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Pre-packaged Insolvency Resolution Process (PPIRP)

***Introduction** Insolvency & Bankruptcy Code, 2016 (IBC) was notified on May 28, 2016 and by December 2016 majority of provisions of IBC was implemented. With its enactment an altogether new insolvency regime that is proactive, incentive compliant, market led, and time-bound, came into existence in India. The insolvency framework typically aims to: (i) rescue a viable firm, and (ii) liquidate an unviable firm. Rescuing a viable firm is far more important than failing to liquidate an unviable one during the current crisis. If a viable firm is liquidated forever it cannot be undone.

A company may not be doing well for force majeure circumstances such as coronavirus disease (COVID-19), however it may bounce back on their own as soon as normalcy restores or recalibrate their operations and businesses to an 'all-new normal'. They may even explore innovative workouts for resolutions outside the Code.

Hence to protect businesses (a) the minimum amount of default to file an Insolvency Application was increased from **Re. 1 lakhs to Rs. 1 Crores** and (b) It was notified that no application for initiating Insolvency to be filed for any default arising **after March 25, 2020** till March 24, 2021. During this period MSME were also insulated.

Meanwhile Government had changed the criteria for Micros, Small and Medium Enterprise and currently any enterprises having investment in Plant and Machinery or Equipment up to Rs.50 crore and turnover up to Rs.250 crore would be considered under MSMEs. With this definition, about 70% of companies would fall in the ambit of MSME

The period of insulating MSME expired on March 24, 2021 and to save viable units during Pandemic, Government considered to implement settlement framework under IBC in the form of Pre-packaged insolvency resolution process (PPIRP). PPIRP shall provide speedier resolutions and hence a new Chapter under IBC was added with all checks and balances.

*'Pre-pack' has no statutory definition. It is probably because it has evolved over the time, differently in different jurisdictions and every jurisdiction has a unique variant(s) of pre-pack, which allows the stakeholders to modify it further to an extent to suit their needs. It has different nomenclature such as Pre-Packaged Insolvency Resolution, Pre-Arranged Insolvency Resolution and Pre-Plan Sale in the USA, Pre-Pack Sale in the UK, Scheme of Arrangement in Singapore, etc. As nomenclature suggests, Pre-Pack is a restructuring plan which is agreed to by the Debtor and its Creditors prior to the Insolvency filing and then sanctioned by the court on an expedited basis. In the UK context, it generally refers to a Pre-Agreed Business Sale by an Insolvency Practitioner which does not require prior court and/or creditor sanction.

*Report of the Sub-Committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process- October 2020

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Considering the current COVID 19 Pandemic following measures were taken

1. Governments have responded to save MSME with various measures such as moratorium on loan repayments, sector specific forbearance, infusion of liquidity into the banking system to provide credit to financially distressed firms, relief in asset classification banking norms, flexibility in director's obligations to initiate insolvency proceeding, relief from compliance with specific legal obligations, etc.
2. Disqualification u/s 29A clause (c) and (h) is suspended wef 06 June 2018. Hence the Promoters of CD or the Guarantor for CD are eligible to submit a Resolution Plan for CD.
3. Even Reserve Bank of India (RBI) permitted lending institutions to extend the moratorium on term loan instalments by six months and time for resolution under prudential framework by 180 days.
4. With considerable learning and maturity of the ecosystem, and a reasonably fair Debtor-Creditor relationship in place, the ground was ready to experiment new options for resolution of stress under IBC in furtherance of its objectives. In other jurisdiction where market is evolved, pre-arranged and prepackaged proceedings are considered as more efficient.
5. In view of the urgencies to protect MSME from going in Insolvency, on April 04, 2021 an Ordinance was promulgated by the President amending IBC, 2016 by adding a new Chapter III A (Section 54A to 54P) on "Pre-packed Insolvency Resolution Process (PPIRP). This demonstrate the keenness of the Government to continuously improve resolution framework. Usually, pre-pack is a natural step in the evolution of insolvency regimes.
6. MSMEs play a big role in GDP of India and generating employment in India and hence it was necessary to provide MSME instant relief and support in such uncertain time of Pandemic. In Corporate Insolvency Resolution Process (CIRP for large company the experience was, that not many Resolution Applicants (RA) come forward. PPIRP is introduced which help MSMEs to negotiate with the Financial Creditors (FC) and revive the enterprise by the management / promoters/ partners while continue to remain in the management.
7. In case of PPIRP, it's only Corporate Debtor (CD) and not the Creditors who can file the Application and submit Base Resolution Plan (BRP). The entire process of PPIRP to be completed in maximum **120 days** unlike CIRP which can go up to 330 days or beyond.
8. Application for PPIRP can be filed by CD if the minimum amount of default is more than **Rs.10 lakhs**. There is **no maximum limit of default** which were misunderstood by many.
9. PPIRP is definitely a boon to MSME sector in India and provide a chance to promoter to save their enterprise. Pre-Pack or PPIRP is nothing but consensual restructuring where there is mutual agreement between CD and Creditors (Informal) and then judicial approval of Adjudicating Authority (Formal)

