

# ANALYSIS OF PPIRP PROCESS AND ITS BENEFITS AS COMPARED TO CIRP

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## INTRODUCTION

**Pre- Packaged Insolvency Resolution Process (PPIRP)** came into existence in **April 2021** by way of an amendment in the **Insolvency and Bankruptcy Code, 2016**<sup>[1]</sup>. The provisions pertaining to the PPIRP have been incorporated in **chapter IIIA** of Insolvency and Bankruptcy Code, 2016. This is said to be one of the most important amendments in the history of **Insolvency and Bankruptcy Code**. The PPIRP includes the **MSMEs** within its ambit since the MSMEs have <sup>[i]</sup>been severely affected by the pandemic. According to a survey conducted by **National Small industries corporation Ltd** , approximately **9%** of the MSMEs had to shut down due to COVID- 19. However, there are a set of conditions as to who fall within the ambit of MSMEs under the **Micro, Small and Medium Enterprises Development Act, 2006**. The sole purpose for bringing the MSMEs within the PPIRP mechanism is to provide a quick and cost effective mechanism for the revival of these enterprises. Pre- Packs basically enables the process of resolution of a debt distressed company by way of an agreement between creditors and the existing owners or outside investors. As per this mechanism **the financial creditors** can accept or reject the **base resolution plan (BRP)** submitted by a corporate applicant . If the financial creditors (FC) accept the base resolution plan submitted by the corporate applicant it is sent **for the approval of the NCLT** .The PPIRP process has become increasingly popular in Europe and is already in function in UK.

## PROCESS OF INITIATION OF PPIRP

PPIRP incorporates a **hybrid insolvency resolution** process .The pre- initiation phase of the PPIRP is informal while the post-initiation phase is basically formal. Due to informal process in the pre- initiation stage it is easier for the corporate debtors (CD) and its creditors to work on the best way to resolve stress and the post- initiation phase helps in value maximization. The process for the initiation of PPIRP are as follows:<sup>[ii]</sup>

- (a) The PPIRP process commences only after the approval of **66%** of the financial creditors and the name of the resolution professional (RP) is confirmed.
  - (b) A **Special Resolution** is adopted by a corporate debtor with a **majority of 75%** of members voting in favour of the resolution.
  - (c)Preparation of **Base Resolution plan** by corporate debtor .
  - (d) Mutual agreement between financial creditors and corporate debtors with regard to the name of resolution professional (RP).
  - (e) Preparation of draft information memorandum.
- Submission of PPIRP application by corporate applicant to the **adjudicating authority (AA) or NCLT** . The adjudicating authority can either accept or reject the resolution plan within 14

days of receipt of such application. In case of acceptance of the resolution plan by the adjudicating authority (AA) a moratorium is declared under **section 143 (1)** of the code, a resolution professional is appointed and public statement is made for the commencement of PPIRP.

- The formation of the **committee of creditors (COC)** should take place within **7 days** of the initiation of the code .
- After the acceptance of PPIRP by **the adjudicating authority (AA)** resolution plan to be submitted within **90 days** and the entire PPIRP process should be completed within a span of 120 days.
- The information memorandum to be finalized by the resolution professional and sent within 14 days to the **committee of creditors (COC)**.
- Submission of list of claims by corporate debtor to the resolution professional (RP).
- Management of the affairs of the **corporate debtor** to be vested with the Board of Directors or partners .
- The corporate debtor must submit the **base resolution plan (BRP)** to the financial creditors before commencement of the PPIRP process and to the committee of creditors within 2 days of commencement of the process.
- The committee of creditors can accept the **base resolution plan** if it does not violate the interests or claims of the operational creditors. On the other hand , if the claims of the operational creditors is violated the resolution plan will not be submitted by the COC , and the resolution professional must submit other plans.
- A Base Resolution Plan must be submitted by committee of creditors with **66% of voting** shares to the adjudicating authority (AA). The adjudicating authority can either accept or reject the plan within a span of 30 days.
- In the event of termination of the PPIRP process liquidation can be ordered by the adjudicating authority.

Through incorporation of both formal as well as informal insolvency process, PPIRP ensures flexibility and tries to reduce the rigidity of the traditional CIRP process as the CIRP did not provide for informal resolution process.

### **ADVANTAGES OF THE PPIRP MECHANISM**

The main objective behind the incorporation of PPIRP process is to protect the interests of MSMEs as well as provide for better insolvency resolution process in a time bound manner. The advantages of the PPIRP process are as follows:

- ***PPIRP provides for a cost effective mechanism***

The PPIRP plays an important role in managing the costs as it provides for a system which enables **the corporate debtor** to continue with the management of the company / debtor and no cost is to be paid by **the resolution professional** for the same. It leads to maximization of outcomes for all stakeholders that causes less disruption in the continuation of their business. Also PPIRP envisages **“out of court”** restructuring process that reduces significant litigation costs incurred during the process .

- **Timely Resolution**

The PPIRP envisages a process that provides for faster completion of the resolution process as compared to the CIRP. The maximum time limit for the completion of PPIRP is **120 days ( 90 days for the approval of the committee of creditors and 30 days for adjudication by adjudicating body )**. However, in the case of CIRP , the maximum time limit for the completion of process is **180 days. It can also extend beyond 180 days by taking permission of the NCLT.** Thus, the PPIRP provides for timely completion of the resolution process and prevents degradation of the stressed assets. The timely resolution provided by the PPIRP process was discussed in the case of **Krish Realtech Pvt. Ltd.**

- **Introduction of the Debtor in possession model**

The **debtor in possession model** is basically introduced under **section 54 H(a)** of the insolvency and Bankruptcy Code. This model provides that the management of the debtor/company would be vested in their hands including the revival of the debtor .The advantage of this model or feature is that since the management is totally aware of the activities of the company / debtor they can make better decision for the betterment of the debtor.

