

Analytical Study of Pre-Packaged Insolvency

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ABSTRACT

What is Insolvency?

- Insolvency is a state in which a business or an individual is unable to pay debts on time.
- It often leads to a bankruptcy filing, marking a legal declaration of one's inability to repay outstanding debts.

When a company or individual is unable to make their debt payments on schedule, they become insolvent. This frequently results in a bankruptcy filing, which formally admits their incapacity to pay back obligations. A framework for restructuring and resolving the insolvency of various organizations, including businesses, partnerships, and people, is provided under the Insolvency and Bankruptcy Code of 2016. The goal is to efficiently restructure or resolve financial issues while balancing the interests of stakeholders and optimizing asset value.

After payments are missing, the procedure usually begins when a qualified party approves a request. The Code encourages a cooperative phase during which parties cooperate to resolve financial strain without

facing legal consequences. Creditors assess if a company can recover and create a plan to support it if it is unable to pay its debts. When it comes to dealing with corporate insolvency, there are two primary approaches: (a) the Corporate Insolvency Resolution Process (CIRP), which either ends in the liquidation of the company or rehabilitates it through a resolution plan; and (b) the Pre- Packaged Insolvency Resolution Process (PPIRP), which seeks to resolve the situation either with a plan or without one.

Insolvency for an individual entails collaborating with creditors to establish a repayment schedule overseen by a resolution specialist. In the event that the repayment plan is unsuccessful, the debtor's assets are sold as part of the bankruptcy process. When rehabilitation efforts are thought unlikely, the Code also provides a fresh start procedure for those with limited resources.

1. INTRODUCTION

Pre-packaged insolvency is a new method within the wider scope of insolvency and bankruptcy resolution. The goal is to improve upon traditional insolvency procedures by allowing for faster, more effective, and less disruptive solutions. This method was brought to India by changes made to the Insolvency and Bankruptcy Code (IBC), 2016, specifically by the Insolvency and Bankruptcy Code (Amendment) Act, 2021.

Prepackaged insolvency occurs when a struggling company reaches an agreement with its creditors on a plan for resolving financial issues prior to declaring insolvency. This predetermined plan is then presented for insolvency resolution process, making the resolution quicker and more efficient.

Aligned with its goals, the Code includes provisions for recouping the value forfeited in avoidance deals. In the distribution of assets during liquidation, the Government is placed below unsecured financial creditors in the hierarchy. If a company goes bankrupt, the Government is prioritized right above unsecured creditors in terms of who gets paid first. The Code takes precedence over other laws in the event of conflict or inconsistency.

1.1 Background:

MSMEs are vital for the economy of India. They play a crucial role in the economy by contributing substantially to GDP and employing a large portion of the population. The business operations of many have been affected by the COVID-19 pandemic, leading to financial strain for numerous individuals. The resolution of their stress necessitates diverse treatment, as a result of the distinct characteristics of their companies and more straightforward corporate structures. Hence, it was deemed necessary to offer a more efficient insolvency resolution method for small and medium-sized enterprises (MSMEs) under the Code, aiming for faster, affordable, and value-enhancing results for all parties involved, while minimizing disruptions to business operations and job preservation. In line with this, the President issued the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 04.04.2021 to incorporate PPIRP within the Code. PPIRP is established based on trust and recognizes the integrity of MSME owners by supporting resolution as long as they are involved in the company.

PPIRP can be accessed to address the stress faced by corporate MSMEs. It is offered as an alternative choice, if the stakeholders prefer to utilize it. It can be used to alleviate stress with a minimum default amount of ₹ 1 crore, for which Corporate Insolvency Resolution Process (CIRP) is an option. Unlike the Consumer Information Report (CIRP), this option is also accessible for defaults of at least ₹ 10 lakh, occurring between 25.03.2020 to 24.03.2021.

PPIRP possesses the characteristics that establish a CIRP as sacred, and upholds the strictness and structure of the CIRP. It is casual until a certain extent and then becomes formal. It combines debtor-in-possession with creditor-in-control. It is not completely private or completely public - it enables the company, if eligible under section 29A, to present the base resolution plan (BRP) that can be contested for maximizing value. It protects the rights of stakeholders equally to CIRP and includes sufficient safeguards to avoid any potential abuse. It involves courts and IPs having a restricted role. Different from CIRP, it does not give in when there is no resolution plan. While PPIRP and CIRP serve as choices, some stakeholders may prefer one over the other in specific situations.

Governing Framework:

The regulations regarding PPIRP can be found in:

- (i) The Insolvency and Bankruptcy Code, 2016, was amended by the Insolvency and Bankruptcy (Amendment) Ordinance, 2021.
- (ii) The Insolvency and Bankruptcy Code of 2016 was altered by the Insolvency and Bankruptcy (Amendment) Ordinance of 2021.
- (iii) Guidelines for Pre-packaged Insolvency Resolution Process established by the Insolvency and Bankruptcy Board of India in the year 2021.