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A. Applicable provisions for PPIRP

1. Insolvency and Bankruptcy Code, 2016 (IBC,2016)
2. Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021
3. Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021
4. Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021

B. Key Highlights of the Amendment for PPIRP

1. Through Ordinance related amendments were made in IBC under Section 4, 5, 11, 11A, 33, 34, 54A to 54P (Chapter III-A) 61,65, 67A,77A,208,239 , 240 and 240A
2. A new chapter III A has been added containing Sections Section 54A to Sections 54P in IBC.
3. New definitions u/s 5 have been added.
4. In Section 4 minimum default of Rs. **10 lakhs** has been specified through Notification dated April 9, 2021
5. Section 54A in Chapter III A specifies that Pre- Packed Insolvency Process can only be initiated against a Corporate Debtor (**CD**) who should be included in the criteria of MSME.
6. Section 54P provides that sections 24, 25A, 26, 2728, 29A, 32A, 43 TO 51 and the provisions under Chapter VI and VII shall apply to PPIRP as well.
7. New Section 67A is inserted specifying penalty for fraudulent management of CD during PPIRP.
8. New Section 77A has been inserted specifying Punishment for offences related to PPIRP.

C. New Definitions

Section 5 of IBC is amended by inserting new definitions as follows:

1. **“Base Resolution Plan”** means a resolution plan provided by the corporate debtor under clause (c) of sub-section (4) of section 54A.
2. **“Basis for evaluation”**, includes the parameters to be applied and the manner of applying such parameters, as approved by the committee, for evaluating a resolution plan to assign a score to the plan, and disclosed in the invitation for resolution plans
3. **“Preliminary Information”** means a memorandum submitted by the corporate debtor under clause (b) of sub-section (1) of section 54G.
4. **“Pre-packaged Insolvency Date”** means the date of admission of an application for initiating the pre-packaged insolvency resolution process by the Adjudicating Authority under clause (a) of sub-section (4) of section 54C.
5. **“Pre-packaged Insolvency Resolution Process Period”** means the period beginning from the pre-packaged insolvency commencement date and ending on the date on which an order under sub-section (1) of section 54L, or sub-section (1) of section 54N, or sub-section (2) of section 54-O, as the case may be, is passed by the Adjudicating Authority.

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6. “**Pre-packaged Insolvency Resolution Process Costs**” means—
 - a. the amount of any interim finance and the costs incurred in raising such finance;
 - b. the fees payable to any person acting as a resolution professional and any expenses incurred by him for conducting the pre-packaged insolvency resolution process during the prepackaged insolvency resolution process period, subject to sub-section (6) of section 54F;
 - c. any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern pursuant to an order under sub-section (2) of section 54J;
 - d. any costs incurred at the expense of the Government to facilitate the pre-packaged insolvency resolution process; and
 - e. any other costs as may be specified.
7. “**Significantly better**” in relation to resolution plan, means that the score of the resolution plan is higher than that of another resolution plan by a certain number or percentage, as approved by the committee and disclosed in the invitation for resolution plans.

