *State Tax Officer vs. Rainbow Papers* - [our article here](#), as against earlier rulings in *Sundaresh Bhatt, Monnet Ispat*, and *Leo Edibles*.
- While the provisions under SOGA/ToPA are not contrary to IBC, however, if benefit is to be taken under IBC, it can be done if there was a contractual arrangement/transaction creating security interest in favour of the Creditor. It has to be a security interest which is "created" as such. See *BHEL v. Anil Goel, Liq. or Visa Power* (NCLAT)
- Third party security: For a person to be designated as a financial creditor of the corporate debtor, it has to be shown that the corporate debtor owes a financial debt to such person. Can be regarded as secured debt. Supreme Court in *Anuj Jain Interim Resolution Professional For Jaypee Infratech Limited v. Axis Bank Limited Etc. Etc.* held

# Secured creditors under IBC: Rights during CIRP

- Bar on enforcement of security interest during moratorium
  - sec. 14(1)(c) - prohibits any action to **foreclose, recover or enforce any security interest** created by the corporate debtor in respect of its property including any action under SARFAESI Act, 2002
  - part payment of the sale consideration was made by the purchaser and no sale certificate was executed as on the date of admission of the CIRP application - sale is not completed under SARFAESI - FC cannot continue to enforce - *Indian Overseas Bank v. RCM Infrastructure*.
- Proof of claim
  - Financial creditor to submit the claim in Form C
    - (ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given)
    - where CD is a borrower / guarantor
  - Operational creditor to submit the claim in Form B - details to include: a. any security held, the value of security and its date
  - Evidence - may be proved on the basis of record of IU or 'other relevant documents' (inclusive clause)
- Treatment of secured creditors in the resolution plan
  - Priority and value to be considered by CoC- see sec 30(4)
    - The entitlement of such a dissenting financial creditor to receive the “amount payable” could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him and in the order of priority available to him. SC in *Jaypee Kensington*
    - However, his dealing with the security interest, if occasion so arise, would be conditioned by the extent of value receivable by him. The creditor cannot bring about an inequitable scenario, by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors. *India Resurgence Arc Pvt. Ltd. v. M/S Amit Metaliks Ltd*
    - See SC ruling in *Essar Steel India Limited v. Satish Kumar Gupta and Ors*

# Secured creditors under IBC: Rights during liquidation (1/2)

- Secured creditors during liquidation has option to
  - Realize the security interest outside liquidation process- sec 52 of Code; or
  - Relinquish security interest and receive proceeds u/s 53
    - priority under sec. 53(1)(b), pari passu with workmen
    - asset becomes part of liquidation estate - sec. 36
- Right to make an application to NCLT if any resistance is faced in the course of realising secured asset from the CD or any person connected therewith
- Where the proceeds of the realisation of the secured assets are not adequate, the unpaid debts of such secured creditor shall be paid by the liquidator in accordance with 53(1)(e)
  - In majority of cases, liquidation fund is gets exhausted after paying the second layer u/s 53(1)
  - Therefore, this recovery is almost impossible



# Secured creditors under IBC: Rights during liquidation (2/2)

- Secured creditor to inform liquidator, and liquidator to “verify” such security interest and “permit” the secured creditor to realise only “such” security interest, the existence of which may be proved by -
  - IU, ROC or CERSAI
    - however, what about sec. 77 of Companies Act?
  - As financial creditor in Schedule II-D
    - Details of any security held, the value of security, and the date it was given
    - whether security interest relinquished
  - As operational creditor in Schedule II-C
    - Details of any retention of title in respect of goods/properties or any other security
    - whether security interest relinquished
- Presumption of asset being part of liquidation estate
  - where a secured creditor does not intimate its decision within 30 days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.
- A secured creditor who opts for realisation, shall also pay
  - CIRP/liquidation costs
  - share of workmen
  - excess of the realised asset
- *Inter-se* priorities during liquidation
  - First charge vs. second charge; priorities are also determined by registration
  - Right to realize security under Section 52 of IBC is restricted to a creditor that has an ‘exclusive charge’ or ‘sole first charge’ *IM Financial Asset Reconstruction Company Limited v Finquest Financial Solutions Private Limited and Ors.* [NCLAT]
  - Certain rulings hold that distribution would be irrespective of any charge they were holding prior to relinquishment of security interest - see *TDB v. Anil Goel* [NCLAT]

# Realization of security interest outside liquidation process

## Regulation 21A

### Step 1

- Communication of decision within 30 days of LCD
- In Form C (Operational creditors) or Form D (Financial Creditors)

### Step 2

- Proportional contribution towards Liq. Costs & workmen dues
- Within 90 days of LCD

### Step 3

- Excess of realised amount over submitted claim to be submitted to liquidation estate
- Within 180 days of LCD

