

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

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

8.2 Recording of Minutes

- a) Minutes shall contain a fair and correct summary of the proceedings of the meeting.
- b) The Interim Resolution Professional/Resolution Professional shall record the proceedings of the meetings.
- c) The Interim Resolution Professional/Resolution Professional may exclude from the minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.
- d) Minutes shall be written in clear, concise and plain language.
- e) Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.
- f) Minutes need not be an exact transcript of the proceedings at the meeting.
- g) Where any earlier Resolution(s) or decision is superseded or modified, minutes shall contain a specific reference to such earlier Resolution(s) or decision or state that the Resolution is in supersession of all earlier Resolutions passed in that regard.

8.3 Signing and Dating of Minutes

- a) Minutes of the meeting of the COC shall be signed and dated by the Interim Resolution Professional/Resolution Professional.
- b) The Resolution Professional shall put initial on each page of the minutes, sign the last page and append to such signature the date and the place where he has signed the minutes.
- c) Any blank space in a page between the conclusion of the minutes and signature of the Resolution Professional shall be scored out.

8.4 Circulation of Minutes

The resolution professional shall:-

- a) Circulate the minutes of the meeting by electronic means to all members of the committee and the authorised representative,

if any, within forty-eight hours of the conclusion of the meeting; and

- b) seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open, from the circulation of the minutes, for such time as decided by the committee which shall not be less than twenty-four hours and shall not exceed seven days:

Case Citation: *NCLAT (10.06.2019) in IDBI Bank Limited v. Mr. Anuj Jain, IRP, Jaypee Infratech Ltd. and Anr. (Company Appeal (AT)(Ins) No. 536 of 2019) held that; "We make it clear that if any of the 'Financial Creditor' remains absent from voting, their voting percentage should not be counted for the purpose of counting the voting shares, as held by this Appellate Tribunal in 'Tata Steel Ltd. vs. Liberty House Group Pte. Limited & Ors.'"*

The High Court of Gujarat in Arvind Mills Ltd. has held that a bare attempt to vote by depositing blank ballot containing any writing is not effective and cannot be included in the total count. Only those ballots that express voters preference can be counted. The requirement contemplates only two preferences: one affirmative and the other negative. To adopt any other rule would be to say that three ballots were contemplated— one affirmative, one negative, and another neither affirmative nor negative but forming a new class into which all ballots void for any reason must go. In the matter of Kirloskar Electric Co. Ltd., the Karnataka High Court held that a member present and voting may remain neutral, indifferent, unbiased, or impartial- not engaged on either side. One is not supposed to write anything except putting 'yes' or 'no' either in favour of or against the proposition. A vote cast without indicating the mind of the voter either for or against the resolution is no voting at all. So, in construing whether a resolution is passed by three- fourths majority present and voting, what is to be considered in calculating the majority is not the number of persons present and voting, but the number of valid votes polled in such meeting. The number of valid votes includes only votes indicating the mind of the voter for or against the resolution.

Note: The IRP/RP may seek directions from the Adjudicating Authority (AA) if encounter any challenges or difficulties

in dealing with the Committee of Creditors (CoC). In such instances, obtaining guidance from the AA can ensure that the insolvency process proceeds in accordance with the applicable laws and regulations, while also safeguarding the interests of all stakeholders involved.

- c) The authorised representative shall circulate the minutes of the meeting received to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.
- d) 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 the IBC Code.
- e) No creditor, whether secured or unsecured, irrespective of its voting power or share, or no pool of creditors such as Joint Lenders' Forum is a substitute of the CoC. A Resolution Professional cannot take directions of a creditor having significant voting power or a pool of creditors.

Kindly note as per Regulation 16A of IBBI (CIRP) Regulations 2016, recording of minutes by AR shall apply mutatis mutandis.

IV. Meeting of the Stakeholders Consultation Committee

- a) The establishment and operation of the Stakeholders Consultation Committee (SCC) in the liquidation process is similar to the constitution of the Committee of Creditors (CoC) under the Corporate Insolvency Resolution Process (CIRP).
- b) The liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy. The committee of creditors under section 21 shall function as the consultation committee with same voting rights till constitution of the consultation committee as per Regulation 31(1).
- c) The voting share of a member of the consultation committee shall be in proportion to his admitted claim in the total admitted claim.
- d) The liquidator may facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, partners, to nominate their representative for

participation in the consultation committee.

