

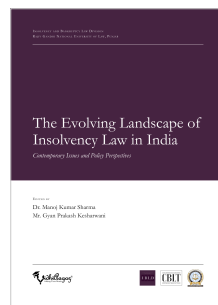
CHAPTER 1

Pre-Packaged Insolvency Resolution in India after the IBC Amendment Act 2026: A Critical Assessment of the Revised MSME Framework

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CHAPTER 1

Pre-Packaged Insolvency Resolution in India after the IBC Amendment Act 2026: A Critical Assessment of the Revised MSME Framework

DR. PARINEETA GOSWAMI*

The Insolvency and Bankruptcy Code, 2016, provides a consolidated and time-bound framework for insolvency resolution, liquidation, and bankruptcy, with emphasis on value maximization and continuation of viable businesses. The introduction of the Pre-Packaged Insolvency Resolution Process (PPIRP) in 2021 created a faster and less disruptive mechanism for resolving the financial distress of eligible micro, small, and medium enterprises. The IBC Amendment Act, 2026, has revised several provisions governing PPIRP and has also provided for a new Creditor-Initiated Insolvency Resolution Process (CIIRP). While the PPIRP amendments have substantially come into force, the provisions introducing CIIRP have been enacted but have not yet been operationalised.¹ PPIRP combines pre-initiation negotiations with formal creditor approval and judicial supervision. It seeks to preserve the corporate debtor as a going concern, protect employment, reduce costs, and maximize creditor recovery. However, the process also raises concerns regarding transparency, valuation, promoter control, creditor participation, and conflicts of interest. This paper critically examines the Indian PPIRP framework, its advantages and limitations, and the changes introduced by the IBC Amendment Act, 2026. It argues that PPIRP can serve as an effective instrument of corporate rescue if supported by transparent procedures, independent monitoring, and adequate protection of stakeholder interests.

Keywords: Pre-packaged Insolvency Resolution, Corporate Restructuring, Financial Distress, Creditor Rights, Regulatory Frameworks

1 INTRODUCTION

Corporate insolvency and bankruptcy have been enduring challenges for businesses and economies worldwide. In the face of financial distress, the fate of a distressed company and

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¹ Ministry of Corporate Affairs, Notification S.O. 2625(E) (May 22, 2026), bringing specified provisions of the Insolvency and Bankruptcy Code (Amendment) Act, 2026 into force from 26 May 2026.

its stakeholders hangs in the balance.² Traditionally, the process of resolving insolvency has often been cumbersome, lengthy, and inefficient, leading to value destruction, job losses, and significant economic repercussions. To address these issues, pre-packaged insolvency resolution has emerged as an innovative and proactive strategy aimed at optimizing corporate recovery.

The Insolvency and Bankruptcy Code was born in 2016, with the intention of making the resolution process business-friendly. It is this feature of the Insolvency and Bankruptcy Code that stands in contrast to its predecessor, which seeks to address stressed assets with the help of a market mechanism. The code has been successful in terms of recovery since its launch. Insolvency and Bankruptcy Code is a robust mechanism to deal with insolvency, wherein the corporate debtors are provided an opportunity to resurrect their business. The process is called the Corporate Insolvency Resolution Process (CIRP). The entire process of corporate resolution is formalistic and time-consuming, and MSMEs encounter a lot of issues while adhering to the process. The minimum default limit for launching CIRP under Section 4 increased from ₹1 lakh to ₹1 crore with the notification dated 24 March 2020. As such, the default of an MSME, which is less than ₹1 crore, cannot generally be treated as a default under the CIRP and is only eligible to be treated as a default under the PPIRP if the default is at least ₹10 lakh.³ The rate of NPA in MSMEs is high; it is 9.2%, 10.2% and 16.5% in micro, small and medium enterprises respectively in 2020. So, to address the issues of non-performing assets in the MSMEs sector, there is a need to form an insolvency resolution procedure that assists the MSMEs in resolving insolvency and bad debts. As we know, MSMEs are the backbone of job creation, and the bad debt issue is a threat to the existence of MSMEs. The Central Government introduced the new insolvency resolution method, PPIRP, to make the process of resolution of insolvency appropriate for the MSMEs sector. The scheme of arrangement generally keeps the existing Board of Directors or partners in place to run the corporate debtor during the resolution process, subject to oversight by the Resolution Professional and supervision by the Committee of Creditors. But owners or promoters will not necessarily keep their ownership or control after the resolution plan has been approved, provided the plan is under management during PPIRP.

All countries, including India, suffer from the issue of Non-Performing Assets (NPAs). A study on some selected financial institutions in India, which are the backbone of all economic activities, has revealed that the higher the NPA, the lower the profitability of financial

² *Pre-Packaged Insolvency Resolution Process (PPIRP)*, TAXMANN BLOG (2022), <https://www.taxmann.com/post/blog/pre-packaged-insolvency-resolution-process-ppirp/?amp> (last visited Feb. 8, 2022).

