

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS (PPIRP)

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Terminology

- RP –Resolution Professional
- FC-Financial Creditor (Lenders against time value of money)
- OC-Operational Creditors (Suppliers of Goods and Services)
- CD-Corporate Debtor
- Board-The Insolvency and Bankruptcy Board of India
- Code-IBC,2016

Abbreviation

- AA Adjudicating Authority
- CoC Committee of Creditors
- PIM Preliminary Information Memorandum
- AR Authorised Representative
- IFRP Invitation for resolution plan PPIRP Pre-packaged Insolvency Resolution Process
- BRP Base Resolution Plan IM Information Memorandum RP Resolution Professional
- BAP Best Alternate Plan
- IP Insolvency Professional
- UFC Unrelated Financial Creditor
- CD Corporate Debtor
- MSME Micro, Small and Medium Enterprise
- UOC Unrelated Operational Creditor

- Pros: • Preservation: Prepack can save the day for potentially hostile firms, which default. Early action would generally lead to saving value. News of insolvency or financial difficulty can result in a reduction in the value of a business. The risk of value diminution can be avoided by completing a pre-pack. • Less court interference: Where the debtor and the creditors have agreed to certain commercial arrangements, the role of courts to 'interfere' in such commercial arrangements is reduced to a great extent. • Binding nature/Cramdown: Unlike other kinds of out-of-court restructuring proceedings, a pre-pack operates within the fold of the statutory scheme, which makes the outcome legally binding on all stakeholders.

Eligibility for PPIRP A CD, which is an MSME under sub-section (1) of the section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, is eligible to apply for initiation of PPIRP, if it-

- (i) has committed a default of at least ₹10 lakh;
- (ii) is eligible to submit a resolution plan under section 29A of the Code;
- (iii) has not undergone a PPIRP during the three years preceding the initiation date;
- (iv) has not completed a CIRP during the three years preceding the initiation date;
- (v) is not undergoing a CIRP; and
- (vi) is not required to be liquidated by an order under section 33 of the Code.

Evidence of MSME

- Udyam Registration Certificate or proof of investment in plant and machinery or equipment and turnover as per Notification No. 2119(E) dated 26th June, 2020 of the Ministry of MSMEs.

Who Can Apply

- (i) Only a corporate applicant can file an application for initiation of PPIRP.
- (ii) The applicant shall file the application in Form 1, in electronic form, before the AA for initiating PPIRP.

Pre-initiation Phase

- The following activities need to be undertaken in pre-initiation stage:

1

For seeking approval of creditors under section 54A(2)(e) and (3), the applicant (corporate applicant filing an application for initiation of PPIRP) shall convene meetings of the unrelated financial creditors (UFCs),

2

- For convening a meeting of UFCs, the applicant shall serve the notice of the meeting to UFCs at least five days before the date of the meeting (s) unless a shorter time is agreed to by all of them. The notice of the meeting shall indicate the date, time, and venue of the meeting and specific agenda items for discussion.

3

- The applicant shall enclose a list of creditors and the amount due to each of them in Form P2, along with the notice convening the meeting seeking approval for appointment of an IP as RP

4

In the meeting of UFCs, creditors having at least 10% of the value of debt shall propose the name of an IP eligible under the Regulations, for appointment as RP

5

- The UFCs representing not less than 66% in value of debt due to such creditors shall approve the appointment as RP and the terms of appointment in Form P3

6

- The majority of director/partners of the CD shall make a declaration in Form P6 stating (a) that the CD shall file an application for initiation within a definite time not exceeding 90 days, (b) that the PPIRP is not being initiated to defraud any person, and (c) the name of the IP approved by creditors to be appointed as the RP.

7

- The members of the CD shall pass a special resolution, or at least three-fourth of the total number of partners of the CD shall pass a resolution, approving the filing of an application for initiating PPIRP as required in section 54A(2)(g).