- **Incorporation of Hybrid Process**

The PPIRP mechanism enables the creditors as well as corporate debtors to agree to an informal plan and submit it to the **adjudicating authority (AA)** for approval . Due to the mutual agreement between **financial creditors (FC) and corporate debtors (CD)** [iii] there are less chances of opposition to the resolution plan and by virtue of being a hybrid process that is by incorporating both the features of formal as well as informal resolution process it reduces the stigma that is attached with the formal process.

- **Confidential process**

There is stark similarity between a PPIRP Process as well as **alternative dispute resolution mechanism** as in both the process it is ensured that confidentiality is maintained throughout. In the PPIRP process the debtors are not allowed to disclose any information in the newspaper or any kind of website. Through this process, confidentiality is maintained and also the reputation and goodwill of the parties are not affected.

## **BENEFITS OR ADVANTAGES OF PPIRP AS COMPARED TO CIRP**

One of the most important reasons for introducing the PPIRP Mechanism was to eliminate drawbacks that were present in the existing CIRP mechanism. The benefits or advantages of the PPIRP process as compared to the existing CIRP mechanism are as follows :

### **PPIRP involves preliminary work before filing the application before adjudicating authority/ NCLT**

In CIRP no preliminary steps are involved before filing of an application before the **adjudicating authority (AA)** . However, in case of PPIRP, proper steps are involved before filing of an application before the adjudicating authority (AA). The PPIRP process commences only after 66% of the financial creditors approve the PPIRP process and the name of the resolution professional (RP) is confirmed , Special resolution passed by the corporate debtors on the approval of 75% of members , preparation of Base Resolution Plan by the Corporate debtor and approval of the name of Resolution Professional by financial creditors and corporate debtors. Thus, preliminary work or

initial work is already done before filing of the application before the **adjudicating authority (AA)** that makes the process less cumbersome and also a formal understanding is reached between the corporate debtors and financial creditors.

### **Better protection of the interests of Operational Creditor**

A model of “ **swiss challenge**” [iv] has been incorporated in the PPIRP process. Swiss challenge refers to a bidding process in which an offer is made by the applicants in order to secure a contract. The process starts with submitting a **base resolution plan (BRP)** by the promoters. If the BRP is not in consonance with the interests of the **operational creditors (OC)**, then it has to necessarily open for a swiss challenge. On the other hand, if in the BRP, the interests of operational creditors are met that is the operational creditors are paid in full then it is on the discretion of committee of creditors(COC) to open it for swiss challenge. Hence, through the PPIRP mechanism it is ensured that the interests of the operational creditors is met as compared to the traditional CIRP process.

#### **• Protection of the interests of MSMEs**

The PPIRP process tries to safeguard the interests of the MSMEs by including the MSMEs in the process so that they can revive their operations. However, in the case of CIRP, the interests of the MSMEs was neglected as the MSMEs came within the ambit of operational creditors and the liquidation value that was offered to them was negligent. Also, before the incorporation of the PPIRP process the MSMEs were at a disadvantageous position because third parties were usually not interested in becoming the resolution applicant and taking over the debtor, and it were mostly the promoters of the debtor itself who were interested in becoming the resolution applicant, and the provisions of **section 29 A(c)** barred promoters and directors of the MSMEs from submitting resolution plans. Consequently, the debtor would go into liquidation. On the other hand, the PPIRP under section 240 A exempts promoters/ directors of MSMEs from the limitation imposed under section 29A(c) by vesting the agency with the promoters OF MSMEs.

**GCCL Infrastructure and Projects Limited** [v] was the first corporate debtor against which the PPIRP was initiated under **section 54 A of Insolvency and Bankruptcy code, 2016**. GCCL Infrastructure and Projects Ltd. is a MSME and was eligible to file the application under section 54 A(1) of the IBC. The case was incorporated in the Ahmedabad bench of the NCLT. The promoters / managers of the company were exempted from the limitations imposed under section 29 A(c). Thus, the PPIRP mechanism provides better protection to the interests of MSMEs.

### **CONCLUSION**

**Pre- Packaged Insolvency Resolution Process (PPIRP)** definitely tries to eliminate the difficulties that were present in the **CIRP (Corporate Insolvency Resolution Process)** by providing for a time bound resolution process. It also tries to reduce the intricacies that were present in the CIRP process by incorporating both informal as well as formal insolvency process. The main objective behind the incorporation of PPIRP is to restore the MSMEs to its normal position as due to the outbreak of COVID-19, a lot of MSMEs were on a brink of insolvency. The safeguards and measures adopted in the PPIRP mechanism have helped the MSMEs to a great extent in order to revive their operations as a **going concern**. Hence, it can be said that the PPIRP process provides for a better insolvency resolution process as compared to the traditional CIRP process.

### **Reference**

[i] [http. www.mca.gov.in](http://www.mca.gov.in)

[ii] <http://www.ibbi.gov.in>

[iii] <https://www.taxmann.com>

[iv] <https://cbcl.nliu.ac.in>

[v] <https://insolvencytracker.in>

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