

## ICSI IIP - IBC KNOWLEDGE CAPSULE 5

### Role of Committee of Creditors as per the Code and its Regulations, Orders of Adjudicating Authorities

The following table shows a list of the roles to be performed by Committee of Creditors (COC) *during the Corporate Insolvency Resolution Process*. The list is divided into four types of categories with respect to the source that their role is defined by.

Code and Regulations	
Supreme Court	
NCLAT	
NCLT	

S. No.	ROLE DEFINED	SOURCE
1.	COC shall confirm the IRP as RP or replacement of IRP with another IP as RP by a vote of 66%	Section 22(2) of the Code
2.	COC shall file an application with the AA for replacement of IRP with proposed RP.	Section 27 of the Code
3.	<p>COC shall give its approval to the Resolution Professional by a vote of 66% for the following activities during CIRP:</p> <p>(a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;</p> <p>(b) create any security interest over the assets of the corporate debtor;</p> <p>(c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;</p> <p>(d) record any change in the ownership interest of the corporate debtor;</p>	Section 28 of the Code

	<p>(e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;</p> <p>(f) undertake any related party transaction;</p> <p>(g) amend any constitutional documents of the corporate debtor;</p> <p>(h) delegate its authority to any other person;</p> <p>(i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;</p> <p>(j) make any change in the management of the corporate debtor or its subsidiary;</p> <p>(k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;</p> <p>(l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or</p> <p>(m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor</p>	
<p>4.</p>	<p>COC may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.</p>	<p>Section 30(4) of the Code</p>
<p>5.</p>	<p>The COC may reduce the notice period for convening a COC meeting from five days to such other period of not less than twenty-four hours, as it deems fit.</p>	<p>Regulation 19(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations,</p>

		2016.
6.	COC may modify the percentage of voting rights required for quorum in respect of any future meetings of the committee.	Proviso to Regulation 22(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
7.	COC shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs	Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
8.	COC shall evaluate the resolution plans received strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit. The committee shall record its deliberations on the feasibility and viability of the resolution plans.	Regulation 39(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
9.	COC may instruct the resolution professional to make an application to the Adjudicating Authority under section 12 to extend the insolvency resolution process period.	Regulation 40 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
10.	It is the commercial wisdom of the COC to decide as to whether or not to rehabilitate the CD by accepting a particular resolution plan. The rationale for only FCs (COC) handling the affairs of the CD and resolving them has been deliberated upon by the BLRC, which formed the basis for the enactment of the Insolvency Code.	Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.
11.	It is the commercial wisdom of the majority of creditors to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the CIRP is to take place. This includes determining the ' <i>feasibility and viability</i> ' of a Resolution Plan as well.	Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.
12.	COC is called upon to consider the resolution plan under section 30(4) after it is vetted and verified by RP as being compliant with all the statutory requirements specified under section 30(2).	K. Sashidhar v. Indian Overseas Bank & Ors.
13.	The Code grants paramount status to the commercial wisdom of the COC, without any judicial intervention, for ensuring completion of the processes within time limit.	K. Sashidhar v. Indian Overseas Bank & Ors.
14.	COC will bear the expenses incurred by the IRP in proportion to the amount claimed.	State Bank of India v. SKC Retails Ltd.
15.	COC should have a transparency while accepting or	Rajputana Properties

	rejecting resolution plans.	Pvt. Ltd. v. Ultra Tech Cement Ltd. & Ors.
16.	COC can appoint the IRP as RP only after obtaining consent from the proposed person.	Dharmendra Kumar v. IBBI & Ors.
17.	COC is a creature of the Statute and an instrumentality of the state.	Numetal Ltd. v. Satish Kumar Gupta RP and Another
18.	COC is required to decide whether the proposal given for settlement in terms of Section 12A is better than the 'Resolution Plan' or not	Shaji Purushothaman v. Union Bank of India & Ors
19.	COC to look at the viability, feasibility and other conditions of the resolution plan in respect of corporate debtor under CIRP	Sreeram E. Techno School Pvt. Ltd. v. Beans and More Hospitality Pvt. Ltd.
20.	COC should not have given any reason against the IRP which otherwise would affected the career of the person.	Bank of Baroda v. Maa Tara Ispat Industries Private Limited
21.	COC should not seek liquidation if time is still left to invite resolution plans	In the matter of Vedika Nut Crafts Pvt. Ltd
22.	COC is responsible for safeguarding the interests and assets of a CD under CIRP.	Renaissance Steel India Private Limited v. Mr. Dhaivat Anjaria & Ors.
23.	Members of the COC should give due authority to their nominated representatives for smooth voting process	SBJ Exports & Mfg. Pvt. Ltd. v. BCC Fuba India Limited
24.	COC should support the RP and the resolution applicants by way of making all documents available to them.	R. Venkatakrishnan v. Paragon Steels Pvt. Ltd. & Ors.
25.	COC has to comply with the provisions of the Code.	Subburaj Cotspin Mills Pvt. Ltd. v. Tharuvai Ramachandran Ravichandran, IRP
26.	COC is not vested with absolute power to change the IRP without any valid or tenable reasons.	Ms. Rama Subramaniamv v. M/s Sixth Dimensions Project Solution Limited

**Notes:**

**Abbreviations used:**

IBBI: Insolvency and Bankruptcy Board of India  
IPA: Insolvency Professional Agency  
ICSI IIP: ICSI Institute of Insolvency Professionals  
IP: Insolvency Professional  
CIRP: Corporate insolvency resolution process  
IRP: Interim Resolution Professional  
AR: Authorised Representative  
COC: Committee of Creditors  
CD: Corporate Debtor  
FC: Financial Creditor  
OC: Operational Creditor  
Code: Insolvency and Bankruptcy Code, 2016

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