1.2 Need of Pre-Packaged Insolvency Resolution

The Corporate Insolvency Resolution Process, as outlined in the Insolvency and Bankruptcy Code, 2016, heavily involves the judiciary, which may lengthen the process but guarantees enforceability upon approval by the Adjudicating Authority¹. Currently, in our nation's system, there is no opportunity for an out-of-court resolution for bankruptcy. The primary cause is that our country's new insolvency and bankruptcy mechanism is still in its early stages and the market is not yet mature enough for informal bankruptcy resolutions. In nations such as the USA and UK, the pre-pack insolvency resolution has been implemented for many years. In accordance with Chapter 11 of the United States Bankruptcy Code, a financially troubled company negotiates terms of a Chapter 11 plan with major creditors and seeks approvals for a resolution plan before seeking bankruptcy protection. The company then requests expedited approval from the bankruptcy court for the plan, as well as the related disclosure statement and solicitation procedures. Not all financially troubled companies are eligible for a pre-packaged insolvency case, only those where high levels of debt are the main cause of distress and the company does not require

¹ Insolvency and Bankruptcy Code, No. 31 of 2016, INDIA CODE (2016).

a complete restructuring of its business operations.

According to laws in the UK, a pre-pack involves negotiating and agreeing on the sale of a company's business and/or assets before an insolvency practitioner is appointed, with relevant documentation being signed and implemented soon after the appointment². The speed of selling the company in pre-pack administration leads to greater returns for creditors compared to other insolvency options, along with benefits like transparency, business continuity, and lower administrative costs. Given the success of pre-packaged insolvency resolutions in developed countries, this practice can also be implemented in India.

Considering the implementation of pre-packaged insolvency resolution processes in developed nations and their successful results, it can also be applied in the Indian scenario.

1.3 Ground for Pre-Packaged Insolvency in India

While IBC was being developed, the Bankruptcy Law Reforms Committee stated in its initial report that the key factor for the functioning of the bankruptcy code is speed, emphasizing the importance of designing a legal framework to address firm failure quickly³. Even though it has been almost 3 and a half years since the Code was implemented, strict adherence to statutory timelines remains a challenge. In addition to delays, issues like engaging third-party advisors and various costs are present. Delays have implicit costs such as operational disruptions, service provider refusals, damage to goodwill, etc. Informal private restructuring can help minimize these costs significantly during the Corporate Insolvency Resolution Process (CIRP). Private restructuring, being outside the court procedures, offers flexibility in creating resolution plans tailored to prospective buyers' needs, allowing for due diligence and reducing post-resolution conflicts and legal battles. Nevertheless, the out of court settlement/restructuring schemes in India have not seen much success in the past. RBI launched the Corporate Debt Restructuring (CDR) scheme in 2001 but discontinued it in 2018 due to its lack of success; the CDR cell sanctioned the restructuring of stressed loans totaling ₹ 4 trillion during its operation. Out of this, loans worth ₹ 84,677 crore were able to successfully exit the CDR cell, while loans worth ₹ 1.84 trillion exited without success. Almost ₹ 1.32 trillion in non-performing loans were still being restructured in the plan when it was reversed. RBI also launched initiatives such as the Scheme for Sustainable Structuring of Stressed Assets (S4A) which targeted resolution⁴. This plan enabled lenders, mostly banks, to differentiate between sustainable and unsustainable loans for big borrowing accounts experiencing serious financial troubles. The banks would change the unmanageable debt into equity or equity related instruments, reducing the borrower's debt burden significantly while also lowering the promoter's equity stake. However, because of the disjointed efforts of the different agencies and simultaneous legal actions at various official bodies, none of the off-court settlement plans achieved the desired outcomes. As a result, the RBI discontinued all of these schemes and moved all cases to the IBC.

2. ELIGIBILITY FOR PRE-PACKAGED INSOLVENCY PROCESS (PIRP)

² Insolvency Act 1986, c. 45 (UK).

³ Bankruptcy Law Reforms Comm., *The Report of the Bankruptcy Law Reforms Committee: Volume I—Rationale and Design* (Nov. 2015)

⁴ Reserve Bank of India, *Scheme for Sustainable Structuring of Stressed Assets (S4A)* (2016)

An MSME eligible under section 7(1) of the MSME Development Act, 2006, can request the initiation of a Personal Property Insolvency Risk Profile (PPIRP) if it meets the following criteria⁵:

1. It has defaulted on payments amounting to at least ₹10 lakh.
2. It is eligible to submit a resolution proposal according to section 29A of the Code.
3. It has not had a Personal Property Insolvency Risk Profile (PPIRP) conducted in the three years prior to the request.
4. It has not been through a Corporate Insolvency Resolution Process (CIRP) in the three years before the request.
5. It is not currently undergoing a Corporate Insolvency Resolution Process (CIRP).
6. It is not subject to liquidation under a section 33 order of the Code.