³ Ministry of Corporate Affairs, Notification S.O. 1205(E) (Mar. 24, 2020); Ministry of Corporate Affairs, Notification S.O. 1543(E) (Apr. 9, 2021).

institutions in the economy.⁴ To address the issue of NPAs, among others, the Indian government has enacted the Insolvency & Bankruptcy Code, 2016. This came as a completely new insolvency and bankruptcy regime, which is constantly evolving to this day. In one big step towards this evolution, the government passed the Insolvency & Bankruptcy Code (Amendment) Act, 2021. The 2021 amendment added the time-bound alternative of PPIRP to bring together pre-initiation negotiation with formal creditor consent and court oversight.⁵

The introduction of this concept in the Indian insolvency regime is a timely one. This is because it is designed to help companies in financial trouble to resolve their financial issues, and with the increase of threshold to 10 million INR from the earlier 0.1 million INR on 24th March 2020, it has become difficult to resolve financial issues.⁶ This was done as a result of the COVID-19 pandemic causing businesses to suffer ongoing losses; a lower threshold could have led to an increase in insolvency proceedings and, naturally, more liquidations.⁷ A lot of business closures is not a friend to the economy since it results in loss of credit, loss of business and loss of jobs as well.⁸

The concept of pre-packaged insolvency has been named differently across different jurisdictions.⁹ It is called a pre-arranged insolvency plan and pre-plan sale in the USA, pre-pack in the UK, scheme of arrangement in Singapore, fast-track safeguard proceedings for pre-packs in France and expedited reorganization proceedings for pre-packs by the United Nations Commission on International Trade Law (UNCITRAL).¹⁰ The IMF has two variants of this process.¹¹ Pre-packaged plans, which involve negotiation and plan voting prior to the beginning of the rehabilitation process and obtain court approval as soon as the rehabilitation process begins. Pre-packaged plans, in which negotiations are completed prior to the start of proceedings, and the formal voting is completed after the start of the proceedings.

India follows a hybrid pre-negotiated insolvency model. Before filing the application, the corporate debtor prepares a base resolution plan and obtains the prescribed approval of its unrelated financial creditors for initiating PPIRP. However, the final consideration and

⁴ Ashish Kumar, Srirang Jha & Sahil Grover, *Impact of Non-Performing Assets on Profitability: A Study of Selected Private and Public Sector Banks in India*, EMPIRICAL ECON. LETTERS 129–38 (2021).

⁵ GERARD MCCORMACK, CORPORATE RESCUE LAW – AN ANGLO-AMERICAN PERSPECTIVE (2008).

⁶ Ministry of Corporate Affairs, Notification S.O. 1205(E) (Mar. 24, 2020).

⁷ IBBI *Liquidation Process Regulations, 2016*, IBC LAWS (2022), <https://ibclaw.in/ibbi-liquidation-process-regulations/> (last visited Feb. 8, 2022).

⁸ IBBI, INSOLVENCY AND BANKRUPTCY NEWS, vol. 18 (Jan.–Mar. 2021).

⁹ Insolvency and Bankruptcy Code (Amendment) Act, 2021, § 8; REPORT OF THE SUB-COMMITTEE OF THE INSOLVENCY LAW COMMITTEE ON PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS (2020).

¹⁰ Himani Singh, *Pre-Packaged Insolvency in India: Lessons from USA and UK* (Jan. 13, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3518287.

¹¹ Int'l Monetary Fund, *Introduction, in* ORDERLY AND EFFECTIVE INSOLVENCY PROCEDURES ch. 1 (1999).

voting on the resolution plan take place after the commencement of PPIRP through the Committee of Creditors. Therefore, the Indian framework combines pre-initiation negotiations with formal creditor voting and approval under the supervision of the Resolution Professional and the Adjudicating Authority.

Pre-packaged insolvency resolution is rooted in the principles of justice and fairness. PPIRP seeks to balance the interests of different stakeholders, although their levels of participation differ. While the primary voting control is exercised by the Committee of Creditors, the other stakeholders get the safeguards of the Code and the approved resolution plan. For this to happen, transparency and communication play a crucial role in any successful pre-pack. The restructuring plan should be designed in a way that respects the rights of creditors and enables the debtor to be allowed to continue business in a sustainable fashion. Part of the PPIRP process is to involve creditors. Creditors should be given the time to consider and make comments on the proposed plan of restructuring. This will not only increase transparency but also aid in developing a plan that is agreeable to most stakeholders. The Resolution Professional shall establish the Committee of Creditors within seven days after the commencement of the PPIRP based on the list of claims (confirmed). The CoC reviews the base resolution plan, reviews and considers competing plans if necessary, and votes on the resolutions granted by the Code. One of the key elements of pre-pack solutions is to keep the struggling debtor alive. Pre-packs are different from conventional bankruptcy proceedings, which typically result in the company being liquidated. This safeguards employment as well as keeping the business open for the benefit of its clients and customers; in turn, benefiting all concerned.

Pre-pack insolvency under the Act has been the subject of some scepticism. However, the aforementioned decision-making process, according to the arguments, is a promising and progressive process. This is because it has the best of both worlds: the formal judicial process (structured and decisive) and the informal (cheap and collaborative).¹² The type of insolvency regimes in the world reflects many factors, including the viability of different means of insolvency, institutional structures, judicial efficiency, etc., which makes a 'one-size-fits-all' solution neither wise nor feasible. Nevertheless, there should be some international benchmarks that would enable us to determine the effectiveness of an insolvency regime to a certain degree.

