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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS
UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016: A
DOCTRINAL ANALYSIS OF ITS GOVERNANCE
FRAMEWORK, CHALLENGES AND REFORM PROSPECTS.

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INTRODUCTION

The enactment of the Insolvency and Bankruptcy Code, 2016 marked a transformative shift in India's insolvency jurisprudence by consolidating the fragmented framework governing corporate distress and introducing a creditor-driven, time-bound resolution mechanism.¹ Prior to the Code, insolvency proceedings in India were governed by multiple legislations such as the Sick Industrial Companies Act, the Companies Act provisions relating to winding up, and recovery mechanisms under the SARFAESI Act and the Recovery of Debts and Bankruptcy Act.² These regimes were widely criticised for procedural delays, value erosion of distressed assets, and the absence of an efficient restructuring mechanism.³ The IBC sought to address these structural inefficiencies by establishing a unified framework aimed at maximising asset value, promoting entrepreneurship, ensuring credit availability, and balancing the interests of all stakeholders.⁴

Central to the architecture of the IBC was the *Corporate Insolvency Resolution Process (CIRP)* contained in Part II of the Code, which introduced a creditor-in-control model where the management of the corporate debtor shifts to an insolvency professional upon the commencement

¹ Insolvency and Bankruptcy Code, No. 31 of 2016.

² Sick Industrial Companies (Special Provisions) Act, No. 1 of 1986 (India); Companies Act, No. 18 of 2013, §§ 270–365 (India); Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002 (India); Recovery of Debts and Bankruptcy Act, No. 51 of 1993 (India).

³ Bankruptcy Law Reforms Committee, Ministry of Finance, The Report of the Bankruptcy Law Reforms Committee: Volume I – Rationale and Design 15–26 (2015).

⁴ Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 S.C.C. 17, ¶ 27 (India).

of insolvency proceeding.⁵ While CIRP represented a significant improvement over previous insolvency mechanisms, its implementation revealed several structural limitations. In practice, the resolution process often became protracted due to litigation, valuation disputes, and delays before the adjudicating authority, namely the National Company Law Tribunal.⁶ These delays frequently resulted in deterioration of enterprise value and increased uncertainty for creditors and investors.

The limitations of CIRP became particularly pronounced in the case of *Micro, Small and Medium Enterprises (MSMEs)*, which constitute a substantial segment of India's industrial ecosystem. MSMEs contribute significantly to employment generation, innovation, and economic growth⁷; however, they often operate with limited financial resources and are particularly vulnerable to economic shocks. Subjecting such enterprises to the full CIRP framework characterised by extensive procedural requirements, public bidding processes, and potential displacement of promoters often proved counterproductive. The need for a faster, flexible, and less disruptive insolvency resolution mechanism for MSMEs therefore became increasingly evident. In response to these concerns, the Government of India introduced the *Pre-Packaged Insolvency Resolution Process (PPIRP)* through the *Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021*, subsequently incorporated into the Code by the Amendment Act of 2021.⁸ This legislative reform inserted *Chapter III-A into Part II of the Code, comprising Sections 54A to 54P*, thereby establishing a statutory framework for pre-packaged insolvency proceedings in India.⁹

The PPIRP mechanism represents a hybrid insolvency framework that combines the flexibility of informal debt restructuring with the legal enforceability of formal insolvency proceedings.¹⁰ Unlike the conventional CIRP, where negotiations between stakeholders occur only after the commencement of insolvency proceedings, the PPIRP framework allows the corporate debtor and its creditors to negotiate a restructuring plan prior to approaching the adjudicating authority. The pre-negotiated resolution plan is subsequently presented before the tribunal for approval within a

⁵ Insolvency and Bankruptcy Code, 2016, §§ 6–32.

⁶ Insolvency and Bankruptcy Code, 2016, § 60.

⁷ Ministry of Micro, Small & Medium Enterprises, Annual Report 2022–23, Government of India, at 2–5.

⁸ Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, No. 3 of 2021 (India).

⁹ Insolvency and Bankruptcy Code, 2016, §§ 54A–54P (inserted by the Insolvency and Bankruptcy Code (Amendment) Act, 2021).

¹⁰ Vanessa Finch & David Milman, *Corporate Insolvency Law: Perspectives and Principles* 573–75 (3d ed. 2017).

streamlined statutory process. This model is designed to ensure a quicker resolution while preserving business continuity and enterprise value.

The statutory scheme governing PPIRP begins with *Section 54A of the Insolvency and Bankruptcy Code*, which defines the eligibility criteria for initiating the process. Under this provision, an application for PPIRP may be made in respect of a corporate debtor that is classified as an MSME under *Section 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006*¹¹, provided certain conditions are satisfied.¹² These include the absence of ongoing CIRP proceedings, the absence of liquidation orders under *Section 33 of the Code*, and the requirement that the corporate debtor be eligible to submit a resolution plan under *Section 29A*, which restricts certain persons from regaining control of the debtor entity. Furthermore, the initiation of PPIRP requires the approval of financial creditors representing *not less than sixty-six percent in value of the financial debt*, thereby ensuring that the process is initiated only with substantial creditor consent.¹³

Another notable feature of the PPIRP regime is the *debtor-in-possession model*, under which the management of the corporate debtor continues to remain with the existing promoters during the resolution process, subject to oversight by the Committee of Creditors and the resolution professional. This represents a significant departure from the CIRP framework, where control shifts to the resolution professional immediately upon admission of the insolvency application. The rationale behind this approach is that promoters of MSMEs often possess specialised operational knowledge and business relationships that are essential for the survival of the enterprise. Allowing them to retain operational control can therefore facilitate business continuity and preserve economic value.

