

Best Practices Meetings of Committee of Creditors Under CIRP and Stakeholder's Consultation Committee Under Liquidation Process

(.....Continue from the previous edition)

2.4 Contents of Notice

- h) The notice of the meeting shall-
 - i. 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;
 - ii. 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
 - iii. Provide contact details of the person who will address the queries connected with the electronic voting.
- i) 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. Quorum:

- a) A meeting of the committee shall be quorate if members of the committee representing at least thirty three percent (33%) 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.
- b) Where a meeting of the committee cannot 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.
- c) In the event a meeting of the committee is adjourned in accordance with sub-regulation (2), the adjourned meeting shall be quorate with the members of the committee attending the meeting.

Note: The meeting shall be considered as conducted unless and until attended by at least one member from CoC, participants shall not be counted for such purposes.

- Quorum shall be present throughout the meeting.
- Quorum shall be present not only at the time of commencement of the meeting but also while transacting business.

4. Appointment of Authorized Representative

4.1 Appointment of representative duly authorized by financial creditor to attend CoC meetings on their behalf

- a. 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 A Copy of Form for Appointment of Authorised Representatives is enclosed as Annexure – D.
- b. The form must not be sent out with the name or description of any other person inserted on it.
- c. The form is valid only if it is presented by the time stated in the notice convening the meeting.
- d. The form which is incorrect, or incomplete will be considered invalid.
- e. 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:
 - i. The form sent with the notice of the meeting (or a substantially similar form) has been used.
 - ii. The identity of the creditor and the authorised representative, the nature of his/her authority and any

instructions given to the authorised representative are clear.

- f. Resolution Professional will be the deciding authority in what is to be considered a 'Minor error' in the form.
- g. 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.
- h. 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.

4.2 Authorized 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 audiovisual means.

4.3 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

The notice convening the meetings of the committee shall provide the participants an option to attend the meeting through video conferencing or other audio and visual means in accordance with Regulation 23 of IBBI (CIRP) Regulation 2016.

The Resolution Professional shall make necessary arrangements to ensure uninterrupted and clear video or audio and visual connection. The Resolution Professional shall take due and reasonable care:

- a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures.
 - b) to ensure availability of proper video conferencing or other audio and visual equipment or facilities for providing transmission of the communications
 - c) for effective participation of the participants at the meeting.
- to store for safekeeping and marking the physical recording(s) or other electronic recording mechanism as part of the records of the corporate debtor;
 - 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
 - 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.

Provided that the persons, who are differently abled, may make request to the resolution professional to allow a person to accompany him at the meeting.

6. Attendance Records

- a) The attendance sheet should be complete in all respects and signing should be ensured within the meeting itself.
- b) 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 special invitation and their mode of presence, if participating through electronic mode. Designation, person to whom representing, Mobile no. and Email Id of the CoC member should also be recorded in Attendance sheet.
- c) 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.
- d) When the meetings are held through electronic mode, the attendance list may be generated through the Video Conferencing software.
- e) 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.

7. Conduct of the Meeting

- a) The Interim Resolution Professional/Resolution Professional acts as the chairperson of the meeting of the committee. At the commencement of a meeting, the Resolution Professional shall take a roll call when every participant attending through video conferencing or other audio and visual means shall state, for the record, the following -
 - i. his name;

- ii. whether he is attending in the capacity of a member of the committee or any other participant;
- iii. whether he is representing a member or group of members;
- iv. the location from where he is participating;
- v. that he has received the agenda and all the relevant material for the meeting; and
- vi. that no one other than him is attending or has access to the proceedings of the meeting at the location of that person.
- b) After the roll call, the Resolution Professional shall inform the participants of the names of all persons who are present for the meeting and confirm if the required quorum is complete.
- c) The resolution professional shall ensure that the required quorum is present throughout the meeting.
- d) From the commencement of the meeting till its conclusion, no person other than the participants and any other person whose presence is required by the resolution professional shall be allowed access to the place where the meeting is held or to the video conferencing or other audio and visual facility, without the permission of the resolution professional.
- e) The Authorized representative of the Suspended Board of Directors is not allowed to attend the meeting.
- f) Resolution Professional has to provide Information Memorandum (IM) in electronic form to each member of the CoC along with all other relevant information.