The scheme has been designed in a manner to provide a more friendly mechanism of resolution of stressed assets of micro, small, and medium enterprises while ensuring the

¹² Elizabeth Tashjian, Ronald C. Lease & John J. McConnell, *Prepacks: An Empirical Analysis of Prepackaged Bankruptcies*, 40 J. FIN. ECON. 135, 138 (1996).

protection of the interests of creditors.¹³ The Indian PPIRP framework follows a debtor-in-possession and creditor-in-control model. Under Section 54H of the Code, the management of the corporate debtor's ordinary business affairs continues to vest in its Board of Directors or partners. At the same time, the Resolution Professional conducts the PPIRP, monitors the management of the corporate debtor, and informs the Committee of Creditors of any breach of statutory obligations. The Committee of Creditors exercises commercial supervision and takes important decisions concerning the resolution process. Thus, operational management ordinarily remains with the corporate debtor, while creditors retain control over major resolution-related decisions. Section 54D requires the PPIRP to be completed within 120 days from the PPIRP commencement date. Within this overall period, the Resolution Professional must submit the resolution plan approved by the Committee of Creditors to the Adjudicating Authority within 90 days. Section 54L requires the Adjudicating Authority to decide the submitted plan within 30 days of its receipt. The latter period should not be treated as an automatic extension beyond the statutory PPIRP framework.¹⁴ It will help in reducing the costs and litigation involved in the resolution process and providing an effective resolution of corporate insolvency. A PPIRP application can be filed only by the corporate debtor after obtaining the prescribed approval of its financial creditors who are not related parties. Following the IBC Amendment Act, 2026, the approval threshold under Sections 54A(2)(e) and 54A(3) has been reduced from 66 per cent to 51 per cent of the value of the financial debt owed to such creditors. This threshold applies to the approval of the proposed Resolution Professional and the approval for filing the PPIRP application.¹⁵ The Committee of Creditors may, at any time during PPIRP, resolve by a vote of not less than 66 percent of the voting shares to seek the vesting of the corporate debtor's management in the Resolution Professional. The resolution professional must then apply to the adjudicating authority under Section 54J. The Adjudicating Authority may transfer the management to the Resolution Professional only where it is satisfied that the affairs of the corporate debtor have been conducted fraudulently or that there has been gross mismanagement. Therefore, the Committee of Creditors cannot independently remove or dissolve the existing management. The Act provides for strict penalties for fraudulent management of a corporate debtor or providing false information or any material omission in the application or list of claims.

¹³ *Silent Features of Proposed Pre-Packaged Insolvency Resolution Process Under Insolvency and Bankruptcy Code, 2016*, <https://ibclaw.in/silent-features-of-pre-packaged-insolvency-resolution-process-under-insolvency-and-bankruptcy-code-2016-report-of-the-sub-committee-of-the-insolvency-law-committee-on-pre-packaged-insolvency-resolu/>.

¹⁴ Insolvency and Bankruptcy Code, 2016, §§ 54D, 54L.

¹⁵ Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 34(a), amending §§ 54A(2)(e) and 54A(3) of the Insolvency and Bankruptcy Code, 2016.

2 PROCEDURE OF PRE-PACKAGED INSOLVENCY RESOLUTION

The Insolvency and Bankruptcy Code was enacted in 2016, while the statutory PPIRP framework was introduced in April 2021 to make the insolvency proceeding fast, cost-efficient, and effective in resolution with minimum disruption in the business proceedings without deteriorating the value of the business houses.¹⁶ PPIRP is a hybrid statutory resolution process combining informal negotiations before commencement with formal proceedings after admission. The corporate debtor prepares a base resolution plan and obtains the prescribed creditor approval before filing the application. After admission, the process is conducted under the supervision of the Resolution Professional, the Committee of Creditors, and the Adjudicating Authority. It is an innovative corporate rescue method that offers an option to settle the insolvency either in formal (judicial) insolvency proceedings or informal (out-of-court) settlement. Let's understand the procedure of the PPIRP.¹⁷

2.1 Pre-Initiation Stage

The pre-initiation stage starts with seeking approval of creditors to file applications to follow the resolution as per the pre-packaged scheme. Before filing an application for PPIRP, the corporate debtor must seek approval from its financial creditors who are not related parties. The corporate debtor must convene a meeting of such financial creditors in accordance with the prescribed procedure and provide them with the declaration of its directors or partners, the members' or partners' resolution, the base resolution plan, and such other prescribed information. If the corporate debtor has no financial creditors who are not related parties, the proposal and approval must be provided by such persons as may be specified under the applicable regulations.

Under the IBC Amendment Act, 2026, the approval threshold under Sections 54A(2)(e) and 54A(3) has been reduced from 66 per cent to 51 per cent of the value of the financial debt owed to unrelated financial creditors. This reduced threshold applies to the approval of the proposed Resolution Professional and the approval for filing the PPIRP application.

2.2 Application for Initiation

Where a corporate debtor satisfies the eligibility requirements under Section 54A, a corporate applicant may file an application before the Adjudicating Authority for initiation of

¹⁶ *Insolvency and Bankruptcy Code in Economic Survey*, <https://ibclaw.in/insolvency-and-bankruptcy-code-ineconomic-survey/>.

¹⁷ AKHIL GUPTA, SOME SIZES FIT ALL (2020).

PPIRP. The application must be submitted in the prescribed form and manner and must be accompanied by the prescribed fee.¹⁸

Before the 2026 amendment, Section 54C(3) expressly listed the principal declarations, approvals, consents, and information that had to accompany the application. The IBC Amendment Act, 2026, substitutes this detailed statutory list with a general requirement that the corporate applicant furnish “such information as may be specified.”¹⁹ Consequently, the Code no longer permanently fixes the complete list of documents within Section 54C(3). The applicant must comply with the documentary and informational requirements prescribed under the applicable PPIRP regulations and forms.

