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## “ROLE OF COMMITTEE OF CREDITORS (COC): COMMERCIAL WISDOM VS JUDICIAL REVIEW”

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### ABSTRACT

*The Committee of Creditors (CoC) is established as the key decision-making authority in the Corporate Insolvency Resolution Process (CIRP) in the Insolvency and Bankruptcy Code, 2016 (IBC). The commercial wisdom doctrine gives the CoC broad powers to accept or to refuse a resolution plan, restricting judicial review of such matters by establishing authorities like National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). Nonetheless, it becomes problematic when such freedom interferes with values of fairness, transparency, and protection of stakeholders. Although courts give deference to the commercial judgments of the CoC, it has in some cases intervened to make sure that its commercial judgments do not override the statutory requirements and to avoid arbitrariness. The paper discusses how the jurisprudence on the balance between CoC commercial wisdom and the limits of the judicial review has been shifting by considering the landmark cases and their consequences within the resolution of insolvency. It claims that there ought to be the balanced approach to ensure both efficiency and accountability in the IBC framework.*

### Introduction

The introduction of Insolvency and Bankruptcy Code in 2016 brought a paradigm shift in the Indian insolvency regime as the framework created was a creditor-centric approach to addressing the stressed assets within a time limit. The core element of this framework is the Committee of Creditors (CoC) of which the financial creditors make the majority and they are tasked with the role of assessing and authorizing the resolution plans. The CoCs decisions are informed by its so-called commercial wisdom which the courts have upheld as mostly inadmissible in courts of law.

Insulating the CoC decisions on commerce to the scrutiny of a court is justified by the notion that financial creditors are the best equipped to determine the viability and feasibility of the resolution plans. As a result of this, the courts of

adjudication (like the NCLT and NCLAT) are limited to reviewing procedure compliance and not replace what CoC would have deemed correct. This doctrine has been upheld in such cases like *K. Sashidhar v. Indian Overseas Bank and Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* where the Supreme Court stressed the predominance of the commercial prudence underlying the CoC.

But the doctrine is not absolute. Courts have stepped in areas when the CoC decisions were discovered to be arbitrary, discriminative or against the statutory provisions. This poses the essential question to what level must the judicial review be allowed without compromising the effectiveness and purposes of the IBC?

The aim of this paper is to investigate this fine line between CoC autonomy and judicial

oversight. It critically examines the judicial trends, determines the existing gaps and the extent to which the existing structures are effective in ensuring that there is protection of the interest of all the stakeholders and that the insolvency process has not altered the diplomatic process of determining the bankruptcy of organizations.

## MAIN BODY

### 1. Conceptual Framework of the Committee of Creditors under IBC

In the year 2016, Insolvency and Bankruptcy Code, (IBC) fundamentally restructured the insolvency regime in India by giving a shift in favour of creditors. The Committee of Creditors (CoC) that is formed as per Section 21 of the Code is significant in the Corporate Insolvency Resolution Process (CIRP). It mainly comprises of financial creditors, who would be at a better position to evaluate the economic feasibility of a troubled corporation.

The CoC has been given with responsibility of significant duties like appointing Resolution Professional (RP), approving resolution plans and determining whether to liquidate the corporate debtor or not. Such decisions are subject to a vote especially of 75 per cent. afterwards it was decreased to 66 per cent. it was a vote of collective commercial judgment on the part of creditors. This is due to the focus on the creditor control so that the parties which have financial interests can decide on the result of the process of insolvency.

The rationale behind this is efficiency. The creditors, mainly banks and other financial institutions are expected to have knowledge and motivation to maximize value. It is also a practice that is in line with the best practices that are being practiced worldwide, with creditor based insolvency models prevailing. There are however some concerns to do with equity (the concentration of power) specifically to the operational creditors and other stakeholders with less control over the decision-making process.

### 2. Commercial Wisdom Doctrine.

The principle of commercial wisdom is the focal point in comprehending the authority of CoC. It implies that the decision making process of the CoC, which includes the resolution plan being accepted or not, cannot be reviewed on merits by a court of law. Courts have always believed that they do not have the proficiency to consider commercial ones, which involve complex financial matters.

This was a doctrine that was prominent by the interpretation of the law. It implies judicial restraint and this is to make insolvency processes time-bound and efficient. Extent to which courts intervene will be counterproductive to the IBC as it would result in procrastination and uncertainty.

Commercial wisdom encompasses haircut acceptance decisions, allocation of funds among creditors and analysis of resolutions applicants. These are subjective judgments in business, which demand technical and financial acumen. Thus, the review by the courts often is limited to compliance and legality in regards to the procedure.

