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# A Continued Necessity of PIRP Under the IBC 2016 Post Covid

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DIVYANSH CHAUDHARY<sup>1</sup>

## ABSTRACT

*The introduction of the Pre-Packaged Insolvency Resolution Process (PIRP) under the Insolvency and Bankruptcy Code (IBC) 2016 marked a pivotal development in addressing the delays and challenges faced by distressed companies, particularly Micro, Small, and Medium Enterprises (MSMEs), during the COVID-19 pandemic. Enacted through the 2021 amendment, PIRP was designed as an expedited and streamlined alternative to the Corporate Insolvency Resolution Process (CIRP). It involves pre-negotiation of a resolution plan between creditors and debtors, which is subsequently submitted for formal approval. This mechanism aims to balance creditor interests while mitigating adverse economic impacts on MSMEs.*

*The PIRP offers several advantages, including a shorter resolution timeline (120 days), reduced litigation, and enhanced debtor-creditor collaboration. However, its adoption has been limited, largely due to hesitancy among financial creditors and lack of awareness about its potential benefits. Structural challenges such as the absence of a framework for group insolvency and a secondary market for stressed assets further impede its success.*

*Despite these challenges, PIRP aligns India's insolvency framework with global practices in jurisdictions like the UK and USA, promoting confidence among international creditors. To ensure its effectiveness post-COVID, the government must introduce complementary measures, such as legal reforms to empower adjudicating authorities and enhance procedural efficiency.*

*While PIRP remains underutilized, its potential to transform insolvency resolution for MSMEs is significant. Its continued necessity hinges on addressing current impediments, fostering creditor confidence, and integrating a robust framework for group insolvency and secondary asset markets. By overcoming these challenges, PIRP could evolve into a cornerstone of India's insolvency landscape, fostering quicker resolutions and minimizing economic disruptions.*

**Keywords:** *Pre-Packaged Insolvency Resolution Process (PIRP), Micro, Small, and Medium Enterprises (MSMEs), Corporate Insolvency Resolution Process (CIRP).*

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<sup>1</sup> Author is an Advocate in India.

## **I. INTRODUCTION**

The Insolvency and Bankruptcy Board of India (“IBBI”) introduced the rules on pre-packaged insolvency resolution process (“PIRP”) in 2021, as a solution to combat the delay in resolution obtainment on various issues faced by companies during COVID. The pre-packaged insolvency resolution process was introduced through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 primarily to provide a resolution process for Micro Small and Medium Industries (“MSME”).<sup>2</sup> The objective being to expedite any resolution process for distressed companies for their revival during the COVID period. The process involves facilitating a negotiation between debtors and creditors and agreeing on a resolution plan before initiating the formal insolvency process.<sup>3</sup> While the process was introduced as a quick and effective solution for resolution of disputes during COVID, it took a while for it to be implemented and it continues to remain in force. While it is indeed considered a more streamlined process of the traditional Corporate Insolvency Resolution Process (CIRP), it still requires to be seen as to whether this ought to be a permanent solution.<sup>4</sup>

## **II. APPLICATION AND APPROVAL FOR A PIRP**

### **(a) Qualifying for the PIRP**

Section 4 of the Amendment states that the minimum threshold for a company to initiate a PIRP. is to have a debt that does not exceed the amount of Rs. 1,00,00,000/. Additionally. To apply for a PIRP, the creditors must satisfy the requirements under the IBC 2016, section 54A. The PIRP process does not include any previous application under CIRP or admission of liquidation against the creditors.<sup>5</sup>

It must be ensured that the financial creditors are not related to the corporate debtors not having less than 66% of the corporate debtor’s financial debt. They must have also accepted the proposal of the Insolvency professional that has been appointed by the Resolution Professional for PIRP. Along with this, a specific declaration must be obtained from the directors or the partners of the corporate debtors wherein they declare their intention to start the PIRP. Keeping this in mind, the resolution professional has to also file a report to ascertain the fulfilment of the

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<sup>2</sup> PrePackaged Insolvency Resolution Process (2021) IBBI. Available at: <https://www.ibbi.gov.in/uploads/whatsnew/a650764a464bc60fe330bce464d5607d.pdf> (Accessed: 10 December 2024).

<sup>3</sup> Id

<sup>4</sup> Taxman Publications has a dedicated in-house Research & Editorial Team. This team consists of a team of Chartered Accountants (2022) Pre-packaged insolvency resolution process (PIRP), Taxmann Blog. Available at: <https://www.taxmann.com/post/blog/pre-packaged-insolvency-resolution-process-ppirp/> (Accessed: 10 December 2024).