To verify its MSME status, the application must include either a copy of the Udyam Registration Certificate, proof of investment in plant and machinery, or turnover details as outlined in Notification No. 2119(E) dated June 26, 2020, by the Ministry of MSMEs⁶.

3. APPLICATION OF PROVISIONS OF CIRP TO PPIRP

Part II Chapter III-A of the Insolvency and Bankruptcy Code (sections 54A to 54P) outlines the specific provisions for the Prepackaged Insolvency Resolution Process (PPIRP). While many provisions of the Corporate Insolvency Resolution Process (CIRP) are applicable to PPIRP, there are exceptions specified.

As per Section 54P(1) of the Insolvency Code, introduced by the IBC (Amendment) Act, 2021⁷, which came into effect on April 4, 2021, the provisions from sections 24, 25A, 26, 27, 28, 29A, 32A, and sections 43 to 51, as well as Chapters VI and VII of Part II of the Insolvency Code, apply to PPIRP with necessary modifications, except for Chapter III-A which pertains to PPIRP itself.

Here's how the application of these provisions is adapted for PPIRP:

- (a) References to “members of the suspended Board of Directors or the mates” in Section 24(3)(b) should be understood as referring to “members of the Board of Directors or the mates,” unless an order has been issued under Section 54J.
- (b) References to Section 25(2)(j) in Section 26 should be considered as references to Section 54F(2)(h).
- (c) References to “Section 16” in Section 27 should be read as references to “Section 54E.”

⁵ Micro, Small and Medium Enterprises Development Act, No. 27 of 2006, INDIA CODE

⁶ Ministry of Micro, Small & Medium Enterprises, Notification No. 2119(E), *Criteria for Classification of Micro, Small and Medium Enterprises* (June 26, 2020)

⁷ Insolvency and Bankruptcy Code (Amendment) Act, No. 26 of 2021, INDIA CODE

- (d) References to “resolution professional” in Sections 28(1) and 28(4) should be understood as referring to the “commercial debtor.”
- (e) References to “Section 31” in Section 61(3) should be read as references to Section 54L(1).
- (f) References to “Section 14” in Sections 74(1) and 74(2) should be read as references to “Section 54E(1)(e).”
- (g) References to “Section 31” in Section 74(3) should be considered as references to Section 54L(1).

The specific provisions applicable to PPIRP include:

- **Section 24:** Outlines the procedures for creditor meetings.
- **Section 25A:** Covers voting by authorized representatives of fiscal creditor classes and their compensation.
- **Section 26:** Allows the resolution professional to avoid transactions without disrupting the resolution process.
- **Section 27:** Enables the Committee of Creditors (CoC) to replace the resolution professional with a 66% majority vote and written consent from the new resolution professional.
- **Section 28:** Mandates CoC approval for certain actions undertaken by the resolution professional.
- **Section 29A:** Specifies who is disqualified from being a resolution applicant, with exceptions for MSMEs as outlined in Section 240A.
- **Section 32A:** Grants immunity from executing the commercial debtor’s assets following PPIRP approval for past transactions if operational changes have taken place.
- **Sections 43 to 51:** Address issues related to preferential transactions (Sections 43 and 44), undervalued transactions (Sections 45 to 48), fraudulent transactions (Section 49), and extortionate credit transactions (Sections 50 and 51).
- **Chapter VI:** Focuses on the Adjudicating Authority and penalties (Sections 60 to 67).
- **Chapter VII:**⁸ Discusses offenses and their penalties (Sections 68 to 77A).

⁸ Insolvency and Bankruptcy Code, No. 31 of 2016, Sections 24–32A, 43–51, 60–77A, INDIA CODE,

4. PHASES FOR INITIATING PRE-PACKAGED INSOLVENCY

4.1 PRE-INITIATION PHASE

The Pre-Initiation Phase of the Pre-Packaged Insolvency Resolution Process (PPIRP) involves a blend of informal preparatory tasks and formal steps once the process begins. During this phase, the corporate entity (the applicant) and its creditors collaborate to determine the most effective resolution strategy for business challenges. Here are the required activities for the pre-initiation phase:

1. **Engagement with Creditors:** The applicant must meet with unrelated financial creditors (UFCs)—those not affiliated with the corporate debtor (CD)—as defined in sections 54A(2)(e) and (3). If the company has no debts or if all lenders are related to the company, meetings must be held with unrelated operational creditors who have similar obligations as the related creditors.
2. **Form P2 Submission:** The applicant needs to complete Form P2, listing the debtors, amounts owed, and include a notice of the meeting to approve an Insolvency Professional (IP) as the Resolution Professional (RP)⁹.
3. **Proposal of Resolution Professional (RP):** During the UFC meeting, creditors holding at least 10% of the total debt must propose a name for the RP. The IP can only act as RP if neither they nor their firm has any connection to the insolvent company, adhering to the independence requirements in regulation 7¹⁰.
4. **Approval of RP Appointment:** To approve the RP and their terms in Form P3, at least 66% of the debt's value from UFCs is required. This includes compensation for the pre-initiation phase, reimbursement for PPIRP-related activities, and any expenses if the RP oversees the CD under section 54J.
5. **Director/Partner Declaration:** Most directors or partners of the CD must submit Form P6 confirming that (a) the CD will apply for initiation within 90 days, (b) the PPIRP is not intended for fraudulent purposes, and (c) the IP's name for RP appointment as approved by creditors.
6. **Resolution for PPIRP Authorization:** A special resolution from CD members or a resolution from at least three-fourths of the CD members is required to authorize the PPIRP initiation, according to section 54A(2)(g).
7. **Submission of Business Resolution Plan (BRP):** The CD must prepare a BRP that complies with the guidelines in section 54K.
8. **Documentation for Initiation:** Along with the announcement for the meeting(s) to seek approval to initiate the PPIRP, the applicant must include: (a) a list of creditors and amounts owed in Form P2, (b) a declaration in Form P6, (c) the resolution from CD members or mates as per section 54A(2)(g), and (d) the BRP.
9. **UFC Meeting Agreement:** At the UFC meeting, creditors holding at least 66% of the total debt must agree to submit an application to start the PPIRP process for the company director under section

⁹ Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021, Forms P2 & P3.

¹⁰ Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021, Reg. 7

54A(3), using Form P4.

10. **Selection of Authorized Representatives (ARs):** The IP proposed as the RP will identify creditors by class from Form P2, elect three IPs as ARs, secure their agreement using Form P5, allow creditors to choose their preferred IP as AR, and communicate the selected ARs' names and agreement in Form P5 to the applicant, following regulation 15¹¹.

11. **Form P8 Submission:** The proposed RP must submit a Form P8 report verifying the CD's eligibility for PPIRP, with the Business Responsible Party attesting to the required criteria.

4.2 *APPLICATION FOR INITIATION OF PPIRP*

- (i) Only a commercial aspirant is eligible to file for initiating a PPIRP (Pre-Packaged Insolvency Resolution Process).
- (ii) To start a PPIRP, the aspirant must electronically submit an application in Form 1 to the Adjudicating Authority (AA).
- (iii) The application must include the following documents:
 - (a) Record of dereliction;
 - (b) Consent of the proposed Insolvency Professional (IP) to act as the Resolution Professional (RP) in Form P1;
 - (c) Approval from the Unsecured Financial Creditors (UFCs) for initiation in Form P4;
 - (d) If applicable, the consent of the proposed IP to act as the Authorized Representative (AR) in Form P5;
 - (e) Statement of Protestation by the Directors or partners in Form P6;
 - (f) Resolution passed by members or partners;
 - (g) Statement of Protestation by the Corporate Debtor (CD) regarding avoidance transactions in Form P7¹²;
 - (h) Report from the RP in Form P8;
 - (i) Audited financial statements for the last two fiscal years;

¹¹ Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021, Reg. 15, Form P5.

¹² Insolvency and Bankruptcy (Application to Adjudicating Authority for PPIRP) Rules, 2021, Form P7.

- (j) Provisional financial statements for the current fiscal year up to the date of protestation under section 54 A (2)(f);
- (k) Latest Udyam Registration Certificate or proof of MSME status¹³;
- (l) Affidavit confirming the CD's eligibility under section 29A of the law to propose a resolution plan in the PPIRP;
- (m) Statement of affairs dated within 14 days of the application date;
- (n) List of names and addresses of the CD's members or partners, including their individual shareholdings;
- (o) Proof of payment of the ₹15,000 application fee;
- (p) Evidence of submission of a copy of the application to the Insolvency and Bankruptcy Board of India (IBBI);
- (q) Proof of the aspirant's authority to file the application if they are a member or partner of the CD.
- (iv) Before submitting the application to the AA, the aspirant must also send a copy to the IBBI.
- (v) The AA will review the application and decide to accept or reject it within 14 days based on its completeness. If there are any deficiencies, the AA will give the aspirant a seven-day period to correct them before rejecting the application. The AA will also take into account any pending application for initiating Corporate Insolvency Resolution Process (CIRP) when making its decision.
- (vi) The PPIRP will begin once the application is admitted.
- (vii) Upon admitting the PPIRP application, the AA will impose a temporary moratorium as per sections (1) and (3) of section 14 of the Code, appoint the IP mentioned in the application as the RP, and ensure the RP makes a public announcement.
- (viii) If the application is not submitted by the deadline specified in Form 6 or is rejected by the AA, the IP's liabilities will end¹⁴.

