Pre Packaged Insolvency Resolution Process (PPIRP) Under Insolvency & Bankruptcy Code, 2016

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EIRC ICSI

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Disclaimer

The content of this presentation is intended to provide a general guide to the subject matter. Specialist professional advice should be sought about your specific circumstances

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Principle Objective of IBC-28 May 2016

1. An Act to Consolidate and amend the Laws relating to reorganization and insolvency resolution of Corporate Persons, Partnership Firms & Individuals

2. In a Time bound manner

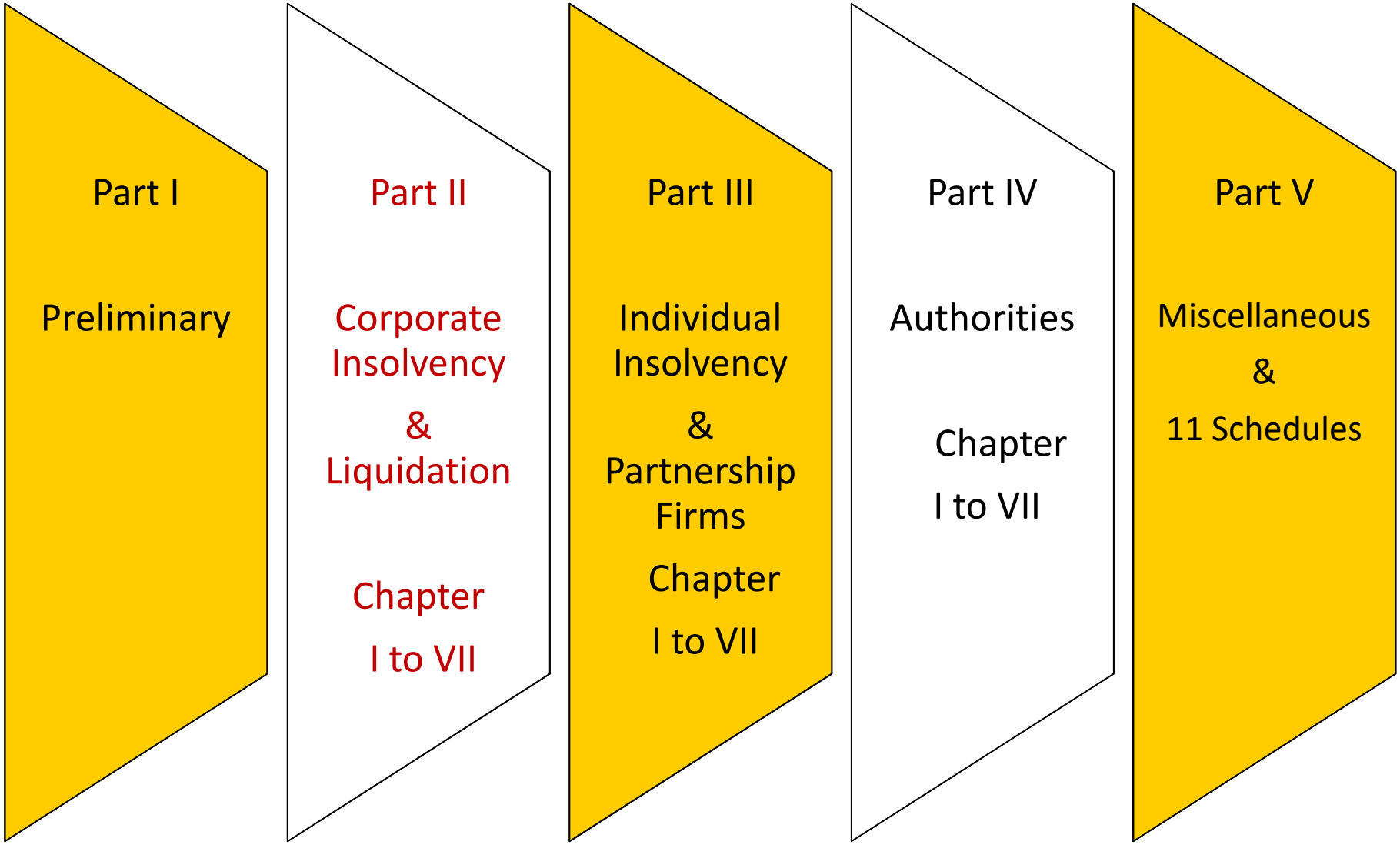
3. For Maximisation of value of assets of such persons

4. To promote Entrepreneurship,

5. To make available the Credit , and

6. Balance the interests of all the stakeholders

IBC-2016


Part I
Preliminary
Part II
Corporate Insolvency & Liquidation
Chapter I to VII
Part III
Individual Insolvency & Partnership Firms
Chapter I to VII
Part IV
Authorities
Chapter I to VII
Part V
Miscellaneous &
11 Schedules

