



IBC KNOWLEDGE CAPSULE

Framework for “*Authorised Representatives under IBC*”

Introduction:

In order to represent the financial creditors in a simplified manner, an Authorized Representative (AR) may be appointed to represent their concerns to the committee of creditors for the insolvency resolution under the provisions of Section 21 (6A) (b) of IBC & Regulation 16A (1) of the Regulations as per the IBBI circular dated July 13, 2018.

Insolvency and Bankruptcy Code 2016 (IBC) does not define the term ‘authorized representative’ in its rules or regulations. An Authorized Representative (AR) is a person, who, under the provisions of the Code should be a registered Insolvency Professional and are appointed for the purpose of facilitating representation of creditors belonging to a class. The concept was introduced in IBC through Insolvency and Bankruptcy Code (Second Amendment) Act, 2018.

The available framework on Authorised Representatives under the Code with important provisions and orders passed are summarized in the color coded table below:

Provisions of the Code	
Rules/Regulations under the Code	
Forms to be filed	
Orders passed by NCLT/NCLAT/Supreme Court	
Circulars/Notifications/Reports	

TABLE: “Authorised Representatives” under IBC

Source	Details /Excerpts	Explanation/Remarks
Section 21(2) of the Code	<i>(2) The committee of creditors shall comprise all financial creditors of the corporate debtor: Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor,] shall not have any right of representation, participation or voting in a meeting of the committee of creditors:</i>	This Sub-section provides that AR would be a part of the COC, thus formed.
Section 21 (6A) of the Code	<i>(6A) Where a financial debt— (a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors; (b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors; (c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors, and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.</i>	Section 21 (6A) (b) provides that where the corporate debtor has at least ten financial creditors in a class, the interim 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 collects voting instructions from the respective class of creditors, attends the meetings of the committee of creditors (CoC) and casts vote in respect of the said class in accordance with the instructions he receives from the creditors.

Section 21 (6B) of the Code	<i>(6B) The remuneration payable to the authorised representative- (i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and (ii) under clause (b) of sub-section (6A) shall be as specified which shall be form part of the insolvency resolution process costs.]</i>	The remuneration has been elaborated upon in the regulations based on the number of creditors that the AR represents.
Section 24 (3) of the Code	<i>The resolution professional shall give notice of each meeting of the committee of creditors to- (a) members of [committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5) ...(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.</i>	Since AR represents the creditors who are a part of the COC, a notice of the meeting would need to be issued to them as well. Please note that the representative of the OC , may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings.
Section 25 of the Code	<i>25A. Rights and duties of authorised representative of financial creditors. – (1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means. (2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents. (3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions: Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share: Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.</i>	The authorised representative collects voting instructions from the respective class of creditors, attends the meetings of the committee of creditors and casts vote in respect of the said class in accordance with the instructions he receives from the creditors.

	<p><i>(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote: Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of subsection (3).</i></p> <p><i>(4) The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.</i></p> <p><i>Explanation.- For the purposes of this section, the “electronic means” shall be such as may be specified</i></p>	
Regulation 4A of IBBI (CIRP) Regulations, 2016	<p><i>(2) For representation of creditors in a class ascertained under sub-regulation (1) in the committee, the interim resolution professional shall identify three insolvency professionals who are-</i></p> <p><i>(a) not his relatives or related parties;</i></p> <p><i>(aa) having their addresses, as registered with the Board, in the State or Union Territory, as the case may be, which has the highest number of creditors in the class as per their addresses in the records of the corporate debtor: Provided that where such State or Union Territory does not have adequate number of insolvency professionals, the insolvency professionals having addresses in a nearby State or Union Territory, as the case may be, shall be considered;</i></p> <p><i>(b) eligible to be insolvency professionals under regulation 3; and</i></p> <p><i>(c) willing to act as authorized representative of creditors in the class.</i></p>	This regulation will specify the eligibility criteria for appointment of an Authorized Representative.

	<i>(3) The interim resolution professional shall obtain the consent of each insolvency professional identified under sub-regulation (2) to act as the authorized representative of creditors in the class in Form AB of the Schedule.]</i>	
Regulation 6 (2) (bb) of IBBI (CIRP) Regulations, 2016	<i>(bb) offer choice of three insolvency professionals identified under regulation 4A to act as the authorized representative of creditors in each class</i>	AR is appointed out of three options given to the class of creditors to pick from
Regulation 8(3) of IBBI (CIRP) Regulations, 2016	<i>A creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional in the public announcement, to act as its authorised representative.</i>	Class of creditors will pick one person out of three options given to them after obtaining consent from all for being appointed as an AR.
Regulation 9(2) of IBBI (CIRP) Regulations, 2016	<i>Where there are dues to numerous workmen or employees of the corporate debtor, an authorised representative may submit one [claim with proof] for all such dues on their behalf in Form E of the Schedule.</i>	It is one of the duties of the AR to collect the claims and apply with a consolidated claim form.
Regulation 16A of IBBI (CIRP) Regulations, 2016	<i>16A. Authorised representative. (1) The interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors in the class in Form CA received under sub-regulation (1) of regulation 12, to act as the authorised representative of the creditors of the respective class: Provided that the choice for an insolvency professional to act as authorised representative in Form CA received under sub-regulation (2) of regulation 12 shall not be considered.... ...(9) 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</i>	The process for appointment and the functions of an AR are given under this Regulation. It specifies that the AR needs to be in consultation with the class of creditors that it represents.
Regulation 16B of IBBI	<i>16B. Committee with only creditors in a class. Where the</i>	If an AR is appointed for a class, then the