The procedural framework of PPIRP is further elaborated through several provisions within Chapter III-A. *Section 54C* provides for the filing of an application for initiation of the process before the adjudicating authority, while *Section 54D* deals with the admission or rejection of such application. Upon admission, *Section 54E* imposes a moratorium similar to that under Section 14

¹¹ Micro, Small and Medium Enterprises Development Act, No. 27 of 2006, § 7(1) (India).

¹² Insolvency and Bankruptcy Board of India, Discussion Paper on Pre-Packaged Insolvency Resolution Process 4–6 (Jan. 2021).

¹³ Insolvency and Bankruptcy Code, 2016, § 54A(2).

of the Code, thereby suspending certain legal actions against the corporate debtor.¹⁴ The resolution process then proceeds under the supervision of the *Committee of Creditors (CoC)*, which evaluates the *base resolution plan* submitted by the corporate debtor in accordance with *Section 54K*.¹⁵ If the base resolution plan fails to satisfy creditor expectations, the CoC may invite competing resolution plans to ensure value maximisation.¹⁶ The entire process is required to be completed within *120 days from the commencement date*, including ninety days for creditor consideration of the resolution plan and thirty days for approval by the adjudicating authority.

The introduction of PPIRP therefore reflects a broader shift in insolvency policy towards *efficient restructuring and business rescue rather than liquidation*.¹⁷ By permitting pre-negotiated settlements and reducing procedural complexity, the mechanism aims to minimise the destructive effects of prolonged insolvency proceedings.¹⁸ At the same time, the statutory framework incorporates safeguards, including creditor approval thresholds, oversight by insolvency professionals, and judicial supervision, to ensure transparency and prevent abuse of process.

Despite its conceptual promise, the PPIRP regime raises several complex legal and practical questions. Concerns have been raised regarding the possibility of promoter opportunism under the debtor-in-possession model, the adequacy of creditor protections during pre-filing negotiations, and the limited scope of the mechanism, which is presently confined to MSMEs. Moreover, as a relatively recent legislative innovation, the PPIRP framework is still in the early stages of judicial interpretation, and the evolving jurisprudence of insolvency tribunals will play a crucial role in shaping its future trajectory.

This paper conducts a comprehensive doctrinal examination of the Pre-Packaged Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016, with particular emphasis on its statutory framework, practical implementation, and emerging challenges. By analysing the

¹⁴ Insolvency and Bankruptcy Code, 2016, § 14.

¹⁵ Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, § 54K (India).

¹⁶ Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, § 54K(4)–(5) (India).

¹⁷ Report of the Insolvency Law Committee on Pre-Packaged Insolvency Resolution Process, Ministry of Corporate Affairs, Government of India (2021).

¹⁸ Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021, Gazette of India.

legislative intent, relevant provisions, and comparative insolvency practices, the paper seeks to evaluate whether PPIRP effectively fulfils its objective of providing a swift and efficient restructuring mechanism while maintaining an appropriate balance between debtor autonomy and creditor protection.

CONCEPTUAL FRAMEWORK OF THE PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

The Pre-Packaged Insolvency Resolution Process (PPIRP) represents a significant innovation within the Indian insolvency regime, designed to reconcile the objectives of speed, value preservation, and creditor protection within the broader framework of the Insolvency and Bankruptcy Code, 2016. Conceptually, PPIRP is rooted in the idea that insolvency resolution need not necessarily begin with a formal judicial process. Instead, it allows distressed firms and their creditors to negotiate and structure a restructuring plan informally before the commencement of formal insolvency proceedings, thereby reducing litigation costs and preserving enterprise value.

The concept of pre-packaged insolvency has its origins in international insolvency practices, particularly within jurisdictions such as the United States¹⁹ and the United Kingdom²⁰, where pre-packaged bankruptcy or pre-pack administration has been used to facilitate swift corporate restructuring. The underlying premise of such mechanisms is that negotiations conducted prior to court intervention can produce a consensual resolution plan that minimises uncertainty and prevents the deterioration of the debtor's business operations. The Indian legislature incorporated this concept into the Insolvency and Bankruptcy Code through the Insolvency and Bankruptcy Code (Amendment) Act, 2021, which inserted *Chapter III-A (Sections 54A to 54P)* to govern the statutory framework of PPIRP.

At its core, the conceptual design of PPIRP reflects a hybrid insolvency model that combines elements of informal restructuring with formal legal oversight. Unlike the Corporate Insolvency Resolution Process (CIRP), which follows a creditor-in-control model and transfers management

¹⁹ 11 U.S.C. §§ 1121–1129 (Chapter 11 Reorganization).