¹³ Ministry of Micro, Small & Medium Enterprises, Udyam Registration Portal

¹⁴ Insolvency and Bankruptcy (Application to Adjudicating Authority for PPIRP) Rules, 2021, Form 6

4.3***POST-INITIATION PHASE***

- (i) The entire process must be completed within 120 days from the PPIRP launch date.
- (ii) During the PPIRP, the Board of Directors will continue to manage the company's affairs, working to maintain the value of the property and oversee its operations. All stakeholders are expected to uphold their legal obligations and rights concerning the company.
- (iii) Within two days of the PPIRP's start date, the company (CD) must provide the Resolution Professional (RP) with an updated list of claims, including details about creditors, security interests, and guarantees using Form P10. Additionally, the company must submit a Primary Information Memorandum (PIM) with relevant details for developing a resolution plan. If any party, including promoters, directors, managers, or those who authorized the information, fails to provide accurate information or misleads the process, they will be held liable and required to provide compensation.
- (iv) The CD must also submit the Business Restructuring Plan (BRP) to the RP within 48 hours of the PPIRP's launch date. The BRP may be revised if permitted by the Committee of Creditors (CoC).
- (v) The RP must issue a public advertisement in Form P9 within two days of the process commencement, as specified in Regulation 19.¹⁵
- (vi) The RP is required to carry out the duties and responsibilities outlined in Section 54F.

4.4***APPROVAL OF RESOLUTION PLAN:***

- (i) If the Base Resolution Plan (BRP) does not affect the claims of Operational Creditors (OCs), the Committee of Creditors (CoC) may choose to donate it to the Adjudicating Authority (AA).
- (ii) If the CoC rejects the BRP or if it adversely affects OCs' claims, the Resolution Professional (RP) will request other potential resolution applicants to submit alternative resolution plans. He must provide a brief summary of the assignment for these plans using Form P11 within 21 days from the initiation of the Pre-Packaged Insolvency Resolution Process (PPIRP), in accordance with Regulation 43.
- (iii) The assignment for resolution plans must detail every step of the process, including how the RP and resolution applicants will interact, with specific reasons and timelines. It should include: (a) the basis for assessment; (b) criteria for evaluating one plan as superior to another; (c) the minimum price change required; and (d) the procedure for improving a resolution plan. A non-refundable deposit is required to submit a resolution plan.
- (iv) Resolution plans that are submitted in response to the assignment and comply with the Code and Regulations will be evaluated based on the set criteria. The plan with the highest score will be selected as the Best Alternate Plan (BAP) to compete with the BRP.

¹⁵ IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021, r. 19 & Form P9.

- (v) If no resolution plans are received, the CoC may consider approving the BRP.
- (vi) The CoC may choose to approve the BAP if it offers a significant improvement over the BRP. The process will end if no substantially improved BAP is approved.
- (vii) If the BAP does not present a significant improvement over the BRP, the RP must disclose the scores of both the BAP and BRP to the respective submitters and invite them to revise their plans according to Regulation 48.
- (viii) The revision process will continue until one of the submitters decides not to take the opportunity within the given timeframe. After the revision period ends, the CoC will review and potentially approve the resolution plan with the highest score. The process will conclude if the CoC does not grant approval.

4.5 CLOSURE OF PPIRP

A Pre-Packaged Insolvency Resolution Process (PPIRP) can conclude under several circumstances:

1. **Approval of Resolution Plan:** The PPIRP ends when either the Bankruptcy Resolution Plan (BRP) or the Bankruptcy Adjudicating Plan (BAP) is approved by the Adjudicating Authority (AA).
2. **Expiry of Submission Period:** The process terminates if no resolution plan is submitted to the AA within the 90-day period.
3. **Rejection of Resolution Plan:** The PPIRP is closed if the AA rejects the proposed resolution plan.
4. **Termination by AA:** The AA can terminate the PPIRP if the Resolution Professional (RP) requests termination and this request is supported by at least 66% of the Committee of Creditors (CoC).
5. **Conversion to CIRP:** The PPIRP can be converted into a Corporate Insolvency Resolution Process (CIRP) if the RP applies for conversion and the CoC approves it with at least 66% of their votes, provided the Corporate Debtor (CD) is eligible for CIRP. The RP from the PPIRP then becomes the Interim Resolution Professional (IRP) for the CIRP.
6. **Termination Due to Plan Issues:** The process may be terminated if the CoC rejects the resolution plan or if the approved plan does not lead to a management change, particularly if the AA had previously transferred management to the RP under section 54J.

5 LIST OF FORMS

FORM	SOURCE	DESCRIPTION
Form 1	Rules	Application by Corporate Applicant to initiate PPIRP
Form P1	Regulations	Written consent by IP to act as RP / IRP
Form P2		List of creditors to be provided by the applicant
Form P3		Approval of terms of appointment of RP, by UFCs
Form P4		Approval for filing application to initiate PPIRP, by UFCs
Form P5		Written consent by IP to act as AR
Form P6		Declaration by majority of directors / partners
Form P7		Declaration regarding existence of avoidance transaction(s)
Form P8		Report by the IP proposed to be appointed as the RP
Form P9		Public announcement by the RP
Form P10		List of claims by the CD
Form P11		Brief particulars of the invitation for resolution plans
Form P12		Compliance certificate by the RP
Form P13		Application for termination of PPIRP