D. Brief on Process of PPIRP

1. Corporate Debtor (CD) to be MSME [a Company or Limited Liability Partnership (LLP)]
2. Default by CD to be minimum amount of **Rs. 10 Lakhs**
3. Approval of Directors of the Company or Partners of LLP
4. Special Resolution of Members or Resolution by 3/4th Partners
5. Certain declarations are required from the Directors of the Company or Partners of LLP with Application
6. Approve appointment of Insolvency Professional (IP) as Resolution Professional (RP) by CoC with the approval of **66%** voting (value of financial debt)
7. CD to make an Application for initiating PPIRP with AA-
8. AA to admit in 14 days – 7 days time will be given to CD to rectify the defect, if any .
9. AA shall either admit or reject the application
 - a. **Reject:** PPIRP do not commence
 - b. **Admit:** PPIRP commences
10. Once AA admits the Application PPIRP commences (**PPIRP Commencement Date**)
11. AA declares a **moratorium**, appoint **RP** and cause a **public announcement** of the initiation of PPIRP to be made by RP.
12. The **moratorium shall continue** from the date of order of AA admitting application of PPIRP till the date on which PPIRP period comes to an end.
13. **After admission of Application:** CD shall submit to RP list of claims, Preliminary Information Memorandum and Base Resolution Plan (BRP) in **2 days from the PPIRP Commencement Date**
14. RP to constitute Committee of Creditors (CoC) within **7 days** of PPIRP Commencement Date.
15. 1st meeting of CoC to be within **7 days of constitution of CoC.**
16. RP to present **Base Resolution Plan (BRP)** to CoC in 90 days from PPIRP Commencement Date confirming requirements of Sec.54K

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17. CoC shall approve or reject the BRP (66% voting by value of Financial Debt) or go for completion of process of improvement (Swiss Challenge)
 - a. **Approve:** RP shall file the plan with AA for approval
 - b. **Reject:** RP shall invite other plans under Swiss Challenge
18. CoC to complete the process of improvement (Swiss Challenge)
19. CoC shall select one Resolution Plan from the plans submitted which is **significantly better**
20. CoC shall within **90 days**
 - a. **Approve** the BRP or the selected Resolution Plan
 - b. If **no plan approved**—RP shall file application for the Termination of PPIRP
21. RP shall file the BRP or Resolution Plan approved by CoC with 66% voting (by value of financial debt) for AA Approval
22. AA approves or rejects the plan
 - a. **Approve:** PPIRP is completed
 - b. **Reject:** AA shall order Termination and Initiate Liquidation of CD

E. Section 54A: Corporate Debtors who are eligible for PPIRP

1. Only MSMEs are eligible for PPIRP. **Micro, Small and Medium Enterprises Development Act, 2006** has defined MSMEs as given below:

Classification		Micro	Small	Medium
Manufacturing Enterprises and Enterprises rendering Services	Investment in Plant and Machinery or Equipment:	Not more than Rs.1 crore	Not more than Rs.10 crore	Not more than Rs.50 crore
	Annual Turnover:	Not more than Rs. 5 crore	Not more than Rs. 50 crore	Not more than Rs. 250 crore

2. Corporate Debtor (CD) who commits a default of minimum amount of **Rs 10 lakhs** as specified by Central Government vied Notification released by MCA on April 9, 2021.
3. Eligibility of CD to initiate PPIRP
 - a. CD has not undergone PPIRP or completed CIRP, as the case may be, during the period of **3 years** preceding the date of application for initiating PPIRP;
 - b. CD is not undergoing CIRP;
 - c. No order for liquidation of CD is passed;
 - d. CD is eligible to submit a Resolution Plan under section 29A of IBC;
 - e. FCs have proposed an IP and approved (with 66% voting by value of financial debt) the person to act as Resolution Professional for conducting PPIRP; (The approval of terms of appointment of RP shall be in **Form P3**);

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- f. Majority of Directors of the Company or Partners of LLP have made declaration in the manner specified;
- g. Members of the CD have passed a Special Resolution, or at least 3/4th of the total number of partners of LLP have passed a resolution approving the filing of an application for initiating PPIRP shall be in **Form P4**.