The applicable regulatory requirements may include the approval of unrelated financial creditors, consent of the proposed resolution professional, declarations of the directors or partners, the members’ or partners’ resolution, details concerning avoidance transactions, proof of MSME status, financial statements, statements of affairs, and other prescribed information. These requirements should be attributed to the applicable regulations and forms rather than described as a fixed list contained in Section 54C(3).

Under Section 54C(4), the Adjudicating Authority must ordinarily admit the application if it is complete or reject it if it is incomplete. Before rejecting an incomplete application, it must allow the applicant seven days from receipt of the notice to rectify the defect. PPIRP commences from the date on which the application is admitted.²⁰

The corporate debtor must be eligible to submit a resolution plan under Section 29A of the Code. In a PPIRP, the corporate debtor may itself submit the base resolution plan, either independently or jointly with another person. However, Section 240A grants qualifying micro, small, and medium enterprises limited exemptions from the disqualifications contained in Sections 29A(c) and 29A(h). Accordingly, a promoter of an eligible MSME is not automatically disqualified merely because of these two clauses, although all the other applicable requirements of Section 29A must continue to be satisfied.

A corporate debtor classified as a micro, small, or medium enterprise under Section 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006, may initiate PPIRP after committing a default of at least the notified minimum amount. It must be eligible to submit a resolution plan under Section 29A, must not be undergoing CIRP, and must not be subject to a liquidation order under Section 33. It must also not have undergone PPIRP or completed CIRP during the three years preceding the initiation date. The 2026

¹⁸ Insolvency and Bankruptcy Code, 2016, §§ 54C(1)–54C(2).

¹⁹ Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 35, substituting § 54C(3) of the Insolvency and Bankruptcy Code, 2016.

²⁰ Insolvency and Bankruptcy Code, 2016, §§ 54C(4)–54C(5).

Amendment Act provides for the future inclusion of CIIRP within these disqualifications; however, the relevant CIIRP-related amendments have not yet been brought into force.

2.3 Post-Initiation Phase

All the action in the pre-packaged insolvency proceedings will have to be done within 120 days of the start of the proceedings. During the whole process of resolution of insolvency, the management of affairs of the company remains in the hands of the Board of Directors/the partners of the corporate debtor; they are allowed to take all such steps that are essential for the benefit of the corporate debtor. The corporate debtor needs to submit the base resolution plan to the resolution professional and an updated list of claims of creditors and their security interests and guarantees in Form No. P10.²¹

The IBC Amendment Act, 2026, has also expanded the obligation to cooperate with the Resolution Professional. The amended Section 54F(5) requires any person who is or has been a member of the personnel of the corporate debtor, its promoter, a person associated with its management, or a person engaged under a contract for service with the corporate debtor to provide the assistance and cooperation required by the Resolution Professional. The amendment therefore extends the duty beyond existing personnel and management to former personnel and contractual service providers who may possess information relevant to the PPIRP.²²

2.4 Consideration and Approval of Resolution Plan

Under Section 54K, the corporate debtor must submit the base resolution plan to the resolution professional within two days of the PPIRP commencement date. The Resolution Professional presents the plan to the Committee of Creditors. The Committee may allow the corporate debtor to revise the base resolution plan before deciding whether to approve it or invite competing plans.

The Committee of Creditors may approve the base resolution plan directly where it does not impair the claims of operational creditors. A claim is considered impaired when the plan does not provide for full payment of the confirmed claim appearing in the updated list of claims.

The Resolution Professional must invite prospective resolution applicants to submit competing resolution plans where the Committee of Creditors does not approve the base resolution plan or where the base resolution plan impairs the claims of operational creditors.

²¹ Insolvency and Bankruptcy Code, 2016, § 54G(1); Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021, reg. 20.

²² Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 36, substituting § 54F(5) of the Insolvency and Bankruptcy Code, 2016.

The competing plans are evaluated in accordance with the criteria approved by the Committee of Creditors. Where a competing plan is significantly better than the base resolution plan, it may be selected for approval.

If not, the plan selected to compete is the competing plan and the base resolution plan goes into competition using the improvement mechanism prescribed. The resolution plan finally chosen should be approved by the Committee of Creditors with a 66 percent majority of the votes. The Committee's duties when casting votes shall include determining the feasibility, viability and proposed distribution of the plan between creditors, including the priority of the plan under Section 53 and the value of the creditors' secured security interests. The Resolution Professional shall file the resolution plan before the Adjudicating Authority under Section 54K(15) once the resolution plan is accepted by the Committee of Creditors with a 66 per cent voting share. The Committee of Creditors can approve the plan, but it will not automatically become a legally binding plan. The Adjudicating Authority considers the plan under Section 54L and may approve it if it satisfies the requirements of the Code and contains adequate provisions for its effective implementation. After approval by the Adjudicating Authority, the plan is implemented and supervised in accordance with the arrangements contained in the approved plan. The Resolution Professional may be involved in supervision, but implementation is not necessarily undertaken exclusively by the Resolution Professional.

The 2026 amendment makes two important changes to Section 54L. First, before rejecting a resolution plan for non-compliance, the Adjudicating Authority may allow the Committee of Creditors to rectify defects in the plan. This curative opportunity can prevent termination or liquidation merely because of remediable defects.²³ Secondly, the legal consequences contained in Sections 31(5) and 31(6) have been extended to a resolution plan approved under PPIRP. Accordingly, specified licenses, permits, registrations, quotas, concessions, clearances, and similar governmental or regulatory rights connected with the approved plan cannot ordinarily be suspended or terminated during their remaining period if the continuing obligations attached to them are fulfilled. Further, unless the approved plan provides otherwise, claims against the corporate debtor and its assets relating to the period before approval of the plan are extinguished, and proceedings based on those claims cannot be instituted or continued against the corporate debtor or its assets.²⁴ These consequences do not automatically extinguish the separate liabilities of promoters, guarantors, or persons jointly liable with the corporate debtor.