²⁰ Vanessa Finch & David Milman, *Corporate Insolvency Law: Perspectives and Principles* 573–75 (3d ed. 2017).

of the corporate debtor to an insolvency professional upon admission, the PPIRP framework adopts a debtor-in-possession model, allowing the existing management to continue operating the enterprise during the resolution process.²¹ This approach recognises that promoters and management of MSMEs often possess specialised knowledge, commercial relationships, and operational expertise that are crucial for the survival of the enterprise.

The statutory basis for the initiation of PPIRP is provided under *Section 54A of the Insolvency and Bankruptcy Code*, which lays down the eligibility criteria for corporate debtors seeking to avail the mechanism.²² Under this provision, only corporate debtors classified as Micro, Small, and Medium Enterprises under *Section 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006* are eligible to initiate the process. Additionally, the provision establishes several pre-conditions for initiation, including that the corporate debtor must not be undergoing CIRP, must not have completed PPIRP within the preceding three years, and must not be subject to liquidation proceedings under *Section 33* of the Code. These eligibility conditions reflect the legislature's intention to confine the mechanism initially to smaller enterprises that require a more flexible restructuring framework.²³

A distinctive feature of the conceptual framework of PPIRP is the requirement of prior creditor consent before initiating the process. Under *Section 54A(2)* and related provisions, the corporate debtor must obtain the approval of financial creditors representing not less than sixty-six percent in value of the financial debt prior to filing an application before the adjudicating authority. This requirement ensures that the process is fundamentally consensual in nature, preventing misuse of the mechanism by debtors seeking to restructure liabilities without adequate creditor support. The involvement of creditors at the pre-initiation stage also enhances the credibility and feasibility of the proposed resolution plan.²⁴

²¹ Douglas G. Baird, *Elements of Bankruptcy* 286–88 (6th ed. 2014).

²² *Insolvency and Bankruptcy Code*, 2016, No. 31 of 2016, § 54A (India).

²³ Ministry of Corporate Affairs, Report of the Insolvency Law Committee on Pre-Packaged Insolvency Resolution Process (2021), <https://www.mca.gov.in>.

²⁴ M. S. Sahoo, Pre-Packaged Insolvency Resolution Process for MSMEs, *Insolvency and Bankruptcy Board of India Journal* (2021).

Once the corporate debtor secures creditor approval, the application for initiation of PPIRP must be submitted before the Adjudicating Authority, namely the National Company Law Tribunal (NCLT), under *Section 54C* of the Code. Upon admission of the application, the tribunal declares a moratorium under *Section 54E*, which restricts the institution or continuation of legal proceedings against the corporate debtor and preserves the status quo during the resolution process. This moratorium serves a similar purpose to that under *Section 14 of the IBC*, namely to protect the corporate debtor from external enforcement actions while negotiations and restructuring take place.²⁵

Another central component of the conceptual architecture of PPIRP is the Base Resolution Plan, which is submitted by the corporate debtor at the commencement of the process. The legal framework governing this plan is provided under *Section 54K*, which empowers the Committee of Creditors (CoC) to evaluate the proposed plan and determine whether it adequately protects the interests of creditors. If the base resolution plan does not impair the claims of operational creditors and satisfies the requirements of the Code, the CoC may approve it directly. However, if the plan is considered unsatisfactory or if it adversely affects creditor interests, the CoC may invite competing resolution plans from third-party applicants, thereby introducing a competitive bidding process designed to maximise asset value.

The oversight of the resolution process is entrusted to a Resolution Professional, whose appointment is approved by the financial creditors prior to filing the application for PPIRP. Although the management of the corporate debtor continues to remain in possession of the business, the Resolution Professional performs critical supervisory functions, including verifying claims, facilitating meetings of the Committee of Creditors, and ensuring compliance with statutory requirements. This structure reflects a deliberate balance between operational autonomy of the debtor and regulatory oversight by insolvency professionals, thereby reducing the risk of promoter misconduct.

²⁵ Sumant Batra, *Corporate Insolvency: Law and Practice in India* (2d ed. 2020).

The timeline prescribed for the completion of PPIRP further illustrates the conceptual emphasis on efficiency. Under the statutory scheme, the entire process must be completed within *120 days from the commencement date*, including *90 days for approval of the resolution plan by the Committee of Creditors and 30 days for approval by the Adjudicating Authority*. This compressed timeline distinguishes PPIRP from the longer resolution period permitted under CIRP and reflects the legislative intent to provide a swift restructuring mechanism for financially distressed MSMEs.

From a conceptual standpoint, PPIRP can therefore be understood as an attempt to reconcile three fundamental objectives of insolvency law: speed of resolution, preservation of enterprise value, and protection of creditor rights. By enabling negotiations prior to formal proceedings and allowing the debtor to retain operational control, the mechanism seeks to reduce the destructive consequences of prolonged insolvency litigation. At the same time, statutory safeguards such as creditor approval thresholds, oversight by insolvency professionals, and judicial scrutiny by the adjudicating authority ensure that the process remains transparent and accountable.

