



## ***"CoC's Role in CIRP under IBC: Recommendations on Best Practices"***

### ***Synopsis of Study by Indian Institute of Insolvency Professionals of ICAI "IIPI"***

There are several judicial pronouncements which have enabled greater clarity on the roles of the Committee of Creditors 'CoC' vis-a-vis the RP and the CIRP process. These decisions have time and again, reiterated, the innate commercial wisdom and supremacy of the CoC. There have also been significant efforts from the regulator, the Insolvency and Bankruptcy Board of India ("IBBI") to enable a more robust functioning of the Code. In this regard the IBBI had published a Charter of Responsibilities of the RP (01 March 2019) and the CoC delineating the responsibilities, inter se, of the two key functionaries and offices of public trust under the Code.

The Journey of improvement and excellence is a continuing one. IIPI in order to strengthen the Code framework and the sustained efforts of IBBI, commissioned a Working Group under the convenorship of CA. Hans Raj Chugh, Director, IIPI, to carry out a study for (i) identifying further challenges, if any, in this crucial interplay between the Members of the CoC and the Resolution Professionals and (ii) recommending best practices in this regard.

#### **Key Recommendations: -**

##### **1. Need to Regulate CoC**

Given the need to regulate the functioning of a CoC, the same may be achieved through self-regulation or a Charter or a code of conduct to which all CoC members subscribe, which may be put in place by IBBI/IBA or in consultation with each other as may be appropriate.

##### **2. Replacement and Remuneration of Resolution Professional**

As one professional is sought to be replaced by another, a No Objection Certificate on the lines of those provided for replacement of Statutory Auditors of entities may be considered as a matter of professional ethics as well as to enable communication between the RP and proposed RP to identify issues and challenges, if any. There is no uniformity in respect of IRP / RP remuneration. Such remuneration was found to be very low in certain cases which may threaten the very independence of the IRP / RP. Guidelines may be considered to be issued to RP / CoC to ensure that fees are commensurate with the scale of engagements.

An RP should not merely be replaced on ground of cost consideration. This is likely to result in undercutting and unhealthy competition. The incoming RP would need to justify in writing the reasons for reduction in fee.

### **3. Data pertaining to Corporate Debtor**

CoC members also have various expert reports viz., techno-economic feasibility reports, technical reports which should be shared with RP and resolution applicants (RA) to improve the quality of information available to RA for better bids. The CoC's as a Best practice may be guided to provide all such data to the Resolution Professional right at the commencement of their engagement to enable the CIRP to be conducted effectively and efficiently.

### **4. Timely approvals to RP**

While the overall timelines for the conduct of the CIRP process is mentioned in Regulation 40A, the turnaround times expected of the members of the CoC is not defined even in terms of a directory (not mandatory) indication. Suggesting such timelines would enhance the efficiency of the process and enable higher levels of accomplishment of the timelines stated in Regulation 40A. Such directory timelines could at the outset prescribe 7 days for any matters requiring consent of the CoC.

### **5. Interim Finance**

In cases where the Corporate Debtor is dormant and has no free cash flows to support even the legitimate spends required by the RP, provisions may be incorporated to enable basic contribution by the members of the CoC who are benefitted by the CIRP process. Provisions should also be incorporated how a situation of non-contribution by CoC members is to be dealt with.

### **6. Clear Definition of Roles and Responsibilities of members of the CoC**

In *Swiss Ribbons Vs. Union of India* and *Essar Steel Vs. Satish Kumar Gupta*, the Hon'ble Supreme Court has emphasized on commercial wisdom of CoC in approval of Resolution Plan and various aspects thereof including distribution. The role of the CoC is one of a fiduciary duty with an implied covenant of good faith and fair dealing with all stakeholders. Hence it is imperative that there are adequate safeguards in terms of conduct of such members of the CoC.

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