But critics say that the pure obedience to commercial wisdom can result in whimsical choices. An example is the unchecked disproportionate haircut or being discriminatory towards specific creditors. The doctrine is therefore efficient but it should also have safeguards that have to be put to avoid misuse.

### 3. Judicial Recognition of CoC Supremacy

The Indian courts have continuously affirmed CoC supremacy in cases of insolvencies. In the case of K. Sashidhar v. Indian Overseas Bank, the Supreme Court stated that the commercial judgement of the CoC to vote in favour or against a resolution plan is not justiciable. It was pointed out by the Court that the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) cannot inquire about the correctness of such decisions.

Equally, in Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta the Supreme Court reiterated its position that the commercial wisdom of the CoC is the most important factor. The Court made it clear that the Court can only meddle in matters relating to compliance with Section 30(2) of the IBC that specifies the veins which must be met during a resolution plan.

These rulings underscore a consistent judicial interpretation: the independence of the CoC, but limitations on the powers of adjudging authorities. The courts have realized that the process of resolving insolvency has intricate economic considerations and is preferably handled by financial specialists.

But the judiciary has also recognized this autonomy as not paramount. CoC should have the liberty to work within the legal context, and it should not go against what the law stipulates or tenets of fairness.

#### **4. Scope & Limits of the Judicial Review.**

The scope of judicial review under the Insolvency and Bankruptcy Code, 2016 remains deliberately narrow, reflecting the legislative intent to preserve the primacy of the Committee of Creditors (CoC) and ensure a time-bound resolution process. Adjudicating authorities such as the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) are not empowered to question the commercial wisdom of the CoC, particularly in matters relating to the feasibility, viability, or financial structuring of a resolution plan. Instead, their role is confined to examining whether the resolution process complies with the procedural and substantive requirements laid down under the Code, especially Section 30(2). Judicial review is primarily exercised to ensure that the resolution plan provides for insolvency resolution costs, safeguards the minimum interests of operational creditors, and does not contravene any existing law. Additionally, courts may intervene in cases where the decision of the CoC appears to be arbitrary, discriminatory, or mala fide, thereby

violating principles of natural justice. However, such intervention is exceptional rather than routine, as excessive judicial interference could undermine the efficiency and objectives of the IBC framework. Thus, the judiciary maintains a careful balance by upholding legal compliance and fairness while refraining from substituting its own judgment for that of financial creditors.

#### **5. Clash between Commercial Wisdom and Equity.**

The tension between the commercial wisdom and doing what is just to the stakeholders is one of the most controversial parts of IBC framework. Financial creditors have taken centre stage in the CoC, though, there is a notable lower recovery by operational creditors.

Such an imbalance brings into question the question of fairness. Operational creditors, including suppliers/ employees, can be very important in the operation of a firm and only have a small role when it goes under. The CoC might not take their interests into account because its decision is based on financial grounds.

This question was discussed by the Supreme Court with regard to the Essar Steel case, which pointed out that equal treatment is not equitable treatment. The Court understood the difference between operational and financial creditors but emphasized that the latter should be paid a minimum guarantee.

Regardless of this explanation, there are fears as to the transparency and fairness in the decision-making process of CoC. Critics suggest that market worship can go against the overall goals of the IBC such as maximization of value and balancing stakeholders.

#### **6. Adjudicating Authorities Role: NCLT and NCLAT.**

The NCLT and NCLAT are adjudicating bodies of the IBC. They are mainly concerned with making sure that the insolvency process is conducted according to the law. But by the doctrine of commercial wisdom their powers are limited.

The NCLT approves resolution plans and the NCLAT appeals NCLT orders. Both institutions are restricted to consider compliance and legality of the process, but not the virtue of commercial decisions.

The praise and criticism have been as follows: On the one hand, it helps to avoid judicial overreach and guarantees prompt resolution. Conversely, it limits the powers of courts to deal with any injustice (which well may have come about as a result of CoC decisions). The courts have tried to create a compromise where limited interference is made in extraordinary circumstances. Nevertheless, the extent of this intervention is still under discussion.

### **7. The New Trends in Interpretation in the Judiciary.**

The recent court cases indicate a certain liberalization with regards to the doctrine of commercial wisdom. Although the courts still value the independence of the CoC, they have been ready to interfere with the cases in which there are issues of procedural imbalances or prejudices. As an example, the resolution plans have been scrutinized by the courts that favor some creditors disproportionately or otherwise do not meet the statutory requirements. This shows a change towards being more accountable without compromising the authority of CoC.

