

Pre-Packaged Insolvency Resolution Process



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BACKGROUND

- ◆ After considering experience of Insolvency Code, the Insolvency Law Committee (ILC), at its meeting on 16th May 2020, decided to constitute a sub-committee to study pre-packaged Insolvency Resolution Process (PIRP) for speedier resolution of insolvency, and submit their recommendations. Accordingly, a sub-committee of ILC was constituted by Ministry of Corporate affairs vide order dated 24th April, 2020, under Chairmanship of Dr. M S Sahoo, Chairperson of IBBI.
- ◆ The sub-committee submitted its recommendations on 31st October, 2020 to Government. On basis of the recommendations of sub-committee, it was decided to amend Insolvency Code. Accordingly, President promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 4th April, 2021 to introduce PIRP under the Code for this purpose. PIRP is built on trust and honours the honest MSME owners by enabling resolution when the company remains with them.
- ◆ With the background of the formal process in India being afflicted with high costs, pre-pack allows for a cost-effective and speedy resolution process. Pre-pack also identifies and alienates the role of the Insolvency/Resolution professional as an expert in the process.

NEED FOR PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

- ◆ Normal procedure as specified in Part II Chapter II of Insolvency Code (sections 4 to 32A) are cumbersome. Hence a comparatively simple procedure has been



prescribed in Chapter III-A (sections 54A to 54P) in Part II of Insolvency Code.

- ◆ Micro, small, and medium enterprises (MSMEs) are critical for India's economy.
- ◆ They contribute significantly to gross domestic product and provide employment to a sizeable population.
- ◆ The COVID-19 pandemic has impacted their business operations and exposed many of them to financial stress.
- ◆ Resolution of their stress requires different treatment, due to the unique nature of their businesses and simpler corporate structures.
- ◆ Therefore, it was considered expedient to provide an efficient alternative insolvency resolution process under the Code for corporate MSMEs, that ensures quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses, and which preserves jobs.

BENEFITS OF PRE-PACK INSOLVENCY RESOLUTION PROCESS

- ◆ It consolidates the benefit of both formal and informal proceedings of resolution, thus broadening the options for stakeholders
- ◆ Initial spade work is done before making application to Adjudicating

Authority(AA) and some sort of informal understanding has been reached with financial creditors.

- ◆ The Base Resolution Plan prepared by corporate debtor having inside knowledge of business is a good starting point. In fact, if there is no impairment of operational creditors, Committee of Creditors can accept the Base Resolution Plan itself, with some improvements.
- ◆ Corporate debtor is allowed to be partner with other person to submit the base resolution plan.
- ◆ Swiss challenge method to get best possible resolution plan
- ◆ Reduced burden on NCLT due to out of court settlements.
- ◆ It allows the corporate debtor retain control till a settlement is reached with the creditors.
- ◆ The pre-pack in contrast is limited to a maximum of 120 days with only 90 days available to the stakeholders to bring the resolution plan to the NCLT.

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

- ◆ The concept of PPIRP has been introduced to insulate the MSMEs as well as the creditors from prolonged legal battles at a time when financial liquidity in the market is essential to bring back the crippled economy on its feet.

- ◆ Restructuring of the corporate debtor is agreed in advance with the creditors and other important stakeholders of such debtor before insolvency is declared. In simple terms, it is a plan which offers a quasi-formal mechanism to finalize the resolution plan before insolvency proceedings (under the Code) are initiated by any creditor.
- ◆ Thus, PPIRP strives to achieve a balance between an informal settlement like a one-time settlement plan (which is both economic and flexible but does not have any certainty or statutory backing) and a regular CIRP under the Code (which has legal certainty and proper statutory backing but is time-consuming and involves severe costs or massive haircuts).

HOW ARE PRE-PACKS BETTER THAN CIRP?

- ◆ One of the key criticisms of the CIRP has been the time it takes for resolution. At the end of March 2021, 79 per cent of the 1,723 ongoing



insolvency resolution proceedings had crossed the 270-day threshold. A major reason for the delays is the prolonged litigation by erstwhile promoters and potential bidders.