However, the conceptual design of PPIRP also raises important questions regarding the balance between debtor autonomy and creditor protection. Critics argue that allowing promoters to remain in control during the resolution process may create opportunities for strategic behaviour or information asymmetry. Others point out that the limited applicability of PPIRP to MSMEs restricts its potential to transform the broader insolvency landscape in India. These concerns highlight the need for continued evaluation of the mechanism as judicial precedents develop and practical experience accumulates.

In essence, the conceptual framework of PPIRP reflects the evolving philosophy of insolvency law in India, which increasingly emphasises business rescue and restructuring rather than liquidation. By introducing a flexible and consensual resolution mechanism within the statutory framework of the Insolvency and Bankruptcy Code, the legislature has sought to create a system that balances economic efficiency with procedural fairness. The effectiveness of this framework, however, will ultimately depend on its implementation, judicial interpretation, and the willingness of creditors and debtors to engage constructively within the process.

STATUTORY GOVERNANCE FRAMEWORK UNDER THE INSOLVENCY AND BANKRUPTCY CODE

The legal framework governing PPIRP is contained in *Chapter III-A of Part II of the Insolvency and Bankruptcy Code*, encompassing *Sections 54A to 54P*.²⁶ These provisions collectively establish the procedural, institutional, and substantive rules that regulate the initiation, conduct, and approval of the pre-packaged insolvency process.

The starting point of the statutory framework is *Section 54A*, which specifies the eligibility criteria for corporate debtors seeking to initiate PPIRP. The provision restricts the availability of the mechanism to *Micro, Small and Medium Enterprises (MSMEs)* as defined under *Section 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006*. The provision establishes several conditions that must be satisfied prior to initiation. These include the absence of an ongoing *Corporate Insolvency Resolution Process (CIRP)* against the corporate debtor, the absence of liquidation proceedings under *Section 33 of the Code*, and the requirement that the corporate debtor has not undergone PPIRP within the preceding three years. The corporate debtor must also be eligible to submit a resolution plan under *Section 29A of the IBC*,²⁷ which disqualifies certain categories of persons including wilful defaulters and persons connected with non-performing assets from regaining control of the distressed entity.

Under *Section 54A(2) read with the relevant regulations*, the corporate debtor must obtain the approval of financial creditors representing *not less than sixty-six percent in value of the financial debt* before filing an application for PPIRP. This provision ensures that the process is fundamentally consensual and prevents unilateral initiation by debtors without meaningful creditor participation. The application for initiation must then be filed before the *Adjudicating Authority, namely the National Company Law Tribunal (NCLT)*, under *Section 54C*. Upon admission of the application, the NCLT declares a *moratorium under Section 54E*, which operates in a manner similar to the moratorium provided under *Section 14 of the IBC* during the CIRP. The moratorium prohibits the institution or continuation of suits, execution of judgments, and enforcement of

²⁶ Insolvency and Bankruptcy Code, 2016, §§ 54A–54P.

²⁷ Insolvency and Bankruptcy Code, 2016, § 29A.

security interests against the corporate debtor during the pendency of the process. This temporary protection allows the debtor and creditors to negotiate the resolution plan without external interference.

The governance structure of PPIRP also establishes the *Committee of Creditors (CoC)* as the central decision-making body.²⁸ Under *Section 54I*, the Committee of Creditors is constituted by the Resolution Professional after verification of claims submitted by creditors. The CoC exercises supervisory authority over the resolution process and retains the power to approve or reject the proposed resolution plan by a vote of *not less than sixty-six percent of the voting share*.

A distinctive feature of the PPIRP governance structure is the introduction of the *Base Resolution Plan*, which is governed by *Section 54K*²⁹. Unlike the CIRP, where resolution applicants submit competing plans after the commencement of insolvency proceedings, the PPIRP framework allows the corporate debtor to submit a pre-negotiated base resolution plan at the outset of the process. The Committee of Creditors evaluates this plan to determine whether it adequately protects the interests of stakeholders. If the plan does not impair the claims of operational creditors and is considered commercially viable, the CoC may approve it directly. However, if the base resolution plan is unsatisfactory or adversely affects creditor interests, the CoC may invite competing resolution plans from third-party applicants, thereby introducing a competitive bidding process designed to maximise value.

The approval of the final resolution plan is governed by *Section 54L*³⁰, which requires the Committee of Creditors to approve the plan by the prescribed voting threshold before submitting it to the adjudicating authority for confirmation. Once the NCLT approves the resolution plan, it becomes binding on the corporate debtor, its employees, creditors, and other stakeholders.

²⁸ Insolvency and Bankruptcy Code, 2016, § 54I.

²⁹ Insolvency and Bankruptcy Code, 2016, § 54K.

³⁰ Insolvency and Bankruptcy Code, 2016, § 54L.

The statutory framework provides safeguards to prevent misuse of the debtor-in-possession model. Under *Section 54J*³¹, the Committee of Creditors may, by a vote of sixty-six percent, resolve to vest the management of the corporate debtor with the Resolution Professional if the promoters engage in fraudulent conduct or gross mismanagement of the affairs of the company during the process. This provision ensures that the operational autonomy granted to the debtor does not undermine the interests of creditors.