- e) The liquidator shall convene the first meeting of the consultation committee within seven days of the liquidation commencement date and may convene other meetings, if he considers necessary, on a request received from one or more members of the consultation committee: *Provided that* when a request is received by the liquidator from members, individually or collectively, having at least thirty three percent of the total voting rights, the liquidator shall mandatorily convene the meeting.
- f) The consultation committee shall advise the liquidator, by vote of not less than sixty-six percent of the representatives of the consultation committee.
- g) The advice of the consultation committee shall not be binding on the liquidator: *Provided that* where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing and submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report.

Save as otherwise provided under Chapter III of Part II of the Code and the Liquidation Regulations, the provisions of regulations 18 to 26 of Chapter VI and Chapter VII of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 shall apply mutatis mutandis to meetings of the consultation committee under liquidation proceedings.

1. Convening a Meeting of Stakeholders Consultation Committee

- a. The first meeting of stakeholders' consultation committee shall be held within seven days of liquidation commencement date. The liquidator appointed by the Adjudicating Authority shall summon the Committee of Creditors to the first SCC meeting and the CoC shall act as the SCC till the SCC is constituted by the liquidator i.e., within 60 days of liquidation commencement date.
- b. The liquidator should notify the CoC of the SCC meetings and their role till the SCC is constituted, via email communications followed by phone calls to ensure there's maximum participation and the role of the CoC in such meetings is abundantly clear.
- c. The liquidator shall summon a meeting of SCC as and when he considers necessary or when a request is made by a stakeholder. However, the liquidator shall conduct SCC meetings regularly i.e., either monthly/ quarterly

(with the approval of SCC) as the liquidator and SCC may deem appropriate to keep the stakeholders updated on the liquidation process and maintain transparency throughout the process, however as a best practice the Liquidator may attempt to conduct Meeting within 45 days.

2. Constitution of the Stakeholders Consultation Committee

- a. The liquidator shall constitute the SCC within 60 days of liquidation commencement date that shall comprise of a representative from each class of creditor. Each class of creditors shall elect their representative who will be a part of the SCC, in the case they fail to elect a representative, such representatives shall be selected by a majority of voting share of the class, present and voting.
- b. The liquidator shall send a notice to all creditors intimating them about the process of selecting a representative. The SCC should be involved at every stage of selecting a representative, from sending a notice till the election of a representative the liquidator should facilitate the process. This will ensure that the representatives are elected in a transparent and fair manner.
- c. The liquidator can facilitate the process by holding an SCC meeting with a specific agenda of appointing representatives. With respect to the voting/ selecting the representative, the liquidator can use the same portal that is used by the SCC to vote on liquidation matters to simplify the process of appointment.
- d. This is an ongoing activity as new claims are received throughout the process and all creditors must be at consensus with the elected representative, therefore, the SCC & liquidator should continuously facilitate the process as and when new claimants are added to the claims' list.

3. Notice of the Meeting

3.1 Serving of Notice

- a. The liquidator shall serve a notice of at least 5 days for conducting an SCC meeting. The notice shall be served via electronic means along with a detailed agenda and a briefing note for the meeting.
- b. The liquidator should take confirmation from stakeholders on their attendance prior to the meeting to ensure that the quorum is achieved for the meeting and the notice should be served way in advance, to the extent possible, so that the stakeholders can make themselves available for the meetings.
- c. The liquidator shall keep a record of transmission of the notice sent to each recipient and in case of any failed

transmission to any stakeholder, confirm their presence via phone call.

- d. The liquidator shall also keep a check on the responses on the meeting invites sent via email. In case a stakeholder has declined an invite, the liquidator in consultation with stakeholders can decide on a different day or time for that meeting, if the agenda is important and requires extensive deliberation among the stakeholders.

3.2 Contents of the Notice

- a. The notice must contain the date, time, mode of the meeting and venue. In case the meeting is being conducted physically, an option of audio-visual means must be given to stakeholders who cannot be present in person. Link for such an audio-visual means must be provided along with the notice and the liquidator should do a technical demo of the link to avoid glitches and issues at the last minute.
- b. The notice shall include the following:
 - A list of agendas to be discussed;
 - A list of matters to be voted upon; and
 - A detailed discussion document covering the matters that will be discussed.

Note: To include minutes of previous SCC meeting, the Liquidator shall comply with the point no.8

- c. The notice shall clearly specify the items to be discussed and items to be voted upon to avoid confusion. Each item of business that needs approval shall be supported by a note outlining the material facts of the matter.

