

Withdrawal of Claim by a member of Committee of Creditor during CIRP

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In an interesting question whether a creditor who wishes to opt out of the CIRP process withdraw his claim?

The Word 'Claim' has been defined in the code under section 3(6). As per this section, the claim means a right to payment and also right to remedy. So, claim comes into picture only if there is a right to payment and if no right to payment, no claim at all.

The Interim Insolvency Professional as per section 15 (1) read with Section 13 of IBC has to make a Public announcement within 3 days of his appointment. In the Public announcement, the details of Corporate Debtor, the Register with which the entity is registered and the last date of submission of claims and other details will be there. As per Section 15(1)(c) and as per CIRP Regulation 6(2)(c), the Creditors have to submit their claims within 14 days from the date of appointment of Interim Resolution Professional. But as per CIRP Regulation 12(2) the Creditors who fails to the submit the claims with proof within 14 days can submit their claims within 90 days from the Insolvency Commencement date.

Section 12A of the IBC clearly permits withdrawal of an application under Section 7 of the IBC that has been admitted on an application made by the applicant with 90% approval of the CoC for withdrawal application.

On an interesting view neither does chapter II of the IBC nor do the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provide for the event of withdrawal of claim submitted by a financial creditor after its admission in the CoC thus adding to the ambiguity in the given situation.

However, chapter III of the IBC which contains provisions regarding 'liquidation process', Section 38(5) provides that a creditor may withdraw its claims as filed before the liquidator within 15 days of submission.

In the matter of **Mr. KN Rajakumar v. V. Nagarajan (2021) [ibclaw.in 223 NCLAT](#)**, as per the recorded facts of the matter, certain financial creditors who were part of the original CoC of the corporate debtor withdrew their claims entirely during the course of the CIRP. Despite such change in circumstances, the NCLAT went on to order the original CoC which is constituted by such erstwhile creditors as well to reconvene and determine the fate of the corporate debtor as on present date.

The NCLAT upheld the NCLT's Order on the basis that the resolution professional does not have any 'adjudicatory power' under the IBC and no change can be made in the CoC when it was already formed. It is undisputed that the resolution professional as per the provisions of the IBC does not have adjudicatory powers and cannot reject a claim or even change the status of a creditor once the

CoC is constituted.

In such instances the RP usually does not want to take any onus on himself as there is no clear provision under CIRP for RP to allow a creditor to withdraw their claim. Ultimately for withdrawal of claim under CIRP the Creditor has to rely on Section 60(5) by making an application to the Adjudicating Authority for withdrawal of any claim that is made against the Corporate Debtor.

However, the General Clauses Act, 1897 section 16 provides Power to appoint to include power to suspend or dismiss. Where, by any [Central Act] or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having [for the time being] power to make the appointment shall also have power to suspend or dismiss any person appointed [whether by itself or any other authority] in exercise of that power.

In principle Resolution Professional in exercising his duties as legal officer of the Court can exercise this power as provided under general clauses act to allow a creditor to withdraw their claim. But the question then arises whether a Resolution Professional appoints a creditor as Financial Creditor or Operational Creditor as the case maybe after verification of claim or by virtue of law they acquire that status?

Clearly an explanation as to allowance of creditor to withdraw their claim after CIRP is commenced is required from IBBI or necessary amendment is required.

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