

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS PPIRP – *WAY TO GO*

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PRE-PACKS IN INDIA,

Pre-Packaged Insolvency Resolution Process - PPIRP

Outcome of learnings and experience of IBC over 4 years

MSME's require special treatment:

- Contribute 29% to GDP of India
- Employ directly almost 100 million
- Account for 95% of industrial units and approx. 50% of exports
- Micro: Investment in Plant & Machinery/Equipment upto Rs. 1 cr., Turnover upto Rs. 5 cr.
- Small: Investment upto Rs. 10 cr., Turnover upto Rs. 50 cr.
- Medium: Investment upto Rs. 50 cr., Turnover upto Rs. 250 cr.

Section 7(1), MSME Development Act, 2006

- Plant & Machinery/ Equipment: WDV as per Income tax Rules, 1962
- Tangible assets like land, building, furniture, fittings; Intangible assets; Not included
- Turnover linked to Income tax Act or CGST or GSTIN

Business is linked to Promoters: Skills, Asset ownership, Personal relationships

- MSME support Large industry and quickly generate employment
- Loss of EV in CIRP could be very rapid
- COVID-19 has impacted business/operations, Increased financial distress
- Costs of CIRP/Liquidation are disproportionately high as opposed to

First Opportunity is available to sitting management, subject to qualification

- Opportunity to existing management to retain the enterprise
- Viable business
- Clean hands
- Willingness and ability to drive change
- Business Plan offers Fair Treatment to Creditors who are providing support
- FC as providers of long-term funds are convinced of the Business Plan
- OC will not offer any sacrifice
- Workmen and Employees will get their full dues
- Plan proposed by sitting management be evaluated with competitive RPlan

Chapter III-A, Part-II of IBC, 'Pre-Packaged Insolvency Resolution Process' introduced

IBC (A) Act, 2021, 11.08.2021, w.e.f. 04.04.2021, s. 54A to 54P

The Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021
Form-1 for reporting default and commencement of PPIRP

The Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Regulations, 2021
Forms P-1 to P-14 after filing of Form-1, at various stages thereafter

PPIRP - CALLS FOR TIMELY ACTION

Encourages sitting management for early action

Protection from Wrongful Trading, Fraudulent Preferences

Act before Creditors take action, Show bona-fide to get support

- Get waivers/concessions from FC
- Sell assets, Lighten debt and assets
- Align debt obligations with expected cash flows for long-term revival

Delay in initiation

- Mounting defaults of FC, OC, Employees, Government
- Likely action under s. 7 or s. 9
- Government, Employee Welfare Funds/Pension Plans as Applicants
- Reduced viability of operations
- Revival will require sacrifices by other classes

ELIGIBILITY, *First Steps*

Eligibility Criterion

Default of \geq Rs. 10 lacs

Eligible to submit RPlan under s. 29A

CD not undergone PPIRP / CIRP during 3 years preceding initiation date

CD not undergoing CIRP

CD not required to be liquidated by Order of AA under s. 33

First steps

FC of 10% proposes name of IP

66% FC approve the proposal for IP

Management declares that:

- Application for initiation shall be filed in 90 days*
- Process not being initiated to defraud any person*

Members of CD approve filing of application by special resolution

FC's have been provided Base Resolution Plan (BRP)

PRIOR TO FILING BEFORE AA

Preparing to File

- IP to prepare report that:
 - CD is eligible
 - BRP confirms to requirements
- IP duties shall cease:
 - If CD fails to file the application to AA within 90 days, or
 - Application is rejected by AA
- Fee of IP on approval of application for initiation of PPIRP shall form part of PPIRP costs

INITIATION OF PPIRP

File Form 1 before AA with following documents

- a) Record of default
- b) Consent of the IP as RP, fm. P1
- c) Approval of Creditors for proposed RP, fm. P3
- d) Approval of Creditors for filing of application, fm. P4
- e) Consent of IP proposed as AR, if any, fm. P5
- f) Declaration by Directors/Partners, fm. P6
- g) Member's resolution or Partner's resolution
- h) Declaration by CD regarding avoidance transactions, fm. P7
- i) Report of RP, fm. P8
- j) Audited financial statements of last 2 financial years
- k) Provisional financial statements of current FY not older than 14 days on DoA, s. 54A(2)(f)
- l) Latest Udyam Registration Certificate, or proof that CD is MSME
- m) Affidavit stating CD is eligibility under s. 29A.
- n) SoA not older than 14 as on DOA:
 - List of assets with security created thereon, and liabilities
 - List of secured claims & security, other creditors, dues to connected persons
 - Details of guarantees given in relation to CD
 - Details of members/partners