### Note

- Such assets cannot be sold to any person who is disqualified u/s 29A of the Code;
- Must be sold within 180 days of LCD

- Reg. 37 of Liquidation process reg.: The secured creditor must intimate the liquidator the realisable price at which he proposes to realise the asset.
- Within 21 days of such intimation, liquidator shall
  - Of a person willing to buy the asset before the expiry of 30 days of intimation; and
  - At a higher price than intimated by the secured creditor
  - Secured creditor shall sell the asset to such person; and bear the cost incurred by the liquidator for identification of such person
- Reg. 37 applies only in cases outside SARFAESI Act

# Secured creditors rights in insolvency and bankruptcy of personal guarantors

- Chapter III of IBC was made applicable to personal guarantors to corporate debtors vide a Notification dated 15 Nov, 2019.
- IRP can be initiated against a personal guarantor.
- sec. 110 - rights under repayment plan
  - secured and unsecured parts of debt to be treated differently
  - secured creditors are entitled to participate in meetings of creditors and vote.
  - secured creditor's right to enforce security is forfeited if he is exercising his right to vote in respect of repayment plan. If he does not forfeit this right, then the right to vote is exercisable only in respect unsecured part of debt.
  - The concurrence of the secured creditor shall be obtained if he does not participate in the voting on repayment plan but provision of the repayment plan affects his right to enforce security.
- Application for bankruptcy can be made [sec. 123]
  - subject to declaration that the secured creditor shall give up his security for the benefit of all the creditors of the bankrupt, or
  - only in respect of the unsecured part of the debt - in this case, secured and unsecured parts of debt shall be treated separately
- Proof of claim by secured creditors [sec.172]
  - Where a secured creditor surrenders his security to the bankruptcy trustee for the general benefit of the creditors, he may produce proof of his whole claim.
  - Where a secured creditor realises his security, he may produce proof of the balance due to him.



# Information utility





# Information utility and related provisions (1/2)

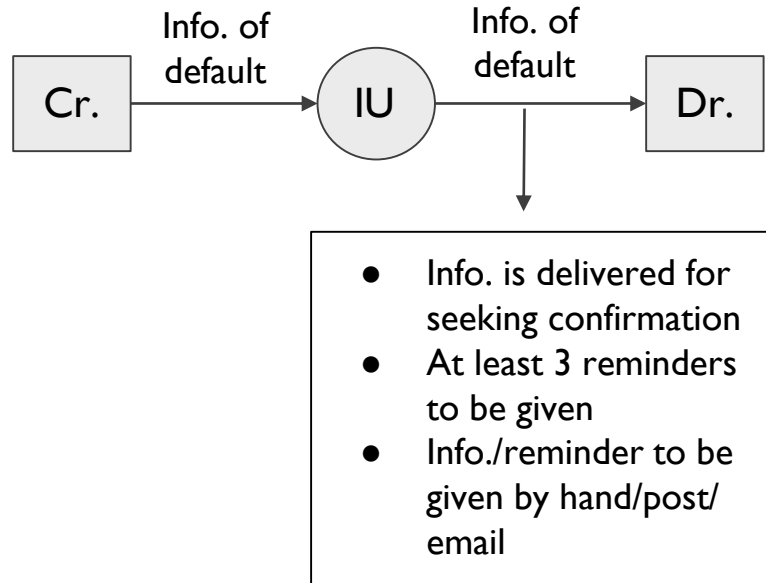
- Information utility is regulated information agency which
  - accepts, electronically record, get authentication, maintain and provide access to financial information
  - Financial information means one or more of the following-
    - records of the debt of the person;
    - records of liabilities when the person is solvent;
    - records of assets of person over which security interest has been created;
    - records, if any, of instances of default by the person against any debt;
    - records of the balance sheet and cash-flow statements of the person; and
    - Such other information as may be specified.
- Information utility is registered under sec 210 of the Code read with reg. 4 of IU regulations
- Currently, there is only one IU in India named National E-Governance Services Ltd (NeSL)
- IU are responsible to provide core services & other services under the IU regulations
  - Core services means services rendered for-
    - accepting electronic submission of financial information
    - safe and accurate recording of financial information
    - authenticating and verifying the financial information submitted
    - providing access to information stored with the IU
- RBI Circular dated 19th Dec, 2017 read with Circular dated 4th Jan, 2018 mandates the following to file information with IU
  - Financial creditors regulated by RBI
  - Registered ARCs

