

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

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Presented by
Sajeve Deora, CA
Director, Integrated Capital Services
Ltd., India
www.raas.co.in

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PRE-PACKS IN INDIA,

Pre-Packaged Insolvency Resolution Process - PPIRP

Outcome of learnings and experience of IBC over 4 years

MSME's require special treatment:

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

Section 7(1), MSME Development Act, 2006

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

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

- MSME support Large industry and quickly generate employment
- Loss of EV in CIRP could be very rapid
- COVID-19 has impacted business/operations, Increased financial

FOUNDATIONS OF PPIRP- *FOR MSME*

First Opportunity is available to sitting management, subject to qualification

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

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

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

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

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

PPIRP - CALLS FOR TIMELY ACTION

Encourages sitting management for early action

Protection from Wrongful Trading, Fraudulent Preferences

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

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

Delay in initiation

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

ELIGIBILITY, *First Steps*

Eligibility Criterion

Default of \geq Rs. 10 lacs

Eligible to submit RPlan under s. 29A

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

CD not undergoing CIRP

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

First steps

FC of 10% proposes name of IP

66% FC approve the proposal for IP

Management declares that:

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

Members of CD approve filing of application by special resolution

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

PRIOR TO FILING BEFORE AA

Preparing to File

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

INITIATION OF PPIRP

File Form 1 before AA with following documents

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

FORM 1 BEFORE AA

AA and Form 1

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

POST-INITIATION OF PPIRP

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

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

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

MANAGEMENT OF CD DURING PPIRP

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

RP IN PPIRP, s. 54F

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

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

RESTRUCTURING – RPLAN, rg. 44

Reach of Restructuring - RPlan

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

*BRP provides for impairment of any claims, CoC may require promoters to dilute voting
Reasons to be recorded in case no dilution is provided*

BRP may have participation of any other person as investor

CONTENTS OF RPLAN, rg. 45

RPlan must include

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

APPROVAL OF RPLAN

Approval of BRP, Evaluation of competitive RPlan

- If BRP does not impair claims owed to OCs, CoC may approve it for submission to AA
- If CoC does not approve BRP or BRP impairs claims of OCs:
 - RP invites prospective RA's to submit RPlans in competition to BRP
 - Publish invitation, fm. P11, within 21 days from commencement date, rg. 43.
- Fm. P11 includes:
 - Basis for evaluation, Basis for considering better RPlan with another
 - Tick size, Manner of improving RPlan
- RPlans received under fm. P11 should comply with IBC, Evaluated as per rg. 47.
- RPlan with highest score is selected

- *CoC approves BRP if no RPlan is received, or BRP is 'significantly better' than RPlan*
- *If CoC does not approve a significantly better RPlan, process terminates*

- If RPlan is not better than BRP, RP discloses scores to submitters
- RP invites improvements to Plans, rg. 48
- Process of improvement continues till submitters fail to improve option within specified time
- Plan with higher score on completion of improvement process

TERMINATION OF PPIRP, s. 54N

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

MODEL TIMELINES FOR PPIRP

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

WAY TO GO, SUSTAINABLE RESTRUCTURING

- **NCLT Approval**
 - CoC finalize Plan with 66% votes
 - Reasonableness of Asset Valuation vs. Debt
 - Low level of sacrifice

- **Availability of Expert - IP**
 - Persons can complex businesses, process and compliances
 - Prepacks provides opportunity to debtor and its creditors to formulate RPlan
 - Low involvement of IRP

- **Operational Creditors**
 - Settles uncertainty

- **Role of Creditors**
 - FCs to remain satisfied in process, if not - CIRP can be initiated
 - Ability to reject a Plan

- **Connected Party, PPIRP, Role of Promoters**
 - Debtor-in-Possession, near Control of Business
 - Applicability of s. 29A – An essential ingredient to Process

THANK YOU

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