FORM 1 BEFORE AA

AA and Form 1

- AA admits application in 14 days if it is complete or rejects if incomplete
- Before rejecting, 7 days' notice to applicant for rectifying defects, s. 54C(4)(b)
- PPIRP commence on date of admission of application, s. 54C(4)(a)
- RP to submit RPlan approved by CoC in 90 days
- If no RPlan is approved by CoC in 90 days, RP to file for termination of PPIRP
- PPIRP to be completed in 120 days
- AA on admission:
 - Declare moratorium per s. 14(1) & 14(3), which shall come to an end on termination
 - Appoint IP in application as RP
 - Cause public announcement to be made by RP, s. 54E(1)(c)
- Duties of IP shall cease if application not filed within time in fm. 6 or not admitted by AA

POST-INITIATION OF PPIRP

- *During PPIRP, s. 54H:*
 - Management of affairs vest in BoD/partners of CD
 - BoD/partners:
 - Preserve value of property
 - Manage CD's operations as going concern
 - Promoters, members, personnel and partners of CD
 - Exercise, discharge their contractual/statutory rights & obligations qua CD

- *During PPIRP, s. 54J:*
 - 66% CoC may decide to vest the Management in RP, subject to approval of AA
 - Vesting if during PPIRP affairs were conducted fraudulently/gross mismanagement

- *CD to submit to RP within 2 days of commencement date, updated as on that date:*
 - List of claims with details of creditors
 - Security interests and guarantees in fm. P10
 - PIM containing information for formulating resolution plan
 - BRP to RP within 2 days of commencement, CoC may permit revision

- RP make PA in fm. P9, within 2 days of commencement of PPIRP, rg. 19

MANAGEMENT OF CD DURING PPIRP

- *CD during PPIRP, rg. 50:*
 - Not to manage in a manner prejudicial to creditors or in a fraudulent manner
 - Not to undertake transactions over threshold decided by CoC
 - Observe controls and restrictions provided by CoC
 - Promoters/members/partners exercise right, discharge obligations
- *In consultation with RP provide to CoC monthly reports on:*
 - Legal proceedings having material impact on business
 - Details of key contracts executed using reporting period
 - Any other relevant matters having material impact on business of CD
- *CD to submit to RP within 2 days of commencement date, updated as on that date:*
 - List of claims with details of creditors
 - Security interests and guarantees in fm. P10
 - PIM containing information for formulating resolution plan
 - BRP to RP within 2 days of commencement, CoC may permit revision

RP IN PPIRP, s. 54F

- *Duties:*
 - Confirm claims, Inform creditors, Maintain updated list
 - Monitor management
 - Constitute CoC and convene meetings, s. 54I
 - Inform CoC of breach of obligations of management
 - Prepare IM on basis of PIM provided by Management
 - File application for avoidance transactions
 - Monitor management of affairs vest in BoD/partners of CD
 - BoD/partners:
 - Preserve value of property
 - Manage CD's operations as going concern
 - Promoters, members, personnel and partners of CD
 - Exercise, discharge their contractual/statutory rights & obligations qua CD

- *Powers:*
 - Access accounts, records, electronic data
 - Attend meetings of BoD and Committees
 - Appoint Accountants, Legal and other Professionals
 - Collect information for within 2 years prior to PPIRP - Avoidance/Wrongful

RESTRUCTURING – RPLAN, rg. 44

Reach of Restructuring - RPlan

- Transfer of all or part of assets to one or more persons
- Sale of all or part of assets, whether subject to security interest or not
- Merger, Amalgamation, Demerger
- Substantial acquisition of shares
- Cancellation or delisting of shares
- Satisfaction or modification of security interest
- Curing or waiving breach of terms of debt
- Reduction in amount payable to creditors
- Changes in terms and covenants of debt
- Amendment of Constitution documents
- Issuance of securities for cash, property, securities, exchange of claims or interests
- Change in portfolio of goods produced or services rendered
- Change in technology employed
- Obtaining approvals from Governmental Authorities