In addition to the items mentioned in Regulation 36 of CIRP the IM must include a dedicated section detailing the following:

- Quantum of Carry Forward Losses available to the CD
- a breakdown of these losses under the specific heads as per the income tax act 1961
- the applicable time limits for utilizing these losses

- the status of MSME of the CD
 - Fair Value Provided that the COC may decide not to disclose the fair value if, for reasons to be recorded in writing, it considers such nondisclosure to be beneficial for the resolution process
 - The IM is mandated to be shared with the members of the COC not with the other participants and Suspended Board of Directors.
- g) The Resolution Professional also has to take a confidentiality undertaking from the members of the COC before sharing information and documents relating to Resolution Applicants, valuation, financials and Resolution Plans. The details of valuation are required to be disclosed to every member of the CoC in electronic form, on receiving a confidentiality undertaking. Thus, information and documents need to be disclosed or supplied to entitled persons, in the specified manner, at the specified time, after meeting the specified requirements.
- h) After the receipt of resolution plan, the RP shall provide the fair value, liquidation value and valuation reports to every member of the committee in electronic form on receiving an undertaking from the member of the committee to the effect that such member shall maintain confidentiality.

Note: The Valuation aforesaid is mandated to be shared with the members of the COC and not with the other participants and Suspended Board of Directors.

- i) The resolution professional shall ensure that minutes are made in relation to each meeting of the committee and such minutes shall disclose the particulars of the participants who attended the meeting in person, through video conferencing, or other audio and visual means.
- j) The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty-eight hours of the said meeting.

7.1 List of Creditors and authorized representatives to be available for Inspection

- a) The list of creditors, and authorised representatives shall be available for inspection by the persons who

submitted proofs of claim at the first meeting of Committee of creditors.

- b) The Resolution Professional may place the updated list of creditors, if any, at every meeting of COC and shall be available for inspection with required documents, if needed.
- c) The updated list of creditors should also be filed on the electronic platform of the Board for dissemination on its website.

7.2 Voting by the committee and Authorised Representative.

- a) The actions listed in section 28(1) shall be considered in meetings of the committee by a voting of 66%.

Note: The IRP/RP shall provide a summary of rationale for agenda item to be voted upon. The IRP/RP shall place the identified professional with the specific scope of work seeking delegation of Authority, if any and shall also ensure Independence and no conflicting interest with IRP/RP/CD/COC/PRA. IRP/RP must ensure that he/she maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such a decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of its decisions and actions.

- b) Any action other than those listed in section 28(1) requiring 51% voting approval of the committee may be considered in meetings of the committee.

Note: IRP/RP must include the operational status of the corporate debtor shall seek its approval for all costs, which are part of insolvency resolution process costs.

- c) The resolution professional shall take a vote of the members of the committee present in the meeting on any item listed for voting after discussion on the same.
- d) The authorized representative of a particular class of financial creditors will vote in the CoC, on behalf of all financial creditors represented by him as per the decision taken by a vote of more than 50 percent of the voting share of the financial creditors of such

class, who have cast their vote. Such majority vote within a class of creditors will be counted as a 100 percent vote from that class of creditors in favour or against a voting item.

Illustration: If out of a class of 100 homebuyers, 50 or more homebuyers vote in favour of a resolution plan, then all homebuyers would be considered to have voted in favour of the resolution plan.

- e) In case COC members voted physically, the IRP/RP shall maintain voting sheets and to be complete in all respect and signing should be ensured within the meeting itself on the agenda to be voted upon.
- f) The voting 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; list of agenda to be voted upon; names and signatures of the members of CoC.

- g) At the conclusion of voting at the meeting, the resolution professional shall announce the decision taken on items along with the names of the members of the committee who voted for or against the decision or abstained from voting.
- h) Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved: Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before voting. Provided further that where none of the resolution plans receives requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.

(to be continued....)

