

CIRP - PART - III

[Section 21 to 28]

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Section 21 - Committee of creditors

1.	→ The IRPro shall after collation of all claims received against the CD, <u>constitute a committee of creditors.</u>
* 2. <u>D.P</u>	→ The coc <u>shall</u> comprise <u>all financial creditors</u> of CD ↓ Proviso - 1 Provided that a Fc. or the AR of Fc if it is a related party of CD, shall not have any right of representation participation or voting in a meeting of coc. ↓ Proviso - 2 Provided further that first proviso shall not apply to the Fc if <u>it is a related party of the CD solely on conversion or substitution of debt into equity or instr. convt. into eq. shares</u>
3.	→ where CD owes financial debt to 2 or more Fc. as a part of consortium or agreement, <u>each such Fc shall be part of coc and their voting shares shall be determined on the basis of financial debt owed to them.</u>
4	→ <u>where any person is Fc. as well as O.C.</u> a) ↓ - such person shall be Fc to the extent of F. debt owed by CD <u>shall be included in coc with voting sh. proportion to the ext. of fin. debt owed to such creditor.</u> b) ↓ - such person shall be oc to the extent of OP. debt owed by CD.
5	→ where oc has assigned or transferred any OP. debt to the Fc. the assignee, transferee, <u>shall be considered as oc</u> to the extent of such assignment or legal transfer.
6	→ where the terms of fin. debt extended as a part of consortium arrangement provided for a single trustee or agent to act for all fin. creditors, each Fc may. ↓ Authorise a trustee or agent to act on his behalf in the coc. ↓ Represent himself in the meeting of crs. ↓ appoint a insolv. Professional (other than Resoln prof) at his own cost to represent himself in the meeting of coc. ↓ Exercise his right to vote to the extent of his voting sh. with one or more Fc jointly or severally

GA	<u>where a financial debt.</u> (a) Is in the form of sec. or deposits & the terms of fin. debt provide for appointment of a trustee or agent to act as a A.R. of all fin. creditors ↓ Such trustee or Agent shall act on behalf of such fc. ↓ <u>organised bleed</u> (b) Is owed to the class of creditors exceeding 10 other than crs covered under clause a) or sub sec. (6). ↓ The IRPRO shall make an appⁿ to the AA + List of all creditors ↓ containing the name of R. pro other than <u>IRPRO</u> to act as A.R. (App. by AA prior → coc) <u>2 imp points :</u> A.R. → appointed by AA Fees/ → Part of CIRP cost ↓ <u>unorganised bleed</u> (c) Is represented by guardian, executor or administrator such person shall act as A.R. on behalf of such f.c.
6B	<u>Remuneration payable to the authorised representative shall be</u> → <u>Under clause a) or c) of sub sec. 6A</u> :- <u>As per the terms of fin. debt</u> → <u>Under clause (b) of sub sec. 6A</u> :- <u>Part of CIRP cost</u>
7.	<u>Manner of voting</u> / - <u>Board may specify (IBBI)</u> Determining of v.sh in respect of fin debt
8.	All decisions of coc shall be taken by a vote of Not less than <u>51% of voting sh. of fc.</u> provided that where the cd does not have any fc → <u>coc may be</u> shall be constituted in such manner as may be specified.
9.	coc shall have a <u>right to require</u> a <u>resolutional professional</u> to <u>furnish any info. in relation to the corporate debtor</u> at any time <u>during the CIRP.</u>
10.	<u>Resolⁿ Professional.</u> <u>Fin. info.</u> → coc (w. 7 days)

Regulation - 16A

Authorised Representative of creditors in class

- Interim Resolution Professional shall select the insolvency prof. who is the choice of the highest number of financial creditors to act as a authorised representative of the creditors of the resp. class and shall apply to the AA for appointment of AR within 2 days of the verification of the claims.
- Any delay in the appointment of AR for any class of creditors not affect the validity of any decision taken by the committee.
- on appointment of AR, IRPro shall -
 - Provide list of creditors in each class. → A.R.
 - Provide an updated list of creditors in each class.
 - Provide electronic means of communication between AR and the creditors in each class.
- voting share of creditors - shall be in proportion to the fin. debt which include an interest at the rate of 8% p.a unless a different rate has been granted.