BRP provides for impairment of any claims, CoC may require promoters to dilute voting

Reasons to be recorded in case no dilution is provided

BRP may have participation of any other person as investor

CONTENTS OF RPLAN, rg. 45

RPlan must include

- Affidavit of eligibility of RA
- Statement of RA/related entity has not contributed to failure of another approved RPlan
- Undertaking of RA that information and records provided in RPlan are true and correct
- Term and implementation schedule
- Management and control of business during the term of RPlan
- Statement as to how RPlan deals with interests of various stakeholders
- Amount payable to OC is in priority over FC
- Dissenting FC are paid in priority over consenting FC
- Demonstrate that:
 - It addresses causes of default
 - Is feasible and viable
 - Has provisions for effective implementation
 - Has provision for approvals required and timelines
 - RA has capability to implement

APPROVAL OF RPLAN

Approval of BRP, Evaluation of competitive RPlan

- If BRP does not impair claims owed to OCs, CoC may approve it for submission to AA
- If CoC does not approve BRP or BRP impairs claims of OCs:
 - RP invites prospective RA's to submit RPlans in competition to BRP
 - Publish invitation, fm. P11, within 21 days from commencement date, rg. 43.
- Fm. P11 includes:
 - Basis for evaluation, Basis for considering better RPlan with another
 - Tick size, Manner of improving RPlan
- RPlans received under fm. P11 should comply with IBC, Evaluated as per rg. 47.
- RPlan with highest score is selected
- *CoC approves BRP if no RPlan is received, or BRP is 'significantly better' than RPlan*
- *If CoC does not approve a significantly better RPlan, process terminates*
- If RPlan is not better than BRP, RP discloses scores to submitters
- RP invites improvements to Plans, rg. 48
- Process of improvement continues till submitters fail to use option within specified time
- Plan with higher score on completion of improvement process is considered for approval
- If no Plan is approved, process terminates

TERMINATION OF PPIRP, s. 54N

- On approval of either BRP or RPlan by AA
- On expiry of 90 days if no RPlan is submitted to AA for approval
- On rejection of RPlan by AA
- On approval by AA of application by RP, approved by 66% CoC, for termination of PPIRP
- On RPlan not resulting in change in management after AA vested it with RP, s. 54J.
- On conversion into CIRP, after 66% CoC approves RP applies, CD eligible, s. 54O
- RP of PPIRP is appointed as IRP of CIRP

MODEL TIMELINES FOR PPIRP

s. / rg. of IBC	Description of Activity	Timeline (T), From the date of commencement of PPIRP
s. 54C	Commencement of PPIRP and appointment of RP	T
s. 54G, 54K	Submission of list of creditors, preliminary information memorandum, BRP	T+2
s. 54E / rg. 19	Publication of public announcement	T+2
rg. 38	Appointment of registered valuers	T+3
s. 54I	Constitution of CoC	T+7
s. 54I	First Meeting of the CoC	T+14
rg. 43	Submission of IM	T+14
rg. 43	Publication for invitation for RPlan	T+21
rg. 43	Receipt of RPlans	T+36
rg. 47 & 48	Evaluation and approval of RPlans	T+89
rg. 41	RP to form opinion on avoidance transactions	T+30
	RP to make determination on avoidance transactions	T+45
	RP to file application to AA for appropriate relief in case of avoidance transactions	T+60
s. 54D / rg. 48	Submission of CoC approved RPlan / application for termination of PPIRP	T+90
s. 54L	Approval of RPlan / order for termination of PPIRP	T+120

WAY TO GO, SUSTAINABLE RESTRUCTURING

- **NCLT Approval**
 - CoC finalize Plan with 66% votes
 - Reasonableness of Asset Valuation vs. Debt
 - Low level of sacrifice
- **Availability of Expert - IP**
 - Persons can complex businesses, process and compliances
 - Prepacks provides opportunity to debtor and its creditors to formulate RPlan
 - Low involvement of IRP
- **Operational Creditors**
 - Settles uncertainty
- **Role of Creditors**
 - FCs to remain satisfied in process, if not - CIRP can be initiated
 - Ability to reject a Plan
- **Connected Party, PPIRP, Role of Promoters**
 - Debtor-in-Possession, near Control of Business
 - Applicability of s. 29A – An essential ingredient to Process

THANK YOU

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