



Consultation Paper

Framework for protection of interest of public equity shareholders in case of listed companies undergoing Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC)

1. Overall objectives of Insolvency Law, as highlighted by IMF in its report on “Orderly & Effective Insolvency Procedures” are as under:
 - i. The allocation of risk among participants in a market economy in a predictable, equitable¹, and transparent manner.
This objective plays a critical role in providing confidence in the credit system and fostering economic growth for the benefit of all participants
 - ii. To protect and maximize value for the benefit of all interested parties and the economy in general.
This objective is most obviously pursued during rehabilitation, where value is maximized by continuing a viable enterprise.
2. Considering the above twin objectives of any insolvency law, it is essential to recognize the rights and obligations of equity versus debt. It is undeniable that the rights available to creditors are distinguished and superior (in respect of claims in case of liquidation) when compared to an equity shareholder. As such equity holders acquire the last position in waterfall mechanisms in the resolution plan approved by Court for getting any dues or sum at the time of liquidation as they are the owners of the Insolvent company. Hence, equity is also known as Risk Capital.
3. Corporate Insolvency Resolution process (CIRP) under Insolvency and Bankruptcy Code, 2015(IBC), like the BIFR mechanism earlier, is primarily meant for the protection of creditors / lenders when a company becomes insolvent. In this

¹ Means to the extent that different creditors have struck fundamentally different commercial bargains with the debtor (e.g., through the granting of security), differential treatment of creditors that are not similarly situated may be necessary as a matter of equity



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process Committee of Creditors (CoC) under IBC steers the insolvency process along with Resolution Professional (RP).

4. IBBI in its newsletter for Apr-Jun, 2022 has noted that a total number of 5636 CIRPs have commenced since inception, out of which 3637 CIRPS have been closed. Out of these 3637 closed cases, 1703 CIRPs have ended in liquidation while only 517 have resulted in approval of resolution plan (out of which 75 are listed companies). The rest of the closed cases (1417) have either been disposed of on appeal/ settled or withdrawn.

5. From a listed companies' perspective whenever there is a resolution plan approved, there can be broadly two outcomes of such a resolution plan as follows:

(i) The Company remains a listed company, albeit with significant capital reduction pursuant to a resolution plan approved by NCLT.

(In terms of recent amendment to SCRR, listed companies coming out of CIRP, as part of their continuous listing requirement, are required to maintain public shareholding of at least 5% as a result of implementation of resolution plan approved u/s 31 of the IBC.)

Or

(ii) The Company gets delisted as a part of the resolution plan approved by NCLT or undergoes liquidation as approved by NCLT.

(Regulation 3(2) of the Delisting Regulations permits delisting of shares if the same is part of the resolution plan approved under section 31 of the IBC)

6. So far, it is observed that 28 listed companies have ended in liquidation pursuant to CIRP, 52 listed companies have been delisted pursuant to approval of the resolution plan and 23 companies continued to remain listed pursuant to approval



of resolution plan. Further, about 70 listed companies are currently undergoing the CIRP.

7. In this context, SEBI has received numerous references and grievances in respect of companies that have been delisted pursuant to approval of resolution plan. Some of the concerns highlighted by the complainants include:
 - a. SEBI should intervene in the matter and allot converted shares of the new entity that comes into being after the debtor company is taken over by the new promoter (resolution applicant) pursuant to NCLT resolution.
 - b. SEBI should decide on giving the right value to the business of the debtor company and all small stakeholders should get appropriate value of their shareholding since it is only the big players who are now acquiring the shareholding of the struggling debtor company at throw away prices and the retail shareholders get no consideration against their shareholding in the company.
 - c. A resolution process that leads to overnight zero value of equity shares in case of companies that undergo delisting pursuant to approval of resolution plan with no prior intimation to the public shareholders to even present their case before the Committee of Creditors (CoC), is not an acceptable process.
8. Keeping in view of the aforesaid grievances, it is now felt that there is a need to take suitable measures to protect the interest of public equity shareholders in case of listed companies undergoing Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code.
9. In this regard, a proposal taking into account the interest of all stakeholders including minority public shareholders while opening a new avenue for raising funds for the corporate debtor, without compromising the speed and efficiency of CIRP process, is placed for public consultation as below:-



10. Proposal

A. The existing public equity shareholders (i.e. non-promoter public shareholders as defined at para B below) of the corporate debtor shall be provided an opportunity to acquire equity of the fully diluted capital structure of new entity² to the extent of upto the minimum public shareholding percentage (currently 25%), on the same pricing terms as agreed upon by the resolution applicant. The new entity shall endeavour to achieve at least 5% public shareholding through such mode of offer made to the non-promoter public shareholders. The offer to acquire shares / allotment would be made in an equitable manner to such public equity shareholders.

The above mechanism shall be an integral part of the resolution plan submitted by resolution applicant for all listed entities undergoing CIRP.