# Information utility and related provisions (1/2)

- Process of authentication of default-
  - IU to deliver information of default to debtor
  - At least 3 reminders to be given to debtor for confirmation of information
  - Information of default/ reminder is given by hand, post or electronic means
- Mandate u/s 215(2) on financial creditor to file financial information with IU
  - “ *A financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, in such form and manner as may be specified by regulations*”
  - Same is optional in case of operational creditor - sec 215(3)
- Amendments made in the IU Regulations in June, 2022
  - Reg. 20(1A): Makes it mandatory for both FC & OC to file the information of default with IU before filing CIRP application
  - Three reminders are given to debtor for confirmation of information
    - If not confirmed, shall be “deemed to be confirmed”
    - However, in case of FC being banks, non confirmation after 3 reminders will be treated as “confirmed”
  - Status of information of default to be communicated to in form D-
    - creditors of the debtor who has defaulted in payment of a debt
    - parties and sureties, if any

# Process of authentication of default

## STEP-1



Reg. 20(1A): Information of default by cr. to be filed before filing application for initiation CIRP

## STEP-2

On completion of step-1, IU to record status of authentication

(i) For FCs which are banks under sch- II of RBI Act

- Dr. confirms the default/ no response even after 3 reminder: **Authenticated (Green)**
- Dr. disputes the info: **Disputed (Red)**

(ii) For creditors apart from (i)

- Dr. confirms the default: **Authenticated (Green)**
- Dr. disputes the info: **Disputed (Red)**
- No response even after 3 reminder: **Deemed authenticated (Yellow)**

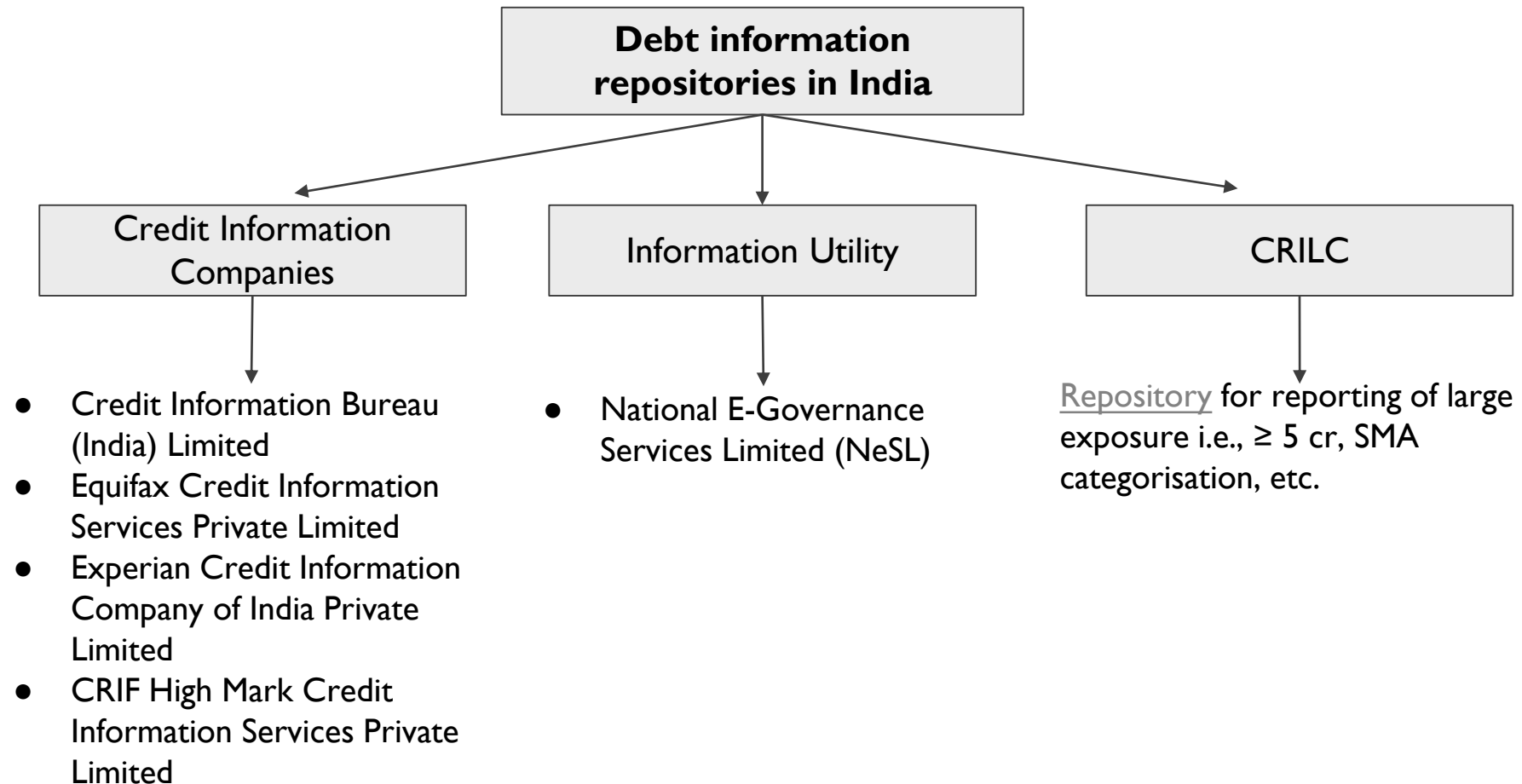
## STEP-3

After recording status of information of default, IU shall communicate the status in **Form-D** to

