

## **PRE-PACKS : THE NEXT STEP IN THE EVOLUTION OF INSOLVENCY REGIME IN INDIA**

The enactment of the Insolvency and Bankruptcy Code, 2016 (**the Code**) provided a new insolvency regime to the country in order to resolve the corporates and individuals, undergoing financial distress, in a time bound manner. Given the fact that the market for the new professions created by the Code have sufficiently matured and the processes introduced by it have adequately evolved, the Government found it feasible to explore new initiatives in order to further improve the effectiveness of the Code. One such initiative which has recently emerged is the Pre-Pack Insolvency Resolution Process (**PIRP**).

### **Introduction of Pre-Packs and the Rationale behind the same**

In order to introduce PIRP in the Code, the President of India promulgated the Insolvency and Bankruptcy (Amendment) Ordinance, 2021<sup>1</sup> (**Ordinance**), which was notified by the Ministry of Law and Justice on 04.04.2021. Vide the said Ordinance, the Government introduced a new Chapter III-A in the Code and introduced PIRP in respect of corporate persons classified as Micro, Small and Medium Enterprises (**MSMEs**), as defined under Section 7(1) of the MSME Development Act, 2006.

The recitals to the Ordinance acknowledge the peculiar circumstances which have emerged in light of the COVID-19 pandemic, and provide the rationale for introduction of pre-packs.

It states that the COVID-19 pandemic has *inter alia* adversely impacted the business operations of MSMEs and exposed many of them to financial distress. It further acknowledges the interim measures taken by the Government to ameliorate the pains emanating on account of COVID-19, which include increase in the threshold of default from Rs. 1 lakh to Rs. 1 Crore for filing petitions under Section 7, 9 and 10 of the Code, which was intended to protect MSMEs from being pushed into insolvency proceedings, and suspension of filing

insolvency proceedings on account of COVID-19 defaults for a total period of one year beginning from 25.03.2020 to 24.03.2021.

Highlighting the significance of MSMEs in terms of their contribution towards employment and Gross Domestic Product (**GDP**) of the country, the recitals state that pre-packaged resolution has been introduced specifically to cater to the MSME sector with the following intendment, as provided in the Ordinance:

*"AND WHEREAS it is considered expedient to provide an efficient alternative insolvency resolution process for corporate persons classified as micro, small and medium enterprises under the Insolvency and Bankruptcy Code, 2016, ensuring 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."*

Given the fact that MSMEs have simpler corporate structures and fewer liabilities, a traditional Corporate Insolvency Process (**CIRP**) could be a little too burdensome for MSMEs, which might not be able to survive through the entire span thereof, ranging from 180 to 330 days, which may even be extended to 2-3 years. Hence, pre-packs have been introduced to provide a more flexible alternative framework to MSMEs for a smoother and speedier resolution.

In furtherance of the above Ordinance, vide Notification dated 09.04.2021<sup>2</sup> published by the Ministry of Corporate Affairs (**MCA**) on 12.04.2021, the Central Government has specified Rs. 10 lakhs as the minimum amount of default for the matters relating to PIRP of corporate persons under the newly introduced Chapter III-A. Further, in order delineate the entire process, vide

1

<https://ibbi.gov.in/uploads/legalframwork/04af067c22275dd1538ab2b1383b0050.pdf>

2

[http://www.mca.gov.in/Ministry/pdf/Notification\\_1204021.pdf](http://www.mca.gov.in/Ministry/pdf/Notification_1204021.pdf)

Notification dated 09.04.2021<sup>3</sup>, MCA issued the Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021 ('**Pre-Pack Rules**'). In addition, vide Notification dated 09.04.2021<sup>4</sup>, the Insolvency and Bankruptcy Board of India ('**IBBI**') has issued IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021 ('**Pre-Pack Regulations**').

The present article aims to provide an analysis of the said process in terms of the Code and the relevant rules and regulations notified in this regard.