- ◆ The pre-pack in contrast, is limited to a maximum of 120 days with only 90 days available to stakeholders to bring a resolution plan for approval before the NCLT.
- ◆ Another key difference between pre-packs and CIRP is that the existing management retains control in the case of pre-packs; in the case of CIRP, a resolution professional takes control of the debtor as a representative of financial creditors. Experts note that this ensures minimal disruption of operations relative to a CIRP.

SECTION GOVERNING PRE-PACKAGE INSOLVENCY

Section 54A to 54P of the Insolvency and Bankruptcy Code, 2016 ('Code') read with the the Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021 and Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 which lays down the provisions of a pre-packaged insolvency resolution process with respect to its initiation, manner of carrying out the process, appointment of resolution professional, termination etc.



WHO CAN FILE AN APPLICATION TO INITIATE THE PPIRP?

Any corporate person *i.e.*, a company or a Limited Liability Partnership (LLP), classified as an MSME under section 7(1) of the MSME Act, 2006 (CD).

To evidence that the Corporate Debtor

is an MSME, the applicant shall attach either a copy of the latest and updated **Udyam Registration Certificate** or **proof of investment in plant and machinery or equipment and turnover** as per Notification No. 2119(E) dated 26th June, 2020 of the Ministry of MSMEs.

MSME THRESHOLD

Class	Capital Investment in Plant and machinery or equipment (Crores)	Turnover (Crores)	Applicability of Pre-pack
Micro Enterprise	1	5	✓
Small Enterprise	10	50	✓
Medium Enterprise	50	250	✓

MINIMUM DEFAULTED AMOUNT FOR PRE-PACKAGED INSOLVENCY

The Ministry of Corporate Affairs *vide* its notification dated April 09, 2021 specified ten lakh rupees as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor.

DURATION OF PPIRP

According to section 54D of the code, entire PPIRP needs to be completed within a time period of 120 days from date of initiation of the commencement date. In addition, the insolvency professional shall be required to submit resolution plan as approved by the Committee of Creditors (CoC) within a period of 90 days from the insolvency commencement date and if no plan is approved by the CoC in the designated time frame, then the insolvency professional shall be required

to file for termination of PPIRP with the adjudicating authority.

ELIGIBILITY OF CORPORATE DEBTOR FOR PPIRP

As per section 54A, Corporate Debtor (CD), is eligible to apply for initiation of PPIRP, subject to following conditions:-

- ◆ Corporate Debtor (CD), which is an MSME under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.
- ◆ CD has committed a default of atleast INR 10 Lakh and
 - is eligible to submit a resolution plan under section 29A of the Code;
 - has not undergone a PPIRP during the three years preceding the initiation date;

- has not completed a CIRP during the three years preceding the initiation date;
- is not undergoing a CIRP; and
- is not required to be liquidated by an order under section 33 of the Code;
- Approval of 66% of unrelated financial creditors for initiation of PPIRP and appointment of proposed insolvency professional as the resolution professional.

CD needs to provide copy of the special resolution, base resolution plan conformity with the requirements provided u/s 54K, Declaration to financial creditors for obtaining the aforesaid permission.

- Declaration from majority of directors/partners that-
 - CD will file application for initiation of PPIRP within 90 days.
 - PPIRP has not initiated to defraud any person
- Passing of special resolution in case of company or approval of more than $\frac{3}{4}$ of partners in case of LLP for approving the filing of application for initiation of PPIRP.

SECTION 54B – DUTIES OF RESOLUTION PROFESSIONAL (RP) BEFORE INITIATION PPIRP

- ◆ The duties of the RP shall commence from the date of obtaining approval from 66% financial creditors section 54A(2)(e).
- ◆ Prepare a report in the prescribed Form P8 confirming whether the Corporate debtor meets requirements of Section 54A and the resolution plans conform the requirements u/s 54A(4)(c).
- ◆ File such reports and documents as may be required by the Insolvency Board and undertake such other duties as may be specified by the Insolvency Board in accordance with Section 17 of Chapter III of Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021.
- ◆ The duties of the RP will cease if the application is not initiated within 90 days from the date of default as required u/s 54A (4) (c) or such application is rejected or admitted (along with payment of fee and costs) by the Insolvency Board.