²³ Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 37(b), inserting a proviso into § 54L(3) of the Insolvency and Bankruptcy Code, 2016.

²⁴ Insolvency and Bankruptcy Code (Amendment) Act, 2026, §§ 19(e), 37(a), inserting §§ 31(5)–31(6) and extending their application to PPIRP through § 54L(2).

The 2026 amendment also modifies the consequences where PPIRP culminates in liquidation. The references in Sections 54L(4)(b) and 54N(4)(a) have been expanded to include the additional consequences contained in Section 33(1)(b)(iv) and Section 33(1)(b)(v). Where such a resolution plan was rejected, or the PPIRP was terminated as provided in the Code in the circumstances, the Adjudicating Authority shall declare the moratorium under this section and appoint a liquidator as provided in section 34. The amendment provides a more transparent process for moving from an unsuccessful PPIRP to liquidation.²⁵

3 PROPOSED RELATIONSHIP BETWEEN PPIRP AND CIIRP

The IBC Amendment Act, 2026, provides for the introduction of a creditor-initiated insolvency resolution process through Chapter IV-A of Part II of the Code. Under the enacted framework, CIIRP may be initiated by a financial creditor belonging to a notified class of financial institutions in respect of specified categories of corporate debtors.²⁶ Unlike PPIRP, which is initiated by an eligible MSME corporate debtor, CIIRP is designed as a creditor-initiated process.

However, Section 40 of the 2026 Amendment Act, which inserts Chapter IV-A, has not yet been brought into force. Similarly, the amendments adding CIIRP to the eligibility restrictions under Sections 54A(2)(a) and 54A(2)(b) have not commenced. CIIRP should therefore be discussed as an enacted but not yet operational mechanism, rather than as an existing alternative currently operating alongside PPIRP.²⁷

Once brought into force, the CIIRP framework will prevent simultaneous or repetitive use of PPIRP, CIRP and CIIRP within the periods prescribed by the Code. Its practical relationship with PPIRP will depend upon the commencement notification, identification of eligible corporate debtors and creditors, and the rules and regulations issued under Chapter IV-A.

4 SIGNIFICANCE OF PRE-PACKAGED INSOLVENCY RESOLUTION

The advantages of pre-packaged insolvency resolution are numerous and can be grouped into several key areas, making them a valuable tool in managing financial distress.²⁸ The

²⁵ Insolvency and Bankruptcy Code (Amendment) Act, 2026, §§ 20(a)(ii), 37(c), 38, amending §§ 33(1)(b), 54L(4)(b) and 54N(4)(a) of the Insolvency and Bankruptcy Code, 2016.

²⁶ Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 40, inserting Chapter IV-A and §§ 58A–58M.

²⁷ Ministry of Corporate Affairs, Notification S.O. 2625(E) (May 22, 2026). The notification did not bring s 40 or s 34(a)(i)–(ii) into force.

²⁸ Gazette Notification No. S.O. 1543(E) (Apr. 9, 2021), the minimum amount of default for a PPIRP process is ₹ 10.00 Lacs. This Notification has been issued under proviso to Section 4 of the IBC.

benefits include aspects of value preservation, job security, speed, confidentiality, and special considerations for the MSMEs sector.²⁹

The major advantage of pre-pack insolvency resolution is that it has the ability to preserve the value of an ailing company to a great extent. Pre-packs help to prevent erosion of value because they will resolve financial issues before they become full-blown insolvency proceedings.³⁰ This is essential for protecting the interests of creditors because a going concern is likely to recover more than liquidation.

Pre-packaged insolvency resolutions have a positive impact on employment by safeguarding jobs. In traditional insolvency processes, job losses are widespread, as companies are often compelled to downsize or close their doors entirely.³¹ Pre-packs, on the other hand, allow distressed entities to continue their operations, thereby protecting the livelihoods of their employees.

As substantial negotiations and preparation of the base resolution plan take place before the formal commencement of PPIRP, an approved plan may be implemented more efficiently than a plan developed entirely during a conventional insolvency proceeding. However, PPIRP does not necessarily result in the sale of the corporate debtor to an outside buyer. Depending on its terms, the resolution plan may provide for restructuring of debt, alteration of payment obligations, infusion of capital, dilution of promoter shareholding, change in management, sale of assets, or a combination of these measures. The way of implementation would depend on the resolution plan sanctioned by the Committee of Creditors and the Adjudicating Authority. PPIRP allows the corporate debtor and financial creditors to engage in preliminary negotiations and prepare the base resolution plan prior to the formal beginning of the process. This pre-initiation phase offers a certain level of confidentiality that could mitigate reputation loss and help maintain the going-concern value of the business. But there is no confidentiality for the entire PPIRP. After admission, the Adjudicating Authority declares a moratorium, appoints the Resolution Professional and makes a public announcement that the PPIRP is commencing. This is then only gained at the pre-initiation negotiation stage, which is relatively informal. The pre-pack or resolution plan is much quicker than a formal resolution process. In the U.S., for example, a corporate debtor engages in negotiations over a Chapter 11 restructuring plan and seeks votes on the plan prior to the filing of the plan and court approvals. Pre-packaged insolvency resolutions are unique in offering faster and more economical resolutions in today's time-crunched

²⁹ JOSE M. GARRIDO, *OUT-OF-COURT DEBT RESTRUCTURING* ¶ 101 (World Bank Study 2012).