ADVANTAGES OF THE PPIRP MECHANISM

The primary goal of the Pre-Packaged Insolvency Resolution Process (PPIRP) is to safeguard the interests of Micro, Small, and Medium Enterprises (MSMEs) and improve the insolvency resolution process in a timely manner. Here are the key advantages of the PPIRP process:

- *Cost-Effective Mechanism:*

The PPIRP is designed to be cost-efficient. It allows the debtor to continue operating the business during the resolution process without incurring additional costs for the resolution professional. This approach minimizes disruptions to the business and helps to maximize returns for all stakeholders. Moreover, PPIRP facilitates an “out-of-court” restructuring, which reduces the significant costs typically associated with formal insolvency proceedings.

- *Timely Resolution:*

PPIRP offers a quicker resolution compared to the Corporate Insolvency Resolution Process (CIRP). The entire PPIRP process is to be completed within 120 days (90 days for creditor approval and 30 days for adjudication). In contrast, the CIRP has a maximum duration of 180 days, with possible extensions if authorized by the National Company Law Tribunal (NCLT). This ensures that the PPIRP provides a more timely resolution and prevents further deterioration of the financial situation, as demonstrated in the Krrish Realtech Pvt. Ltd. case¹⁶.

- *Debtor-in-Possession Model:*

The PPIRP incorporates a Debtor-in-Possession model, as outlined in Section 54H(a) of the Bankruptcy and Insolvency Code. This model allows the debtor to retain control of their business operations and recovery efforts. The advantage of this approach is that it ensures decisions are made by those who have a deep understanding of the company’s condition, potentially leading to more effective restructuring.

- *Hybrid Process:*

The PPIRP introduces a hybrid approach, combining both formal and informal elements. Creditors and debtors can agree on a restructuring plan informally and submit it for approval to the adjudicating authority. This collaborative process reduces opposition to the resolution plan and benefits from the flexibility of informal procedures while maintaining some formal process advantages.

- *Confidential Process:*

The PPIRP process ensures confidentiality, similar to alternative dispute resolution methods. Debtors are prohibited from disclosing sensitive information on public platforms or websites. This confidentiality helps protect the reputation and goodwill of the involved parties throughout the resolution process.

¹⁶ Krrish Realtech Pvt. Ltd. v. Union of India, W.P.(C) 993/2021, Delhi High Court (2021).

*BENEFITS OR ADVANTAGES OF PPIRP AS COMPARED TO CIRP**Preliminary Work before Filing:*

- **PPIRP:** Requires preliminary steps such as approval from 66% of financial creditors and 75% of members of the commercial debtor. The resolution professional's name is also verified, and a base resolution plan is prepared before filing with the adjudicating authority (NCLT). This preliminary work helps in streamlining the process, making it less clumsy, and ensures a formal understanding between the commercial debtor and financial creditors.
- **CIRP:** Does not involve such extensive preliminary steps before filing. The process can be more cumbersome as it starts directly with the filing of an application with NCLT, potentially leading to more disputes and complications.

Better Protection of Operational Creditors:

- **PPIRP:** Incorporates a “Swiss challenge” model, which ensures that the base resolution plan (BRP) is either accepted as it is (if it meets the interests of operational creditors) or opened for competitive bidding if it does not meet those interests. This provides better protection for operational creditors compared to the CIRP.
- **CIRP:** Does not have a specific mechanism like the Swiss challenge to ensure that operational creditors' interests are met comprehensively. Their interests might be less prioritized, and they may not have the same level of assurance that their dues will be adequately addressed.

Protection of MSME Interests:

- **PPIRP:** Specifically designed to protect MSMEs by allowing their promoters and directors to participate in the resolution process. Section 240A of the IBC exempts MSME promoters and directors from certain disqualifications that are applicable under Section 29A, which otherwise might have barred them from submitting resolution plans.
- **CIRP:** MSMEs often face challenges as their interests might be neglected, and the limitations imposed under Section 29A could lead to their liquidation. The CIRP process can be less favorable for MSMEs, particularly if third parties are not interested in taking over the distressed company.

Case Example:

GCCL Structure and Projects Limited¹⁷: The first case under PPIRP highlighted its effectiveness. GCCL, an MSME, was able to initiate PPIRP and benefit from the exemption of its promoters from the limitations of Section 29A, showcasing how PPIRP can offer a more favorable outcome for MSMEs compared to CIRP.

In summary, the PPIRP process addresses several shortcomings of the CIRP by providing a more structured preliminary phase, better protection for operational creditors, and enhanced support for

¹⁷ *GCCL Structure and Projects Ltd. v. GVFL Trustee Co. Pvt. Ltd.*, CP (IB) 48/NCLT/AHM/2021, NCLT Ahmedabad Bench (2021).

MSMEs. This makes PPIRP a more efficient and accommodating process for resolving insolvency issues, especially for smaller enterprises.