4. Quorum

The liquidator shall determine the quorum before commencement of the meeting. The quorum shall be present during commencement of the meeting as well as transacting business. The meeting shall be quorate if the committee representing at least thirty percent of the voting rights are present either in person or by video conferencing or other audio- visual means.

5. Attendance Records

- a. The liquidator shall take a roll call and mark the attendance of the stakeholders attending the meeting.
- b. In case of a physical meeting, an attendance sheet bearing name, type of creditor, bank/ institution, contact number, email ID and signature, shall be circulated in the meeting for stakeholders to record their attendance.

- c. The attendance sheet must contain the number of the SCC meeting and date of the meeting.
- d. The liquidator shall preserve the attendance sheet for records and provide it to the regulator for compliance purposes.

6. Conduct of the SCC Meeting

- a. All SCC meetings shall be chaired by the liquidator appointed by the committee of creditors of a corporate debtor and the adjudicating authority.
- b. The liquidator shall take a roll call and each participant shall state the following:
 - His/ her name.
 - The class of creditors he is representing.
 - The bank/ institution he represents
- c. The liquidator shall ensure that the required quorum is present throughout the meeting.
- d. In each SCC meeting the liquidator shall confirm minutes of the previous SCC meeting from the stakeholders. In case any of the stakeholders has comments or queries with respect to the minutes of the previous SCC meeting, the liquidator shall address the same and revise the minutes accordingly.
- e. The liquidator shall obtain a confidentiality undertaking from the stakeholders before sharing sensitive information such as the valuation of the assets, mode of sale, etc. in the SCC meeting.
- f. The liquidator shall provide an asset memorandum to all the stakeholders. The details of valuation are to be disclosed to every member of the SCC on receiving a confidentiality undertaking.
- g. The liquidator shall ensure that minutes are prepared in relation to every SCC meeting.

7. Voting by the Committee

- a. The liquidator shall record vote of the stakeholders on every important matter where approvals are required such as appointment of professionals.
- b. The authorized representative from each class of creditors shall cast a vote on behalf of that class of creditors.
- c. At the conclusion of voting the liquidator shall prepare a document where details of the resolution passed with the voting results against each matter will be stipulated. The liquidator shall circulate the voting results with the stakeholders via electronic means.
- d. The voting share of each stakeholder will be in proportion to his claim amount.

7.1 Voting by electronic means

- a. The liquidator shall provide each member of the committee means to exercise its vote by electronic means.
- b. The authorized representative shall exercise the votes by electronic means as per the voting instructions received by him from the creditors in the class.
- c. At the conclusion of voting, the liquidator shall make a written record of the decisions taken on relevant agenda items along with the names of the members who have voted for or against the agenda.
- d. The liquidator shall circulate the written record with the members of the committee for their reference.
- e. In case of technical issues faced by the stakeholders in casting their vote, the liquidator shall provide necessary guidance and grievance mechanism to the stakeholders.
- f. The voting lines shall be on for a reasonable amount of time so that the stakeholders can deliberate on the vote to be casted and take an informed decision.

8. Minutes of the Meeting

- a. The liquidator shall make the minutes available to a stakeholder in either electronic or physical form, on receipt of :
 - an application in writing;
 - costs of making such reports and minutes available to it; and
 - an undertaking from the stakeholder that it shall maintain confidentiality of such reports and minutes and shall not use these to cause an undue gain or undue loss to itself or any other .
- b. Where the liquidator takes a decision different from the advice given by the consultation committee, he shall record the reasons for the same in writing and submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report
- c. In case of any queries/ suggestions made by stakeholders the liquidator shall modify the minutes and get it considered and approved in next SCC Meeting..
- d. The liquidator shall keep a record of the minutes of all the SCC meetings and provide it to the regulator on completion of the liquidation process.

8.1 Contents of the Minutes

- a. The minutes shall contain the date of the meeting, number of

the meeting, name of the corporate debtor, classes of creditors, names of all the participants, mode of conduct of the meeting, time and venue of the meeting.

- b. Minutes should specify the names of all participants and the capacity in which they are attending the meeting.
- c. The views given by each participant on agenda items must be recorded along with the final decision taken on the matter under discussion.
- d. Apart from the resolution/ decision taken, the minutes shall record a background of proposals and summarize the deliberations thereof.
- e. The liquidator shall provide his independent opinion on each agenda item and record it in the minutes. This will ensure that justification for the decision is available at a later stage.

