

Statement of Best Practices: "Meetings of the Committee of Creditors Under Corporate Insolvency Resolution Process"

(Joint paper by all the IPAs)

Introduction

In a Corporate Insolvency Resolution Process (CIRP), the commercial wisdom of the Committee of Creditors (CoC) is final subject to approval of the resolution plan by the Adjudicating authority. The CoC decides various matters in a CIRP, including acceptance or rejection of a resolution plan. It takes decisions through its meetings which are recorded in the minutes of the meetings. In CIRP, thus the role of CoC is akin to that of a protagonist, giving finality to the process.

This Statement of Best Practices (Statement) on the meetings of the Committee of Creditors (CoC) is one of a series of Best Practices issued and recommended to Insolvency Professionals (IPs) with a view of maintaining high standards by setting out best practices and harmonising approach to particular aspects of insolvency resolution process.

Adherence by an Insolvency Professional to this Statement is recommendatory. It prescribes a set of guidelines for convening and conducting meetings of the Committee of Creditors constituted under Chapter II of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) and matters related thereto.

This Statement of Best Practices sets out-

- (a) The legal provisions on meetings of Committee of Creditors as provided under the Code and Rules/Regulations/IBBI facilitation letters;
- (b) Practice of observance of the legal provisions in letter and spirit; and
- (c) Suggested best practices in conducting and convening the CoC meetings, basis the observations of IPAs from the inspections conducted of their registered Insolvency Professionals (IPs).

The following is the text of the Statement of Best Practices on "Meetings of the Committee of Creditors", prepared

jointly by ICSI Institute of Insolvency Professionals (ICSI IIP), Indian Institute of Insolvency Professionals of ICAI (IIPI) and Insolvency Professional Agency of the Institute of Cost Accountants of India (IPA-ICMAI).

Scope

This Statement is applicable to Insolvency Professionals while conducting the CoC meetings. This Statement is in conformity with the provisions of the Code and the rules/regulations made thereunder. However, if, due to subsequent changes in the Code and the Rules/Regulations made thereunder, a particular Statement or any part thereof becomes inconsistent with the Code or the regulations, the provisions of the Code or rules or the regulations shall prevail.

1. Convening a Meeting of Committee of Creditors

1.1 Authority

- 1.1.1 The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors. The Resolution Professional appointed by the Adjudicating Authority to conduct the CIRP, may as and when he considers necessary summon subsequent meetings of the CoC.
- 1.1.2 The Resolution Professional shall summon a meeting of CoC if a request to that effect is made by the members of the committee representing thirty three per cent. of the voting rights.
- 1.1.3 The Resolution Professional shall act as a chairperson for all the meetings of CoC. The Resolution Professional shall himself conduct all the meetings of CoC. The number of persons accompanying the RP for the meetings may be limited to three and these persons should not ordinarily speak unless specifically

directed by the RP to speak on a specific issue.

1.2 Serial Number, Day, Time, Place and Mode of Meeting

1.2.1 Every Meeting shall have a serial number.

A Meeting may be convened on any day, at any time and place as the Resolution Professional deems fit. The Resolution Professional may keep in mind that a meeting may not preferably be kept on a National Holiday, unless absolutely necessary.

1.2.2 Date, time and place of the meeting must be fixed and intimated keeping in mind the convenience of members of COC and having regard to their geographical location.

1.2.3 The Resolution Professional may convene the meeting of COC at the premises of corporate debtor/financial creditor or his/her own premises or any other place as the Resolution Professional deems fit. The decision of the Resolution Professional will be final and binding.

Provided, when choosing the venue for the meeting, the Resolution Professional should not only fulfil the legal requirement to choose a place which is convenient for persons who are invited to attend, but he/she should also ensure that the accommodation is adequate for the number of persons likely to attend. Where a meeting is conducted through video conferencing or other audio and visual means, the venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

1.2.4 The members of the CoC may meet in person or through such other electronic means as provided in CIRP Regulations.

1.2.5 Where a meeting is conducted through video

conferencing or other audio and visual means, the venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place. The link for joining the meeting shall be communicated, in advance, to all the members of the COC with clear advice to attend the meeting at the scheduled time by joining the link.

2. Notice

2.1 Service of Notice

2.1.1 Notice Period

A meeting of the CoC shall be called by giving not less than five days' notice in writing along with notes on agenda to every participant, at the address it has provided to the Resolution Professional and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20 of CIRP Regulations.

Illustrative list of items of business for the Agenda for the first and subsequent meetings of Committee of Creditors is placed at Annexure A and B, respectively.