³⁰ S. FRISBY, *A PRELIMINARY ANALYSIS OF PRE-PACKAGED ADMINISTRATIONS* (REPORT TO THE ASSOCIATION OF BUSINESS RECOVERY PROFESSIONALS) (2007). See K. VAN ZWIETEN, *GOODE ON PRINCIPLES OF CORPORATE INSOLVENCY LAW* 494 (5th ed. 2018).

³¹ S. FRISBY, *A PRELIMINARY ANALYSIS OF PRE-PACKAGED ADMINISTRATIONS* (REPORT TO THE ASSOCIATION OF BUSINESS RECOVERY PROFESSIONALS) (2007).

environment. This speed is particularly beneficial in times of economic instability when quick response can make all the difference between recovery and irreparable damage. The pre-pack insolvency procedure has been designed keeping in mind the specific needs of the MSMEs (Micro, Small and Medium Enterprises) sector and the minimum threshold of default standing at Rs. 10 lakhs. This approach considers the different circumstances and problems smaller businesses encounter. The corporate debtor is required to fulfil several pre-conditions before applying. They involve securing a special resolution of its members, a resolution by at least three-fourths of its partners, a resolution, subject to approval by most of the financial creditors who are not related to the resolution process, or approval of the proposed Resolution Professional.³²

PPIRP may be initiated only through an application made by the corporate applicant in respect of an eligible corporate debtor. A “corporate applicant” includes the corporate debtor, an authorized member or partner, or an individual who manages the operations and resources of the corporate debtor.³³

The CoC may allow the corporate debtor to revise the base resolution plan before deciding whether to approve it or invite competing plans. However, the corporate debtor does not have unilateral control over the final plan. The plan must satisfy the statutory requirements and obtain approval from at least 66 per cent of the CoC’s voting share before being submitted to the Adjudicating Authority.

PPIRP is to be completed within 120 days of the date of the commencement of PPIRP by Section 54D. The Resolution Professional shall then file the resolution plan which has been approved by the Committee of Creditors with the Adjudicating Authority within 90 days of this overall period. In case the resolution plan is not approved within that time, the resolution professional will apply to withdraw the PPIRP. Section 54L also stipulates that the Adjudicating Authority must approve or reject the resolution plan submitted within 30 days from the date it is received. These timelines are to be considered as part of the overall time-bound framework of the PPIRP and are not an automatic extension beyond statutory time limits.³⁴ The advantages of using PPIRP are related to its ability to preserve the value of distressed businesses, keep the jobs intact, offer relative confidentiality while still in the pre-initiation phase, speed up the resolution process and customize solutions for the needs

³² Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 34(a), amending §§ 54A(2)(e) and 54A(3) of the Insolvency and Bankruptcy Code, 2016.

³³ S. FRISBY, A PRELIMINARY ANALYSIS OF PRE-PACKAGED ADMINISTRATIONS (REPORT TO THE ASSOCIATION OF BUSINESS RECOVERY PROFESSIONALS) (2007).

³⁴ MINISTRY OF CORP. AFF., GOV’T OF INDIA, MONTHLY NEWSLETTER, vol. 13Z (Nov. 2018); the Ministry of Corporate Affairs has also sought public comments on, inter alia, pre-packaged insolvency resolution process under the Code. *See* MCA Notice (Apr. 16, 2019).

of the MSMEs sector. These advantages collectively make pre-packs a valuable tool in managing financial distress and insolvency proceedings.³⁵

5 CHALLENGES OF PRE-PACKAGED INSOLVENCY RESOLUTION

Pre-packaged insolvency resolution seeks to combine the speed and flexibility of an informal restructuring with the legal certainty and safeguards of a formal insolvency proceeding. However, the challenges associated with the Indian Pre-Packaged Insolvency Resolution Process (PPIRP) must be distinguished from those arising under foreign pre-pack administration or pre-pack sale models. In jurisdictions such as the United Kingdom, a pre-pack may involve the negotiation and sale of the business before or immediately after the commencement of formal administration. By contrast, the Indian PPIRP is a statutory resolution process involving admission by the National Company Law Tribunal (NCLT), declaration of a moratorium, appointment of a resolution professional, constitution of a Committee of Creditors (CoC), public announcement, and judicial approval of the resolution plan.³⁶ Nevertheless, the Indian framework continues to raise concerns regarding transparency, promoter influence, valuation, creditor participation, and potential conflicts of interest.

5.1 Limited Transparency during the Pre-Initiation Stage

One of the main issues with pre-pack liquidation is the lack of transparency in the discussions that take place prior to the official process. The international experience shows that a private negotiation between the debtor, secured creditors and a prospective purchaser can cause questions about the fairness of the transaction and the value received.³⁷ In line with the Indian mechanism, the base resolution plan is prepared by the corporate debtor and then discussed with the financial creditors who are unrelated to the debtor before the application for the commencement of the PPIRP is filed.³⁸ This confidentiality could preserve the popularity and going concern importance of the business. But there may be a lack of information regarding these preliminary negotiations for operational creditors, employees, minority shareholders and other stakeholders. In fact, the concern is not that there is no transparency during PPIRP, but that some stakeholders are not well represented at the pre-initiation phase of PPIRP. Formal Admission to PPIRP makes the process subject to

³⁵ *Role of MSMEs Crucial for India to Become a \$5-Trillion Economy, Says Kant*, ECON. TIMES (2022), <https://economictimes.indiatimes.com/small-biz/sme-sector/role-of-msmescrucial-for-india-to-become-a-5-trillion-economy-says-kant/articleshow/88605491.cms?from=mdr> (last visited Feb. 8, 2022).