<sup>5</sup> PrePackaged Insolvency Resolution Process (2021) IBBI. Available at: <https://www.ibbi.gov.in/uploads/whatsnew/a650764a464bc60fe330bce464d5607d.pdf> (Accessed: 10 December 2024).

obligations under Section 54A of the Code by the corporate debtor.<sup>6</sup>

The corporate debtor must also keep the interim finance amount such as the costs incurred during the PIRP process and the fees that is payable to the resolution professional ready.<sup>7</sup>

### **(b) Disposing previous applications or simultaneously applications**

Section 11A introduced through the amendment into the Code, states that if an application to invoke PIRP is made under section 54C and is pending against a corporate debtor, then the same should be considered prior to the admission or the rejection of a CIRP application under the Code. Furthermore, if a PIRP is applied for within 14 days of the application pending under the Code (Section 7,9 and 10) then the application for the PIRP has to be admitted or disposed prior to the pending applications. If at all the application for invoking PIRP is filed after 14 days of filing the CIRP under the code, then the CIRP application has to be disposed first. However, the provisions would not be applicable to CIRP applications that are filed and are pending on the date that the amendment commenced (April 4, 2021).<sup>8</sup> Furthermore, under section 54O of the Code, the Committee of Creditors who must have not less than 66% of the total vote can at any time after the PIRP is initiated and prior to the approval of the resolution plan choose to opt for a CIRP to be initiated if the corporate debtor is qualified. It is imperative to note that the Resolution professional must inform the adjudicating authority in advance of the Committee of Creditors' decision. It subsequently becomes incumbent on the adjudicating authority to pass the order for the same within 30 days of being intimated by the same that the PIRP is being terminated and the CIRP is being initiated along with a declaration of a pre-packaged insolvency resolution process costs which has to be paid along with the CIRP costs. Orders passed by the adjudicating authority will be of the same nature as any order passed under section 7 of the IBC.<sup>9</sup>

### **(c) Initiating a PIRP process**

Corporate debtors can file an application to initiate a PIRP in the prescribed format only after having satisfied section 54A of IBC.<sup>10</sup> If section 54A of IBC is satisfied, then the adjudicating

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<sup>6</sup> Sinha, A. (2023) The prepackaged insolvency resolution process: A pathway to early revival , ETLegalWorld.com. Available at: <https://legal.economictimes.indiatimes.com/news/opinions/the-prepackaged-insolvency-resolution-process-a-pathway-to-early-revival/102619304>. (Accessed: 10 December 2024).

<sup>7</sup> Id

<sup>8</sup> Sachdeva, H. (2022) Pre-packaged insolvency resolution process – an overview of the mechanism, azb. Available at: <https://www.azbpartners.com/bank/pre-packaged-insolvency-resolution-process-an-overview-of-the-mechanism/> (Accessed: 10 December 2024).

<sup>9</sup> PrePackaged Insolvency Resolution Process (2021) IBBI. Available at: <https://www.ibbi.gov.in/uploads/whatsnew/a650764a464bc60fe330bce464d5607d.pdf> (Accessed: 10 December 2024).

<sup>10</sup> Satija, A. and Mukherjee, D. (2021) Pre-packaged insolvency resolution under the insolvency and bankruptcy

authority can either accept or reject the application made within 14 days and the PIRP will then commence from the date the adjudicating authority has accepted the application.<sup>11</sup>

On the date that the PIRP commences, the adjudicating authority can along with an order of admission under section 54C take the following actions:

“(a) declare a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of Section 14, which shall apply mutatis mutandis to the proceedings under this Chapter; (b) appoint a Resolution Professional as named in the application.”