Fees of AR -

<u>No. of crs in class</u>	<u>Fees per meeting</u>
10 - 100	15,000
101 - 1000	20,000
more than 1000	25,000

Refer

Amendment

→ A.R. to seek Preliminary Review -

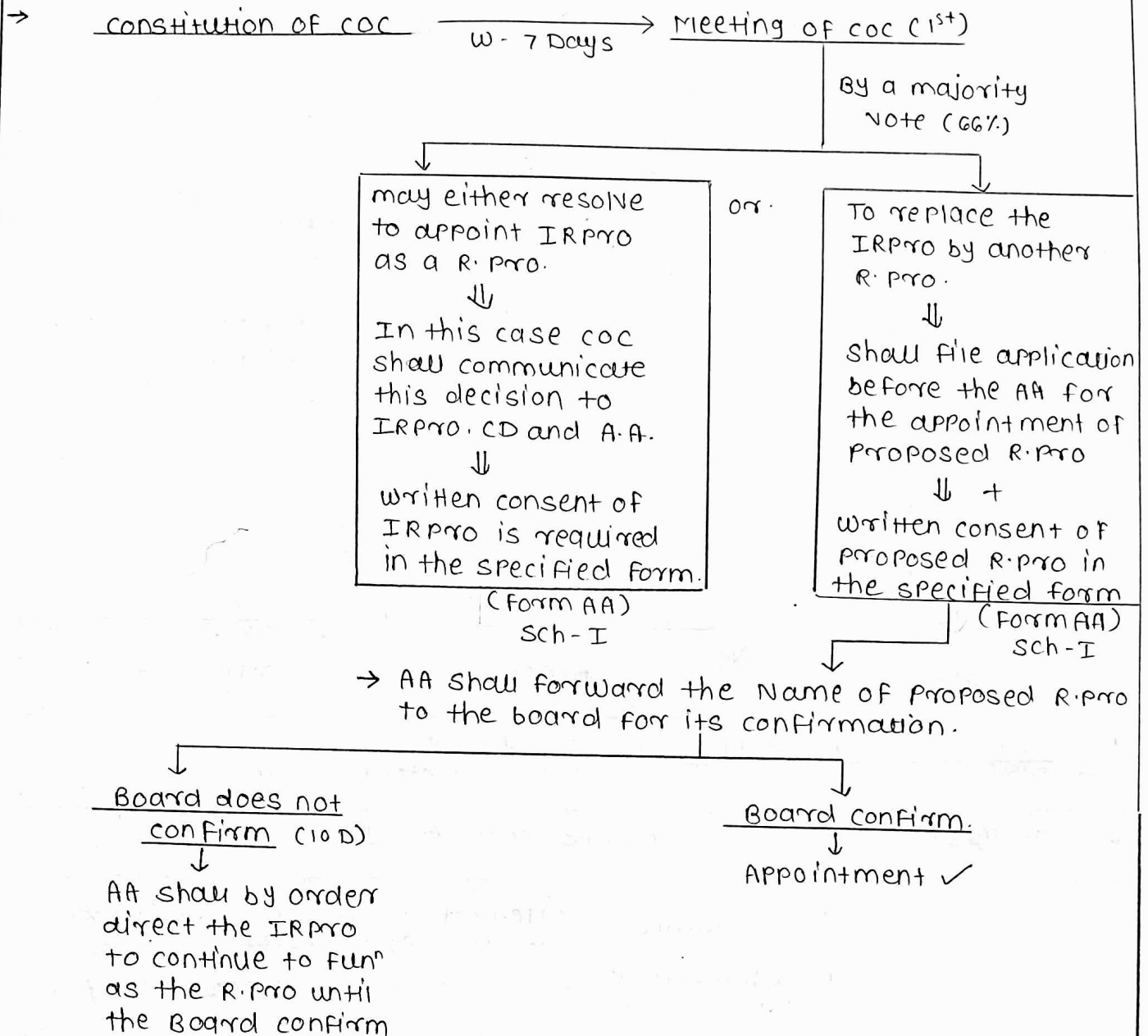
AR shall circulate the agenda to creditors in a class and may seek their preliminary views on any item in the agenda. The creditors shall be provided with a window of at least 12 hours to submit their preliminary rev views and the said window shall be open should be open at least 24 hours after AR seeks preliminary views such preliminary views shall not consider as voting instructions

Regulation - 16B

where the 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 Authorised Representative.