³⁶ Insolvency and Bankruptcy Code, 2016, §§ 54C–54L.

³⁷ TERESA GRAHAM, GRAHAM REVIEW INTO PRE-PACK ADMINISTRATION: REPORT TO THE RT HON VINCE CABLE MP ¶¶ 7.64–7.65 (2014).

³⁸ Insolvency and Bankruptcy Code, 2016, §§ 54A(2)–54A(4).

statutory disclosure and supervision. The NCLT declares moratorium, appoints the Resolution Professional and makes a public announcement. Thus, confidentiality is not a part of the process but rather a limited part of the pre-initiation negotiations.³⁹

5.2 Limited Participation of Operational and Unsecured Creditors

The corporate debtor and its financial creditors not related to it are the main actors in initiating PPIRP. Operational creditors can file claims and enjoy the same protection as financial creditors under the resolution plans; however, they are not involved in the same way as financial creditors in approving the PPIRP and in choosing the resolution professional. It is possible to approve a base resolution plan directly if it doesn't affect the claims of operational creditors.⁴⁰ If it affects such claims or the CoC does not approve of the base resolution plan, the Resolution Professional shall solicit competing resolution plans. In this case, a claim will be considered impaired if the plan does not include full payment of the confirmed claim in the updated list of claims.⁴¹ Such safeguards do not preclude the ability of operational creditors or unsecured creditors, in certain cases, to have some influence on the process of formulating the base resolution plan. The only real protection they have is that of the statutory rules affecting payment, competing plans, and judicial review, and not direct control of the initial negotiations.⁴²

5.3 Creditor Disputes and Litigation

There could be conflicts on issues related to admission and valuation of claims, composition of the CoC, allocation of voting rights, treatment of operational creditors, eligibility of resolution applicants and comparison between the base resolution plan and alternatives. Creditors can also raise objections to a plan if they believe the distribution is unfair and/or the value offered is less than the value they might have received under CIRP or liquidation. While PPIRP aims to minimise litigation by pre-emptively negotiating and seeking creditor consent, issues that do crop up post-commencement can compromise its key benefits of speed and cost-effectiveness. Appeals and collateral litigation could become more relevant in cases involving various classes of creditors that contest valuation and distribution or the market viability of the chosen resolution plan.

³⁹ *Id.* § 54E.

⁴⁰ *Id.* §§ 54A, 54-I.

⁴¹ *Id.* §§ 54K(4)–54K(5).

⁴² *Id.* § 54K, Explanation II.

5.4 Limitations of the Competitive Plan Mechanism

Indian PPIRP is not a process that automatically entails a sale to a specific pre-determined buyer. The Code offers a framework for competition as per Section 54K. The resolution plan can be submitted directly without doing any harm to the rights of operational creditors where it does not affect the creditors' committee. If the CoC does not approve the base resolution plan, or if the plan makes it difficult for the operational creditors' claims to be satisfied, the Resolution Professional must solicit competing plans from prospective resolution applicants.⁴³

However, it does rely on significant market participation. Prospective applicants might have little time to assess the corporate debtor, to conduct due diligence and to come up with a feasible resolution plan. The information available and its accuracy, the eligibility requirements set for applicants, and the way the base plan is compared to competing plans can impact the competitiveness of the process. If the market doesn't react, the base resolution plan might still be the only viable commercial solution, and this will reduce meaningful price discovery.

5.5 Valuation Difficulties

The valuation of a financially distressed enterprise is inherently complex. Its assets may have substantially different values depending on whether they are valued individually, on a liquidation basis or as part of a going concern. Information asymmetry, market uncertainty, contingent liabilities, and the absence of comparable transactions may further complicate the valuation exercise.⁴⁴

International studies of pre-pack administrations have also identified concerns regarding the independence and accuracy of valuations, particularly where the sale or restructuring benefits persons connected with the existing management.⁴⁵ Similar concerns may arise in the Indian context, where the corporate debtor or its promoters prepare the base resolution plan while continuing to manage the enterprise.

An inaccurate valuation may affect the comparison between the base plan and competing plans, the treatment of secured and unsecured creditors, and the determination of whether the resolution maximizes the value of the corporate debtor. Independent valuation, adequate disclosure of assumptions, and meaningful scrutiny by creditors are therefore essential to the legitimacy of PPIRP.

⁴³ *Id.* §§ 54K(5)–54K(12).

⁴⁴ TERESA GRAHAM, GRAHAM REVIEW INTO PRE-PACK ADMINISTRATION: REPORT TO THE RT HON VINCE CABLE MP ¶ 7.46 (2014).

⁴⁵ VANESSA FINCH, CORPORATE INSOLVENCY LAW: PERSPECTIVES AND PRINCIPLES 74 (2d ed. 2009).

