

Insolvency and Bankruptcy Code, (Amendment) Ordinance 2021

The Government has brought about several initiatives to mitigate the financial distress during this pandemic, in respect of insolvency proceedings, like increasing the debt threshold to Rs. 1 Crore, and suspending initiation of insolvency process for one year from 25th March 2020. This Ordinance was recently promulgated on 04th April 2021, primarily keeping in mind the significant contribution of the Micro, Small and Medium Enterprises (MSME) sector in India, and given that MSMEs have been reeling under severe financial distress during this time

Eligibility for availing the Pre-Packaged Insolvency Resolution Process (PPIRP)

- The Ordinance brings out certain unique concepts and features, that lie in alternative to the usual Corporate Insolvency Resolution Process (CIRP), albeit with the requisite eligibility criteria.
- The Corporate Debtor is required to be a registered MSME.
- The Corporate Debtor should not have undergone / or is undergoing CIRP or been ordered Liquidation under the IBC.
- A special resolution is to be passed in a general meeting with the members of the Corporate Debtor before initiation of the PPIRP, and majority of Directors / Partners to approve initiation of PPIRP.
- 66% of the Financial Creditors of the Corporate Debtor are required to approve the proposal of the Resolution Professional (RP).
- **Minimum Debt Threshold** – Rs. 10 Lakhs for MSMEs

Steps involved in the initiation of the PPIRP

- Once the Corporate Debtor meets the requisite eligibility criteria, a “Base Resolution Plan” is to be prepared by the Corporate Debtor.
 - A Base Resolution Plan is a concept that entails the Corporate Debtor to prepare its own Resolution Plan, as opposed to a third party Resolution Applicant who prepares a Resolution Plan for the revival of the Corporate Debtor in the case of a CIRP.
- The Application should include
 - Declaration of the Majority of Directors / Partners
 - Special Resolution of the members of Corporate Debtors
 - Financial Creditors Approval for initiation of PPIRP and Written Consent of proposed Resolution Professional
 - Report of Resolution Professional on the eligibility of Corporate Debtor
 - Information relating to books of account of Corporate Debtor

- The Adjudicating Authority will admit the PPIRP Application if it is complete in all respects, on which date moratorium is declared, a public announcement is made and a Resolution Professional is appointed. The Adjudicating Authority shall admit or reject the PPIRP Application within 14 days of the Application.
- This date on which the Adjudicating Authority admits the Application is called the PPIRP Commencement Date. The PPIRP is required to be concluded within 120 days of the Commencement Date, and the Resolution Plan is required to be approved by the Adjudicating Authority by then.

Process approving the Resolution Plan / Base Resolution Plan

- Within two days of the PPIRP Commencement Date, the Corporate Debtor submits the Base Resolution Plan to the Resolution Professional, who then presents it to the Committee of Creditors.
- The Committee of Creditors will peruse the Base Resolution Plan prepared by the Corporate Debtor and ensure it does not impair the claim of any Operational Creditor.
- In the event the Base Resolution Plan impairs the claim of Operational Creditors, the Resolution Professional can call for invitations for better Resolution Plans from third party Resolution Applicants who can compete with the Base Resolution Plan.
- After evaluating the Resolution Plans vis à vis, the Base Resolution Plan, the best Resolution Plan is selected, and thereafter approved (by 66% majority) by the Committee of Creditors and then submitted to the Adjudicating Authority for approval / rejection.
- The PPIRP is terminated in either of the two instances:
 - If the Committee of Creditors does not approve of any of the Resolution Plans.
 - If the Adjudicating Authority does not approve of the Resolution Plan selected and presented by the Committee of Creditors

Striking features of the Pre-Packaged Insolvency Resolution Process (PPIRP) over a regular Corporate Insolvency Resolution Process (CIRP)

- **Least disruption to the management of the Corporate Debtor**

The biggest facet in a CIRP is that the Resolution Professional takes over the management and supervision of the Corporate Debtor during the insolvency process. Further, the Resolution Professional is also empowered to take custody of, and control, the assets of the

Corporate Debtor. For giving control, the Resolution Professional is given access to all the books of accounts of the Corporate Debtor and relevant records, as required.

During a PPIRP however, the Corporate Debtor continues to be vested with management of the affairs of the Corporate Debtor. Having said this, the Board of Directors / Partners of the Corporate Debtor should make every endeavour to work in the best interests of the Corporate Debtor in managing its operations. In the event the Committee of Creditors sense gross mismanagement or the conduct of fraudulent activities, they can (by a 66% majority) vote to vest the management of the affairs of the Corporate Debtor with the Resolution Professional.

- **Corporate Debtor can submit its own Resolution Plan**

The Corporate Debtor is entitled, under the PPIRP, to submit a Base Resolution Plan, which delineates a plan to satisfy the claims of its creditors while ensuring that the management of the Corporate Debtor remains intact, and is not vested with a third party Resolution Applicant, who is interested in the affairs of the Corporate Debtor.

Should the Committee of Creditors feel that the Base Resolution Plan is not appealing to the Creditors, the Committee of Creditors can invite applications for better Resolution Plans, and the Corporate Debtor can compete with the significantly better Resolution Plan.

However, once a regular application for CIRP is admitted, the Corporate Debtor has no involvement in the Resolution Plan, and is entirely at the mercy of the Resolution Applicant, and the Committee of Creditors.

- **Better timelines than CIRP**

The prescribed timeline for completion of the CIRP is 180 days from the CIRP Commencement date (along with permitted extensions). However, a PPIRP is mandated to conclude in 120 days from the PPIRP Commencement Date.

Overall, this Ordinance is a welcome move by the Government in the wake of the financial crisis faced by MSMEs. However, only time will tell whether all these benefits will serve the intended purpose and if the timelines are realistically achievable.

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