(CIRP) Regulations, 2016	<i>corporate debtor has only creditors in a class and no other financial creditor eligible to join the committee, the committee shall consist of only the authorized representative(s)</i>	creditors in that class will not be allowed to attend the meeting of the COC.
Regulation 21(2) of IBBI (CIRP) Regulations, 2016	<i>21. Contents of the notice for meeting. ...The notice of the meeting shall provide that a participant may attend and vote in the meeting either in person or through an authorized representative: Provided that such participant shall inform the resolution professional, in advance of the meeting, of the identity of the authorized representative who will attend and vote at the meeting on its behalf</i>	AR is granted the right to attend a COC meeting, if appointed
Regulation 25(5) of IBBI (CIRP) Regulations, 2016	<i>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 ...(6) The authorised representative shall circulate the minutes of the meeting received under sub-regulation (5) 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</i>	It is also the duty of an AR to circulate the minutes of the meeting to its class of creditors and inform them of the voting requirements and windows.
Regulation 25A of IBBI (CIRP) Regulations, 2016	<i>25A. Voting by Authorised Representative. 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.</i>	AR will take the votes cast by the creditors in its class and present them to the IP for decision making.
Regulation 31 of IBBI (CIRP) Regulations, 2016	<i>"Insolvency resolution process costs" under Section 5(13)(e) shall mean ... (aa) fee payable to authorised representative under 41[sub-regulation (8)] of regulation 16A; (ab) out of pocket expenses of authorised representative for discharge of his functions under section 25A</i>	The fee and out of pocket expenses of the AR are covered under Resolution process costs and will thus need to be ratified by the COC.
FORM AB	Consent to act as an AR	
FORM CA	Submission of claim by Financial Creditors in a Class	

FORM E	Proof of claim of workmen or employee by AR	
CIRCULAR No. IBBI/CIRP/015/2018 dated 13th July, 2018	Appointment of Authorised Representative for Classes of Creditors under section 21 (6A) (b) of the Insolvency and Bankruptcy Code, 2016	Wherever the approval of resolution plan under regulation 39 (3) of the Regulations is at least 15 days away, the resolution professional shall expeditiously obtain, by electronic means, the choice of the insolvency professional from creditors in a class to act as the authorised representative of the class and proceed further in the manner as specified in regulation 16A of the Regulations.
Clarification Circular No. IBBI/CIRP/JIL dated 6th December, 2019	Voting on behalf of creditors in a class in the CIRP of Jaypee Infratech Limited	The Resolution Professional / Authorised Representative is duty bound to conduct the process, including voting, strictly in compliance with the Code, Regulations and the order dated 6th November, 2019 of the Hon'ble Supreme Court in the matter of <i>Jaiprakash Associates Ltd. & Anr. Vs. IDBI Bank Ltd. & Anr.</i> and to suitably inform the creditors in such class about the timing and the manner of voting by them on the resolutions / resolution plan to obviate any confusion.
Report of Insolvency Law Committee (March 2018)	<i>In light of the logistical and technical difficulties in ensuring participation by all members of the CoC in large CoCs, the Committee deliberated on the need for a provision for representation of retail creditors, public depositors or any other individual financial creditors above a certain threshold in terms of number through an authorised representative. Such authorised representative may attend and vote on behalf of such financial creditors in the said meeting, express the concerns of the creditors being represented by it in the meeting, obtain clarity on issues and communicate any important concerns to the represented creditors. This shall further ensure inter se coordination among the creditors by having a common representative as well as effective participation in the meetings of the CoC. Participation by a single person representing many creditors is not only cost and time effective but also helps in smooth functioning of the</i>	These provisions were later added through amendments wherein now an AR can attend a meeting and vote in it on behalf of the creditors it represents.

	<p><i>meeting. However, suitable safeguards are necessary to ensure that the authorised representative protects the interests and acts in the best interest of the creditors that it represents</i></p>	
<p><i>Consolidated Engineering Company & Anr. v. Golden Jubilee Hotels Pvt. Ltd.</i> dated 12.12.2018</p>	<p>The AA in the impugned order had held that 10% of the total debt for the purpose of representation in the CoC is to be calculated on the basis of the claim as collated and noticed by the RP. NCLAT upheld the impugned order and stated that if the claim of OC(s), on verification, is found to be less than 10%, the OC(s) have no right to claim representation in the meeting of the CoC. However, NCLAT allowed the representative of the OC(s) to observe the CoC proceedings but without any right to object or participate in the said proceedings, and if any contrary decision is taken, in such a case, the OC may move proper application before appropriate forum at proper stage.</p>	<p>Link to access order: https://ibbi.gov.in/webadmin/pdf/order/2018/Dec/12th%20Dec%202018%20in%20the%20matter%20of%20Consolidated%20Engineering%20Co.%20&%20Anr.%20Vs.%20Golden%20Jubilee%20Hotels%20Pvt.%20Ltd. 2018-12-16%2013:30:59.pdf</p>

Note:

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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