

6th August, 2024

GUIDELINES FOR COMMITTEE OF CREDITORS

Introduction

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 non-adversarial 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.
