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## Pre-Pack Sales: The Next Reform in Indian Insolvency Regime

### Introduction

Considering the rampant outbreak of pandemic COVID-19 and its fatal impact on the businesses across the world, business survival and revival of those already under distress is a matter of humongous solicitude. The challenges and threats that the current disaster in the form of ubiquitous virus has thrown on the world, critical thinking and out of box ideas to deal with the same is need of an hour. With contemporary restrictions and complexity in applying the current framework available for business restructuring, governments across the world are thinking of heterogenous measures to keep the track of market survival and revival ongoing even though at a little pace.

Among all such talks, there is huge buzz in the market about the concept of "Pre-Packs" being introduced in India on same lines it has been in practice in United kingdom and United States of America. A **"Pre- Packaged Insolvency Mechanism"** is a kind of bankruptcy procedure and a credible bilateral market tool pursuant to which restructuring plan of a corporate is planned well in advance before declaring its insolvency. It is a measure to promote corporate rescue. It is a mode of corporate restructuring under which a resolution plan is negotiated and agreed between the Financial Creditors and Board of Directors/ Management of the company under distress in advance, considering the viability and feasibility of a company in order to make good the distress of the company rather than following up the route of formal insolvency/bankruptcy process of the company.

The term **"Pre-Pack Sale"** has been defined by the **Association of Business Recovery Professionals** (a trade association for the United Kingdom's insolvency, restructuring, advisory, and turnaround professionals) as "an arrangement under which the sale of all or part of a company's business or assets is negotiated with a purchaser prior to the appointment of an administrator and the administrator effects the sale immediately on or shortly after his appointment".

### Pre-Packs in Indian Framework

Alternatively, in Indian context Pre-Pack Sale would be one of the subset of pre insolvency resolution instruments thereby providing financial creditors and corporate debtor a superior platform to work in advance on the resolution strategy of the corporate debtor with the advise of an Insolvency Professional, before the filing of an insolvency petition under the provisions of Insolvency and Bankruptcy Code,2016 in contrary to present scenario where the recovery plan of the distressed corporate debtor is worked out at much later stage thereby involving timely and costly process coupled with erosion in the value of the assets of the corporate debtor, multiple litigations, court approvals, loss of faith of stakeholders and limited number of prospective investors to bid for the resolution of the corporate debtor.

In India as per the current framework, the idea of Pre-Pack Sale if introduced will be one of the greatest reform in the Indian insolvency and bankruptcy regime. Pre-Pack Sale if permitted in India would open up the avenues for the efficient trading of the distressed assets of Indian economy in both domestic and international market, increased inflow of foreign capital in the market, improved corporate governance, restructuring of non performing loans and overall strengthening of Indian economy.

Pre-Pack Sale can at same time result in change in the ownership of the business of the company along with continuity in the trade of the company and preservation of the employment of the company without compromising the value of the business, relationship with stakeholders and goodwill of the company that has been built over the years (which is not the case when formal insolvency process has been initiated). However in few situations and on the basis of past experience of its applicability in different countries , Pre-Pack Sale would not be an appropriate resolution structure in situations where interest of all the stakeholders is not considered or where sale of business of the company is to the connected party or where nepotism towards secured financial creditors is more. In such cases, Insolvency Practitioner associated with the Pre Pack Sale process should act very diligently in ensuring the fair valuation, in arriving at the best price for the sale of the assets of the company and ensuring safeguards in place to cater maximum stakeholders interest. On the basis of global trends and practices the concept of Pre-Pack Sale can yield THE following benefits to the Indian market:

- Minimum erosion to the company's brand name.
- Out of court and less time consuming course.
- Cost effective process.
- Continued operations of the company.
- Less burden on judicial infrastructure.
- Job preservation of the existing staff.
- Least impact on the company's relationship with key stakeholders, employees and customers.

To cull out the maximum advantage of this concept , following present issues need to be tackle tactfully and with utmost care by devising a robust working mechanism to implement the Pre-Pack sales effectively :

- Absenteeism of a well-defined law and process to govern it.
- Alignment and safeguarding of the interest of all class of creditors.
- Ensuring transparency during the sale of the assets.
- Striking a balance between the interest of the company and connected parties.

- Working upon the viability and marketing of the business of the company to attract investors and capital advisors.

## Challenges and Aftermath

As every new reform bring in itself plethora of challenges and defiance, so does the concept of Pre-Pack will. Considering the present bandwidth of Indian infrastructure to deal with recovery and revival of the businesses, lack of an effective pre-insolvency bilateral mechanism in place between creditors and debtors in India can be an obstacle in achieving the end result of Pre-Pack Sales. Therefore, introduction of precise timelines and process to be followed to implement Pre-Packs is quintessential to its success.

To get amicable with the culture of doing homework well in advance to deal emphatically with the issues of insolvency and bankruptcy more sagaciously in India, Pre-Packs will also test the skills, knowledge and expertise of the insolvency practitioners to work more diligently at rudimentary stage of distress itself. Steady capital inflow and easy credit availability will also be one of area that is highly impacted because of pandemic and need to be worked upon efficaciously to make Pre-Pack Sale a hit concept.

Applicability of Section 29A of Insolvency and Bankruptcy Code, 2016 on Pre-pack Sale will go a long way in defining its success rate in India. Technological advancement to support this process can prove to be a game changer to the pace at which business are restructured and recovered in India. Apart from above, support and cooperation from different cadre of stakeholders is an ultimate thing required to welcome this reform in a more harmonious way. Learning from international practices and process being deployed to the concept of Pre-Pack sale is also imperative to understand the concept in a coherent manner.

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