### What is Pre-Pack Insolvency Resolution?

Pre-Pack Insolvency Resolution is a marriage of traditional insolvency framework with out-of-court resolution process, which encompasses the following two phases:

1. **Informal Phase** which entails arriving at a consensual restructuring plan agreed to by the debtor and its creditors prior to the filing of the insolvency proceedings.
2. **Formal Phase** whereby the outcome arrived at by the stakeholders is made binding on all stakeholders by the blessings of NCLT in the form of sanctioning of the said plan, on an expedited basis.<sup>5</sup>

PIRP entails keeping the promoters in possession of the Corporate Debtor ('**CD**'), who can continue to run it as a going concern, thereby ensuring minimal disruptions in the business activities and preservation of jobs. It further aims at providing the honest debtors a second chance to retain their enterprises by entering into an arrangement with their lenders. This incentivises the initiation of PIRP at a time when the corporates are in a pressing need for resolution and there are barely any Resolution Applicants.

Further, in order to prevent the abuse of the process by current management, PIRP also provides numerous powers to the creditors to direct and control the process. Hence, it can be

said to be a '**Debtor-in-possession and creditor-in-control**' model of resolution, which ultimately has the benefits and structure of formal insolvency proceedings.

The aforesaid two phases of the pre-packaged insolvency resolution have been elaborated in the subsequent sections of this Article.

### Who may initiate a PIRP?

As of now, out of the numerous stakeholders of the CD, only the '**Corporate Applicant**', as defined in Section 5(5) of the Code, has been made entitled to initiate the PIRP. The term 'Corporate Applicant' includes:

- i. A Corporate Debtor; or
- ii. Any member or partner of the CD authorised to make an application; or
- iii. An individual who is in charge of managing the operations and resources of the CD; or
- iv. A person who has control and supervision over financial affairs of the CD.

### Who is eligible for a PIRP?

In order to qualify and undergo PIRP, the CD, classified as an MSME, has to fulfil the following preliminary conditions in terms of the Code and Pre-Pack Regulations:

S.No.	Conditions / Eligibility Criteria	Relevant Section and/or Regulation / Notification
1.	A default of an amount ranging from Rs. 10 Lakh to Rs. 1 Crore.	S. 4 read with Notification of MCA dated 09.04.2021.
2.	The CD must not have undergone PIRP or CIRP during 3 years immediately	S. 54A(2)(a)

<sup>3</sup>

[http://www.mca.gov.in/Ministry/pdf/InsolvencyandBankruptcyRules\\_12042021.pdf](http://www.mca.gov.in/Ministry/pdf/InsolvencyandBankruptcyRules_12042021.pdf)

<sup>4</sup> <https://ibbi.gov.in/uploads/legalframework/2021-04-10-182311-5ngd9-0dd40b82af7a770d5e89c0d9e37bdb45.pdf>

<sup>5</sup> Report of the Sub-Committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process; <https://www.ibbi.gov.in/uploads/resources/24c7fc03cdfdff69960ce374416fa646.pdf>

	preceding the date of initiation of PIRP.	
3.	The CD must not be undergoing CIRP.	S. 54A(2)(b)
4.	The CD must not have been ordered to be liquidated under Section 33 of the Code.	S. 54A(2)(c)
5.	The CD must be eligible to submit a Resolution Plan under Section 29A.	S. 54A(2)(d)

**Time Frame for completion of PIRP**

In terms of Section 54D of the Code, PIRP has to be completed within a time period of **120 days** from the date of admission of the application for PIRP by NCLT. There is no provision for extension of the same.

Within the **initial 90 days**, the Resolution Plan, as approved by the Committee of Creditors ('CoC'), has to be submitted before NCLT for approval. Further, if no such plan is approved, at the end of such 90 days, an application has to be filed for termination of PIRP. Once the Resolution Plan is presented before NCLT, it has to approve or reject the same, and close the PIRP within the **next 30 days**.

**I. INFORMAL PHASE : TASKS TO BE UNDERTAKEN BEFORE COMMENCEMENT OF THE FORMAL PIRP IN NCLT**

**Duties of Corporate Debtor**

In the interest of flexibility, the process before the admission of a PIRP application by NCLT, has not been codified in detail and has been left to the mutual understanding of the stakeholders of the CD.