Part II- Insolvency Resolution and Liquidation for Corporate Persons

- Chapter I- Preliminary (Section 4 & 5)
- Chapter II- Corporate Insolvency Resolution Process (CIRP) (Section -6 to 32)
- Chapter III- Liquidation (Section -33 to54)
- Chapter IV- Fast Track Process (Section -55 to 58)
- Chapter V- Voluntary Liquidation (Section -59)
- Chapter VI- Adjudicating Authority (Section -60 to 67)
- Chapter VII- Offences & Penalties (Section -68 to 77)

Adjudicating Authority (AA) under IBC 2016

National Company Law Tribunal (NCLT)

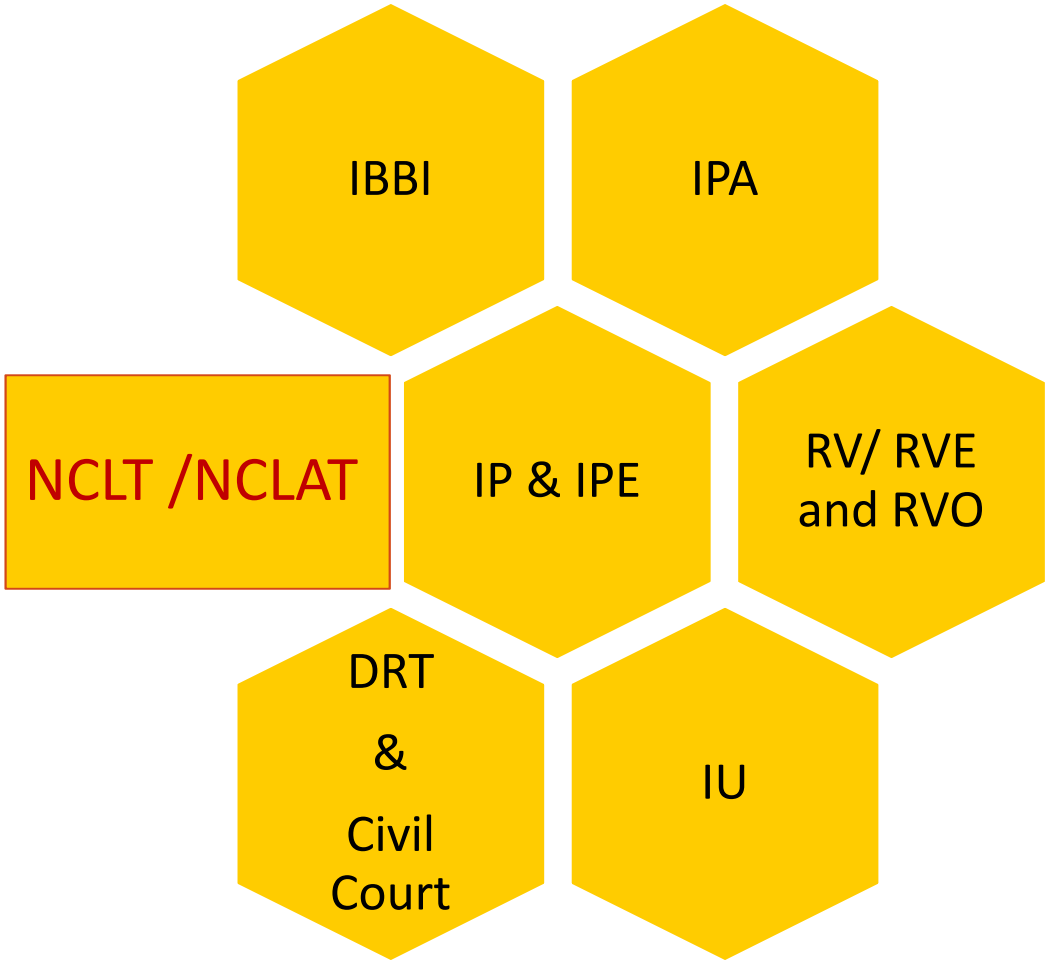
CD that is Company & LLP and Personal Guarantor (PG) of CD

Debt Recovery Tribunal (DRT)

Individuals other than PG in business or otherwise &

Traditional Partnership Firm (Not LLP)

Broad Framework under IBC 2016



Why PPIRP

- Global Innovation Index, wrt 'Ease of Resolving Insolvency'

  India's rank improved from 111 in 2017 to 47 in 2020

- With the enactment of IBC Code 2016 an altogether new insolvency regime that is Proactive, Incentive Compliant, Market Led and Time-Bound came into existence

- An economic law is essentially empiric and it evolves continuously through experimentation

Challenges under CIRP

Shift in control to IP

Going Concern

Non-co-operation

Litigation

Higher cost due to delay in Time Line

Availability of Resolution Applicant (RA)