Section 22 - Appointment of R. pro. + Regⁿ-3



⇒ Eligibility criteria for Resolution Professional - [Reg - 3]

- If he and all partners / Dir. of insol. prof. entity of which he is P/D are independent of the CD.
 - Eligible to be appointed as an ID on the board of CD U/s 149 of the companies Act, where CD is a company.
 - Is not related party of the CD
 - of a legal or consultancy firm that has or had any transⁿ with the CD amounting to 5% or more of Gross T/O of such firm in last 8 yrs
- committee shall obtain written consent from R. pro - in form AA
- An IRpro or Rpro shall make disclosure at the time of his appoint. and thereafter in accordance with code of conduct
- An IRpro or Rpro who is a Dir/P. of an insolvency Professional entity shall not continue as R. pro in a CIRP if insol. prof. entity or any other P/D of such entity represent any other st. holder in same CIRP

⇒ Section 23 - Resolution Professional to Conduct CIRP.

1.	2.	3.
• Subject to sec. 27 the R.Pro. shall conduct the entire CIRP and manage the operations of CD during CIRP. ↓ Provided that the R.Pro. shall continue to manage ORN of the CD after the expiry of CIRP period until the order of Resoln Plan or appointing a Liquidator is passed by AA.	The Resolution Professional shall exercise powers and perform duties as are vested or conferred on the IRPro.	In case of any appointment of Resoln Professional (sec. 22(4)) the IRPro shall provide all the info. documents and records pertaining to the CD in his possession and knowledge to the R.Pro.

⇒ Section 24 - Meeting of Committee of Creditors

1.	<u>Members of coc may meet</u> → In person or by such other e-means.
2.	<u>All meetings of coc</u> → shall be conducted by <u>R.Pro.</u>
3.	R.Pro → Notice ↓ of each meeting of coc. → Mem. of coc incl. AR ref. in sub sec. (G) and (GA) of sec. 21. → Mem. of suspended BOD or the partners or their representatives if the amt. of their agg. due is not less than 10% of debt.
4.	The Dir / P and one representative of OC may attend the meetings of coc but shall not have any right to vote in such meetings. The absence of any of the above as the case may be shall not invalidate proceedings of such meeting.
5.	sub. to sub-sec. (G)(GA)(GB) of sec. 21 any creditor who is a mem. of coc may appoint an insolvency professional other than the Res. Pro to <u>represent such creditor</u> in a meeting of coc. [Fees - borne by cr.]
6.	each creditor shall vote in accordance with voting sh. assigned to him based on the fin. debt owed to them.
7.	R.Pro shall determine the voting sh assigned to them each cr. in the manner specified by board.
8.	The meetings of the committee of creditors shall be conducted in such manner as may be specified.

Regulation - 18.

* - R. Pro shall convene a meeting before lapse of 30 days from last meet.

→ The R. Pro may convene the meeting of the committee as and when he considers necessary, and shall convene a meeting if the request to that effect is made by the members of the committee representing 33% of voting rights.

coc can extend the intervl. - at least 1 meet / quarter

Regulation - 19

→ Time period for Notice:

- A meeting of the committee shall be called by giving not less than 5 days notice in writing → to every participant → by hand delivery, by post or by electronic means at the address it has provided to the resolution professors



- committee may reduce the Notice period from 5 days to such other period of not less than 24 hours.



- If there is any authorised representative committee may reduce the period to not less than 48 hours.

Regulation - 20

→ content of Notice -

- A List of the matters to be discussed at the meeting.
- A List of the issues to be voted upon at the meeting.
- copies of all documents relevant to the matter to be discussed and the issues to be voted upon at the meeting
- state the process and manner for voting by e-means and the time schedule incl. the time period during which vote may be cast.
- Provide the log in ID and the details of the facility for generating password for keeping security & casting of vote in a secure manner.
- Provide contact details of the person who will address the queries connected with the e-voting.

Regulation - 20

→ Service of Notice by electronic means :-

- A Notice may be circulated electronically via e-mail as a text msg. as an attachment or as a notification → incl. electronic link or URL for viewing Notice.
- The Name of co., the Location, the time and the date of meeting must all be stated.