ANALYSIS

The PPIRP in India breaks away from traditional bankruptcy processes by using a debtor-in-possession model that emphasizes business sustainability and protects creditors' interests. PPIRP aims to ensure transparency and fairness by giving operation control to the Commercial Debtor (CD) and adding a list of responsibilities towards creditors. Checks and balances, such as the ability of the Commission of Creditors(COC) to terminate the process in case of misconduct by the CD, and the role of the Resolution Professional(RP) in supervising the process, are essential for upholding the integrity of the resolution process. Even though creditor control is important in PPIRP, active cooperation from the CD is needed to utilize their understanding of the company's issues for a successful resolution. Additionally, the phased preparation method and strict process execution demonstrate PPIRP's inflexibility to various business scenarios. In general, PPIRP shows promise in addressing commercial torture, while also preventing liquidation and maintaining business sustainability through its blend of effectiveness, stakeholder engagement, and rigidity. However, the initiative introduced for MSMEs in India has not met the needs of these businesses, as evidenced by the low number of 11 PPIRPs approved since its inception, with only 4 of them having their resolution plans approved. Only two out of the PPIRPs were completed within a 120-day timeframe. There are potential explanations for the low quantity.

1. Conflict with the basic structure of the Code

The layout of PPIRP varies from typical CIRP. In PPIRP, the responsibility for control and operation rests with the BOD, while in CIRP it is transferred to the RP. The Sub-committee, in its agitation of PPIRP, emphasized the importance of upholding the initial framework of the law, including creditor control, stagnation, and the enforceability of the approved resolution plan. The law allows the CoC to modify operations with 66 votes and AA's approval, showing creditor influence, which contradicts Debtor control in PPIRP¹⁸.

2. Conflict with the MSME Development Act

In Section 3 of the Micro, Small and Medium Enterprises Development Act 2006, a Board is set up to analyze and recommend growth strategies for these enterprises. The Board's absence from the Sub-Committee in charge of creating pre-pack fabrics may have resulted in inadequate attention to the needs of MSMEs. The pre-pack model works within a debtor-in-possession framework, but approval from creditors is necessary for its start. Creditors may be hesitant to accept voluntary cuts, especially since a pre-pack can be triggered by a default as low as Rs. One million. Therefore, it is important to examine the framework provisions of the Code and align them with the Act.

¹⁸ Report of the Sub-Committee of the Insolvency Law Committee on Pre-Packaged Insolvency Resolution Process (Oct. 2020), at 12–15

3. *Unsecured Creditor's Interest not considered*

Creditors who are not under much pressure in the current bankruptcy system may be completely disregarded in PPIRPs. They might not have the opportunity to make their arguments or oppose the sale while staying in accommodations.

4. *Procedural Flaws and Delays*

PPIRP must be finished within a period of 120 days. It is a partially formal procedure with minimal intervention from the courts. However, AA's presence can be observed in every step, causing unnecessary detentions and obstacles, going against the original purpose of implementing PPIRP as a voluntary CIRP.

In *GCCL structure and Projects Limited*,¹⁹ the first instance of PPIRP was accepted by NCLT Ahmedabad on September 14, 2021. As per Section 54D, the process was expected to be completed within 120 days after the approval of the Adjudicating Authority. However, even though the Committee of Creditors (CoC) approved the base resolution plan (BRP), the resolution plan was not accepted until September 5, 2023. The holding was linked to the BRP's proposal at the junction, prompting the NCLT to investigate its specifics and question the CoC's business decision.

In the Krrish Realtech Private Limited case, the court reviewed complaints from creditors under Section 424 of the Companies Act 2013. Both included and excluded creditors presented their objections, and the court confirmed that handling these complaints falls within its jurisdiction under the Act, rather than introducing new procedures. Despite this, the process was still negatively affected. In pre-pack cases, the Resolution Professional (RP) is required to update the list of claims within two days of their appointment, including any claims not listed during the Pre-Packaged Insolvency Resolution Process (PPIRP) admission stage. Addressing all objections early in the process can extend the informal phase, leading to court involvement and potentially delaying the 120-day deadline.

After an application is accepted, the RP must verify that the Commercial Debtor (CD) has fulfilled the necessary requirements to start a PPIRP. In the Loon Land Developers Ltd case, proper procedures were not followed, raising concerns about the MSME status.

The National Company Law Tribunal (NCLT) permitted creditors to raise objections, to which the CD could respond. On appeal, the CD argued that the NCLT had no authority to allow objections due to the time-sensitive nature of PPIRP, and there was no provision for such opposition. However, the appellate authority upheld the NCLT's decision, stating that the CD was not prejudiced by the objections and had adequate time to address them. This led to delays in the resolution process.