The PIRP has to be completed within 120 days and the resolution professional has to submit the plan of resolution that has been approved by the committee of creditors to the adjudicating authority within 90 days from the PIRP commencing. If the required time period lapses, then the Resolution professional will have to file an application before the adjudicating authority to terminate the PIRP. Once the application has been filed, the adjudicating authority will then pass an order to terminate the PIRP or increase the set time period to complete the PIRP.<sup>12</sup>

#### **(d) Approving the process**

Once the base resolution process has been submitted to the financial creditors prior to the PIRP being finalised, it has to be submitted to the resolution professional by the corporate creditors and must be considered the base resolution plan within two days of the PIRP commencing. The corporate debtors are then given an opportunity by the committee of creditors to revise the base resolution plan that has been submitted to them.<sup>13</sup> It is imperative to note that the base resolution plan has to comply with the requirements provided under section 30 of the IBC. Once the plan is approved, it will be submitted to the Adjudicating authority, if the plan is rejected, then the Resolution professional will file an application to terminate the PIRP. The approval of the base resolution plan will require a majority vote of not less than at least 66% of the committee of creditors. Post this, if the adjudicating authority approves the resolution proposal which was

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code (IBC): An overview, Vidhi Centre for Legal Policy. Available at: <https://vidhilegalpolicy.in/blog/pre-packaged-insolvency-resolution-under-the-insolvency-and-bankruptcy-code-ibc-an-overview/> (Accessed: 10 December 2024).

<sup>11</sup> Id

<sup>12</sup> Bagga, A. (2021) Pre-packaged insolvency resolution procedure - insolvency/bankruptcy - India, Pre-Packaged Insolvency Resolution Procedure - Insolvency/Bankruptcy - India. Available at: <https://www.mondaq.com/india/insolvencybankruptcy/1064946/pre-packaged-insolvency-resolution-procedure#:~:text=On%20the%20pre%2Dpackaged%20insolvency,to%20the%20proceedings%20under%20this> (Accessed: 10 December 2024).

<sup>13</sup> Tidke, P. (2021) Introduction of pre-packaged insolvency resolution process under the insolvency and bankruptcy code, 2016 - insolvency/bankruptcy - india, Introduction Of Pre-Packaged Insolvency Resolution Process Under The Insolvency And Bankruptcy Code, 2016 - Insolvency/Bankruptcy - India. Available at: <https://www.mondaq.com/india/insolvencybankruptcy/1099424/introduction-of-pre-packaged-insolvency-resolution-process-under-the-insolvency-and-bankruptcy-code-2016> (Accessed: 10 December 2024).

previously approved by the committee of creditors, and only if it satisfies the requirements under Section 30 of the IBC that the plan will be considered satisfactory. Under section 30(3) of the IBC Code, the resolution plan must be approved within 30 days of receiving it. Once an order of approval is passed, the order will have the same effect as any other order passed beneath section 31(1), (3) and (4) of the IBC Code.<sup>14</sup>

However, if the adjudicating authority rejects the resolution plan if it believes that the resolution plan does not satisfy the requirements under section 30(2) of the IBC Code, it can also pass an order stating the same as required under section 54N.<sup>15</sup>

Regardless of the nature of the decision made by the adjudicating authority, all such decisions can be appealed against under section 61(3) of the IBC Code.<sup>16</sup>

### **III. CONTINUED NECESSITY OF THE PIRP POST COVID**

Ever since the amendment introducing PRIP was proposed, the response to the same has been quite muted. One of the primary reasons behind this muted response is because most financial creditors were hesitant in using this process to approve the proposals and thus, the real nature of the PRIP was far from experimented with. It was however acknowledged that the PRIP will indeed incentivise the promoters to constructively engage with the creditors and even prior to any occurrence of any default event, lead to quick and smooth resolutions which would in turn avoid any unnecessary adversarial litigations.<sup>17</sup>

Even though the objective behind the implementation of the PRIP was purely intended to be a win-win situation for the creditors and the debtors alike, it was noted that it is only after this intent is clearly conveyed to the creditors that there would be greater acceptance for the same amongst the larger corporate debtors. In the absence of express usage of this mechanism, it is difficult to build confidence. Barely three years have passed since the mechanism was implemented and therefore corporates need to start using this method more. While many argue

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<sup>14</sup> Bagga, A. (2021) Pre-packaged insolvency resolution procedure - insolvency/bankruptcy - India, Pre-Packaged Insolvency Resolution Procedure - Insolvency/Bankruptcy - India. Available at: <https://www.mondaq.com/india/insolvencybankruptcy/1064946/pre-packaged-insolvency-resolution-procedure-#:~:text=On%20the%20pre%2Dpackaged%20insolvency,to%20the%20proceedings%20under%20this> (Accessed: 10 December 2024).

<sup>15</sup> Tidke, P. (2021) Introduction of pre-packaged insolvency resolution process under the insolvency and bankruptcy code, 2016 - insolvency/bankruptcy - India, Introduction Of Pre-Packaged Insolvency Resolution Process Under The Insolvency And Bankruptcy Code, 2016 - Insolvency/Bankruptcy - India. Available at: <https://www.mondaq.com/india/insolvencybankruptcy/1099424/introduction-of-pre-packaged-insolvency-resolution-process-under-the-insolvency-and-bankruptcy-code-2016> (Accessed: 10 December 2024).