F. Persons who can file application for PPIRP of CD

As mentioned in **Section 54C (1)** under IBC an application with Adjudicating Authority (AA) for initiating PPIRP can be filed by only the **Corporate Applicant** defined under **Section 5(5) of IBC, 2016** which means:

- (a) **corporate debtor**; or
- (b) a **member** or **partner** of the CD who is authorised to make an application for the CIRP or the PPIRP, as the case may be, under the constitutional document of the CD; or
- (c) an **individual** who is **in charge** of managing the operations and resources of the corporate debtor; or
- (d) a **person** who has the **control** and supervision over the financial affairs of the corporate debtor

G. Section 11-Persons not entitled to make application.

The following persons are not entitled to make an application to initiate PPIRP:

- (a) a CD **undergoing** a CIRP or PPIRP; or
- (b) a Financial Creditor (**FC**) or an Operational Creditor(**OC**) of CD **undergoing** PPIRP; or
- (c) a CD in respect of whom a **Resolution Plan** has been approved under Chapter III-A (PPIRP) 12 months preceding the date of making of the application; or
- (d) a CD or a FC who has **violated** any of the terms of Resolution Plan which was approved 12 months before the date of making of an PPIRP application ; or
- (e) a CD in respect of whom a **liquidation order** has been made.

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H. Pre conditions before filing application for PPIRP

1. FCs of the CD, not being its related parties, representing **66%** in value of financial debt to propose and approve the name of the Insolvency Professional (IP) to be appointed as Resolution Professional (RP) for conducting PPIRP.
2. The majority of the Directors /Partners of CD to make a declaration in **Form P6/P7** stating—
 - (a) that the CD shall **file an application** for initiating PPIRP within a definite time period not exceeding **90 days**;
 - (b) that the PPIRP is **not** being initiated to defraud any person; and
 - (c) the **name of the Resolution Professional** proposed and approved by FC/OC or person as may be specified. Insolvency Professional (IP) proposed and approved to be appointed as Resolution Professional (RP) under Section 54A(e)
3. The Members of CD (if company) to pass a **special resolution** or approval of 3/4th Partners (if LLP) for initiating PPIRP as per Section 54A in **Form P4**.
4. CD to obtain approval of FCs, not being its related parties, representing **66%** in value of financial debt for filing of an Application for initiating PPIRP and before approval it shall provide the FCs with the following:
 - (a) Declaration of Director or Partners (point 2 above),
 - (b) Special Resolution or Resolution by partner (point 3 above)
 - (c) Base Resolution Plan
 - (d) Any other documents or information as may be specified

I. Section 54B: Duties of Resolution Professional (RP) before initiation of PPIRP

FC who are not related parties of CD and have not less than 10% of the value of the total financial debt of such creditors may propose names of IP .

1. The duties of RP before initiation of PPIRP are as follows:
 - (a) prepare a **Report in Form P8**, confirming whether the CD meets the requirements of section 54A, and whether **Base Resolution Plan conforms to the requirements**;
 - (b) **file** such reports and other documents, with IBBI as may be specified; and
 - (c) perform such other duties as may be specified.
2. The duties of the RP specified above shall **cease**, if, —
 - (a) the CD **fails to file an Application** for initiating PPIRP within **90 days** of PPIRP Commencement Date; or
 - (b) An **Application** for initiating PPIRP is **admitted or rejected** by the AA, as the case may be.
3. **The fees of the RP and any expenses** incurred by him for conducting PPIRP shall be determined in such manner as may be specified and CoC may impose limits and conditions on such fees and expenses. Fees of RP and the expenses for the period prior to the constitution of CoC are subject to ratification by CoC.

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J. Section 54C: Application to initiate Pre-packaged Insolvency Resolution Process & Section 11A: Disposal of applications under section 54C and under section 7 or section 9 or section 10.

1. Where an Application filed under Section 54C (PPIRP) is **pending**, the Adjudicating Authority (AA) shall pass an order to **admit or reject** PPIRP Application, before considering any Application filed under section 7 /9 or 10 (CIRP) in respect of the same CD.
2. Where an Application under section 54C (PPIRP) is **filed within 14 days** of filing of any Application under section 7/ 9 or 10 (CIRP) which is pending, then the AA shall first **dispose** of PPIRP Application, in respect of the same CD.
3. Where an Application under section 54C (PPIRP) is **filed after 14 days** of the filing of any Application under section 7 /9 or section 10 (CIRP), the AA shall first dispose of the Application under sections 7, 9 or 10 (CIRP), in respect of the same CD.