Transparency is another trend that has emerged. Courts have promoted a well-articulated reasoning in CoC determinations to maintain that they will not be arbitrary. This will foster trust in the insolvency process and make it a more credible process.

### **8. Problems with the Current Framework.**

The existing framework governing the role of the Committee of Creditors (CoC) under the Insolvency and Bankruptcy Code, 2016, though effective in ensuring timely resolution, is not free from challenges. One of the primary concerns is the dominance of financial creditors, who exclusively control the decision-making process within the CoC. This often results in outcomes

that prioritize recovery for financial institutions while sidelining the interests of operational creditors and other stakeholders. Additionally, the lack of transparency in the CoC's functioning raises questions about the fairness and accountability of its decisions, as the reasoning behind accepting or rejecting resolution plans is not always clearly disclosed. Another significant issue is the limited scope of judicial review, which, although intended to preserve efficiency, may sometimes allow arbitrary or inequitable decisions to go unchecked. Furthermore, inconsistencies in judicial interpretation across different cases create uncertainty in the insolvency process, affecting predictability and investor confidence. These challenges indicate that while the current system emphasizes commercial expediency, there is a pressing need to introduce safeguards that ensure a more balanced, transparent, and equitable insolvency regime without undermining the core objective of swift resolution.

### **9. Comparative Perspective**

An example of such is the different insolvency regimes adopted by countries worldwide in terms of controlling creditors and judicial supervision. In other places, such as the United States, courts are more actively involved in overseeing an insolvency process. Conversely, the UK model underlines the autonomy of the creditors as in India.

The Indian practice is a hybrid, having creditor control but with limited judicial regulation. As much as it has enhanced efficiency, it also highlights the importance of enhancing more impressive safeguards to secure the interests of stakeholders.

### **10. Way Forward: Striking a Balance**

The main difficulty is to ensure the commercial prudence of the CoC and the judicial controls. This balance can be made by several measures:

- Greater Transparency: The arbitrariness can be minimized by requiring a justification of CoC decision.
- Stakeholder Inclusion: Greater representation to the operational creditors will enhance fairness.
- Guideline to Judicial Review: It can be utilized by having clear standards so that the adjudicating authorities can be consistent in exercising their powers.
- Capacity Building: The decision-making and oversight can be enhanced by developing stronger institutional capacity.

This balanced strategy will help the IBC to fulfil its goals of efficiency, maximization of values, and fair treatment.

The Committee of Creditors role envisaged by the IBC is a monumental change in the direction of a credit/creditor-driven insolvency regime. Commercial wisdom as necessary to efficiency has to be enforced with sufficient protections to ensure it is not abused. Limited by definition, judicial review is, nevertheless, important in ensuring this balance. With the insolvency framework ever changing, the dilemma has been how to balance autonomy and accountability to hold a fair and successful resolution process.

## CONCLUSION

The Insolvency and bankruptcy code 2016 has substantially transformed the Indians insolvency environment with the introduction of a creditor driven regime at its centre; the Committee of creditors (CoC). The commercial wisdom doctrine that shields the decisions of the CoC to significant judicial reviews has been instrumental in enhancing speed, efficiency and value maximization in resolving the process. The judiciary has made to offer strength to a system which stresses on viable decision-making over long-term litigation by being able to appreciate the financial and technical expertise of creditors.

But this submissiveness to commercial prudence is not unchallenged. The limitation of

judicial review, though essential to eliminate delays, prompts questions on transparency, fairness and safeguarding diverse stakeholder interests. Cases of uneven haircuts, unfair treatment of operational creditors and shrouded decision making processes point to the possible dangers of vesting uncontrolled power to the CoC. Though limited, judicial interference has hence become indispensable in the enforcement of adherence to the provisions of statutes and a check on arbitrariness.

In the changing jurisprudence, the effort is made to create a fine balance between independence and responsibility. It is the pinnacle of the CoC that courts have uniformly maintained with only limited grounds to intervene on matters where illegality, procedural flaws or manifest injustice are observed. This moderated stance is crucial in ensuring the integrity and effectiveness of the insolvency system.

In the future, it will be essential to increase transparency, stakeholder engagement, and creating more effective criteria to assess the judicial review to fill the current gaps. Finally, there should be a delicate balance between the CoC commercial prudence and judicial checks and balances to serve the wider goals of the IBC including timely disposition, maximization of values and fair treatment to all stakeholders.

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