As already mentioned, pre-packs envisage a Debtor-in-possession model whereby the management of the CD continues to run the business operations, and attempt to resolve the financial distress in agreement with the stakeholders. Hence, upon fulfilment of the eligibility criteria, the CD has to undertake a

few tasks before the formal commencement of the PIRP. This ensures a quicker closure of the process as compared to the traditional CIRP. A tabulation of the said tasks is provided below:

S.No.	Tasks to be undertaken by the Corporate Debtor	Form No.	Relevant Section and/or Regulation
1.	The Corporate Applicant has to convene a meeting of unrelated Financial Creditors ('FCs') for the following purposes: a. Proposal of names of Insolvency Professionals ('IPs') to be appointed as Resolution Professional ('RP') for the purpose of conducting PIRP. The said proposal has to be made by unrelated FCs of the CD, representing at least 10 percent of the value of financial debt of the CD. b. Approval of the aforesaid proposal by unrelated FCs, representing at least 66 percent of the value of financial debt of the CD.	P2 and P3	S. 54A(2)(e) read with R. 7 and 14

	In case, the CD has no unrelated FCs or no FCs at all, then a meeting of unrelated Operational Creditors ('OCs') of the CD has to be convened for the aforesaid purpose.			
2.	Majority of Directors or Partners of the CD have to make a Declaration containing the following particulars: a. The CD shall file an application for initiation of PIRP within 90 days. b. PIRP is not being initiated to defraud anyone. c. Name of the IP to be appointed as the RP, as approved in the meeting.	P6	S. 54A(2)(f) read with R. 16	
3.	Members of the CD have to provide an approval by way of a special Resolution, to initiate the PIRP. In case the CD is a partnership firm, the said approval has to be given by way of a resolution passed by at least 3/4 <sup>th</sup> of number of partners.	-	S. 54A(2)(g)	
4.	Once the above approvals have been obtained, the CD has to prepare the following: i. A detailed list of claims, and ii. Preliminary Information Memorandum containing information of the CD for preparation of a Resolution Plan. <i>In case loss / damage is sustained by any person on account of omission of material information or inclusion of misleading information in the aforementioned documents, the Code provides adequate safeguard by way of imposing an obligation for providing compensation to such person, upon all the directors, promoters, partners, as the case held such positions at the time of submission of the said documents or who authorised the submission thereof.</i>	P10  -		S. 54G(1)(a) read with R. 20  S. 54G(1)(b) read with R. 40 S. 54G(2)

5.	Preparation of a Base Resolution Plan in confirmation with the requirements of Section 30(1) and 30(2) of the Code. Such Resolution Plan may be submitted by the CD individually or jointly with any other person.	-	S. 5(2A) read with S. 54A(4)(c) and S. 54K
6.	Approval from FCs, representing at least 66 percent of the value of financial debt of the CD, for filing the application for PIRP. Such approval is taken from the FCs after providing them a copy the declaration, special resolution and a copy of the compliant Base Resolution Plan.	P4	S. 54A(3) and S. 54A(4) read with R. 14(7)

**Duties of Insolvency Professional**

Upon the approval for the appointment of the IP (who shall be termed as RP only after the commencement of PIRP), in terms of Section 54B of the Code read with Regulation 17 of the Pre-Pack Regulations, he/she has to fulfil the following duties before the commencement of the PIRP:

- i. Prepare a Report confirming that the CD is eligible and has duly completed the tasks, as tabulated in the foregoing tabulations. [Section 54B(1)(a)]
- ii. File such other reports and documents, and perform such other duties, as specified by IBBI. [Section 54B(1)(b) and 54B(1)(c)]

Further, the aforesaid duties of the IP shall cease in case CD fails to file an application for PIRP before the NCLT within 90 days, as mentioned in the Declaration made under Section 54A(f) (referred to in the tabulation above), or if the said application is admitted or rejected by NCLT.