8.2 Signing and Dating of the Minutes

- a. The minutes of the SCC meetings shall be dated and signed by the liquidator.
- b. The liquidator shall initial each page of the minutes and sign the last page and append to such signature the date and place where he has signed the minutes.

Annexure A

GUIDELINES FOR COMMITTEE OF CREDITORS

Introduction

- 1. Under the Insolvency and Bankruptcy Code, 2016, the commercial wisdom of the Committee of Creditors (CoC) drives the procedures to attain the objective of value maximization of the distressed assets.
- 2. The members of the CoC largely represent financial creditors and most of them are under regulatory oversight of the financial sector regulators other than Insolvency and Bankruptcy Board of India (IBBI).
- 3. Nevertheless, to foster more effective and time bound decision making by the CoC members, these self-regulating guidelines are being issued, to stem the value erosion, through curtailment of procedural delays and enhancement of transparency and coordinated approach of decision making by the members of the CoC.
- 4. The guidelines would help in resolution under the Code in a time bound manner in the interest of maximisation of value of the assets of the corporate debtor.
- 5. **Short title and commencement:** (a) These guidelines may be called the Guidelines for Committee of Creditors. (b)

These Guidelines shall come into immediate effect.

6. Guidelines

A member of the CoC shall: -

Objectivity and Integrity

- (a) follow relevant provisions of the Code and regulations, in letter and spirit, while performing their roles and functions.
- (b) maintain integrity in discharging their roles and functions as envisioned under the Code.
- (c) maintain objectivity during the decision-making process.
- (d) foster informed decision making and share with the CoC/ Insolvency Professional any relevant information relating to transactions, guarantees, recoveries, claims, etc. relating to the corporate debtor.

Independence and impartiality

- (e) disclose to the CoC/ Insolvency Professional the details of any existing or potential conflict of interest arising due to pecuniary, personal or professional relationship with any stakeholder, immediately on becoming aware of it

Professional competence and participation

- (f) keep themselves updated with the provisions of the Code, rules and regulations and the role and responsibilities assigned thereunder.
- (g) nominate representative with proper authorisation and sufficient mandate to effectively participate in meetings. The nominated representative may endeavour to obtain approval of the competent authority, if required, at the earliest.
- (h) participate actively, constructively and effectively in deliberations and decision making of the CoC.

Co-operation, supervision and timeliness

- (i) supervise and facilitate the Insolvency Professional in discharging his duties under the Code.
- (j) facilitate expeditious appointment of various professionals within the timelines prescribed under the Code and regulations.
- (k) endeavour to resolve any inter-se disputes between the members, particularly in relation to claims, preferably, through dialogue, or other nonadversarial means, with a view to avoid litigation to the extent possible.

Confidentiality

- (l) ensure at all times complete adherence to the undertaking

regarding confidentiality of information.

Costs

- (m) take necessary measures to ensure that the insolvency resolution process cost is reasonable.
- (n) expeditiously decide on all the expenses to be incurred by the Insolvency Professional including the going concern expenses of the corporate debtor and his fee.
- (o) prudently fix the fee payable to the liquidator while deciding to liquidate the corporate debtor.

Meeting of the CoC

- (p) regularly monitor the activities of the Insolvency Professional and seek rationale of decisions/actions taken by him.
- (q) diligently recommend for the inclusion or otherwise of the belated claims collated by the Insolvency Professional and categorised as acceptable, in the list of creditors and its treatment in the resolution plan, if any.
- (r) actively participate in the presentation of valuation methodologies made by the Registered Valuers.
- (s) ensure the conduct of the meeting at regular intervals as specified in the regulations.

Sharing of information

- (t) proactively share the latest financial statements, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc. and other relevant information available, with the Insolvency Professional to enable efficient conduct of the process.
- (u) seek details of all litigation filed against or by the corporate debtor from Insolvency Professional and recommend necessary actions to Insolvency Professional to safeguard the interest of the corporate debtor.

Feasibility and viability of corporate debtor

- (v) carefully review and assess the information memorandum prepared by Insolvency Professional and offer additional insights.
- (w) duly contribute to the preparation of the marketing strategy by the Insolvency Professional and may also take measures for marketing of the assets of the corporate debtor, if necessary.
- (x) ensure that all resolution plans as received by Insolvency Professional are placed before CoC.
- (y) suitably consider the requirement of a monitoring committee for the implementation of the resolution plan.