An application with the Adjudicating Authority (AA) for initiating PPIRP can be filed by a Corporate Applicant if it meets the requirements of Section 54A.

1. The application for initiating PPIRP shall be filed in **Form 1**.
2. CD shall, along with the Application, furnish—
 - (a) the declaration, special resolution or resolution, as the case may be, and the approval of FC for initiating PPIRP;
 - (b) the name and written consent, in **Form P1 of IP** proposed to be appointed as RP;
 - (c) a declaration regarding the existence of any transactions of the CD that may be within the scope of provisions in respect of **avoidance of transactions** under Chapter III or fraudulent or wrongful trading under Chapter VI, in **Form P7**;
 - (d) information relating to **books of account of the CD** and such other documents relating to such period as may be specified.
3. AA will within a period of **14 days** of the receipt of the Application, by an order,—
 - (a) **If complete :Admit** the application
 - (b) **If incomplete: Reject** the application. However AA shall before rejecting the application, give notice to CD to rectify the defect in the application within **7 days** from the date of receipt of such notice from the AA.
4. PPIRP shall commence from the date of admission of application for initiating PPIRP.

K. Section 54D: Time-limit for completion of pre-packaged insolvency resolution process.

1. PPIRPs will be completed within a period of **120 days** from PPIRP Commencement Date.
2. RP to submit to AA the Resolution Plan as approved by CoC under 54K(12) or 54K(4) as the case maybe, within a period of **90 days** from PPIRP Commencement Date.
3. If no Resolution Plan is approved by the CoC **within 90 days**, RP shall on 91st day file an Application with AA for the Termination of the PPIRP in **Form P13**.

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L. Section 54E: Declaration of Moratorium and Public Announcement during PPIRP

1. AA shall on PPIRP Commencement Date, along with the order of admission under section 54C —
 - (a) Declare a moratorium ;
 - (b) Appoint RP ; and
 - (c) Cause a Public Announcement (PA) for initiation of PPIRP to be made by RP in **Form P9**.
2. The Order of moratorium shall have effect from the date of such Order till the date on which the PPIRP period comes to an end.

M. Section 54F: Duties and Powers of Resolution Professional (RP) during prepackaged insolvency resolution process.

1. Duties of RP

- (a) Confirm the list of claims submitted by the CD
- (b) Inform creditors regarding their claims as confirmed
- (c) Maintain an updated list of claims
- (d) Monitor the management of the affairs of the CD
- (e) Inform the CoC in the event of breach of code/ rules/ regulation or any of the obligations by the Board of Directors or Partners,
- (f) Constitute the CoC and convene and attend all its meetings;
- (g) Prepare Information Memorandum(IM) on the basis of the preliminary information memorandum submitted by CD
- (h) File Applications for avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, if any;
- (i) Such other duties as may be specified by IBBI.

2. Powers of RP

- (a) Access all books of accounts, records and information available with CD;
- (b) Access the electronic records of CD from an Information Utility (IU) having financial information of CD
- (c) Access the books of accounts, records and other relevant documents of CD available with Government authorities, statutory auditors, accountants and such other persons as may be specified
- (d) Attend meetings of members, Board of Directors and Committee of Directors, or Partners;
- (e) Appoint accountants, legal or other professionals in such manner as may be specified;
- (f) Collect all information relating to the assets, finances and operations of CD for determining the financial position of CD.
- (g) The existence of any transactions that may be within the scope of provisions relating to avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, including information relating to —
 1. business operations for the previous 2 years from the date of PPIRP Commencement Date;
 2. financial and operational payments for the previous 2 years from the date of PPIRP Commencement Date;
 3. list of assets and liabilities as on the initiation date (date of application) ; and

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(h) Such other matters as may be specified.

Co-operation to RP

- (a) From the date of appointment of RP, the financial institutions maintaining accounts of the CD shall furnish all information relating to the CD available with them to RP, as and when required by him.
- (b) The personnel, promoters and persons associated with CD shall extend all assistance and co-operation to RP.