- If Notice is sent as a non-editable email attachment it must be in PDF or another non-editable format.
- R.Pro must use the system that generate confirmation of the total no. of e-mail recipients as well as record of each recipient to whom notice has been sent.
- Any notices of any failed transmissions and subsequent resending shall be retained as "proof of sending" when notice or notifⁿ of availability of notice are sent via e-mail.
- The duty of R.Pro is fulfilled when he sends the email and he is not liable for transmission error that beyond his control
- The Notice circulated must be legible and the recipient must be able to obtain and keep copies of the Notice.

Regulation - 22

→ quorum at the meeting of the coc. - [Here there is a no requirement of min 2 members]

1. → A meeting of the committee shall be quorate if mem. of the committee representing at least 33% of the voting right are present in person or by VC or by Audio visual means. (Provided committee may modify the % of V.R. in respect of any future meeting).
2. → where the meeting could not be held for want of quorum the meeting shall automatically stand adjourned at the same time and place on the next day. Note < 33%
3. → The adjourned meeting shall be quorate with the members of the committee attending the meeting.

Regulation - 23

→ Detailed expl. P.g. No -

→ The Notice convening the meetings of the committee shall provide participants an option to attend the meeting through v.c. or other audio and visual means in accordance with this Reg.

Regulation - 24

→ Detailed expl. P.g. No -

- The R.Pro shall act as a the chairperson of the meeting of the committee
- He shall ensure that the minutes are made in relation to each meeting of committee and such minutes shall disclose the particulars of participants who attend the meeting in person, through VC, other
- The R.Pro shall circulate the minutes of the meeting to all the participants by electronic means within 48 hrs.

Section 25 - Duties of Resol. Pro.

In order to preserve and protect the assets of CD the R. Pro shall undertake the following actions.

- Take immediate custody and control of all the assets incl. business records of corporate debtors.
- Represent and act on behalf of CD with third parties. exercise rights for the benefits of the CD in judicial or arbitⁿ proceedings.
- Raise interim finance subject to approval of coc (sec. 28)
- Appoint Accountant. legal or other professional
- Maintain an updated list of claim.
- convene and attend all meetings of coc.
- Prepare the information memorandum (sec. 29)
- Invite prospective resolution applicant.
- Present all Resolution plans at the meeting of the coc. File application for avoidance of transaction in accordance with ch-III if any.

Section 25A - Rights and Duties of A.R. of FC.

1. → The Authorised Representative under sub sec. (6) or sub sec. (6a) of sec. 21 or sub sec. (5) of sec. 24 shall have a right to vote and participate and vote in meeting of coc on behalf of FC in accord. with prior voting instructions of such creditors
2. → A.R. $\xrightarrow{\text{circulate}}$ Agenda + Minutes of coc $\longrightarrow$ FC.
3. → AR shall Not act against the interest of the FC. he shall always act in accordance with prior instruction of FC
↓
IF the AR represents several financial creditors, then he shall cast his vote in respect of each fin. creditors in accordance with instructions received from each fin. creditors.
↓
Provided further that if any FC does not give prior instruction AR shall abstain from voting on behalf of such creditors.
- 3A. → The AR under sub sec (6A) of sec. 21 shall cast his vote on behalf of FC he represent in accordance with the decision taken by vote of more than 50% of the voting sh. of FC, who have cast their vote.
D.P. ← organised bleed
→ Provided that for vote to be cast in respect of appuls 12A AR shall cast his vote in accordance with provision of subsec(3)

4. → AR shall file with coc any instructions received by way of physical or electronic means from FC for voting in accordance therewith.

Reg - 23. Participation through video conferencing.

- The Notice convening the meeting of the committee shall provide the participants an option to attend the meeting through video conferencing and other audio or visual means.
- The Resolutioned professional shall make necessary arrangement to ensure uninterrupted and clear video or audio visual connection.
- The R.Pro shall take due and reasonable care.

- To safeguard the integrity of the meeting by ensuring sufficient security and identification procedure.
- ensure availability of proper VC or other audio visual equipment or facilities providing transmission of the commⁿ
- To record proceedings and prepare the minutes of the meeting
- To store for safekeeping and marking the physical recording
- To ensure that no person other than the intended participants attends or has access to the proceedings.
- To ensure the participants attending the meeting through video conf. or other audio visual means are able to hear and see during the course of meeting.