The importance of judicial oversight in the governance of insolvency proceedings has been emphasised by the Supreme Court of India in several landmark judgments interpreting the provisions of the Insolvency and Bankruptcy Code. In *Swiss Ribbons Pvt. Ltd. v. Union of India (2019)*³², the Supreme Court upheld the constitutional validity of the IBC and observed that the Code is fundamentally designed to promote resolution and revival of distressed businesses rather than liquidation. The Court highlighted the central role of the Committee of Creditors in commercial decision-making and recognised the limited scope of judicial interference with such decisions.³³ In *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2019)*³⁴, the Supreme Court reaffirmed the principle of *commercial wisdom of the Committee of Creditors*, holding that the adjudicating authority should not ordinarily interfere with the business decisions taken by the CoC during the resolution process. Although this judgment arose in the context of CIRP, the principles articulated by the Court are equally relevant to the PPIRP framework, as the decision-making authority of creditors remains central to both mechanisms.

Another significant judgment shaping insolvency jurisprudence is *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta (2018)*³⁵, where the Supreme Court interpreted the scope of *Section 29A*³⁶ and clarified the legislative intent behind disqualifying certain categories of persons from submitting resolution plans. The Court emphasised that the objective of Section 29A is to prevent errant promoters from regaining control of the corporate debtor without addressing their past

³¹ Insolvency and Bankruptcy Code, 2016, § 54J.

³² *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 3 S.C.R. 535 (India)

³³ *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 S.C.C. 531, ¶¶ 54–64 (India).

³⁴ *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531 (India).

³⁵ *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*, (2019) 1 SCC 1 (India).

³⁶ Insolvency and Bankruptcy Code, 2016, § 29A.

misconduct. This principle is particularly relevant in the context of PPIRP, where the debtor-in-possession model raises concerns about the potential re-entry of promoters through the base resolution plan.

COMPARATIVE PERSPECTIVES

United States and United Kingdom

The Indian PPIRP framework draws conceptual inspiration from pre-packaged insolvency practices in other jurisdictions, particularly the United States and the United Kingdom. The legal governance structures adopted in these jurisdictions differ in important respects.

In the United States, pre-packaged bankruptcy is conducted under *Chapter 11*³⁷ of the U.S. Bankruptcy Code. Under this system, the debtor negotiates a restructuring plan with creditors before filing for bankruptcy protection. Once the petition is filed, the pre-negotiated plan is submitted to the bankruptcy court for confirmation. The advantage of this model lies in its efficiency, as creditor consent is obtained prior to judicial intervention, thereby reducing the time required for court approval. The U.S. system also incorporates robust disclosure requirements, ensuring that creditors are fully informed about the financial condition of the debtor before voting on the proposed restructuring plan.

In contrast, the United Kingdom operates a system of pre-pack administration under the Insolvency Act, 1986.³⁸ In this framework, the sale of the distressed company's business or assets is negotiated before the appointment of an administrator and executed immediately upon commencement of administration proceedings. This mechanism enables a rapid transfer of the business as a going concern, thereby preserving jobs and enterprise value. The UK pre-pack system has also attracted criticism due to concerns about transparency and potential conflicts of interest when assets are sold to connected parties.³⁹

³⁷ 11 U.S.C. §§ 1125–1129.

³⁸ Insolvency Act 1986, c. 45, sch. B1 (U.K.).

³⁹ Terence Primeaux & Julie Primeaux, Pre-Pack Administrations in the UK: Transparency Concerns, 26 Int'l Insolvency Rev. 89, 94–97 (2017).

When compared with these international models, the Indian PPIRP framework appears to adopt a more balanced governance structure. Unlike the UK system, which relies heavily on private negotiations, the Indian framework incorporates institutional oversight through the Committee of Creditors, Resolution Professional, and the National Company Law Tribunal. At the same time, the Indian model preserves the flexibility of informal negotiations characteristic of the U.S. pre-pack system.

Nevertheless, certain limitations remain. Unlike the U.S. framework, which is available to a broad range of corporate entities, the Indian PPIRP mechanism is currently restricted to MSMEs. Additionally, the absence of detailed disclosure requirements during the pre-initiation negotiation phase may create information asymmetries between debtors and creditors. Addressing these issues will be crucial for ensuring the long-term effectiveness of the PPIRP regime.

PPIRP vs CIRP

Statutory starting-point and eligibility

Introduced by the IBC Amendment (2021); the PPIRP statutory chapter provides a dedicated framework for *pre-packaged* resolution aimed initially at MSMEs. The eligibility, initiation formalities and timeline are expressly set out in Sections 54A–54D and related provisions. The corporate debtor must be an MSME (per Section 7(1) of the MSME Act) or otherwise meet conditions in Section 54A; the corporate debtor must obtain prior approval of financial creditors representing *not less than 66% in value of the financial debt* before filing (Section 54A(2)); and the PPIRP must normally be completed within *120 days* of commencement.