FILING OF APPLICATION WITH AA WITHIN 90 DAYS FROM DATE OF DECLARATION U/S 54C (1)

- ◆ The corporate applicant files the Application in Form 1 with fees of Rs. 15,000 with the AA (Jurisdictional NCLT Bench) in accordance with rules 20, 21, 22, 23, 24, 26 of the National Company Law Tribunal Rules, 2016.



- ◆ The corporate applicant serves a copy of the application to the Board (IBBI) before filing the same with the AA.
- ◆ The acknowledgement of serving a copy to the Board shall be attached with the Application Form filed with the AA.
- ◆ **The Application shall be accompanied by:**

Declaration, Special resolution, Approval of financial creditors for initiation of PPIRP, Name and written consent of the RP proposed to be appointed in prescribed **Form P5** in accordance with Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021, Report of the RP under Sec 54B(1)(a), Declaration of existence of any transactions which are in the scope of avoidance of transactions which are fraudulent or wrongful under Chapter III or VI in prescribed **Form P7** in accordance with Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021, Information relating to Books of account and any other information.

AFTER FILING OF APPLICATION

- ◆ Admission or rejection by the AA (Adjudicatory Authority) within 14 days of filing. However, before rejecting an application, the AA must give notice to the Applicant to rectify the defect in the application within a period of 7 days from

such notice. The date of admission is the insolvency commencement date (ICD).

- ◆ Moratorium shall be declared and effective from the ICD.
- ◆ As per section 54H Management of affairs of CD, shall continue to be vest in the hand of Board of directors or partners as the case may be. But according to section 54J, if the CoC at any time during PPIRP resolve to vest the management of business with Resolution professional by 66% of voting shares, then RP shall make application to AA for the same. AA if think fit shall pass an order vesting the management of the corporate debtor with the resolution professional.
- ◆ The Applicant shall submit a base resolution plan within 2 days from the Pre-Packaged Insolvency Commencement date to the resolution professional and the unrelated committee of creditors ("CoC") for their consideration.
- ◆ The CoC must be constituted within 7 days of the commencement of PPIRP by the resolution professional. The CoC may approve the resolution plan or grant an opportunity to the corporate debtor to revise the resolution plan. The assent of at least 66% of the creditors constituting the CoC is imperative for a resolution plan to succeed.
- ◆ Confirmation of the appointment of the RP.

- ◆ Public announcement of the initiation of the PPIRP to be made by RP.
- ◆ Claim Verification.
- ◆ Once the base resolution plan is presented, the CoC may approve the base resolution plan for submission to the AA only if it does not impair any claims owed by the Applicant to the operational creditors. AA will pass order within 30 days of receipt of such resolution plan.
- ◆ Where - (a) the CoC does not approve the base resolution plan; or (b) the base resolution plan impairs any claims owed by the AA to the operational creditors, the resolution professional may invite prospective resolution applicants to submit a resolution plan to compete with the base resolution plan (i.e., swiss challenge process). However, the CoC is also empowered to provide the Applicant the opportunity to revise the base resolution plan, prior to inviting competing bids.
- ◆ After CoC & AA approve the plan, then it is binding on all stakeholders.

INITIATION OF CIRP

Section 54-O provide COC an option at any time after commencement date of PPIRP but before approval of resolution plan, by vote of not less than 66% of voting shares may resolved to initiate CIRP. Resolution professional will intimate the AA about the COC decision. AA will pass the appropriate order to terminate the PPIRP and initiation of CIRP or not.

SECTION 11A-PPIRP VIS-À-VIS CIRP - ORDER OF PRIORITY

- ◆ In case of pending CIRP Applications as on date of filing which are older than 14 days, the CIRP Applications will first be decided and then the application for pre-pack shall be taken.
- ◆ However, Section 11A does not apply to the applications filed under sections 7, 9 and 10 of the IBC that are pending as on the date of the commencement of the Ordinance.