Deemed venue of the Meeting :-

The scheduled venue of the meeting as set forth in the notice convening the meeting which shall be in India shall be deemed to be the place of such meeting & all recordings deemed to be made at such place.

Reg - 24 conduct of the Meeting.

→ chairman of the Meeting - The Resolution professional

→ Attendance at the commen. -
of the meeting.

↓

R.Pro shall take a roll call when every particip. attending through v.c.

- His name.
- whether attending in the capacity of mem of coc or any other participant
- whether he is presenting mem or grp of mem
- The location from where he is participating
- He has receive the agenda and all other relevant material
- no one other than him attending or has access to the proceedings.

→ AFTER Roll call - R.Pro inform the participants of the name of the all persons who are present for the meeting and confirm if req. quorum is complete.

- The R.Pro shall ensure that required quorum should be present throughout the meeting.
- No person other than the participants and any other person whose presence is required by the R.Pro shall allowed access to the place where meeting is held or to the v.conf. or other audio visual means facility without the permission of R.Pro

Section 27 - Replacement of R.Pro by coc.

- During the CIRP, the coc may replace the R.Pro appointed u/s 22 with another R.Pro in prescribed manner.
- The coc may at meeting by vote of 66% of voting shares, resolve to replace the R.Pro appointed u/s 22 with another R.Pro subject to written consent of R.Pro in specified form.
- coc $\xrightarrow[\text{Name of R.Pro}]{\text{forward (prop.)}}$ AA
- AA $\xrightarrow[\text{R.Pro}]{\text{prop. Name of}}$ Board (for its confirmation)
- where any disciplinary proceedings are pending against the proposed R.Pro under subsec.(3) the R.Pro appointed u/s 22 shall continue till the appointment of another R.Pro

Section 28 - Approval of coc For certain matters

- This section lists out certain actions that may be taken by the R.Pro only with the prior approval of coc by a vote of 66% of the voting sh.

- (1) → Raise any interim finance in excess of the amount as may be decided by coc.
- create any security interest over the assets of CD.
- change the cap. structure of the CD
- Record any change in the ownership interest of the CD
- Give instructions to the fin. institutions maintaining the accounts of CD for debit transaction from any such accounts in excess of amount as may be decided by coc.
- undertake any Related Party transaction
- Amend any constitutional documents of the CD.
- Delegate its authority to any other person.
- make any change in the management of the CD or its subsidiary
- make change in the appointment and terms of personnel as specified by coc.
- make change in the appointment and terms of contract of statutory auditor or internal auditor of CD.

- where any action under sub sec. (i) is taken by the R. pro without seeking the approval of coc → such action shall be void. - sec. 28(4)
- The coc may report the actions of the R. pro u/ sub sec. (4) to the board for taking necessary action against him under this code. - sec. 28(c5)

Regulation - 25

→ Voting by the committee :-

Amendment
→ R. pro shall not extend the voting window where the requisite majority is received and one extend has been granted after

- The Action Listed in sec. 28(i) shall be considered in the meeting. rec. rec. majority
- Any Action other than those listed u/s 28(i) requiring approval of committee may be considered.
- At the conclusion of the vote at the meeting, R. pro shall announce the decision taken on items along with the name of the mem. of the committee who voted for or against the decision or abstain from voting.
- The R. pro shall.

Extension of 24 hr (in set) sub. to max 7 days.

- circulate the minutes of the meeting to all members of the committee and AR within 48 hours from the conclusion of meeting
- seek a vote of the members who did not vote at the meeting where the voting shall be kept open for at least 24 hours from the circulation of minutes. to max 7 days.
- AR shall circulate the minutes of the meeting received by R. pro to creditors in class and announce the voting window at least 24 hours before the window opens for voting instruction and th keep the voting window open for at least 12 hours

Regulation - 26.

Voting by Electronic m.

- R. pro shall provide the each member of committee the means to exercise its voting by either electronic means or through electronic voting system.
- At the end of voting period voting portal shall forthwith block be blocked.
- At the conclusion of a vote, R. pro shall announce and make a written record of a summary or of the decision taken on a relevant Agenda item along with the names of the mem. of committee who voted for or against or abstained from voting.
- R. pro shall circulate a copy of the record to all participants by electronic means within 24 hrs from conclusion of meeting