CIRP is the general, creditor-driven insolvency procedure under the IBC. It may be initiated by a financial creditor (s.7), operational creditor (s.9) or corporate applicant (s.10/11), and applies to corporate debtors generally (no MSME restriction).⁴⁰ The CIRP statutory timeline under *Section 12* is 180 days⁴¹ (extendable once by 90 days; judicial and procedural delays may lead to an aggregated outer cap often referred to as 330 days). PPIRP narrows initial eligibility (MSMEs,

⁴⁰ Insolvency and Bankruptcy Code, 2016, §§ 7–10.

⁴¹ Insolvency and Bankruptcy Code, 2016, § 12.

prior creditor consent) and creates a specially compressed, pre-negotiated pathway; CIRP is broader and follows post-commencement negotiation and marketing.

Initiation, pre-filing negotiations and transparency

The corporate debtor negotiates a base resolution plan with creditors before filing; the base plan is submitted immediately at commencement (Section 54K). The regulatory guidance (IBBI) requires pre-initiation activities (creditor meetings, disclosure to unrelated financial creditors, Form filings) aimed at obtaining creditor buy-in while maintaining confidentiality where appropriate. Under CIRP, the IRP/RP takes control (Section 17), issues public advertisement, invites resolution applicants and runs an open marketing/bidding process (see Sections 19–25, and CIRP Regulations). The process is public and competitive; marketing and information memoranda are furnished after commencement.

PPIRP offers greater confidentiality and speed because key negotiations occur pre-filing; CIRP provides broad market testing and transparency through public marketing which can maximise value but takes longer.

Control of the corporate debtor: debtor-in-possession v. vesting with IRP/RP

PPIRP permits existing management/promoters to remain in control during the pre-pack process subject to RP oversight and the CoC's powers under the Chapter. However, Section 54J permits the CoC (66% vote) to resolve to vest management with the RP and apply to the AA if fraud or gross mismanagement is shown. This creates a conditional debtor-in-possession model with statutory safeguards. Upon admission of CIRP, management vests with the Interim Resolution Professional (IRP) under *Section 17*⁴², who exercises board powers, thereby effecting an immediate change in management and control to ensure neutral administration and value preservation. PPIRP favours continuity (promoters retain operational knowledge) but builds in the CoC/AA safeguard to address abuse; CIRP favours independent control early, reducing risk of promoter opportunism but often increasing business disruption.

⁴² Insolvency and Bankruptcy Code, 2016, § 17.

Timeline and procedural efficiency

The PPIRP process is required to be completed within *120 days* from the PPIRP commencement date (statute/regulations and IBBI guidance). The compressed timeline is designed to reduce value erosion and cost. CIRP statutory target is *180 days*, with a possible one-time extension of up to 90 days (*270 days*), and an outer cap commonly discussed as *330 days* when litigation delays are included. In practice, complex CIRP matters often approach the outer limits due to litigation and contestation. PPIRP's shorter timeline reduces administrative expenses, advisory costs and the period of commercial uncertainty — all factors particularly beneficial to resource constrained MSMEs.

Creditor decision-making, voting thresholds and commercial wisdom

Both processes rely on the *Committee of Creditors* (CoC) and the 66% voting threshold for key decisions: PPIRP requires 66% creditor approval at pre-initiation (s.54A) and for vesting management with RP (s.54J); CIRP requires 66% for approval of the resolution plan (s.30).

Judicial review and CoC primacy

The Supreme Court has repeatedly emphasised the *commercial wisdom* of CoC decisions and limited judicial interference (see *Swiss Ribbons v. Union of India* and *Committee of Creditors of Essar Steel v. Satish Kumar Gupta*). These decisions underpin judicial deference to creditor decisions both in CIRP and by analogy in PPIRP where creditor consent is central. PPIRP formalises creditor primacy earlier (pre-filing), increasing the weight of commercial negotiation; CIRP centralises creditor decisions post-filing but within a more public adjudicatory framework.

Moratorium, creditor rights and operational creditor protection

Moratorium under *Section 14* kicks in⁴³ from the insolvency commencement date and protects the debtor's estate from enforcement. Whereas, on admission the AA declares moratorium under *Section 54E*⁴⁴, which operates similarly for the PPIRP period. The moratorium in PPIRP is therefore a statutory protection once the application is admitted.

⁴³ Insolvency and Bankruptcy Code, 2016, § 14.

⁴⁴ Insolvency and Bankruptcy Code, 2016, § 54E.

Operational creditors

PPIRP statute expressly contemplates that the CoC cannot approve a base resolution plan if it impairs claims of operational creditors (s.54K(4)); if the base plan impairs operational creditor claims, competing plans must be invited. CIRP similarly requires that resolution plans preserve certain priorities and comply with the Code (s.30). Both schemes preserve operational creditor protections, but PPIRP requires an early check on impairment via the base-plan rule to protect non-financial creditors.

Marketing, valuation and competitive tension

The RP runs a transparent marketing process (information memorandum, data room, public advertisements) that helps attract multiple bidders and market testing important for price discovery and value maximisation. For PPIRP, Because the plan is pre-negotiated, there is a risk that the base plan might not be fully market-tested; to mitigate value loss, Section 54K(5) requires invitation of competing plans where appropriate and the RP/CoC must ensure procedures (basis for evaluation, disclosure of information) conform to the Code's standards. IBBI guidance emphasises fair marketing of PPIRP where the base plan is inadequate. PPIRP speeds up resolution but must be carefully run (adequate disclosure and opportunity for competing bids) to avoid sub-optimal sales/insufficient price discovery.

