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| (v) | <u>Committee of Creditors and Resolution Professional (Secs. 21 to 28)</u>  |
|     | (i) <u>Committee of Creditors (CoC) - Sec. 21</u>   |
|     | <u>Sec. 21(1)</u> - IRP shall after collation of all claims received against the corporate debtor and determination of financial position of corporate debtor, constitute a committee of creditors.   |
|     | <u>Sec. 21(2)</u> - CoC shall comprise all financial creditors of the corporate debtor:   |
|     | Note - Financial creditor or its authorised representative, who is a related party of corporate debtor, shall not have any right of representation, participation or voting in a meeting of the CoC.  |
|     | - However, this limitation is not applicable in case of a financial creditor, regulated by a financial sector regulator, who is a related party of the corporate debtor solely on account of conversion of debt into equity or instruments convertible into equity shares, prior to the insolvency commencement date. |
|     | <u>Sec. 21(3)</u> - Where the corporate debtor owes financial debts to $\geq 2$ financial creditors as part of a consortium, each such financial creditor shall be part of the CoC and their voting share shall be determined on the basis of the financial debts owed to them.                                       |
|     | <u>Sec. 21(4)</u> - Where any person is financial as well as an operational creditor, -   |
|     | (a) such person shall be a financial creditor to the extent of financial debt owed by the corporate debtor, and shall be included in the CoC, with proportionate voting share;  |
|     | (b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor.   |

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|  | <b><u>Sec. 21(5)</u></b> - Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.   |
|  | <b><u>Sec. 21(6A)</u></b> - Where a financial debt is in the form of securities or deposits & the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all financial creditors, such trustee/agent shall act on behalf of such financial creditors.   |
|  | <b><u>Sec. 21(8)</u></b> - Save as otherwise provided, all decisions of CoC shall be taken by a vote of not less than 51% of voting share of financial creditors.<br>- If corporate debtor does not have any financial creditors, CoC shall be constituted and shall comprise of such persons as specified.  |
|  | <b><u>Regulation 16 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</u></b><br>Where corporate debtor has no financial debt or where all financial creditors are related parties, CoC shall consist of members as under:<br>(a) 18 largest operational creditors by value (If operational creditors are < 18, committee shall include all such operational creditors);<br>(b) one representative elected by all workmen; and<br>(c) one representative elected by all employees. |
|  | <b>(ii) <u>Appointment of Resolution Professional (RP) - Sec. 22</u></b>   |
|  | ✚ First meeting of CoC shall be held within 7 days of constitution of CoC.   |
|  | ✚ CoC, in first meeting, by a majority vote of $\geq 66\%$ of voting share of financial creditors, either resolve to appoint IRP as a RP or to replace IRP by another RP.  |
|  | ✚ <b>CoC resolves to continue the IRP as RP:</b> Subject to a written consent from IRP, CoC shall communicate its decision to IRP, corporate debtor and the AA.  |
|  | ✚ <b>CoC resolves to replace IRP:</b> CoC shall file an application before AA for appointment of proposed RP, along with a written consent from proposed RP.   |

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|  | <ul style="list-style-type: none"> <li>✚ AA shall forward the name of the RP to the Board for its confirmation and shall make such appointment after confirmation by the Board.</li> </ul>  |
|  | <ul style="list-style-type: none"> <li>✚ If Board does not confirm the name of proposed RP within 10 days of receipt of the name of the proposed RP, AA shall, by order, direct the IRP to continue to function as the RP till Board confirms the appointment of the proposed RP.</li> </ul>                                      |
|  | <p><b><u>Eligibility for RP - Regulation 3 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:</u></b></p>   |
|  | <p>⇒ An IP shall be eligible to be appointed as a RP for CIRP of a corporate debtor if he, and all partners and directors of the IP entity of which he is a partner or director, are independent of the corporate debtor.</p>   |
|  | <p>⇒ A person shall be considered independent of the corporate debtor, if he:</p>   |
|  | <p>(a) is eligible to be appointed as an independent director on board of corporate debtor u/s 149 of the Companies Act, 2013;</p>  |
|  | <p>(b) is not a related party of the corporate debtor; or</p>   |
|  | <p>(c) is not an employee or proprietor or a partner of:</p>  |
|  | <p>(i) a firm of auditors or secretarial auditors or cost auditors of corporate debtor; or</p>  |
|  | <p>(ii) a legal/consulting firm, that has or had any transaction with corporate debtor amounting to <math>\geq 5\%</math> of the gross turnover of such firm, in the last 3 financial years.</p>  |
|  | <p><b><u>(iii) Resolution professional to conduct CIRP - Sec. 23</u></b></p>  |
|  | <ul style="list-style-type: none"> <li>✚ RP shall conduct entire CIRP &amp; manage operations of corporate debtor during the CIRP period &amp; shall continue to manage the operations after expiry of CIRP, until an order approving the resolution plan u/s 31(1) or appointing a liquidator u/s 34 is passed by AA.</li> </ul> |
|  | <ul style="list-style-type: none"> <li>✚ RP shall exercise powers &amp; perform duties as are vested or conferred on IRP.</li> </ul>  |
|  | <ul style="list-style-type: none"> <li>✚ In case of any appointment of a RP (Other than IRP), IRP shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the RP.</li> </ul>   |