<sup>16</sup> Id

<sup>17</sup> Pre-packaged insolvency process can be potential game changer for resolving stressed assets: Shaktikanta Das (no date) The Economic Times. Available at: <https://economictimes.indiatimes.com/news/economy/policy/pre-packaged-insolvency-process-can-be-potential-game-changer-for-resolving-stressed-assets-shaktikanta-das/articleshow/106738391.cms?from=mdr> (Accessed: 10 December 2024).

that, it would benefit their interest if creditors and debtors consider using the PRIP instead of the CRIP, since it is quicker and more effective, the familiarity associated with CRIP takes a hold. Which is why, even though PRIP has already been rolled out for MSMEs and has been specifically targeted to reduce the time-consuming mechanisms under CRIP, not many have actually implemented the same.<sup>18</sup> There are several factors for the delays caused in the insolvency resolution process, one of which is the evolving jurisprudence of the IBC, the pre-established litigatory tactics by the debt holders who prefer the CRIP method, a lack of coordination amongst the various creditors and a lack of knowledge about the new mechanism. Therefore, even though the insolvency practises and mechanism have begun to become more stable through concerted measures, one of the more visible impediments is the absence of a clear framework for group insolvency.<sup>19</sup>

When looking at it from the context of the domestic framework, there is no special structure in place for group insolvency and it has only continued to evolve due to the interpretations of the courts and their guidance. Many groups have advocated for a structure on the same on multiple forums and its important to move ahead with the required legal changes to implement the same. Yet another impediment that has been flagged, is the lack of a vibrant market for stressed assets in the secondary market. The lack of a proper secondary market limits the possibilities of various prospective solutions for the applications for stressed assets under the IBC code. It also applies to the regulated entities when they seek to transfer their stressed assets beyond the process provided by the IBC.<sup>20</sup>

There are several benefits to the introduction of the PRIP that meets the eye. For instance, the introduction of the pre-packaged insolvency process has allowed the government of India to align itself with countries that also have similar mechanisms in place such as the United Kingdom, the United States of America, Canada and Singapore. Creditors from such countries can most definitely approach the PIRP process in India.<sup>21</sup>

Additionally, the introduction of a PIRP mechanism can definitely benefit the MSME sector a lot more than the CIRP mechanism for multiple reasons. For instance, the amendment introducing the PIRP mechanism contains provisions that shows that PIRP is preferred over

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<sup>18</sup> Shukla, P. (2024) Long delays in CIRP substantially erode asset value, says RBI chief, Banking & Finance News | The Financial Express. Available at: <https://www.financialexpress.com/business/banking-finance/learnings-from-ibc-suggest-need-for-some-course-correction-says-rbi-chief-3362179/> (Accessed: 10 December 2024).

<sup>19</sup> Id

<sup>20</sup> Pre-packaged insolvency process can be potential game changer for resolving stressed assets: Shaktikanta Das (no date) The Economic Times. Available at: <https://economictimes.indiatimes.com/news/economy/policy/pre-packaged-insolvency-process-can-be-potential-game-changer-for-resolving-stressed-assets-shaktikanta-das/articleshow/106738391.cms?from=mdr> (Accessed: 10 December 2024).

<sup>21</sup> Id

CIRP primarily because the objective of the PIRP is to balance the needs of the creditors while at the same time protecting the insolvent MSME from the economic ripple effect that is caused by COVID-19. Even though the amendments seek to provide adequate power to the board of directors to manage the corporate debtors, they also intend to strike a balance between section 67A and 77A of the IBC to prevent fraudulent activities in the PIRP by any officer that knows or is party to the corporate debtors.<sup>22</sup>

Even though the efficacy of the PIRPs remain to be seen, its success and necessity post COVID will primarily depend on whether or not the Government of India introduces necessary but complimentary measures to ensure that the Adjudicating Authorities are provided the right set of equipment in the form of legal measures and powers to effectively dispose applications made under the pre-packaged resolution process even in the face of several existing backlog of applications made under the CIRP mechanism, something which the current authorities are trying to resolve and remove as soon as possible.<sup>23</sup>

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<sup>22</sup> Id

<sup>23</sup> Id