B. For identifying public equity shareholders, following category of shareholding (shares and shares underlying depository receipts) shall be excluded:

- i. Promoter and Promoter Group
- ii. Shares held by associate companies and subsidiaries
- iii. Family members of Promoter and Promoter group not covered under definition of promoter group
- iv. Trusts managed by Promoter and Promoter group
- v. Directors and Director's Relatives
- vi. KMPs of the Company
- vii. Public shareholder representing (nominating) member (i.e. Director) on Board

C. Since, subscription from public equity shareholders under such offer to acquire equity of the fully diluted capital structure of new entity will not be in the hand of successful bidder/ resolution applicant, it may not be possible for the successful bidder/ resolution applicant to upfront specify allotting a

² New entity means the resulting entity pursuant to CIRP



certain percentage of equity to public equity shareholders and get the same incorporated as part of resolution plan.

However, to ensure adequate float and liquidity in the new entity post its restructuring, through the resolution plan, it may be specified that the entity may be permitted to continue as a listed entity only if 5% of the fully diluted capital structure of new entity is with the public shareholders. The entire process of offering to the existing public shareholders to acquire the shares of the new resultant entity would be tech enabled at exchanges in a manner to ensure that the speed of resolution process is not adversely impacted or compromised and the said offer is executed through exchange mechanism within a short span of time.

- D. In cases where successful bidder/ resolution applicant is unable to muster 5% public shareholding as per the above process, the company shall go for delisting pursuant to cancellation of the offer made to the existing public equity shareholders and shall refund the consideration received from the public equity shareholders through the said offer before proceeding further with CIRP.
- E. The exemptions granted under the SEBI (Delisting of Equity Shares) Regulations, 2021 for the purpose of IBC may be reviewed and exemption from provisions of Delisting Regulations shall be available only in following cases:
- i. Where the corporate debtor has to undergo liquidation pursuant to CIRP.
 - ii. Where the shareholding of public equity shareholders remains less than 5% of the fully diluted capital structure of the new entity after having exercised the option provided to them to acquire the shares of the new entity up to the MPS percentage, on the same pricing terms as is applicable to the resolution applicant.



11. In brief, the proposal aims to provide an opportunity to minority shareholders to participate in the resolution process on the same pricing terms as available to the resolution applicant (up to a maximum of 25%).

12. In order to provide more clarity on the proposal at Para 10 above, an illustration is provided as follows:

- i. Let us assume a corporate debtor, say Company A, has the following shareholding pattern as on the date of approval of resolution plan.

Table #1

Sr. No.	Type of Shareholder	Percentage of Shareholding
1	Promoter + Promoter Group + Associate Companies of A + Group Companies of A + Family members of Promoter and Promoter Group not covered in definition of promoter group + Trusts managed by Promoter and Promoter Group + Director (including public shareholder nominee) and relatives + KMPs	60%
2	All other shareholders not covered in Sr. No. 1 above	40%
Total		100%

- ii. The CoC, after following due process laid out in the IBC and the regulations framed by IBBI, chooses a resolution plan submitted by an entity/ group of entities, say “XYZ”.
- iii. As part of the plan, XYZ promises to gain control of the company by clearing certain percentage of dues of lender(s). The following table demonstrates the minimum offer required to be made to shareholders at Sr. No. 2 above in order for “A” to remain listed for various scenarios.



Table #2

Shareholding of XYZ into "A" as a result of resolution plan	Old capital reduced to	Post Reduction of shareholding of existing shareholders		Minimum offer to Shareholders at Sr. No. 2 at price at which XYZ plans to acquire shares of "A"	Min acceptance by Shareholders at Sr. No. 2 required to remain listed
		Shareholders at Sr. No. 1 of Table #1 (Promoters shall be reclassified as non-promoters)	Public Shareholders at Sr. No. 2 of Table #1		
75%	25%	15%	10%	0%	0%
85%	15%	9%	6%	10%	0%
90%	10%	6%	4%	15%	0%
95%	5%	3%	2%	20%	0%
97%	3%	1.8%	1.2%	22%	2%
100%	0%	0%	0%	25%	5%
	"A" prohibited to remain listed (in terms of amendment to SCRR) in case XYZ hold more than 95% in "A" i.e. public shareholding is less than 5%.				

Note: The minimum offer shall be made to public equity shareholders only and not to promoters, Directors, KMP etc. (who will be reclassified as non-promoters)

13. Merits of the above proposal:

- Company will be able to retain its status as listed company with minimum public float post restructuring
- Burden on successful bidder/ resolution applicant will be lesser as capital for part equity in the new entity can be met through offer to non-promoter public shareholders. Resolution applicant shall have this additional source of raising money and at the same time shall also comply with MPS.



- iii. Existing public shareholders of the company under CIRP become shareholder in the company post restructuring.
 - iv. Existing public shareholders will have a right to participate in proportion of their shareholding.
 - v. Existing public shareholders will have the opportunity to acquire capital of new entity at the same cost at which the new acquirer is coming.
14. Considering the implications of the aforesaid proposals, on the market participants including issuer companies and investors, public comments are invited on the matters at Para 10 above. Comments may be sent by email, in the following format only:

Name of entity / person :			
Contact Number & Email Address :			
Sr. No.	Reference sub-para (A to E) of the Para 10 of the consultation paper	Suggestion/ Comments	Rationale

While sending email, kindly mention the subject as **"Comments on consultation paper on protection of public equity shareholders in case of listed companies undergoing CIRP"**.

The comments may be sent by email to consultationcfd@sebi.gov.in latest by November 24, 2022. Comments sent in email should be in the file format – MS Excel.