Factors considered for PPIRP

What

Sub- Committee of Insolvency Law Committee (ILC) was constituted on 24.06.2020 to prepare detailed scheme for PPIRP

Why

Evolution - ecosystem,

Stabilization- processes,

Growing jurisprudence

Efficacy of out-of-court workouts

Learning from other jurisdiction

Covid-19

How

PPIRP need to be added in IBC 2016 with necessary checks and balances in the Code
As an option for resolving insolvency

Covid -19 Impact

Threshold
Of Default for filing an Insolvency Application was increased
from
Rs. 1 lakh
to
Rs. 1 crore
to prevent MSMEs from being pushed into insolvency proceedings

Suspension
Of filing of Application for initiation of CIRP for a year
from
25th March, 2020
to
24th March, 2021
AND
No application in future also for Default during this period (Section 10A)

Def of MSME
Threshold of limit of Investment in PM & Turnover has been altered to cover more businesses as MSME

Definition of MSME Effective from 01.07.2020

Category	**Up to 30.06.2020**		**Effective from. 01.07.2020**
	Manufacturing	Service	Manufacturing & Service
Micro	< 25 Lakh Investment in PM	< 10 Lakh Investment in PM	Investment in PM < 1 Crore & Turnover < 5 Crores
Small	> 25 Lakh < 5 crores Investment in PM	> 10 Lakh < 2 Crores Investment in PM	Investment in PM < 10 Crore & Turnover < 50 Crores
Medium	> 5 Crores < 10 Crores Investment in PM	> 2 Crores < 5 Crores Investment in PM	Investment in PM < 50 Crore & Turnover < 250 Crores

What are the benefit of PPIRP

- Alternative resolution to preserve MSME to flatten the curve of insolvency
- MSME are mostly unorganized & getting Resolution Applicant is a concern
- Rescue viable businesses and save employment opportunities
- Cost efficient and faster with the consent of FC
- Continuity as Going Concern with CD
- Its Hybrid Framework- Approval of- (a)Creditors (out of court) & (b) Judiciary
- Rights of OC are protected
- Management to give Base Resolution Plan

What are the benefit of PPIRP

- Resolution before value deteriorates
- Promoters of CD can be RA (Section 29A (c) & (h) exempted)
- Process enjoys Moratorium
- Binding Effect on all the stake holders
- Threshold of Default is reduced to Rs.10 Lakh
- Time bound in Max 120 days (90 + 30)
- Last and not the least is saving of time of NCLT

Study of PPIRP prevailing in different Jurisdiction

UK- Pre-Pack Sale of company or part of its business – Within few hours resolution is arrived

USA- Chapter 11
Pre-Plan Sale,
Pre-packaged Bankruptcy
&
Pre-Arranged Bankruptcy

Singapore- Court approved Scheme with the approval of Creditors having 66% value in debt

France-Four type of options
1.Mandat Ad-hoc,
2.Conciliation,
3.Safe Guard,
4. Insolvency Procedure

Canada- Court approved Sale of Company as a Going Ccncern

April 2021- Amendment in IBC 2016

- **April 04, 2021-** *Ordinances was promulgated by President* amending IBC, 2016 by adding a new Chapter III A (Sections 54A to 54P inserted) on "Pre-packed Insolvency Resolution Process (PPIRP).

- **April 09, 2021** – *MCA* Notified Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021

- **April 09, 2021 –** *IBBI* made Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021

- **April 09, 2021** – *MCA* specified Rs.10 Lakh as minimum amount of Default for PPIRP

Chapter IIIA: PPIRP added in IBC 2016
Section 54A to 54P

Section 54A- CD's eligible for PPIRP

Section 54B- Duties of RP **before PPIRP**

Section 54C- Application to initiate PPIRP

Section 54D- Time-limit in PPIRP

Section 54E- Declaration by AA – Moratorium, RP & Public Announcement

Section 54F- Duties and Powers of RP **during PPIRP**

Section 54G- List of Claims and Preliminary Information Memorandum (PIM)

Section 54H- Management of Affairs of CD

Chapter IIIA: PPIRP added in IBC 2016
Section 54A to 54P

Section 54I- Committee of Creditors (CoC)

Section 54J- Vesting of Management of CD with RP

Section 54K- Consideration and approval of Resolution Plan

Section 54L- Approval of Resolution Plan

Section 54M- Appeal against the Order of NCLT u/s 54L

Section 54N Termination of PPIRP

Section 54O- Initiation of CIRP or Liquidation

Section 54P- Application of provisions of Chapters II, III, VI, and VII to this Chapter

Eligibility of CD to initiate PPIRP -Section 54A

- **CD** is **MSME** as per section 7 of MSMED Act, 2006
- **CD** is **under Default** of minimum amount of Rs.10 Lakh
- **CD** has **not undergone PPIRP or CIRP** during the immediate period of 3 years
- **CD** is **not undergoing a CIRP**
- **CD** has **not received any Order of Liquidation** u/s 33 of IBC 2016
- **CD** is **eligible to submit Resolution Plan** u/s 29A of IBC 2016

Eligibility for Corporate Debtor –Section 54A

- **CD** has **received name of proposed RP** from unrelated FC (not less than 10% in value)

- **CD** has **received approval of at least 66%** of FC in value and in case of no unrelated FC then unrelated OC **to appoint RP (In Form P3)** and fees payable to him.

