

CIRCULAR

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To

All Registered Insolvency Professionals

All Recognised Insolvency Professional Entities

All Registered Insolvency Professional Agencies

(By mail to registered email addresses and on website of the IBBI)

Dear Madam / Sir,

Sub: Voting in the Committee of Creditors

The Insolvency and Bankruptcy Code, 2016 (Code) prescribes voting requirements for various approvals by the Committee of Creditors (CoC). For example, section 28(1) of the Code mandates that the Resolution Professional shall not take any of the actions listed thereunder without prior approval of the CoC. Section 28 (3) further provides that no action listed under section 28 (1) shall be approved by the CoC unless approved by a vote of sixty-six percent of the voting shares. Similarly, section 30 (4) of the Code provides that the CoC may approve a resolution plan by a vote of not less than sixty-six percent of voting share of the financial creditors. Further, in terms of regulation 2 (1) (f) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations), a dissenting financial creditor means a financial creditor who voted against the resolution plan or abstained from voting for the resolution plan, approved by the CoC. In this background, an issue has been raised whether a financial creditor, who is not yet admitted as a member of the CoC, would be considered a dissenting or abstaining financial creditor.

2. The relevant provisions in this regard are:

a. Section 13 of the Code mandates a public announcement calling for the submission of claims under section 15. Further, section 15 mandates that the public announcement referred to in section 13 shall contain the last date for submission of claims, as may be specified.

b. Regulation 12 of the Regulations requires that a creditor shall submit claim with proof on or before the last date mentioned in the public announcement. It, however, provides that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit claim with proof to the Interim Resolution Professional or the Resolution Professional, as the case may be, on or before the ninetieth day of the insolvency commencement date. It further provides that a financial creditor, who submits claim after the stipulated date, shall be included in the CoC from the date of admission of such claim. And such inclusion shall not affect the validity of any decision taken by the CoC prior to such inclusion.

c. Section 18 of the Code mandates the Interim Resolution Professional to receive and collate all claims submitted by creditors to him, pursuant to public announcement under sections 13 and 15 of the Code and constitute a CoC. It also mandates him to list assets and liabilities of the corporate debtor as on the insolvency commencement date. Section 21 of the Code mandates that the Interim Resolution Professional shall, after collation of all claims received against the corporate debtor and determination of financial position of corporate debtor,

constitute a CoC. It further mandates that the CoC shall comprise all financial creditors of the corporate debtor. Section 24 (6) of the Code provides that each creditor shall vote in accordance with the voting share assigned to it based on financial debts owed to such creditor.

d. Regulation 17 of the Regulations require that the Interim Resolution Professional shall file a report certifying constitution of the CoC to the Adjudicating Authority within two days of the verification of claims received under regulation 12.

3. A perusal of the above provisions make it clear that-

a. The Code read with regulations provide for the manner of collection and verification of claims.

b. The Interim Resolution Professional constitutes the CoC comprising financial creditors, whose claims have been admitted, as members.

c. The voting power of a member in the CoC is based on the amount of admitted claim in respect of the financial debt.

d. A financial creditor, whose claim has not been admitted, is included in the CoC as member, as and when its claim is admitted.

e. Inclusion of a financial creditor in the CoC as a member subsequent to constitution of the CoC does not affect the validity of any decision taken by the CoC prior to such inclusion.

f. The CoC decides the matters by the specified percentage of voting share of members.

4. Thus, a person, who is not a member of the CoC, does not have voting right in the CoC. A person, who is not a member of the CoC, cannot be regarded as one who has voted against a resolution plan or abstained from voting.

5. This is issued in exercise of the powers under clauses (aa) and (p) of sub-section (1) of section 196 of the Insolvency and Bankruptcy Code, 2016.

Yours faithfully,

-Sd-

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General Manager

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