

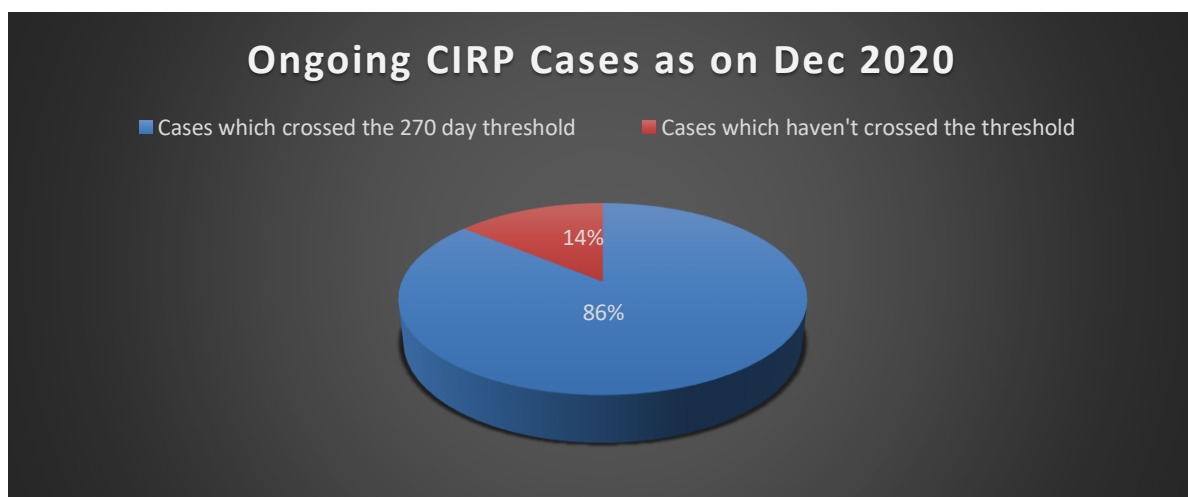
IBC (AMENDMENT)ORDINANCE,2021

Covid Pandemic has been a nemesis for businesses especially for small businesses. It is essential that such financially stressed businesses are provided a platform where they can be revived / restructured in a quick ,cost effective and in a hassle free manner avoiding lengthy proceedings. Hence the central government has promulgated an ordinance allowing the use of pre-packs as an insolvency resolution mechanism for Micro, Small and Medium Enterprises (MSMEs) with defaults up to Rs 1 crore, under the Insolvency and Bankruptcy Code.

A pre-pack is the resolution of the debt of a distressed company through an agreement between secured creditors and investors. This system of insolvency proceedings has become an increasingly popular mechanism for insolvency resolution in the UK and Europe. Under the pre-pack system, financial creditors will agree to terms with a potential investor and seek approval of the resolution plan from the National Company Law Tribunal (NCLT).

NEED

One of the major drawbacks of CIRP process is the time taken for resolution. Following chart shows the number of cases which crossed the threshold of 270 days:



Hence , if stressed businesses cannot be revived in a time bound , cost effective manner , the very purpose of IBC,2016 gets defeated . Moreover , from the economic point of view it is of paramount importance for a stressed MSME to be revived in an efficient manner as MSMEs play a fundamental role in the overall economic development of the nation.. The major advantage of a pre-package process is that it will lead to a smoother implementation of Resolution Plans, would promote growth, and keep the company as a going concern. A very brief process of the pre-package insolvency process is shown below:

Pre-package Process



- ❖ A pre-pack can be initiated if members of the MSME have approved the proposal via a special resolution and 66% of unrelated financial creditors by value have agreed to a pre-pack resolution.
- ❖ The MSME can propose a plan if it is Section 29A compliant .A moratorium will apply when a pre-pack process is underway.
- ❖ The process must be completed within 120 days.
- ❖ During the pre-pack process, the management and control will continue with the promoters and directors of the MSME.
- ❖ The resolution professional will monitor the management of affairs of the company. The committee of creditors, by a 66% vote, can vest the management with the resolution professional .
- ❖ If the plan proposed by the MSME is rejected by the CoC or where operation creditors' dues are impaired, the resolution professional can invite prospective applicants to submit a competing plan.
Such Resolution Plan will have to be approved by 66% of the Financial creditors before submitting it to the NCLT for approval
- ❖ After checking for effective implementation, the plan can be approved the court within 30 days. At any point during before the approval of the pre-pack plan, 66% of CoC by vote share can initiate an insolvency application against the MSME.

WHY PRE-PACKAGED INSOLVENCY RESOLUTION IS GREAT FOR MSME BORROWERS?



- ❖ In a pre-packed insolvency framework, the stressed borrower can prepare a plan for either settlement to secured creditors or resolution, which could involve the sale of the company to an investor — before going to the IBC court.
- ❖ For the borrower, the pre-packed insolvency deal makes immense sense as it helps the MSME borrower retain control of the enterprise till a settlement is reached. This increases his chance to regain control of the company through a resolution process or by getting an investor on board. In typical IBC cases, the borrowers do not have a role once the case is admitted in the NCLT court.
- ❖ The borrower's legal cost is significantly reduced under this mechanism .
- ❖ Since the time limit under the pre-package insolvency is 120 days and since MSME loans are not so big, lenders can look forward to a quick resolution.
- ❖ Since Pre-package aims to provide a quick, efficient, cost effective resolution process, there won't be significant erosion of value of assets.