**II. FORMAL PHASE : CONCLUSION OF PIRP WITH THE BLESSINGS OF NCLT**

**Commencement of PIRP in NCLT**

A step-wise tabulation of the steps involved in the commencement of PIRP is provided below with the corresponding Form No. and relevant provision of law:

Step No.	Particulars	Form No.	Relevant Section and/or Regulation / Rule
<b>I.</b>	<b>Filing of Application for initiation of PIRP:</b> A Corporate Applicant has to file an application before NCLT accompanied with the following documents:	1	S. 54C read with Rule 4
(i)	The declaration, special resolution or resolution, and the approval of FCs for initiation of PIRP.	-	S.54C(3)(a)
(ii)	The name and written consent of the IP to be appointed as the RP.	P1	S.54C(3)(b)
(iii)	The Report prepared by the IP under 54B(1)(a), as already discussed.	P8	S.54C(3)(b)
(iv)	A declaration regarding the existence of any transactions that may be within the	P7	S.54C(3)(c)

	scope of provisions under Chapter III or VI of the Code.		
(v)	Information relating to books of account of the CD and other documents.	-	S.54C(3)(d)
<b>II.</b>	<b>Admission or Rejection of Application:</b> NCLT has to admit or reject the aforesaid application within 14 days from the date of receipt thereof. It must be noted that NCLT has the jurisdiction to reject the said application only on one pretext – i.e., if the application is incomplete. In such case as well, NCLT is bound to issue a 7 day notice to the Applicant for course correction.		S. 54C(4)
<b>III.</b>	<b>Declaration of Moratorium and Public Announcement:</b> In case of admission of the application, NCLT by way of an order, i. declares a moratorium for the purposes referred to in Section 14 of the Code, in order to enable the CD to work out a Resolution Plan and carry		S. 54E(1)(a) read with S. 54E(2)

	the business of the CD in an uninterrupted manner till the completion of PIRP, ii. appoints the RP, and iii. causes the RP to make a public announcement regarding initiation of PIRP, which is to be sent to all the creditors of the CD as well. The date of admission of the application marks the commencement of PIRP and is defined as Pre-packaged Insolvency Commencement Date (' <b>PICD</b> ').	P9 and P2	S.54E(1)(b) S.54E(1)(c) read with R. 19  S. 5(23B)
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**Conduct of PIRP - Tasks, Duties and Powers of RP and CD**

In stark contrast to a traditional CIRP wherein upon the commencement of CIRP, the entire control and the management of affairs of the CD is vested in the RP, in terms of Section 54H of the Code, in a PIRP, the management of the CD continues to vest in the Board of Directors or the partners, as the case may be.

The said power of the existing management is supplemented with a duty to protect and preserve the value of the property of the CD and to continue to discharge their obligations in relation to the CD. Further, the CD is also entrusted with an obligation not to manage such affairs in a manner prejudicial to the interests of the creditors or in a fraudulent manner. The process provides various other safeguards to prevent the abuse of power by the management, which has been elaborated in subsequent paras.

In addition to the change in the role of the CD, the PIRP envisages a dilution of powers of the RP as well. In a PIRP, the RP does not take over the management of affairs of the CD and is only required to play a supervisory and facilitative role for the purpose of ensuring the sanctity of the process. In terms of Section 54F(2)(d) of the Code read with Regulation 50(3) of Pre-Pack Regulations, the RP is required to monitor the management of affairs undertaken by the existing management and ensure compliance with law. This in turn instills confidence in the stakeholders and makes the process fair and transparent.

Post the commencement of the PIRP, the duties of the CD and the corresponding duties of the RP, are tabulated below along with the corresponding provisions of law:

S.No.	Duty of CD and RP	Relevant Section / Regulation
1.	<b>Submission and confirmation of List of Claims:</b> The CD shall submit the list of claims prepared by it in the informal phase in Form P10 to the RP within 2 days from PICD. The RP shall verify the said list of claims and confirm the details provided therein, basis the available documents and records.	S.54G(1)(a)  S.54F(2)(a) read with R. 20(1) and 20(2)
2.	<b>Submission of Preliminary Information Memorandum and preparation of Final Information Memorandum:</b> The CD shall submit the Preliminary Information prepared by it in the informal phase to the RP within 2 days of PICD. The RP shall finalise an Information Memorandum ('IM') basis the said document.	S.54G(1)(b)  S. 54F(2)(g) read with R. 40
3.	<b>Valuation of the CD:</b> Within 3 days of his appointment, the RP shall	R. 38 and 39

	appoint two registered valuers for the purpose of ascertaining the fair value and liquidation value of the CD.	
4.	<b>Constitution of CoC:</b> The RP shall constitute the CoC within 7 days from the PICD.	S. 54F(2)(f) and S. 54I(1) read with Chapter VI of Pre-Pack Regulations.
5.	<b>Conduct Meetings of CoC:</b> The RP shall hold the first meeting of CoC within 7 days of constitution thereof. Further, the provisions of Section 21 with regard to CoC, as is the case in traditional CIRP, shall <i>mutatis mutandis</i> apply to a PIRP as well.	S. 54I(2) read with Chapter VII of Pre-Pack Regulations
6.	<b>Revision of List of Claims and Reconstitution of CoC:</b> The RP shall inform each creditor regarding the status of claims and seek objections and supporting documents to further modify the quantum / nature of the claim. The RP shall keep an updated list of claims at all stages of the PIRP, which shall be made available for inspection by stakeholders, uploaded on the website of the CD, filed with IBBI and presented at meetings of CoC.	S. 54F(2)(b) and S. 54F(2)(c) read with R. 20(3) to R. 20(9)
7.	<b>Application to NCLT for transactions under Chapter III and Chapter VI:</b> On or before the 60 <sup>th</sup> day from PICD, the RP shall make applications for avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, if any.	S. 54A(2)(d) and S. 240A read with R. 41
8.	<b>Keeping stakeholders updated regarding</b>	S. 54F(2)(e)

	<b>breach on part of existing management:</b> The RP shall keep the stakeholders informed in case of any breach of any obligations under the Code and the Pre-Pack Rules and Regulations, on the part of the Directors / Partners of the CD, as the case may be.	
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In addition to the above, in terms of Section 54F(3) read with Regulation 9 and 10 of Pre-Pack Regulations, the RP has the power to access all the documents and information pertaining to the CD, attend all the meetings of its members, Directors etc., appoint professionals for the purpose of fulfilling his duties and take such other actions as may be necessitated to enable him/her to conduct the PIRP in an efficacious manner.

**Supremacy of Commercial wisdom of Committee of Creditors in the Conduct of PIRP**

- 1. Power to approve numerous decisions:**  
Despite the fact that the management of affairs of the CD is in the hands of the existing management, in terms of Section 54J(3)(g) read with Section 28 and Regulation 50(2), there are numerous decisions for which the CD has to take approval of the CoC by a vote of not less than 66 percent. A few such instances are enumerated below:
  - a. Transaction above a threshold limit, as decided by CoC.
  - b. Creation of security interest over the assets of the CD.
  - c. Amendment in the constitutional documents of the CD.
  - d. Undertaking any related party transaction, etcetera.
- 2. Power to vest the management of CD with the RP:** In terms of Section 54J of the Code, the CoC may pass a resolution by a vote of 66 percent to vest the management of the CD with the RP. For the said purpose, the RP has to make an application in Form P14 before NCLT.

If NCLT is of the opinion that the affairs of the CD have been conducted in a fraudulent manner or that there has been gross mismanagement of the affairs of the CD, it may pass an order for vesting the said management into the hands of the RP.

**3. Power to consider the Base Resolution Plan and the swiss challenge, if any:**

Given the supremacy of the commercial wisdom of CoC, as upheld by the Hon'ble Supreme Court<sup>6</sup>, under the PIRP as well, the CoC has been conferred with the power to evaluate the feasibility and viability of the Resolution Plan, and approve or reject the same. The process of consideration of the Base Resolution Plan and the swiss challenge is elaborated in the tabulation below:

S.No.	Particulars	Section / Regulation
1.	<b>Submission of the Base Resolution Plan before CoC:</b> The Base Resolution Plan prepared by CD in consultation with the creditors, has to be submitted to the RP within 2 days of PICD, who shall then place it before the CoC.	S. 54K(1)
2.	<b>Consideration of the Base Resolution Plan by CoC:</b> Upon consideration of the Base Resolution Plan by the CoC, either of the following two scenarios may emerge: i. <u>Approval of Base Resolution Plan:</u> If the Base Resolution Plan confirms to the requirements of Section 30 and does not impair the claims owed by CD to the Operational Creditors ('OCs'), the CoC may	S. 54K(2) to S. 54K(4)

<sup>6</sup> Supreme Court (2019), Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. (CA No. 8766-67 of 2019)



	<p>approve the Base Resolution Plan.</p> <p>ii. <u>Rejection of Base Resolution Plan and the Swiss Challenge</u>: If the CoC does not approve the Base Resolution Plan or if the Base Resolution Plan impairs any claims owed to OCs, the RP shall invite independent Prospective Resolution Applicants ('PRAs') to submit Resolution Plan(s), which shall then compete with the Base Resolution Plan of the CD.</p>	<p>S. 54K(5)</p>	<p>Resolution Plans that confirm to the requirements of Section 30(2), Regulation 44 and 45, before the CoC. Thereafter, the CoC shall evaluate the same and select a Resolution Plan from amongst the same. The Resolution Plan selected by the CoC shall then compete with the Base Resolution Plan.</p>	
<p>3.</p>	<p><b>Invitation of Resolution Plans:</b> The RP shall publish 'Invitation for Resolution Plans' in Form P11 within 21 days of the PICD. The said invitation shall <i>inter alia</i> provide:</p> <p>a. At least 15 days to submit the Resolution Plan,</p> <p>b. Basis for evaluation,</p> <p>c. Tick size – i.e., the minimum improvement over another resolution plan in terms of a score, which is arrived at and approved by the CoC.</p> <p>d. Basis for considering the Resolution Plan significantly better than other Plans, and</p> <p>e. Manner of improving the plan.</p>	<p>S. 54K(7) read with R. 43</p>	<p>5. <b>Approval of a Resolution Plan:</b> The CoC shall compare and score the selected Resolution Plan and the Base Resolution Plan on the basis of the criteria given in the 'Invitation for Resolution Plans', upon which either of the following situations may emerge:</p> <p>a. If the score of the selected Resolution Plan is significantly better than the Base Resolution Plan, as per the terms stated in the 'Invitation for Resolution Plans', then it may be selected for approval.</p> <p>b. If no Resolution Plan is received or the ones which are received do not confirm to the requirements of the Code and the Regulations, the Base Resolution Plan may be considered for approval by the CoC.</p> <p>c. In any other case, the RP shall disclose the scores to the submitters of the Resolution Plans – i.e., the CD and the</p>	<p>S. 54K(10) read with R. 48(1)</p> <p>R. 48(2)</p> <p>S. 54K(11) read with R. 48(3) to 48(6)</p>
<p>4.</p>	<p><b>Presentation of Resolution Plans submitted by PRAs before CoC and selection of Best Resolution Plan for competition with the Base Resolution Plan:</b> The RP shall present the</p>	<p>S. 54K(8) and S. 54K(9) read with R. 42(i), 44, 45, 46 and 47</p>		