- **CD to obtain Declaration** from majority of Directors or Partners stating that
  (a) CD shall file application for PPIRP in 90 days,
  (b) It is not to defraud any person and
  (c) Name of RP is approved by required FC/ OC as the case may be

- **CD to obtain approval of members by way of** Special Resolution or 3/4th of Partners to approve it in case of LLP

Approval of Financial Creditors- Sec 54A (3) & (4)

CD to provide FC for its approval -Special Resolution or approval of 3/4th of Partner approving initiation of , Declaration of Director or Partner and Base Resolution Plan in conformity with the provisions under this Chapter

CD to obtain approval of unrelated FC representing 66% in value of FC **(in Form P4)** for initiating PPIRP. In case there are no unrelated FC then unrelated OC

Duties of RP before PPIRP- Section 54B

Proposed RP to have following Duties before PPIRP starts

1.To prepare a Report in Form P8 confirming CD meets the requirements to initiate PPIRP and the Base Resolution Plan conforms the requirements of Code;

2.To file this Reports along with other documents with IBBI; and

3. To perform such other duties as may be specified.

Duties of RP before PPIRP- Section 54B

Duties of RP ceases under following two situation

1.If CD fails to file application within 90 days ; or

2. Adjudicating Authority (AA) admits/rejects the PPIRP Application filed by RP

Fees of RP is part of PPIRP Cost and CD to maintain separate Bank account with such amount as advised by the CoC and the same shall be operated by RP

Filing of Application- Sec 54C (1)

CD to make an **Application** electronically **for PPIRP with AA in Form I** in accordance with NCLT Rules, 2016, to attach, Affidavit, Proof of Default, Eligibility of CD u/s 29A of IBC Code & other Annexures and pay fees of Rs.15,000/- . Also furnish the following :

(a) Declaration by Directors/ Partners in Form P6

(b) Special Resolution or 3/4th of Partners

(c) Approval of unrelated FC representing 66% in value in Form P4

(d) Consent of RP in Form P1 and his Report in Form P8

(e) Declaration regarding existence of any transactions of CD in respect of Avoidance of Transaction under chapter II or Fraudulent or Wrongful Trading under Chapter VI in Form P7

(f) Information regarding Books of Accounts & other specified documents

(g) Proof of Service of the Application to IBBI

(h) Financials of CD for past 2 years & provisional financials not older than 14 days of making the Application

Section 11A for disposal of Applications made u/s 54C

Where PPIRP Application is pending and Application for CIRP is filed

AA shall pass an order to **Admit or Reject PPIRP Application first** before considering application filed u/s 7 ,9 or 10 (CIRP) in respect of the same CD.

Where PPIRP Application is filed within 14 days from the date of filing of Application for CIRP

AA shall first **dispose of PPIRP Application**, in respect of the same CD.

Where PPIRP Application is filed after 14 days from the date the filing of Application for CIRP

AA shall first **dispose of the Application for CIRP** in respect of the same CD

Filing of Application- Sec 54C (1)

Udyam Registration Certificate (URC) or Evidence of Investment / Turnover

Documents evidencing Authorization to initiate PPIRP

List of FC who have approved the name of RP with value of debt represented by each FC

List of FC who have approved initiation of PPIRP with value of debt represented by each FC

Filing of Application- Sec 54C (1)

- AA to admit the application in 14 days- Directory
- 7 days time may be given for rectification of defects, if any, in the Application
- PPIRP commences from the Date of Admission of the Application by AA.

Fees of RP- Regulation 14 (5)- Form P3

Approval of Terms for appointment of RP:

1. **Pre- PPIRP -**Fee payable to the RP for performing duties before PPIRP

2. **During PPIRP -**Fee payable to the RP and expenses to be incurred by him for conducting the process

3. **When management of CD is vested with him-** Fee payable to the RP and expenses to be incurred by him in case management of the CD is vested with him under section 54J

Time Limit- Sec 54D

- PPIRP shall be completed with in 120 days from its commencement
- RP to submit a Resolution Plan with AA duly approved by 66% voting shares of CoC within 90 days from the Commencement of PPIRP
- Where Resolution Plan is not approved by CoC with in the time period then RP to file Form P13 for termination of PPIRP
- Non approval of Resolution Plan by AA within 120 day from the Commencement of PPIRP does not results in Order for Liquidation

Declaration of Moratorium and PA -Section 54E

1. **Moratorium-** AA once admit PPIRP with the Order (Commencement of PPIRP) declare Moratorium as per Section 14(3) which shall be effective until PPIRP comes to an end.