Costs, confidentiality and business continuity

Empirical and doctrinal commentary indicate PPIRP reduces advisory, litigation and RP costs by shortening the public process and limiting protracted litigations a material advantage for small firms. Several recent studies of PPIRP outcomes show lower advisory spends and faster plan approvals in pilot cases. PPIRP's pre-filing negotiation offers confidentiality (protecting reputation, customer/supplier relations), whereas CIRP's public marketing and announcements can trigger reputational harm and supply-chain disruption. PPIRP's debtor-in-possession model supports continuity of operations and retention of managerial expertise an important consideration for MSMEs where promoters hold tacit knowledge and customer relationships. CIRP's immediate IRP control may interrupt operations more severely.

REFORMS AND SUGGESTIONS FOR STRENGTHENING PPIRP

The Pre-Packaged Insolvency Resolution Process introduced under Chapter III-A (Sections 54A–54P) of the Insolvency and Bankruptcy Code, 2016 represents a progressive step towards a faster and more flexible restructuring framework for distressed enterprises, particularly Micro, Small and Medium Enterprises (MSMEs). However, since its introduction in 2021, the practical utilisation of PPIRP has remained relatively limited when compared with the Corporate Insolvency Resolution Process (CIRP). Scholars, practitioners, and policy reports have highlighted several structural, procedural, and regulatory challenges that restrict the widespread adoption of the mechanism. In order to ensure that PPIRP fulfils its intended objective of facilitating efficient corporate rescue while safeguarding creditor interests, certain reforms and policy interventions are necessary.

Expansion of PPIRP Beyond MSMEs

One of the most significant limitations of the current PPIRP framework is its restricted applicability to MSMEs under Section 54A(1) of the Insolvency and Bankruptcy Code. While the initial legislative rationale behind this limitation was to provide a simplified restructuring mechanism for smaller enterprises, the exclusive focus on MSMEs restricts the broader potential of pre-packaged insolvency processes. In several jurisdictions, including the United States (Chapter 11 pre-packaged bankruptcy) and the United Kingdom (pre-pack administration), pre-packaged restructuring mechanisms are available to companies of varying sizes. These systems demonstrate that pre-packaged processes can be particularly effective for large and complex corporations where prolonged insolvency proceedings may result in significant destruction of enterprise value.

Expanding the PPIRP framework to include non-MSME corporate debtors—subject to appropriate regulatory safeguards—could significantly improve the efficiency of India's insolvency ecosystem. Such expansion could be implemented through amendments to Section 54A, enabling larger corporate debtors to utilise the mechanism where creditors have already reached a consensus on restructuring. This would reduce the burden on the National Company Law Tribunal (NCLT) by resolving cases that might otherwise proceed through lengthy CIRP proceedings.

Strengthening Transparency and Disclosure Requirements

Another concern raised in academic and practitioner commentary relates to transparency during the pre-initiation negotiation stage of PPIRP. Since the base resolution plan is negotiated before the formal commencement of proceedings, there exists a risk of information asymmetry between promoters and creditors, particularly operational creditors who may not be directly involved in early negotiations. Although Section 54K permits the Committee of Creditors to invite competing resolution plans if the base resolution plan impairs operational creditors or fails to maximise value, the absence of detailed disclosure requirements during pre-negotiations may undermine creditor confidence.

To address this concern, regulatory reforms could require the corporate debtor to provide comprehensive financial disclosures prior to creditor approval, including:

1. Detailed financial statements and valuation reports
2. Disclosure of related-party transactions
3. Independent asset valuations conducted by registered valuers
4. Information memoranda similar to those required under CIRP regulations

The introduction of such disclosure requirements would align the PPIRP framework with international best practices and reduce the risk of undervalued restructuring arrangements.

Strengthening Safeguards Against Promoter Misuse

The debtor-in-possession model adopted under the PPIRP framework allows the promoters and existing management of the corporate debtor to continue operating the enterprise during the resolution process. While this feature promotes business continuity, it also raises concerns regarding potential misuse by promoters seeking to regain control of distressed companies without adequate restructuring. The Insolvency and Bankruptcy Code attempts to mitigate this risk through Section 29A, which disqualifies certain categories of persons—including wilful defaulters and related parties from submitting resolution plans. The Supreme Court in *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta* (2018) clarified that the purpose of Section 29A is to prevent defaulting promoters from regaining control of the corporate debtor without addressing their past misconduct.

