Analysis of Power of Committee of Creditors

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Introduction:

Insolvency and Bankruptcy Code, 2016 came into force on 28th May 2016, which may be also called as “Code”. After the fall in subsisting laws for liquidation and insolvency, the Indian bankruptcy regime observed an absolute overtake with the enactment of the Insolvency and Bankruptcy Code, 2016. Primarily, objectives of this code are to maximize the value of assets of a corporate person, to ease the businesses, to minimize the financial risk in business, to improve the condition of the company which is under financial distress, to bring back the company in a time-bound manner, to check and control the fraud done by the corporate person who has been defaulting the due payments and also to set up the Insolvency and Bankruptcy Board of India. However, it mainly focuses on the relief of the creditors of the company or the stakeholders.

Under the Corporate Insolvency Resolution Process, the creditors are given importance and as per the direction of the creditors who are part of the Committee of Creditors, the resolution plan of a company is done. This Code applies to a company which is registered under the Companies Act 1956, a Limited liability partnership, Partnership firms, and Individuals and under the Insolvency and Bankruptcy Code, any financial creditor or an operational creditor can initiate corporate insolvency process against a corporate debtor when the corporate debtor commits a default in repayment of debts.

Committee of Creditors:

The committee of creditors plays a major role in the regime of insolvency. This committee of creditors is the supreme decision-making body in the Corporate Insolvency Resolution Process, whose decision will affect the resolution of insolvency of the corporate debtor. Under regulation 21 of the code, the committee of creditors is formed. It is the responsibility of the interim resolution professional to call for claims received from all the creditors within 14 days of public announcement and when the claim gets the verification, the committee of creditors forms. This committee of creditors shall comprise all the financial creditors of the corporate debtor.

As the code mandates that the committee of creditors shall consist of all the financial creditors, it also made clear differences between the financial creditors and operational creditors. Here, the financial creditors mean a person to whom the debt along with interest is owed e.g. Home-buyers, banks, cheques, bonds, guarantees, etc. Whereas, operational creditor means a person who has debts related to the supply of goods and services including employees, government dues e.g.
employees, service providers.

**Why not operational creditors?**

The difference between the financial creditors and operational creditors is justified by the banking law reforms committee, it emphasized the exclusion of operational creditors from the committee of creditors because the committee of creditors hold the ability to assess the commercial viability, willingness to change the existing terms of liabilities in negotiation and also entrusted with the responsibility of financial restructuring, considering which the operational creditors have limited rights in the code and do not possess such rights so, the code prioritize the inclusion of the financial creditors despite operational creditors in the committee of creditors. Also, the operational creditors are interested in the recovery of debt but not in the resolution of insolvency of the corporate person as like of financial creditors, this is the reason to exclude the operational creditors from being the member of the committee of creditors.

**Roles and Responsibility of Committee of Creditors:**

The committee of creditors have various roles and responsibility in Corporate Insolvency Resolution Process under the code to perform; they are as follows:

- All the major decisions about the company are taken with the approval of the committee of creditors.
- Committee of creditors can decide whether or not to restore the corporate debtor by accepting any resolution plan.
- Committee of creditors confirms the interim resolution professional as resolution professional or can replace the insolvency professional as resolution professional.
- The committee of creditors conducts regular meetings wherein it discusses the rules over the working on the interim resolution professional and examines the fate of the corporate debtor.
- The committee of creditors ratifies the administrative decision taken by the resolution professional.
- After considering its practicality and viability the committee of creditors can approve the proposed resolution plan by not less than 66% of the vote.
- The Committee of creditors also evaluates and approves the resolution plan with modification if any needed.

**Meeting of Committee of Creditors:**

Under section 24 of the insolvency and bankruptcy code, 2016, states how the meeting of the committee of creditors is done which says, all the meetings of the committee of creditors shall be conducted by the resolution professional. The member of the committee of creditors may attend the meeting in person or by electronic means (virtually). The notice of each meeting of the committee of creditors is given by the resolution professional at least 5 days before the commencement of the
meeting. Such notice may be sent by hand delivery or by post. The resolution professional has the responsibility to issue notice to all the participants and the members of the committee of creditors. Here participants mean the suspended Board Members or Partners of the corporate person, Operational Creditors if their aggregate debt is more than 10% of the total debt. These participants of the committee of creditors may attend the meeting can deliberate their opinion and views but do not possess any voting rights but whereas the member of the committee of creditors in the meeting have the voting rights for passing the resolution. Also other than resolution professional, the creditor who is a member of the committee of creditors may appoint an insolvency professional to represent such creditor. The voting shall be done by the creditors by the following voting shares assigned to them. For every decision to be taken in the interest of the revival of the company, the interim resolution professional puts the decision to be taken along with the options against the same on the e-voting platform. Every member of the committee of creditors then has to vote through the identity card provided to them. The majority is at least 51% of voting and then the resolution professional shall determine the voting share of the creditor in the manner specified by the board. Hence, the meeting of the committee of creditors shall be conducted in the aforementioned manner.

As per regulation 22 of Corporate Insolvency Resolution Process 2016, a minimum of 33% of voting right is required to be present for the meeting of the committee of creditors to be held for good discussion. The members can be present either in person or by audio or video conferencing. This quorum of the meeting shall be conducted only by the members of the committee of creditors, not by the participant. For voting as per Regulation 21(3) (b) read with 25(5) of CIRP 2016, voting should not be conducted even if a single member of the committee of creditors is absent, which means for allowing the voting at the meeting there should be 100% total members present.

**Power of the Committee of Creditors:**

- The committee of creditors is the supreme decision-making body, which has the power to decide the fate and regular functioning of the corporate debtor and also take all the important decisions in favor of the company.
- The committee of creditors has the power to approach the adjudicating authority which is the national company law tribunal in case of any foul play event.
- The committee of creditors can apply to the adjudicating authority to change the interim resolution professional if needed.
- The committee of creditors has the power to choose to proceed with the liquidation of the corporate debtor by not approving any resolution plan.
- The Committee of Creditors is empowered to exercise their commercial wisdom while taking any decision for the corporate debtor. This is because the committee of creditors has better knowledge and can better determine the serious situation of the company which is under distress.
- The Committee of Creditors is also authorized to reduce the notice period from five days to 24
hours if they feel the necessity. In case an authorized representative is there, a minimum notice period of 48 hours is required.

Thus, the committed creditors have been vested with great powers under the insolvency and bankruptcy code, 2016.

**Conclusion:**

Under insolvency and bankruptcy code 2016, the Creditors of the company play a very important role in the regime of insolvency. The Committee of creditors has been vested with great powers and responsibilities, which further leads to the resolution of a company under distress. The creditors shall take absolute control of the management of the corporate debtor, with the authority to take important decisions and negotiate the resolution plans, also the committee of creditors eases the financial risk in a company. Nonetheless, the Committee of Creditors is further entrusted with commercial wisdom, which empowers them to take the most crucial decisions regarding the fate of the company. The Committee of creditors is considered to be the headliner to the resolution process. By handing such powers to the creditors of the company, the impact of creditor-in-control model management promises the likelihood of a stronger bankruptcy regime.

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