2. **Appointment of RP -**AA shall appoint RP against whom no disciplinary action is pending.

3. **Public Announcement (PA) in Form P9** Cause a Public announcement of initiation of PPIRP to be made by RP

   - RP to make PA in Form P9 in 2 days from the Commencement of PPIRP.
   - Sent to each creditor in Form P2.
   - Sent to Information Utility (IU)
   - Published on website of CD
   - Submit it with IBBI.

Duties of RP during PPIRP -Section 54F (2)

List of Claims	• Confirm the list of claims submitted by CD
Confirm it with Creditors	• Regarding claims confirmed in specified manner
Update the List of Claims	• Maintain an Updated List of Claims
Monitoring Management of Affairs of CD	• RP shall monitor the management of affairs of CD and not to run the operations of CD

Duties of RP during PPIRP -Section 54F (2)

Constitute CoC	• Constitute CoC and convene and attend all meetings
Provide Information to CoC	• Regarding the breach of any obligations as per Code/ Rule/ Regulations by Board/Partners of CD
Finalize Information Memorandum	• Prepare it on the basis of Preliminary Information Memorandum (PIM) submitted by CD
Application with AA in case of Avoidance Transactions	• File application for avoidance transactions, if any

Rights & Powers of RP during PPIRP-Section 54F (3)

1. Access books of accounts, records and information of CD
2. Access to electronic records of CD with IU
3. Access the books of accounts, records & information of CD available with Government authorities, statutory auditors, accountants & others
4. Attending the meetings of Board, partners, shareholders, committee of CD
5. Appoint accountants, legal & other Professionals
6. Collect all information of CD like assets, finance, operations to determine financial position of CD and existing of any Avoidance of Transaction or any Fraudulent or wrongful trading
7. Business operations for the previous two years from PPIRP Commencement Date
8. Financial and operational payments for the previous two years from PPIRP Commencement Date
9. List of assets and liabilities as on the initiation date
10. Other specified matters

Rights & Powers of RP during PPIRP-Section 54F (4) to (7)

Financial Institutions to provide all required & available information in relation to CD to RP.

Promoters, Management & other Persons of CD to extend all assistance and cooperation to RP as may be required by him to perform his duties and exercise his powers

Fees of RP and expenses incurred by him for conducting PPIRP shall be determined in specified manner. However CoC may impose limits and conditions on it

List of Claims and Preliminary Information Memorandum Section 55G

List of Claims : CD shall provide List of Claims to RP in Form P-10 within **2 days** of PPIRP Commencement Date

Preliminary Information Memorandum (PIM): CD shall provide PIM to RP within **2 days** of PPIRP Commencement Date containing information relevant for formulating a Resolution Plan.

Consequence of wrong information: Without prejudice to liability u/s 77A, promoter, director , partner or authorized person shall be liable to pay compensation to every person who has sustained such loss or damage. Subject to moratorium under Section 54E, person can move to court having jurisdiction.

Management of Affairs of –Section 54H

Management of affairs of CD with existing Board	• Except specified conditions, it shall be with the Board of Directors or Partners of CD. RP shall conduct the process and nor run the operations of CD
CD to remain as Going Concern	• Management to protect and preserve the value of the property of CD, and manage its operations as a going concern
Contractual & Statutory Rights and Oligations	• Of the Promoters, members, personnel and Partners of CD, shall be subject to provisions of Chapter IIIA

Committee of Creditors-Section 54I

Time Limit: RP to constitute CoC within **7 days** of PPIRP Commencement Date based on the List of Claims confirmed

First Meeting: First meeting of CoC shall happen with in **7 days** of constitution of CoC.

Application of certain provisions of Section 21 of CIRP: Section 21 (except sub-section 1) shall apply mutatis mutandis and references to the "RP" under subsections section 21(9) & (10), shall be construed as references to "CD or RP.

