

Study material, for more information please refer IBC, 2016

## Role of Operational Creditor in Corporate Insolvency Resolution Process

### **Who is operational Creditor?**

An Operational creditor refers to a person to whom an operational debt is owed and includes any person to whom such amount has been legally assigned or transferred for goods or services done by them. Vendors and suppliers, employees, government etc. are examples of operational creditors.

*Operational Debt: means debt incurred in exchange for the provision of goods or services (including employment) or debt in respect of the payment of dues arising under any law for the time being in force payable to the Central Govt., any State Govt. or any regulator.*

An operational creditor is defined under Section 5(20) of the Insolvency and Bankruptcy Code (hereinafter the IBC) to mean “any person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”, and is owed an operational debt which is defined under section 5(21) of the IBC to mean: “a claim in respect of the provisions of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.

### **Application under Section 8 & 9.**

Under Section 8(1) IBC, an operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

Further, the Act states under Section 9(1), after the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under subsection (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

Upon acceptance of an application, the adjudicating authority shall initiate a **corporate insolvency resolution process (CIRP)**, under Section 10 and shall thus proceed to appoint an **Interim Resolution Professional** under section 16 of the said Act. The CIRP must be completed within 180 days of from date of admission of application and the Adjudicating Authority, if it finds reasons may extend this time, to not more than 90 days (upper limit is 330 days).

Conditions for invoking IBC against buyer

- The outstanding amount should not be less than 1,00,000/- (One Lac)
- The last invoice should not be more than 3 years (may defer the case to case basis)
- There should not be any dispute against the invoice(s) (before sending demand notice)
- Note: currently, IBC can be invoke against the Company and LLP (registered on MCA websites). For other than company, the process is yet to be notified)

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## **Appointing Insolvency Resolution Professional under Section 16**

The Adjudicating Authority shall appoint an interim resolution professional within fourteen days from the insolvency commencement date. It will be his duty to summon, verify claims made by the corporate debtor's creditors also, list them.

Section 16(3)(b) of the IBC states that where the application for corporate insolvency resolution process is made by an operational creditor and a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

## **Procedure following Appointment**

An operational creditor, who is also not a financial creditor is not entitled to have a voting share in the Committee of Creditors (COC), however the IBC does provide the operational creditor with a certain amount of rights to representation and rights to appeal of this Corporate Insolvency Resolution Process.

## **Right to Representation**

Under Section 24 IBC, If the operational creditor's aggregate dues are more than 10% of total debt, he or his representative may sit in the COC proceedings. Unlike financial creditors, however, he is vested with no voting rights, irrespective of how much his share in the debts maybe.

Under Section 25(h) IBC, the operational creditor may approach the Resolution Professional Appointed by the COC as a Resolution Applicant and submit a resolution plan, provided he is not barred to be a Resolution Applicant under section 29A of the IBC. If the COC is satisfied with this resolution plan it may pass the same.

## **Right to Appeal the Resolution Plan**

If the Operational Creditor is not satisfied with the resolution plan passed by the COC, he may appeal the order in the NCLT within 30 days of passing of such order. The grounds and form for this appeal are laid down in Section 61(3) of the Act which state

The approved resolution plan is in contravention of the provisions of any law for the time being in force;

1. There has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
2. The debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
3. The insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
4. The resolution plan does not comply with any other criteria specified by the Board.

## **Right to Appeal the Valuation of Claims**

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If the operational creditor is not satisfied with the valuation of claims as determined by the Liquidator, he may appeal the order within 14 days to the Adjudicating Authority, under Section 42 of the IBC.

Further, under Section 47, Where a case of undervalued transactions exists, and the liquidator has failed to inform the adjudicating authority, the operational creditor may do so and reverse the transactions wrongly or erroneously occurred.

## Corporate Insolvency Resolution Process