**(iv) Meeting of committee of creditors - Sec. 24**

- ✚ Members of the CoC may meet in person or by specified electronic means.
- ✚ All meetings of the committee of creditors shall be conducted by the RP.
- ✚ The RP shall give notice of each meeting of the committee of creditors to-
  - (a) members of CoC, including the authorised representatives;
  - (b) members of the suspended BoD or partners of the corporate persons;
  - (c) operational creditors or their representatives if amount of their aggregate dues is  $\geq 10\%$  of the debt.
- ✚ Directors, partners and representative of operational creditors, may attend the meetings of CoC, but shall not have any right to vote in such meetings.

**IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016****(a) Voting Rights - Regulation 16:**

A member of the committee shall have voting rights in proportion of the debt due to such creditor to the total debt.

**(b) Constitution of committee - Regulation 17:**

- ⇒ IRP shall file a report certifying constitution of CoC to the AA within 2 days of the verification of claims received.
- ⇒ IRP shall hold the first meeting of the CoC within 7 days of filing report.
- ⇒ Where the appointment of RP is delayed, IRP shall perform the functions of the RP from the 14<sup>th</sup> day of the insolvency commencement date till a RP is appointed u/s 22.

**(c) Meetings of the committee - Regulations 18:**

- ⇒ RP may convene a meeting of the CoC as and when he considers necessary.
- ⇒ RP **may** convene a meeting, if he considers it necessary, on a request received from members of the committee **and** **shall** convene a meeting if the same is made by members of the committee representing at least 33% of the voting rights.

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|  | <b>(d) <u>Notice of the Meetings of CoC - Regulation 19:</u></b>  |
|  | ✚ Meeting of CoC shall be called by giving not less than 5 days' notice in writing to every participant, at the address it has provided to the RP.  |
|  | ✚ Notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means.   |
|  | ✚ CoC may reduce the notice period from 5 days to such other period of not less than 24 hours, as it deems fit.   |
|  | <b>(e) <u>Contents of the notice for meeting - Regulation 21</u></b>  |
|  | ----- Self Study from the book -----  |
|  | <b>(f) <u>Quorum at the meeting - Regulation 22:</u></b>  |
|  | ✚ Meeting shall be quorate if members of CoC representing at least 33% of voting rights are present either in person or by video conferencing or other audio and visual means.            |
|  | ✚ If a meeting could not be held for want of quorum, unless CoC has previously decided otherwise, meeting shall automatically stand adjourned at the same time and place on the next day. |
|  | ✚ Adjourned meeting shall be quorate with members attending the meeting.  |
|  | <b>(v) <u>Duties of RP - Sec. 25</u></b>  |
|  | ----- Self Study from the book -----  |
|  | <b>(vi) <u>Rights and duties of authorised representative of financial creditors - Sec. 25A</u></b>   |
|  | ----- Self Study from the book -----  |
|  | <b>(vii) <u>Replacement of RP by committee of creditors (CoC) - Sec. 27</u></b>   |
|  | ✚ Where, at any time during the CIRP, CoC is of the opinion that a RP appointed u/s 22 is required to be replaced, it may replace him with another RP.                                    |
|  | ✚ CoC may, at a meeting, by a vote of 66% of voting shares, resolve to replace the RP appointed u/s 22 with another RP, subject to a written consent from the proposed RP.                |

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|  | ✚ CoC shall forward the name of the IP proposed by them to the AA.   |
|  | ✚ AA shall forward the name of the proposed RP to the Board for its confirmation and a RP shall be appointed in the same manner as laid down in Sec. 16.                               |
|  | ✚ If any disciplinary proceedings are pending against proposed RP, RP appointed u/s 22 shall continue till the appointment of another RP under this section.                           |
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|  | <b>(viii) <u>Approval of committee of creditors for certain actions - Sec. 28</u></b>  |
|  | RP, during the CIRP, shall not take any of the following actions without the prior approval of the CoC:  |
|  | (a) raise any interim finance in excess of amount as decided by CoC;   |
|  | (b) create any security interest over the assets of the corporate debtor;  |
|  | (c) change the capital structure of the corporate debtor;  |
|  | (d) record any change in the ownership interest of the corporate debtor;   |
|  | (e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as decided by CoC; |
|  | (f) undertake any related party transaction;   |
|  | (g) amend any constitutional documents of the corporate debtor;  |
|  | (h) delegate its authority to any other person;  |
|  | (i) dispose of or permit the disposal of shares of any shareholder;  |
|  | (j) make any change in the management of the corporate debtor or its subsidiary;   |
|  | (k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;  |
|  | (l) make changes in the appointment or terms of contract of specified personnel; or  |
|  | (m) make changes in the appointment or terms of contract of statutory auditors or internal auditors.   |
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|  | <b>Do practice - Questions on CoC and RP - Secs. 21 to 28</b>  |
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