8

The CD shall prepare a BRP in conformity with the requirements under section 54K.

(BRP –BASE RESOLUTION PLAN)

9 (Affidevit and other details)

Affidavit stating that the CD is eligible under section 29A of the Code to submit resolution plan in the PPIRP of the CD;

(m) A statement of affairs made up to a date not earlier than 14 days from the date of application;

(n) A statement giving the names and addresses of the members or partners of the CD, with details of their respective shareholdings;

(o) Proof that the application fee of ₹15,000 has been paid;

(p) Proof that a copy of the application has been served to the IBBI;

(q) Document that records the authority of the applicant to make the application, where the applicant is a member or partner of the CD

Filing with IBBI

- The applicant shall serve a copy of the application (for initiating PPIRP) to the IBBI before filing it with the AA.

Admission (within 14 days)

- Within 14 days of the receipt of the application, the AA shall admit the application, if the application is complete or reject the same, if incomplete. However, before rejecting the application, the AA shall provide a period of seven days to the applicant for rectifying the defects, if any, in the application

Commencement

- The PPIRP shall commence on the date of admission of the application
- The AA shall, on the PPIRP commencement date along with the order of admission, declare a moratorium of the purposes of sub-sections (1) and (3) of section 14 of the Code, appoint the IP named in the application as the RP, and cause a public announcement to be made by the RP.

Post-initiation Phase

- The process is required to be completed within a time frame of 120 days from the PPIRP commencement date.
- During the PPIRP, (a) the management of the affairs of the CD shall continue to vest in the Board of Directors / the partners of the CD; (b) the Board of Directors / the partners of the CD shall make every endeavour to protect and preserve the value of the property of the CD,

After Commencement

The CD shall, within two days of the PPIRP commencement date, submit to the RP, updated as on that date,

- (a) a list of claims, along with details of the respective creditors, their security interests and guarantees, in Form P10, and
- (b) a preliminary information memorandum (PIM) containing information relevant for formulating a resolution plan

Public announcement Formation of CoC and appointment of Valuers

The CD shall submit the BRP to the RP within two days of the PPIRP commencement date. It may revise the BRP if permitted by the CoC.

The RP shall make a public announcement, in Form P9, within two days of the commencement of the process in the manner specified in regulation 19.

Approval of Resolution Plan

- If BRP does not impair claims owed to operational creditors (OCs), the CoC may approve it for submission to the AA.

BRP (BRP –BASE RESOLUTION PLAN) VS BAP (Best Alternative Plan)

- If the CoC does not approve the BRP or the BRP impairs the claims of OCs, the RP shall invite prospective resolution applicants to submit resolution plans to compete with the BRP

BRP VS BAP

- The invitation for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the RP and the resolution applicant, along with corresponding timelines

BRP VS BAP

- The resolution plans received in response to invitation and complying with the requirements of the Code and the Regulations shall be evaluated on the basis for evaluation. The resolution plan which gets the highest score shall be selected as best alternate plan (BAP) for competition with the BRP.

BRP VS BAP

- The CoC may consider BRP for approval if no resolution plan is received.
- The CoC may consider the BAP for approval if it is significantly better than the BRP. If it does not approve a significantly better BAP, the process terminates

Closure of PPIRP

On approval of either the BRP or the BAP by the AA.

(ii) On expiry of 90 days if no resolution plan is submitted to the AA for approval.

(iii) On rejection of resolution plan by the AA.

(iv) On approval by the AA of application filed by the RP for termination of PPIRP, where the CoC approves termination with 66% of voting share.

(v) On conversion into CIRP based on an application filed by the RP, where the CoC approves so with 66% of voting share, and the CD is eligible for CIRP.

The RP of the PPIRP is appointed as the IRP of the CIRP.

(vi) On an order of termination in case either no resolution plan is approved by CoC or the resolution plan approved by the CoC does not result in change in management, where the AA has vested the management of the CD with the RP under section 54J.