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NEWSFLASH

IBC: CLARIFICATION PERTAINING TO DISSENTING OR ABSTAINING FINANCIAL CREDITOR

Background

Upon admission of an application by the National Company Law Tribunal for initiating the corporate insolvency resolution process (“**CIRP**”) regarding restructuring or revival of a corporate debtor, an interim resolution professional (“**IRP**”) is required to constitute a Committee of Creditors (“**COC**”) comprising of only the financial creditors, whose claims have been admitted by IRP. Such COC is entitled to take various decisions concerning the corporate debtor including approval of the resolution plan for revival and restructuring of the corporate debtor or its liquidation.

During the continuation of CIRP regarding revival of the corporate debtor, an IRP is restricted to take any action including approval of the resolution plan unless prior consent of the COC is obtained by a vote of sixty six percent of the voting shares or otherwise provided in The Insolvency and Bankruptcy Code, 2016 (“**IBC**”). The voting power of a member in the COC is based on the amount of its admitted claim by an IRP in the total financial debt.

As per Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**IBBI Regulations**”), a **dissenting financial creditor** is entitled to recover its dues based on its share under the liquidation value **before any recovery is made** by other financial creditors, who have voted in favor of the resolution plan. The term ‘dissenting financial creditor’ is



Office Address: The i-thum, Tower-B, Unit No. 1114 – A & B, Plot No A-40, Block A, Industrial Area, Sector-62, Noida – 201301, U.P., India. **Ph:** +91 120 4273970 | **E-mail:** sharad.tyagi@fjls.in

defined as a financial creditor who has voted against the resolution plan or **has abstained from voting for the resolution plan**. There were interpretation issues regarding a dissenting financial creditor, whether a financial creditor who has not submitted its claim to an IRP could be construed as a dissenting financial creditor as per the definition given above and will it be entitled for the benefit as enshrined in Regulation 38 of IBBI Regulation? Some experts have given wider interpretations to the wordings '***has abstained from voting for the resolution plan***' to include such financial creditors who are not part of COC.

Circular

The Insolvency and Bankruptcy Board of India vide its circular dated September 14, 2018, has clarified that a person, who is not a member of COC, **cannot be considered** as one who has voted against a resolution plan or abstained from voting.

Hence, it is clear that a financial creditor, who is not a member of COC, will not be entitled to the benefit of a dissenting financial creditor as provided in Regulation 38 of IBBI Regulations.