Vesting of management of CD with RP-Section 54J

If CoC approves with 66% voting and resolve to vest management with RP	• If the affairs of CD have been conducted in a fraudulent manner & grossly mismanaged
RP to apply to NCLT (AA)	• RP to file an application with AA
Certain provisions of Chapter III on CIRP also apply to PPIRP	• **Section 14 (2) and (2A)** • **Section 17, 19, 20, 28, (e) to (g)** • **Section 25 (1)** • **Section 25 (2) (a) to (c) and (k)**

Consideration and approval of Resolution Plan – Section 54K

Base Resolution Plan	• CD (either alone or jointly with others) to provide RP, the Base Resolution Plan with in 2days of Commencement of PPIRP. • RP to present the same to CoC for its evaluation
Revision of Base Resolution Plan	• CoC may provide an opportunity to revise the Base Resolution Plan prior to its approval under sub-section (4) or invitation of prospective resolution applicants under sub-section (5)
Application of certain provisions of Section 30	• Section 30(1) (2) & (5) shall apply mutatis mutandis and the Resolution Plans and Base Resolution Plans shall be made in compliance to Section 30(1)(& (2). RA is eligible and Water Fall Mechanism u/s 53 is complied with

Consideration and approval of Resolution Plan – Section 54K

- **Approval of Base Resolution Plan (BRP) as Resolution Plan-** CoC may approve the Base Resolution Plan for submission to the AA if it does not impair any claims of OC owed by the CD

- **Basis For Evaluation**- CoC to fix parameters for evaluating Resolution Plan and assign a score to the plan and the same is disclosed in the invitation for Resolution Plan. *Significantly Batter Plan* means the score of that plan is higher than another plan by a certain number as approved by CoC

- **Invitation for Resolution Plan**- In case CoC does not approve Base Resolution Plan or if the same impairs the claims of OC then in 21 days RP to invite the Resolution Plan and such invite is in Form P11, which has all disclosure require for applicant to send Resolution Plan

Consideration and approval of Resolution Plan – Section 54K

Resolution Plan : RP to check Resolution Plans is in compliance of Code and then submit to CoC for its Evaluation. If no Resolution Plan is received than the Base Resolution Plan may be considered by CoC.

Significantly Better Plan: CoC shall select a Resolution Plan which is Significantly Better Plan than the Base Resolution Plan as per parameters fixed and scoring is higher by certain % as fixed by CoC and also disclosed it in the invitation in Form P11

Swiss Challenge : PPIRP envisages maximization of value of assets of the CD through Resolution Plan. To achieve the purpose the entire market may compete with the Base Resolution Plan submitted by the CD and hence invite was sent by RP

Swiss Challenge for finalizing Resolution Plan

Swiss Challenge mechanism is a time tested mechanism and has proven to be highly effective in value maximization and ensuring transparency in the process .

RP will disclose the Scores of the Resolution Plan selected by CoC and the Base Resolution Plan submitted by CD and ***invite them to improve*** their Resolution Plans within ***48 hours of time –window.***

(a) The *Resolution Applicant (RA)* which has lower score, shall have an option to improve its Resolution Plan by at least a tick size;

(b) Then the submitter of the *other Resolution Plan* shall have an option to improve its Resolution Plan by at least a tick size;

(c) Then *again the RA* shall have an option to improve its Resolution Plan by at least a tick size;

(d) then the submitter of the *other Resolution Plan* shall have an option to improve its Resolution Plan by at least a tick size, and

the process of improvement shall continue till either of the submitters fails to use the option within the time- window specified in the invitation for Resolution Plans.

Consideration and approval of Resolution Plan – Section 54K

- **Approval by CoC -** 66% voting share approves Resolution Plan after Swiss Challenge after considering **various factors** like feasibility, viability, manner of distribution proposed as per Water Fall Mechanism u/s 53 etc

- **Impairment of claims** – if the Resolution Plan submitted by CD provides for impairment of any claims then CoC may require the promoters of the CD to dilute their shareholding or voting or control rights in the CD, else CoC will record reasons for its approval

- **Meaning of Impairment** - Claims shall be considered to be impaired where the Resolution Plan does not provide for the full payment of the confirmed claims as per the updated List of Claims maintained by the RP

Approval of Resolution Plan- Section 54L

- **Application :** RP to file Application with AA with a Compliance Certificate in **Form P12**
- **Approval :** AA in 30 days of receipt of Application pass an Order either approve the Resolution Plan
- **Rejection :** AA in 30 days of receipt of Application may reject the Resolution Plan in case the same is not in conformity with Section 30 (2) of Code
- **Effect of Approval**-Moratorium ceases to have effect, RP to send all records to IBBI for Data Base and Resolution Applicant obtain necessary approval under any law within a period of 1 year
- **Effect of Rejection:** It means Termination of PPIRP and CD to bear the expenses of PPIRP cost . AA can also order Liquidation of CD and PPIRP cost then will be part of Liquidation Cost.
- **Situation where AA can order Liquidation** - If AA has passed Order for vesting the management of affairs with RP due to gross mismanagement or fraudulent conduct of affairs, the *Resolution Plan must propose change of management*, else AA shall reject and order liquidation