CONCLUSION

The introduction of the Pre-Packaged Insolvency Resolution Process (PPIRP) under Chapter III-A (Sections 54A–54P) of the Insolvency and Bankruptcy Code, 2016 (IBC) represents an important milestone in the continuing evolution of India’s insolvency and restructuring regime. Since the enactment of the IBC, the legislative and judicial focus has been directed toward creating a framework that prioritises timely resolution, preservation of enterprise value, and protection of creditor interests. The Corporate Insolvency Resolution Process (CIRP), governed primarily by Sections 7, 9, 10, and 12 of the Code, laid the foundation for a creditor-driven insolvency mechanism that significantly improved recovery rates and strengthened credit discipline in the Indian financial system. Judicial pronouncements such as *Swiss Ribbons Pvt. Ltd. v. Union of India* and *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* further reinforced the principle that the IBC is primarily a resolution-oriented statute aimed at corporate rescue rather than liquidation, while also recognising the central role of the commercial wisdom of the Committee of Creditors (CoC) in determining the viability of restructuring plans.⁴⁵

Despite these achievements, the experience gained from the implementation of CIRP revealed certain structural limitations within the insolvency framework. Lengthy litigation, procedural complexities, and administrative delays often extended the duration of resolution proceedings beyond the statutory timeline prescribed under Section 12, thereby leading to deterioration in asset value and reduced recovery for creditors. These concerns were particularly acute for Micro, Small and Medium Enterprises (MSMEs), which constitute a vital segment of India’s economic structure but often lack the financial and institutional capacity to withstand prolonged insolvency proceedings. Recognising this challenge, the legislature introduced the PPIRP mechanism through the Insolvency and Bankruptcy Code (Amendment) Act, 2021, thereby incorporating a flexible restructuring model that combines the efficiency of informal negotiations with the enforceability of formal insolvency proceedings.

The conceptual design of PPIRP reflects a significant departure from the traditional creditor-in-control model of CIRP by adopting a debtor-in-possession framework. Under this structure, the

⁴⁵ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17, ¶¶ 27–28 (India).

existing management of the corporate debtor is permitted to continue operating the enterprise during the resolution process, subject to oversight by the Resolution Professional and the Committee of Creditors. The statutory scheme under *Section 54A* requires the corporate debtor to obtain prior approval from financial creditors representing at least sixty-six percent of the value of the financial debt before initiating the process, thereby ensuring that the mechanism is fundamentally consensual in nature. Once admitted by the National Company Law Tribunal (NCLT) under *Section 54C*, the process is protected by a moratorium under *Section 54E*, allowing stakeholders to negotiate the restructuring plan without interference from external enforcement actions.

Another distinctive feature of the PPIRP framework is the concept of the Base Resolution Plan, governed by *Section 54K*, which allows the corporate debtor to submit a pre-negotiated restructuring proposal at the commencement of the process. This plan is evaluated by the Committee of Creditors, which may either approve it or invite competing bids from external resolution applicants in order to maximise value. The entire process is required to be completed within 120 days from the commencement date, reflecting the legislature's intention to create a streamlined insolvency mechanism that minimises procedural delays and preserves business continuity.

The comparative analysis between PPIRP and CIRP demonstrates that the two mechanisms are designed to address distinct categories of corporate distress. While CIRP emphasises transparency, market testing, and creditor control through a formalised insolvency process, PPIRP prioritises speed, confidentiality, and consensual restructuring through pre-negotiated agreements between debtors and creditors. Each framework therefore performs a complementary role within the broader insolvency architecture established by the IBC. The availability of both mechanisms enables stakeholders to select the most appropriate restructuring pathway depending on the size of the enterprise, the complexity of financial arrangements, and the level of consensus among creditors.

However, the effectiveness of the PPIRP framework remains contingent upon addressing several structural and operational challenges. Concerns relating to transparency during pre-initiation

negotiations, potential misuse of the debtor-in-possession model by promoters, and limited awareness among MSMEs continue to restrict the widespread adoption of the mechanism. Furthermore, the restricted applicability of PPIRP exclusively to MSMEs limits its capacity to function as a comprehensive alternative to CIRP within the Indian insolvency ecosystem. Comparative experiences from jurisdictions such as the United States and the United Kingdom indicate that pre-packaged insolvency processes can play a far more significant role in corporate restructuring when supported by robust disclosure requirements, independent valuations, and strong regulatory oversight.

Consequently, the long-term success of PPIRP will depend on the implementation of targeted reforms aimed at strengthening the institutional and regulatory framework governing the process. Expanding the applicability of PPIRP beyond MSMEs, enhancing transparency and disclosure obligations during the negotiation stage, strengthening safeguards against promoter misconduct, and improving the institutional capacity of the NCLT and insolvency professionals are essential steps toward ensuring the effectiveness of the mechanism. Greater regulatory oversight by the Insolvency and Bankruptcy Board of India (IBBI), combined with enhanced awareness among financial institutions and corporate debtors, can further facilitate the adoption of PPIRP as a viable restructuring tool.

In a broader sense, the emergence of PPIRP reflects the continuing maturation of India's insolvency regime and the legislature's willingness to experiment with innovative restructuring models in response to evolving economic realities. By integrating elements of consensual negotiation, creditor oversight, and judicial supervision, the PPIRP framework attempts to strike a delicate balance between efficiency and accountability within the insolvency process. If supported by appropriate reforms and effective implementation, the mechanism has the potential to significantly enhance the corporate rescue culture in India, particularly for financially distressed MSMEs that require rapid and flexible restructuring solutions.