THE AA MAY PASS AN ORDER OF TERMINATION IN THE FOLLOWING CASES.

- ◆ CoC passes a resolution seeking termination;
- ◆ Resolution plan is not submitted to the AA within 90 days;
- ◆ Resolution plan approved by the CoC is rejected by the AA.

FIRST CASE FILED U/S 54A OF IBC 2016

- ◆ "GCCL Infrastructure and Projects Limited" becomes the first corporate debtor against which the Pre-Packaged Insolvency Resolution Process is initiated under section 54A of the Insolvency and Bankruptcy Code, 2016.
- ◆ The Corporate Debtor is a Micro, Small & Medium Enterprises (MSME), and is eligible to file this application as per the Section 54A (1) of IBC. It



is engaged in turnkey constructions for commercial and residential real estate development. It was incorporated in 1994 and is based in Ahmedabad, India.

- ◆ The total debt amount payable by the corporate debtor to its various creditors is Rs. 54.16 lakh and the date of default was 31st December 2020.
- ◆ A Special Resolution' by the Members of the Corporate Debtor to initiate the Pre-Packaged Insolvency Resolution Process (PPIRP) under section 54A(2)(g) of the Code was passed, and the Financial Creditor approved the decision of the directors to file this application as contemplated under section 54A(3) of the Code.
- ◆ The Financial Creditor approved the appointment of Parag Sheth as the resolution professional.
- ◆ The applicant has also produced the audited financial statements of the company for the year 2019-20 and 2020-21. List of the assets

and liabilities of the corporate debtor, names and amount of the debt of all Financial Creditors and Operational Creditors and names of all the Directors and Members of the Corporate Debtor have also been produced by the applicant.

- ◆ The Ahmedabad bench of the NCLT admitted the application filed by GCCL Infrastructure and Projects to initiate Pre-Packaged Insolvency Resolution Process.
- ◆ Under Section 54F(5), the personnel of the Corporate Debtor will extend all assistance and cooperation to RP. In case of non-cooperation, the RP can approach this Adjudicating Authority under section L9(2) of the Code. The management of the Corporate Debtor will remain vested with the Board of Directors of the Corporate Debtor as per the provisions of Section 54H subject to action under section 54J of the Code, if, any. The Board of Directors will discharge their duties as specified under section 54H(b) and Section 54H(c) of the Code.

CASES FILED UNDER SECTION 54A (PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS)

<i>Date of Announcement</i>	<i>Name of corporate debtor</i>	<i>Status</i>
15-09-2021	GCCL Infrastructure and project limited	Admitted, ongoing
09-12-2021	Loon Land Developers Ltd.	Admitted, ongoing

COMMON PROVISIONS OF CODE APPLICABLE TO PPIRP

<i>SECTIONS</i>	<i>PROVISIONS</i>
14 (2) & (3)	Moratorium (Refer section 54E (1))
19 (2) & (3)	Personnel of the corporate debtor shall extend all assistance and cooperation to the resolution professional
21	Meeting of Committee of Creditors (Refer section 54-I (3))
24	Meeting of creditors
25A	Voting by authorised representative of class of financial creditors if financial creditors give conflicting directions, his remuneration.
26	Filing of application for avoidance of transactions by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process.
27	Committee of Creditors (CoC) can change the resolution professional with 66% voting, subject to a written consent from the proposed resolution professional in the specified form.
28	Prior approval of Committee of Creditors (CoC) for certain actions by resolution professional.
29A	Persons not eligible to act as resolution applicant. This provision applies to PPIRP also, except where exemption has been given to MSME under section 240A of Insolvency Code.
30(1), 30(2) and 30(5)	Requirements and contents of resolution plan (Refer section 54K (3))
31(1)	Resolution plan once approved by AA binding on all (see section 54L (2))
31 (3)	Moratorium ceases after approval of resolution plan and records to be returned (see section 54L (2))
31(4)	Approval from other authorities within specified period after approval of resolution plan (see section 54L (2))
32A	Immunity from prosecution of corporate debtor after approval of PPIRP, in respect of past transactions, if there was change in management.
33	Liquidation if resolution plan contravened by corporate debtor (refer section 54N)
43-51	Preferential transactions (sections 43 and 44), Undervalued transactions (sections 45, 46, 47 and 48), section 49 (Action if corporate debtor had defrauded creditors), sections 50 and 51 (extortionate credit transaction)