N. Section 54G: List of claims and preliminary information memorandum

1. The CD shall within **2 days** of PPIRP Commencement Date, submit to RP following information updated as on that date in **Form P10**
 - (a) a **list of claims**
 - (b) a **preliminary information memorandum** containing information relevant for formulating a Resolution Plan.
2. Without prejudice to liability u/s 77A of IBC, any person (Director/ Partner/ Authorised Person) shall be liable **to pay compensation to every person who has sustained such loss** or damage as a consequence of the omission of any material information or inclusion of any misleading information in the list of claims or the Preliminary Information Memorandum submitted by CD

O. Section 54H: Management of Affairs of CD

1. During the PPIRP period,—
 - (a) the **management** of the affairs of the CD shall continue to **vest in the Board of Directors** or the **Partners**, as the case may be,
 - (b) the Board of Directors or the Partners, as the case may be, shall make every endeavor to protect and preserve the value of the property of CD and manage its operations as a **going concern**.

P. Section 54I: Committee of Creditors (CoC)

1. In case, CD has no FC or all FC are related parties, COC shall consist of OC who are no related to CD as under :
 - (a) 10 (ten) largest OC by value, and if the number of operational creditors is less than 10 (ten), the CoC shall include all such operational creditors;
 - (b) 1 (one) representative elected by all workmen other than those workmen included as OC; and
 - (c) 1 (one) representative elected by all employees other than those employees included as OC
2. RP to constitute CoC within **7 days** of PPIRP Commencement Date based on the list of claims received from CD.
3. The CoC shall be altered on the basis of updated list of claims.

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4. The Notice of the Meeting of CoC shall be served to **FCs**, who are not related parties of CD, at least **5 days** before the date of the meeting, unless a shorter time is agreed to by all of them.
5. The Notice of the Meeting of CoC to indicate the date, time and venue of the meeting, and enclose a list of Creditors along with the amount due to them in **Form P2**.

Q. Section 54J: Vesting management of CD with Resolution Professional (RP)

1. If CoC pass resolution by not less than **66% votes** (value of financial debt) in favour for vesting management of CD with RP, then RP shall make application to AA in **Form P14**.
2. AA shall pass an order vesting the management of the CD with the RP if AA is of the opinion that during PPIRP:
 - (a) the affairs of the CD have been conducted in a **fraudulent manner**; or
 - (b) there has been **gross mismanagement** of the affairs of the CD
3. In that case the provisions of following sections of Chapter III shall apply to PPIRP, from the date of appointment of RP until PPIRP comes to an end.
 - (a) Section 14 (2) & (2A) --Supply of essential goods & services ;
 - (b) Section 17--Management will be with RP
 - (c) Section 18 clauses (e) to (g) -- RP to take custody of assets and information from IU;
 - (d) Sections 19 and 20-- Personnel to extend co-operation to RP & RP to manage operation of CD as a going concern
 - (e) Section 25 (1) RP to protect and preserve assets of CD;
 - (f) Section 25 (2) (a) to (c) and clause (k)—Take immediate custody and control of all the assets of CD, Represent CD before 3rd party and raise Interim Finance; and such other action as may be notified by IBB
 - (g) Section 28—Approval of CoC for certain actions,

R. Section 54K: Consideration and approval of Resolution Plan

1. CD shall submit the **Base Resolution Plan (BRP)** to RP within **2 days** of the PPIRP Commencement Date and the RP shall present it to the CoC.
2. COC may provide the CD an opportunity to revise BRP prior to submitting BRP to AA or invitation for prospective RA. CD may submit BRP either individually or jointly with any other person.
3. CoC may approve the BRP for submission to the AA if it does not impair any claims owed by CD to OC.
4. If CoC does not approve BRP or **BRP impairs claims of the OCs, RP shall invite prospective Resolution Applicants (RA) to submit Resolution Plan(s)** to compete with BRP.
5. The Resolution Plans and the BRP, submitted under this section shall conform to the requirements referred to in Section 30 (1) and (2) and the provisions of Sections 30 (1), (2) and (5) shall *mutatis mutandis* apply, to the proceedings under this Chapter.