2.1.2 The CoC may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit.

2.1.3 The CoC may reduce the period to such other period of not less than forty-eight hours if there is any authorised representative.

2.2 Notice to be served on

2.2.1 The Resolution Professional shall give notice of each meeting of the CoC to:

- (a) All its members including the authorised representatives referred to in sub-section (6) and (6A) of Section 21 and sub-section (5) of

Section 21:

Provided that when Authorised Representatives are present, then the Financial Creditors or Operational Creditors or Home buyers they represent, would not be allowed to attend the meeting.

- (b) Members of suspended Board of Directors or Partners of the Corporate Debtor as the case may be;
- (c) Operational creditors or their representatives if the amount of their aggregate dues is not less than ten percent of the debt.

Note: If the claim of Operational Creditors, on verification is found to be less than ten percent, the Operational Creditors have no right to claim representation in the meeting of the Committee of Creditors.

2.2.2 The Resolution Professional may, if required, invite such persons relating to the CIRP, as invitees to participate in a particular meeting, where presence of such invitee is required. Such persons may include statutory auditors / senior management personnel of Corporate Debtor, Registered Valuers, Forensic Auditors, if any, etc.

2.2.3 A foreign insolvency practitioner or Administrator of any given case may be allowed to attend the CoC proceedings in India, subject to the approval of Adjudicating Authority.

2.2.4 A notice by electronic means may be sent to the participants through email as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

Further, the subject line in e-mail sharing notice of CoC meeting shall state the name of the corporate debtor, the place (if any), the time and the date on which the meeting is scheduled.

2.2.5 A record of each recipient to whom notice has

been sent and copy of such record and notices of any failed transmission and subsequent re-sending shall be retained as "proof of sending".

2.2.6 The notice for convening the meeting should, where possible be sent simultaneously to all members as specified in 2.2.1. The Resolution Professional should take all reasonable steps to ensure that the list of creditors is complete.

2.3 Contents of Notice

2.3.1 The notice shall provide the participants the details of day, date, time and venue of the meeting and of the option available to them to participate through video conferencing or other audio and visual means, and shall also provide all the necessary information to enable participation through video conferencing or other audio and visual means.

2.3.2 The notice of the meeting shall provide that a participant may attend and vote in the meeting either in person or through a representative duly authorised:

Provided that such participant shall provide the Resolution Professional, in advance, the identity of the authorised representative, who will attend and vote at the meeting on its behalf.

2.3.3 The notice of the meeting shall contain the following-

- (a) a list of the matters to be discussed at the meeting;
- (b) a list of the issues to be voted upon at the meeting; and
- (c) copies of all documents relevant to the matters to be discussed and the issues to be voted upon at the meeting.

2.3.4 Each item of the business requiring approval at the meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the members of the

committee of creditors to understand the meaning, scope and implications of the proposal.

- 2.3.5 The notice of the meeting shall-
- (a) state the process and manner for voting by electronic means and the time schedule, including the time period during which the votes may be casted;
 - (b) provide the login ID and the details of a facility for generating password and for keeping security and casting of vote in a secure manner; and
 - (c) provide contact details of the person who will address the queries connected with the electronic voting.
- 2.3.6 The members of the CoC having atleast 33 percent of the voting rights may request the RP to convene a meeting of the CoC. Such request shall include a note proposing the matters to be discussed or issues to be voted upon, along with relevant documents, if any. The RP shall forthwith convene a meeting of the CoC for consideration of the note, or place the note for consideration in a meeting of the CoC if it is already scheduled or in the ensuing meeting of the CoC.
- 2.3.7 When members of the CoC having less than 33 percent of voting rights request the RP, along with a note, to place the note for consideration in a meeting of the CoC, the RP shall consider the request expeditiously on merits. If he considers it necessary, he shall place the note for consideration in the meeting of the CoC if it is already scheduled or in the ensuing meeting of the CoC.
- 2.3.8 Notice of CoC meeting enclosing agenda should separately record the items to be discussed and items to be voted upon in the meeting for better understanding as a whole.