creditors of the debtor who has defaulted

parties and sureties, if any, to the debt

# Debt information repositories in India





# Multiple registrations: a comparative



## Comparison between registration requirements under RoC, CERSAI and IU (1/2)

Point of discussion	Registration under Companies Act, 2013	Registration under SARFAESI Act, 2002	Registration under IBC, 2016
<b>Provision of law</b>	Section 77 of the Companies Act	Sections 22, 23, 26B read with section 26D SARFAESI Act	Section 215 of the Code read with reg. 21, 21A of the Liquidation regulations and reg. 13 of CIRP regulations
<b>Registration authority</b>	Registrar of Companies	CERSAI	Information Utilities (eg. NeSL)
<b>Applicable in case of borrower entity being</b>	Companies [optional in case of LLPs, see <a href="#">FAQs on LLP e-filing</a> ]	Any entity	Corporate Debtor/Debtor under the Code
<b>Lenders covered</b>	Any lender	Banks/financial institutions	Mandatory for financial creditors (however, see reg. 20(1A) of CIRP regs.)
<b>Borrowers covered</b>	Companies and optional in case of LLPs	Any borrower	Corporate debtor / debtor under IBC

## Comparison between registration requirements under RoC, CERSAI and IU (2/2)

Point of discussion	Registration under Companies Act, 2013	Registration under SARFAESI Act, 2002	Registration under IBC, 2016
<b>Intent of registration</b>	Validity of charge, priority	Enforcement and priority of security interest under sections 26C/26D/26E of the SARFAESI Act	Proof of debt, necessary to file application
<b>Impact of non-registration on enforcement rights of the secured creditor</b>	Charges become void. Loan becomes unsecured	SARFAESI rights become unenforceable; loss of priority	None. However, it is mandatory under law for the financial creditors. Also, can be used as a proof under IBC.
<b>Charge registration obligation on</b>	Borrower – section 77 of CA, 2013 Lender can do – section 78 of CA, 2013 [if borrower does not do within 30 days]	Secured creditor	Financial creditor
<b>Impact on eligibility to file application under IBC</b>	Non-registration of charge with ROC does not stop the creditor from filing application	Non-registration of charge with CERSAI does not stop the creditor from filing application	Creditor required to file information with IU before making application

# Impact of registration/non-registration on proceedings- different scenarios

ROC	CERSAI	IU	Remarks
Yes	Yes	Yes	Enforcement/priority rights fully protected.
Yes	Yes	No	Though it is mandatory for FC to submit information to an IU, that does not impact the secured status of the creditor. Security can be proven by ROC/CERSAI registrations.
Yes	No	No	Non-registration of charge under CERSAI will disable the creditor from enforcing security interest under SARFAESI Act. However, the creditor can prove 'security' and stand in queue under the Companies Act/Code.
No	Yes	Yes	Charge cannot be 'proved' under the Companies Act/Code. In winding up proceedings, the secured creditor may not be able to realise security interest. In going concern, CERSAI registration would enable enforcement of rights under SARAFESI.
No	No	Yes	Security rights would be hampered both in winding up proceedings & enforcement proceedings.
No	No	No	Security rights would be hampered both in winding up proceedings & enforcement proceedings. Also, non-filing of information with IU would be in violation of law.





Points to be seen by IPs



# Points to be seen by IPs

- Verification of claim
  - whether security interest exists and the proof is in accordance with regulations
    - check proofs submitted from IU, CERSAI, ROC
  - details to be checked from Forms submitted and annexed documents
  - in case of liquidation, the liquidator shall also verify the claims collated during the corporate insolvency resolution process but not submitted during the liquidation process, within thirty days from the last date for receipt of claims during liquidation process (see, reg. 30 of Liquidation regs.)
- List of creditors and information memorandum
  - should contain details of security interest, if any - see reg. 13 and 36(2) of CIRP Regs.
- Resolution plan
  - shall take into consideration priority and value of security interest
- During liquidation process
  - assess details of secured creditors going for relinquishment and realisation
  - from secured creditors opting for realisation, recover costs/workmen share (within 90 days) and excess (within 180 days)
  - ensure distribution in terms of sec. 53
    - assess inter-se priorities and values

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