5. *Lack of Transparency*

The PPIRP (Pre-Packaged Insolvency Resolution Process) is initiated by a Company Director (CD), who can use this period of dereliction to negotiate debt restructuring terms with creditors before formal

¹⁹ GCCL Infrastructures & Projects Ltd. v. GVFL Trusteeship Services Pvt. Ltd., C.P. (IB) No. 14/NCLT/AHM/2021 (NCLT Ahmedabad Bench Sept. 14, 2021).

bankruptcy proceedings begin. However, the lack of transparency in this process undermines Section 29A of the Code, which aims to prevent reckless promoters and their associates from regaining control of the company during the resolution process. This opacity can give promoters an opportunity to reassert influence over the restructured company and may also lead to undervalued or preferential deals.

6. *Moratorium Not Imposed*

During the PPIRP, the moratorium protection specified in the Code does not apply until official insolvency proceedings commence. This can pose a problem if PPIRP negotiations fail to conclude successfully, as it leaves the CD vulnerable to ongoing legal challenges from any involved parties. Consequently, other creditors may find themselves exposed and unprotected during these proceedings.

LEGAL PROVISION

Chapter II of the IBC governs CIRP, detailing the process for starting insolvency proceedings, appointing an insolvency professional, and reviewing and sanctioning the resolution plan.

Section 29A of the IBC sets specific criteria for bidders, including the stipulation that they cannot be intentional defaulters or have a previous record of fraud.

The introduction of PPIRP in India occurred in 2021 by adding a new Chapter III-A to the IBC. This chapter outlines the procedures for submitting and approving pre-packaged plans, as well as the requirements for debtors and creditors eligible to start the process.

S.No.	Criteria	CIRP Process	PPIRP Process
1	Eligibility	All companies and LLP	Companies classified as MSME
2	Minimum sum of Default	1 Crore Rupees	10 Lakhs Rupees
3	Application for Initiation	Financial Creditor, Operational Creditor and Corporate Debtor himself	Corporate Debtor, authorized person of CD, Person in control of financial affairs of the CD
4	Timeline	180 Days + 90 Days + 60 Days	120 Days (No Extension)
5	Interim Resolution Professional (IRP)	IRP will get appointed on the Insolvency Commencement Date (ICD)	No Such Concept under this Process
6	Resolution Professional	RP will get appointed on the 1st COC meeting held on 30th day of ICD	RP will get appointed on the Pre-Packaged Insolvency Commencement Date (PICD)

7	Base Resolution Plan (Sec 5(2A))	No Such Concept under this Process	It will be submitted by the Corporate Debtor to financial creditors before PICD
8	Moratorium & Public Announcement	Applicable U/s 14 & 15 of IBC	Applicable U/s 54E of IBC
9	Constitution of Committee of Creditors (COC)	23rd Day from the Insolvency Commencement Date (ICD)	7th Day from the Pre-Packaged Insolvency Commencement Date (PICD)
10	First Meeting of Committee of Creditors	To be held within 7 days of Constitution of COC	To be held within 7 days of Constitution of COC
11	Preliminary Information Memorandum (Sec 5(23A))	No Such Concept under this Process	It will be submitted by Corporate Debtor within two days of PICD to RP
12	Management of the Corporate Debtor	Vested with the IRP on ICD and subsequently transmitted to RP (Sec 17)	Vested with the old management and RP shall monitor it (Sec 54F(2)(d))
13	Initiation of CIRP (Sec 54O)	Not Applicable	COC at any time may decide upon for initiation of CIRP with voting not less than 66%
14	Resolution Plan	Equal Opportunity to All	First Opportunity to Promoters
15	Termination	Results in Liquidation	Only in case of 54J order – Liquidation Other case – Management continues CD

CONCLUSION:

The introduction of a pre-packaged insolvency system in India marks a significant step towards aligning with international practices seen in countries like the UK, the USA, Canada, and Singapore. Specifically, the implementation of the Pre-Packaged Insolvency Resolution Process (PPIRP) offers valuable opportunities for the Micro, Small, and Medium Enterprises (MSME) sector, aiding their recovery amidst economic challenges such as those posed by the COVID-19 pandemic. However, challenges such as voluntary acceptance of haircuts and legal delays affecting the 120-day timeframe need to be addressed.

To improve the outcomes of pre-packs, a phased approach is recommended. This should begin with larger companies that have professional management and gradually extend to smaller businesses with less complex debt structures. Ensuring transparency, particularly regarding the involvement of operational



creditors, can be enhanced by mandating their participation in negotiation processes and setting deadlines for objections. Additionally, introducing a minimum payment requirement for operational creditors, akin to the liquidation entitlements detailed in Section 53 of the Code, could help ensure fair treatment.

The success of PPIRPs also depends on improving the efficiency of Adjudicating Authorities in processing applications, given the current backlog of Corporate Insolvency Resolution Process (CIRP) cases. While pre-packs offer a more streamlined approach for managing distressed businesses, it is essential to amend the Code and establish robust regulatory frameworks. Pre-pack mechanisms should be tailored to the Indian context, serving as a complement to the existing insolvency resolution processes rather than replacing them entirely.

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