Appeal against the Order of AA

- The approved Resolution Plan is *in contravention of the provisions* of any law for the time being in force;
- There has been *material irregularity i*n exercise of the powers by the RP during the PPIRP period;
- *OCs of CD have not been provided for* in the Resolution Plan in the manner specified by the IBBI
- *PPIRP costs* have not been provided for repayment in priority to all other Debts; or
- *Resolution Plan does not comply with any other criteria* specified by the IBBI

Termination – Section 54 N

If CoC do not approve Resolution Plan

or

RP cannot file Resolution Plan in 90 days time from the Commencement of PPIRP

PPIRP Cost to be borne by CD

In that Case AA to pass Order for Termination of PPIRP

&

Provide manner to continue with proceedings initiated for avoidance of transactions or for fraudulent trading

In case CoC decides with 66% voting shares to terminate PPIRP

No Termination of PPIRP but management is vested with RP – Section 54 N

In case of RP file Application in Form P 14 with approval of 66% of CoC to vest the management of CD with RP

- If the Affairs of CD have been conducted in a fraudulent manner or there has been gross mismanagement by the Promoters / Management of CD

In that case AA may pass Order approving management to be vested in RP

- Then until PPIRP Period is not ended CD will be managed by RP

Initiation of CIRP – Section 54(0)

- **By decision of CoC -** CoC with 66% majority decide to initiate CIRP at any stage before approval of Resolution Plan under ***Section 54K(4) (No impairment to any Creditors)*** or **54K(12) Resolution Plan selected by CoC**, subject to fulfillment of requirement of Chapter II on CIRP under the Code

- **Role of AA**-On an Application filed by RP, AA shall terminate the PPIRP and appoint RP as IRP of CIRP (subject to his consent) within 30 days of such Application and direct for inclusion of PPIRP Cost in CIRP Cost

- **Impact of such order**
  - It will be considered as Order of AA u/s 7 for CIRP to start
  - Proceedings initiated for Avoidance of Transaction shall continue
  - Insolvency Commencement Date shall mean Commencement Date of PPIRP
  - In computing time and period for avoidance transaction , duration of PPIRP period shall also be included

Application of provisions of Chapter II, III, VI and VII to this Chapter III A- Section 54P

Following all Chapters shall apply to PPIRP References made in other Chapter to be applicable to Chapter III A on PPIRP

- Chapter II -24, 25A, 26, 27, 28, 29A & 32A
- Chapter III - 43 to 51
- Chapter VI & VII – Entire Chapter

Fraudulent management of CD during PPIRP- Section 67A insertion

Penalty by AA Where an officer of CD manages its affairs with the intent

to **defraud creditors** of CD

or

for **any fraudulent purpose,**

AA may, on an Application filed by the RP, pass an Order imposing upon any such officer, **a penalty which shall not be less than Rs.1 Lakh but may extend to Rs.1 Crores**

Punishment for offences related to PPIRP- Section 77A insertion

Default : If CD, Director or Partner of CD or Authorized Person ***provides any material False information or Omit to provide it , knowingly,*** in the Application for PPIRP or in List of Claims or Preliminary Information Memorandum

Punishment:

Imprisonment *for not less than 3 years and may* extend to 5 years
or
Fine which shall not be less than Rs.1 Lakh and may extend to Rs.1 Crore
or
with **both**

Role of RP - Under Pre-Packaged Insolvency

- Guides CD in all tasks prior to initiation of PPIRP
- RP to oversight the process and not to run the operations of CD
- Protect interest of all stakeholders
- Ensure all dealings are fair and transparent
- Assists the stakeholders in the formulation and approval of a Resolution Plan.
- Involvement of an independent professional in a pre-pack process is common in other jurisdictions.
- Instills confidence of the stakeholders who trust him for his professionalism, independence and integrity.

Process of PPIRP- At a Glance

- Corporate Debtor (CD) to be **MSME** [a Company or Limited Liability Partnership (LLP)]
- Default by CD to be minimum amount of **Rs. 10 Lakhs**
- Approval of **Directors of the Company or Partners** of LLP
- **Special Resolution** of Members or Resolution by 3/4th Partners
- Certain **Declaration**s are required from the Directors of the Company or Partners of LLP with Application
- Approve **appointment of RP** by CoC with the approval of **66%** voting shares in value
- RP to make an **Application** for initiating PPIRP with AA with fees ofRs.15,000/-
- AA to admit in 14 days – 7 days time will be given to CD to rectify the defect, if any .
- AA shall either **admit or reject** the application
- **Reject**: PPIRP do not commence
- **Admit**: PPIRP commences