<i>SECTIONS</i>	<i>PROVISIONS</i>
Chapter VI	Adjudicating Authority for corporate persons and penalties- sections 60 to 67
Chapter VII	Offences and punishments - sections 68 to 77A

MODEL TIMELINE FOR COMPLETION OF PPIRP

SECTION OF CODE/ REGULATION NO.	DESCRIPTION OF ACTIVITY	NORM	TIMELINE
Section 54C	Commencement of PPIRP and appointment of RP	-	T
Sections 54G and 54K	Submission of list of claims, preliminary information memorandum and Base Resolution Plan	Within 2 days from commencement of PPIRP	+2
Section 54E/Regulation 19	Publication of public announcement	Within 2 days from commencement of PPIRP	T+2
Regulation 38	Appointment of registered valuers	Within 3 days from appointment of RP	T+3
Section 54I	Constitution of CoC	Within 7 days from commencement of PPIRP	T+7
Section 54I	First Meeting of the CoC	Within 7 days from constitution of CoC	T+14
Regulation 43	Submission of Information Memorandum	Within 14 days from commencement of PPIRP	T+14
Regulation 43	Publication for invitation for resolution plan	Within 21 days from commencement of PPIRP	T+21
Regulation 43	Receipt of resolution plans	At least 15 days from publication	T+36
Regulations 47 & 48	Evaluation and approval of resolution plan	Within 89 days from commencement of PPIRP	T+89

SECTION OF CODE/ REGULATION NO.	DESCRIPTION OF ACTIVITY	NORM	TIMELINE
Regulation 41	RP to form opinion on avoidance transactions	Within 30 days from commencement of PPIRP	T+30
	RP to make determination on avoidance transactions	Within 45 days from commencement of PPIRP	T+45
	RP to file application to AA for appropriate relief	Within 60 days from commencement of PPIRP	T+60
Section 54D/Regulation 48	Submission of CoC approved resolution plan/application for termination of PPIRP	Within 90 days from commencement of PPIRP	T+90
Section 54L	Approval of resolution plan/order for termination of PPIRP	Within 30 days of application under section 54D	T+120

COMPARISON - PRE-PACK v. RESTRUCTURING UNDER JUNE 7

<i>Parameter</i>	<i>Prepack</i>	<i>Restructuring Under June 7</i>
Haircut to operational creditors	Prepack allows for haircuts to operational debts (albeit throwing the process open to a swiss auction), which will enable the company to holistically restructure its debt in line with the cashflows, to the benefit of the financial creditors.	Under June 7 restructuring, the debts of operational creditors remain unchanged
Seal of Approval	In prepack, the resolution plan receives the approval of NCLT, thereby assuring the lenders of implementation and minimizing risk of default	Under June 7, there is no formal court approval process once the restructuring plan approved by the lenders.
Timelines	The process is relatively faster, as the majority of the preparatory work is completed before an application is made to NCLT. The process after admission, is bound by a 120 day timeline.	A restructuring under June 7 circular is bound by 180 days of time from the end of the review period.



Moratorium	Under pre-pack, a moratorium gets placed for the period of pre-pack insolvency resolution process, thereby suspending ongoing litigation and stopping initiation of new proceedings. Payment to banks is also suspended, allowing for conservation of cash. This allows the company to focus its efforts towards resolution.	Under June 7, there is no concept of a moratorium.
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LIST OF FORMS FILED UNDER PPIRP

<i>FORMS</i>	<i>PURPOSE</i>
Under Rules	
Form 1	Application by Corporate Applicant to initiate PPIRP
Under Regulation	
Form P1	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 Unrelated Financial creditors (UFCs)
Form P4	Approval for filing application to initiate PPIRP, by UFCs
Form P5	Written consent by IP to act as Authorised Representative
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 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

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