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6. RP to provide to RA details of **Basis of Evaluation of Resolution Plan** approved by CoC and relevant information of CD as per Section 29 of IBC in physical or electronic form. The brief particulars for the invitation for Resolution Plans to RA be given in **Form P11**.
7. An opportunity to be given to CD to revise BRP.
8. If such BRP pays out the dues of OCs fully and the CoC feels that it gives the best value, it may decide to accept the BRP.
9. If BRP does not pay the dues of OCs fully, CoC to necessarily conduct a Swiss Challenge (completion of process of improvement).
10. CoC shall select a Resolution Plan out of the plans presented by RP and **approve** the plan if CoC feels that it is **Significantly Better** than BRP.
11. The Resolution Plan (either BRP or Resolution Plan after Swiss Challenge) need to be approved by CoC with minimum **66%** (value of financial debt) in its favour.
12. If the Resolution Plan submitted by CD provides for impairment of claims , CoC may require the **promoters of CD to dilute their shareholding** or voting or control rights in the CD. If CoC approves the Resolution Plan without providing for dilution, it shall record reasons for its approval.
13. The approved Resolution Plan shall be **submitted to AA** by RP in **Form P12**.
14. If no Resolution Plan is approved by CoC, RP shall file an application with AA in **Form P13** for the **Termination of PPIRP**.

S. Section 54L: Approval of Resolution Plan

1. The AA to either approve or reject the Resolution Plan within **30 days** from receipt of it
2. The AA approve the Resolution Plan if it is satisfied that the Resolution Plan:
 - (a) meets the requirements of Section 30(2) of IBC, 2016 and
 - (b) has provisions for effective implementation.
3. If the Resolution Plan does not satisfy two conditions mentioned in point 2 above, AA will reject the Resolution Plan.
4. If AA has passed an Order of vesting of management with RP as per Section 54J (that is if the affairs of CD have been conducted in a fraudulent manner or there has been gross mismanagement of the affairs of CD) and the approved Resolution Plan does not provide for change in management of CD , AA will pass following orders:
 - (a) **Reject** Resolution Plan
 - (b) **Terminate** PPIRP an order **liquidation** of CD
 - (c) Declare that PPIRP cost shall be included in **Liquidation Cost**

T. Section 54M: Appeal against order of AA approving the Resolution Plan under Section 54L

An appeal against an Order of AA approving Resolution Plan to be made before the National Company Law Appellate Tribunal on the following grounds as mentioned u/s 61(3) of IBC:

- (a) the approved Resolution Plan is in **contravention** of the provisions of any law for the time being in force;
- (b) there has been **material irregularity** in exercise of the powers by RP during the PPIRP period;
- (c) the debts **owed to OC of CD have not been provided** for in the Resolution Plan in the manner specified by the Board;

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- (d) the **Insolvency Resolution Process costs have not been provided** for repayment in priority to all other debts; or
- (e) the Resolution Plan does **not comply** with any other criteria specified by IBBI.

U. Section 54N:Termination of PPIRP

1. If no Resolution Plan is approved by the CoC then RP shall file application with AA and AA shall within **30 days** of such application pass the following orders:
 - (a) **Terminate** PPIRP and CD shall bear PPIRP cost and
 - (b) Provide for the manner of continuation of proceedings initiated for **avoidance of transactions** under Chapter III
2. If CoC with 66% voting (of value of financial debt) approves Termination of PPIRP ,after the PPIRP Commencement Date but before the approval of the Resolution Plan, RP will make an application to AA and AA will **terminate** the PPIRP.
3. If the AA has passed an Order or vesting of management with RP in Section 54J (that is if the affairs of CD have been conducted in a fraudulent manner or there has been gross mismanagement of the affairs of CD) and now PPIRP is required to be terminated, the AA shall pass following orders:
 - (a) Order **liquidation** of CD
 - (b) Declare that PPIRP cost shall be included in **Liquidation Cost**.