3. Appointment of representative duly authorised by financial creditor in COC meetings

- 3.1 Every notice shall be accompanied by a form for appointment of representative duly authorised by financial creditor (form) and shall contain the name of the Corporate Debtor and the date of the meeting.
- 3.2 The form must not be sent out with the name or description of any other person inserted on it.
- 3.3 The form is valid only if it is presented by the time stated in the notice convening the meeting.
- 3.4 The form which is incorrect or incomplete will be considered invalid.
- 3.5 The Form which is unsigned or which do not explain the authority under which it is signed, will, therefore, be invalid. However, the form should not be rejected simply because of a minor error in its completion provided:
- a) the form sent with the notice of the meeting (or a substantially similar form) has been used;
 - b) the identity of the creditor and the authorised representative, the nature of the his/her authority and any instructions given to the authorised representative are clear.
- 3.6 Resolution Professional will be the deciding authority in what is to be considered a 'Minor error' in the form.
- 3.7 The RP should intimate to the applicant who wish to be appointed as representative authorised by the financial creditor, in cases where the form is not being accepted for being invalid.
- 3.8 A person may be authorised to represent a creditor which is a body corporate. Where a person is so authorised, he must produce to the RP a copy of the Board resolution from which he derives his authority. The copy of the resolution shared must be signed by the Board of Directors of the Company or Company Secretary of the company.

4. Authorised Representatives for class of Creditors

The authorised representative for a class of creditors shall attend all the meetings of COC either in person or through video conferencing or other audio-visual means.

4.1. Voting by Authorised Representative:

Where the Corporate Debtor has at least ten financial creditors in a class, the resolution professional shall offer a choice of three insolvency professionals and a creditor in the class may indicate its choice of an insolvency professional, from amongst the three, to act as its authorised representative. The insolvency professional, who is the choice of the highest number of creditors in the class, is appointed as the authorised representative of the creditors of the respective class. The authorised representative shall circulate the agenda to creditors in a class, and may seek their preliminary views on any item in the agenda to enable him to effectively participate in the meeting of the committee;

Provided that creditors shall have a time window of at least twelve hours to submit their preliminary views, and the said window opens at least twenty-four hours after the authorised representative seeks preliminary views;

Provided further that such preliminary views shall not be considered as voting instructions by the creditors.

The authorised representative shall cast his vote in respect of each financial creditor or on behalf of all financial creditors he represents in accordance with the provisions of subsection (3) or sub-section (3A) of section 25A, as the case may be.

The procedure for voting and representation will be in accordance with Section 21 (6A) (b) of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 16A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations).

5. Participation through video conferencing

- 5.1 The Resolution Professional shall make necessary arrangements to ensure uninterrupted and clear video or audio and visual connection.
- 5.2 The Resolution Professional shall take due and reasonable care-
 - 5.2.1 to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
 - 5.2.2 to ensure availability of proper video conferencing or other audio and visual equipment or facilities for providing transmission of the communications for effective participation of the participants at the meeting;
 - 5.2.3 to record proceedings and prepare the minutes of the meeting;
 - 5.2.4 to store for safekeeping and marking the physical recording(s) or other electronic recording mechanism as part of the records of the corporate debtor;
 - 5.2.5 to ensure that no person other than the intended participants attends or has access to the proceedings of the meeting through video conferencing or other audio and visual means; and
 - 5.2.6 to ensure that participants attending the meeting through audio and visual means are able to hear and see, if applicable, the other participants clearly during the course of the meeting.

6. Quorum

- 6.1 Quorum shall be present throughout the meeting.
- 6.2 Quorum shall be present not only at the time of commencement of the meeting but also while transacting business.
- 6.3 A meeting of the committee shall be quorate if members of the committee representing at least thirty three percent of the voting rights are present either in person or by video

conferencing or other audio and visual means:

Provided that the committee may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee.

- 6.4 Where a meeting of the committee could not be held for want of quorum, unless the committee has previously decided otherwise, the meeting shall automatically stand adjourned at the same time and place on the next day.
- 6.5 In the event a meeting of the committee is adjourned, the adjourned meeting shall be quorate with the members of the committee attending the meeting.
- 6.6 Participating through electronic mode in a meeting shall be counted for the purpose of Quorum.

7.Attendance Records

- 7.1 Attendance sheet should be complete in all respect and signing should be ensured within the meeting itself.
- 7.2 The attendance sheet shall contain the

following particulars: serial number and date of the meeting; name of the Corporate Debtor; date of initiation of CIRP; place of the meeting; time of the meeting; names and signatures of the members of COC, the Resolution Professional and also of persons attending the meeting by invitation and their mode of presence, if participating through electronic mode.

- 7.3 The attendance sheet shall be deemed to have been signed by the members of COC participating through electronic mode, if their attendance is recorded in the attendance sheet and authenticated by the Resolution Professional.
- 7.4 When the meetings are held through electronic mode, the attendance list may be generated through the Video Conferencing software.
- 7.5 An electronic copy of all records of CoC meetings (physical and electronic) should be kept as per the Record Retention Schedule advised by IBBI from time to time.

(...to be continued in next edition.)