Process of PPIRP- At a Glance

- Once AA admits the Application it's **Commencement Date of PPIRP**
- AA declares a **Moratorium,** appoint **RP** and cause a **Public Announcement** of the initiation of PPIRP to be made by RP.
- The **Moratorium shall continue** from the date of Order of AA P till the date on which PPIRP period comes to an end.
- Promoters & Management to extend all **assistance** and cooperation to RP as may be required by him to perform his duties and exercise his powers.
- **Management** of the affairs of CD shall continue to vest in the Board of Directors or the Partners of LLP
- After admission of Application in 2 days CD to submit to RP List of claims, Preliminary Information Memorandum and Base Resolution Plan (BRP)
- RP to constitute CoC in **7 days** of PPIRP Commencement Date.
- 1st meeting of CoC to be within **7 days** from the date of Constitution of CoC**.**
- RP to present **Base Resolution Plan (BRP)** to CoC in 90 days from PPIRP Commencement Date confirming requirements of Sec.54K

Process of PPIRP- At a Glance

- CoC shall **Approve or Reject the BRP** (66% voting by value of Financial Debt) or go for completion of process of improvement (Swiss Challenge)
- **Approve**: RP shall file the plan with AA for approval
- **Reject**: RP shall invite other plans under Swiss Challenge
  - CoC to complete the process of improvement of Plan (Swiss Challenge)
  - CoC shall select one Resolution Plan from the plans submitted which is **significantly better**
  - CoC shall within **90 days Approve** the BRP or Select the Resolution Plan
- If **no plan approved**—RP shall file Application for the Termination of PPIRP
- RP shall file the BRP or Resolution Plan approved by CoC with 66% voting (by value of financial debt) for AA Approval
- AA may either **approve or reject** the Resolution Plan
- **Approve**: PPIRP is completed and Moratorium ceases
- **Reject**: AA shall Order Termination and/ or Initiate Liquidation of CD

Parameter	CIRP	PPIRP
Initiation of process	Default above Rs.1 crore, excluding COVID-19 Default	Pre and Post default stress, including COVID-19 default. In a phased manner, if required. Default if more than Rs.10 Lakh
Initiation by	FC, OC, or CD	CD, with consent of unrelated FC representing 66% of total value
Management of the CD	IP-in-possession with Creditor-in-Control	Debtor-in-possession with Creditor-in-Control
Information Memorandum	Prepared by RP	Draft prepared by CD and finalized by RP
Invitation for Resolution Plans	Public process	First Right of Offer to promoters then Swiss Challenge, if require
Early closure of process	Under section 12A, on request of the Applicant with 90% approval of CoC	With approval of 66% (value of financial debt), present and voting; Suo moto by CoC
Timeline	180 days till approval of resolution plan by the AA (330 days)	90 days for filing of Resolution Plan with the AA plus 30 days for the AA to approve it
Cooling off	12 months between two CIRPs	3 years between two PPIRP

Opportunities for Professionals

Obligations as CD/Guarantors	Rights as FC/OC, Agreements	Voluntary Liquidation
Compliances	Opportunities for investment in stressed assets	Advisory
Education & Training	Appearances	Deals/Restructuring

Q&A

Q-1 What is responsibility of RP regarding the claims?

RP has to only confirm the claims as provided by CD

Q-2. Is there any upper limit of default for PPIRP?

No upper Limit. The limit isRs.10 Lac or more to initiate PPIRP.

It has been misunderstood reading the following that

*Central Government will specify such **minimum amount of default of higher value,** which shall not be more than one crore rupees for matters relating to the pre-packaged insolvency resolution process of corporate debtors*

Q&A

Q-3 Can CD submit Base Resolution Plan jointly with other person?

Yes, CD may submit the Base Resolution Plan either individually or jointly with any other person.

Q-4. Can there be challenges in the unanimity for pre-pack between different set of creditors?

PPIRP is contractual understanding and acceptance between the Promoters and FC. There should not be any impairment in the claims of OC's.

Q&A

Q-5. When Resolution Plans shall be invited by RP?

RP shall invite prospective Resolution Applicants to submit Resolution Plan(s) to compete with the Base Resolution Plan, if:

(a) CoC does not approve the Base Resolution Plan; or

(b) the Base Resolution Plan impairs any claims of OC from CD

Q&A

Q-1 Rejection of Resolution Plan is liquidation or cancellation of PPIRP?

Q-2 PPIRP Commencement Date?

Q-3 Timeline of 90 days is from admission by NCLT or 90 Days from date of approval by FC?

Q-4. Do you think asking for declaration from the management is non starter for PPIRP

Q-5. Do you think management to be given a clean slate like u/s 32A RA is given

Q&A

Q-6. Who can initiate PPIRP?

Q-7. Whether PPRIP and application u/s 10 are mutually exclusive?

Q-8. Is Registration under Udyam is must?

Q-9. The PPIRP would be available only to MSMEs which are Corporate Debtors I.e. Companies and LLPs. What about MSMEs that are run by Partnership Firms or Proprietorships?

Q-10. Prepack can be initiated by any old NPA account or ARC acquired account which is not put through CIRP?

Thank you!

Amita Desai & Co.

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