V. Section 54O:Initiation of Corporate Insolvency Resolution process(CIRP).

1. If CoC with the approval of 66% voting (value of financial debt) approve after PPIRP Commencement Date but before the approval of Resolution Plan, to initiate CIRP, then RP shall intimate AA about CoC decision and AA shall within **30 days**:
 - (a) **terminate** the PPIRP and **initiate CIRP**
 - (b) appoint RP as **Interim Resolution Professional (IRP)** for CIRP, subject to written consent from RP
 - (c) declare that **PPIRP cost shall form part of CIRP cost**
2. Order passed under this **Section 54O** shall be treated as **Order passed under Section 7** of IBC and shall have the same effect
3. The proceedings initiated for **Avoidance of Transactions** under Chapter III or proceedings initiated under section 66 and section 67A, if any, shall continue during CIRP
4. For the purposes of sections 43 (**Preferential transactions and relevant time**), **46 (Relevant period for Avoidable Transactions)** and **50 (Extortionate Credit Transactions)**, references to “insolvency commencement date” shall mean “pre-packaged insolvency commencement date”; and

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5. In computing the relevant time or the period for avoidable transactions, the time-period for the duration of PPIRP shall also be included, notwithstanding anything to the contrary contained in **sections 43 (Preferential transactions and relevant time), 46 (Relevant period for avoidable transactions) and 50 (Extortionate credit transactions)**

W. 54P. Application of provisions of Chapters II, III, VI, and VII to this Chapter

The provisions of sections 24, 25A, 26, 27, 28, 29A, 32A, 43 to 51, and the provisions of Chapters VI and VII of Part III A, shall, mutatis mutandis apply, to PPIRP

X. Section 67A: Fraudulent management of CD during PPIRP

On and after the PPIRP Commencement Date, where an **officer** of the CD, manages its affairs with the **intent to defraud creditors** or for any **fraudulent purpose**, the AA may, on an application 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 crore** .

Y. Section 77A: Punishment for offences related to PPIRP

1. Where—

- (a) a CD provides any **information in the Application u/s 54C which is false** in material particulars, knowing it to be false or omits any material fact, knowing it to be material; or
 - (b) a CD provides any **information in the list of claims or the preliminary information memorandum which is false** in material particulars, knowing it to be false or omits any material fact, knowing it to be material; or
 - (c) any person who knowingly and willfully authorised or permitted the furnishing of such information under point (a) and (b), such CD or person, as the case may be, shall be punishable with **imprisonment** for a term which shall not be less than **3 years**, but which may extend to **5 years** or with **fine** which shall not be less than **Rs.1 lakh** , but which may extend to **Rs. 1 crore**, or with both.
2. If any Director or Partner of CD deliberately contravenes the provisions of Chapter III-A, such person shall be punishable with **imprisonment** for not less than **3 years**, but which may extend to **5 years**, or with **fine** which shall not be less than **Rs.1 lakh** but which may extend to **Rs.1 crore** or with both.

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Z. Comparison with CIRP

SR NO.	Parameter	CIRP	PPIRP
1.	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
2.	Initiation by	FC, OC, or CD	CD, with consent of majority of unrelated FCs
3.	Management of the CD	IP-in-possession with Creditor-in-control	Debtor-in-possession with Creditor-in-control
4.	Information Memorandum	Prepared by RP	Draft prepared by CD and finalized by RP
5.	Invitation for Resolution Plans	Public process	First right of offer to promoters then Swiss Challenge, if require
6.	Early closure of process	Under section 12A, on request of the applicant	With approval of 66% (value of financial debt), present and voting; Suo moto by CoC
7.	Timeline	180 days till approval of resolution plan by the AA	90 days for filing of resolution plan with the AA plus 30 days for the AA to approve it
8.	Cooling off	12 months between two CIRPs	3 years between two PPIRP

Conclusion

It's a welcome step for MSMEs as PPIRP provides a chance to promoters / management to save CD. 'Having another go' is not a bad idea except when it is mala fide. The BLRC distinguished between malfeasance and business failure. In a growing economy, firms make risky plans of which some plans will fail and will induce default. It gives honest debtors a second chance, and penalise those who act with mala fide intentions in default.

It was experienced in CIRP that very few Resolution Applicants come forward and willing to purchase the business of CD. In such cases the incumbent management of CD is often the only one willing to purchase the business of CD. PPIRP is an efficient and competitive options for resolution of stress assets. PPIRP is a consensual process - prior understanding among or approval by stakeholders about the course of action to address stress of a CD, before invoking the formal part of PPIRP, which ensures confidentiality of the process up to a point and minimizes disputes and litigation.

Hope with the experience of PPIRP, a similar process will also be introduced for other large companies who are under financial stress.