	<p>PRAs, and invite them to improve upon their Resolution Plans.</p> <p>The submitter with a lower score shall be given an opportunity to improve its Plan by at least a tick size, as stated in the 'Invitation for Resolution Plans'. Thereafter, the other submitter of the Resolution Plan, shall be given the same opportunity.</p> <p>The said process shall continue between the two submitters till either of them fails to exercise the option within the time specified in the 'Invitation for Resolution Plans'. The entire process has to be completed within 48 hours and the Resolution Plan which ultimately has a higher score, shall be considered for approval.</p>		<p>7. <b>Presenting the Approved Resolution Plan for approval before NCLT:</b> In case the Base Resolution Plan is approved in the first go, the RP may move an application under Section 54K(4) before NCLT. In another case, if PRAs are invited and a Resolution Plan is approved after the entire process of competition / swiss challenge, the RP may move an application under Section 54K(12) of the Code. As already mentioned, the said application has to be made within 90 days of PICD. The said Application has to be filed along with a Compliance Certificate in Form P12.</p>	<p>S. 54K(15)</p>
<p>6.</p>	<p><b>Approval of the Selected Resolution Plan by the CoC:</b> The selected Resolution Plan may be approved by the CoC by a vote of not less than 66 percent, which may later be presented before NCLT for approval. If the selected Resolution Plan is not approved by the CoC, the RP may move an application in Form P13 before NCLT for termination of PIRP. If such Resolution Plan provides for impairment of any claims owed by CD, the CoC may require the Promoters to dilute their shareholding / voting / controlling rights in the CD.</p>	<p>S. 54K(12) and S. 54K(13)</p> <p>Proviso to S. 54K(12) read with R. 49 S. 54K(14)</p>	<p>8. <b>Approval of Resolution Plan by NCLT:</b> If NCLT is satisfied that the Resolution Plan presented before it is compliant with Section 30(2) of the Code and provisions for its effective implementation, it shall approve the Resolution Plan within 30 days of receipt of such plan. The said resolution plan shall be binding on all the stakeholders of the CD. If the Resolution Plan does not satisfy the requirements above, NCLT shall reject the Resolution Plan within 30 days of receipt thereof.</p>	<p>S. 54L(1) and S. 54L(2)</p> <p>S. 54L(3) and S. 54N</p>

## Closure of PIRP

Either of the following events can mark the closure of the PIRP:

- i. Approval of Resolution Plan under Section 54L of the Code as explained in the tabulation above.
- ii. Termination of PIRP: As per Section 54N of the Code, NCLT shall terminate PIRP within 30 days of receipt of the Application filed by the RP, in the following circumstances:
  - a. If at any time after the PICD but before the approval of the Resolution Plan, the CoC passes a resolution to terminate the PIRP by a vote of not less than 66 percent [ Section 54N(2)];
  - b. If no Resolution Plan is approved by CoC within 90 days from PICD [Section 54D(3)]; or
  - c. If the Resolution Plan selected for approval after the swiss challenge is not approved by the CoC. [Proviso to Section 54K(12)].
- iii. CIRP of the CD: In terms of Section 54-O, the CoC may pass a resolution by a vote of not less than 66 percent, for initiation of CIRP of the CD, if the CD is eligible for the same under Chapter II of the Code. In such a case, the NCLT shall terminate PIRP and initiate CIRP.
- iv. Liquidation of the CD: NCLT shall pass an order for liquidation of the CD under Section 33 of the Code in the following two scenarios:
  - a. If NCLT had earlier passed an order under Section 54J(2) thereby vesting the management of affairs of the CD into the hands of the RP on account of fraudulent conduct or gross mismanagement on the part of the CD, and the Resolution Plan approved by the CoC does not result in the change in the management or control of the CD to a person who was not a Promoter or in the management or control of the CD. [Section 54J(2) read with 54L(4)]
  - b. If NCLT had earlier passed an order under Section 54J(2) as stated in (a) above, and PIRP is required to be terminated on any

of the grounds mentioned in (ii) above.  
[Section 54N(4)]

## III. CONCLUSION

The framework of PIRP, as provided by way of the Ordinance, provides a hybrid approach by offering a perfect blend of an element of informality with the sanctity and advantages of a formal process, and is limited to the resolution of CDs classified as MSMEs, as per the MSME Development Act, 2006.

From a bare perusal of the newly introduced provisions, it is indubitable that PIRP is a framework which retains the rigors and discipline of the Code and offers the current promoters and management of the CD with a second chance to resolve the CD, while continuing to retain control over its affairs. PIRP is woven with adequate checks and balances to prevent the abuse of the process by conferring supervisory and facilitative duties on the RP and reaffirming the supremacy of the CoC for all the significant decisions.

Although the aim of introduction of pre-packs is to provide a quicker, smoother and a cost-effective resolution of the CD, given the capacity and infrastructure of NCLT at present, it remains to be seen whether the same turns out to be a success or not.

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