5.6 Conflicts of Interest and Perceived Unfairness

PPIRP is in a debtor-in-possession and creditor in control format. The Board of Directors/partners normally remain responsible for the affairs of the corporate debtor under Section 54H. Meanwhile, the Resolution Professional manages and oversees the process, and the CoC has control over key commercial decisions.⁴⁶

This will maintain the management skills and minimize disruption in business. It can also create conflicts of interest between the promoters who caused the financial difficulties and the entities that have to run the business, which will be involved in the base resolution plan. They may not always align with those of the creditors, employees or minority shareholders. Issues can be especially acute if a resolution plan would include related parties, promoter-affiliated entities or transactions that would leave the current management in control of the company following a liability reduction or restructuring. Comparative insolvency scholarship has also noted that the coalescing of creditor and managerial control may lead to conflicts over distribution, control, and the ultimate ownership of a troubled business.⁴⁷

5.7 Limited Participation of Minority Shareholders

Minority shareholders may exercise limited influence over the preparation and approval of the base resolution plan, particularly where the promoter group controls the voting power of the corporate debtor. Although the members must approve the filing of a PPIRP application through a special resolution, this requirement may not provide effective protection where the promoters hold the necessary voting majority.⁴⁸

A resolution plan may provide for alteration of share capital, dilution of existing shareholding, transfer of control, or other corporate restructuring measures. Minority shareholders may consequently suffer a substantial reduction in the value of their interests. While insolvency law necessarily prioritizes revival of the corporate debtor and satisfaction of creditor claims, adequate disclosure and compliance with applicable legal safeguards remain important for protecting minority interests.

⁴⁶ Insolvency and Bankruptcy Code, 2016, §§ 54F, 54H, 54-I.

⁴⁷ Andrea Polo, *Secured Creditor Control in Bankruptcy: Costs and Conflict* (Working Paper, 2012); K. VAN ZWIETEN, GOODE ON PRINCIPLES OF CORPORATE INSOLVENCY LAW 495 (5th ed. 2018); John Armour, Brian R. Cheffins & David A. Skeel, Jr., *Corporate Ownership Structure and the Evolution of Bankruptcy Law: Lessons from the United Kingdom*, 55 VAND. L. REV. 1699 (2003).

⁴⁸ Insolvency and Bankruptcy Code, 2016, § 54A(2)(g); Bala N. Balasubramanian & R. Anand, *Ownership Trends in Corporate India 2001–2011: Evidence and Implications* (IIM Bangalore Research Paper No. 419, 2013).

5.8 Employee Concerns

The principal objective of PPIRP is to preserve the corporate debtor as a going concern, which may protect employment more effectively than liquidation. Nevertheless, a resolution plan may provide for business reorganization, closure of unviable units, modification of employment arrangements, or workforce reduction. Employees may have little direct participation in the pre-initiation negotiations and may become aware of the proposed restructuring only after commencement of the formal process.

International studies of pre-pack administrations have identified similar concerns regarding job security, consultation, and the treatment of employee claims.⁴⁹ However, the Indian PPIRP should not be equated with a pre-pack sale in which employees are automatically transferred to a purchaser. The effect on employment depends upon the terms of the resolution plan ultimately approved by the CoC and the NCLT.

5.9 Possibility of Abuse by Promoters and Management

The debtor-in-possession structure may be misused where promoters withhold material information, manipulate valuations, favor related parties, or use the process to retain control while obtaining an excessive reduction of liabilities. There is also a risk that transactions prejudicial to creditors may be completed before commencement of PPIRP.

The Code provides safeguards against such abuse. The Resolution Professional is required to examine and, where appropriate, file applications relating to avoidance transactions and fraudulent or wrongful trading. Under Section 54G, promoters, directors, partners, and persons who authorize the submission of the list of claims or preliminary information memorandum may be liable to compensate persons who suffer loss because of material omissions or misleading information, subject to the statutory defenses. Separate penalties may also arise under Section 77A.⁵⁰

Furthermore, under Section 54J, the CoC may, by a vote of at least 66 percent, resolve to seek vesting of the management in the Resolution Professional. The resolution professional must then apply to the NCLT, which may transfer management where it finds that the affairs of the corporate debtor were conducted fraudulently or that there was gross mismanagement. These safeguards are important, but their effectiveness depends upon timely access to accurate financial information and active supervision by the Resolution Professional and the CoC.

⁴⁹ TERESA GRAHAM, GRAHAM REVIEW INTO PRE-PACK ADMINISTRATION: REPORT TO THE RT HON VINCE CABLE MP ¶¶ 7.64–7.65, 7.78–7.81 (2014).

⁵⁰ Insolvency and Bankruptcy Code, 2016, §§ 54F(2)(h), 54G(2), 66, 67A, 77A.

5.10 Effectiveness of Judicial Oversight

Unlike certain foreign pre-pack models, the Indian PPIRP is not conducted without judicial supervision. The NCLT admits or rejects the application, declares the moratorium, appoints the Resolution Professional, considers applications for vesting management, and approves or rejects the resolution plan.⁵¹ It may also terminate PPIRP or order liquidation in circumstances prescribed by the Code.

The principal concern is therefore not the absence of judicial oversight but the ability of the NCLT to exercise its functions within the statutory timelines. Delays caused by a high caseload, procedural objections, defective applications, or disputes among stakeholders may undermine the objective of completing PPIRP expeditiously. The 2026 amendment seeks to reduce avoidable rejections by permitting the NCLT to allow the CoC to rectify defects in a resolution plan before rejecting it.⁵²

5.11 Regulatory Uncertainty and Limited Jurisprudential Development

PPIRP remains comparatively less tested than CIRP. Consequently, limited judicial interpretation is available on several important issues, including the treatment of disputed claims, the degree of scrutiny applicable to a base resolution plan, the operation of the competitive plan mechanism, and the circumstances justifying the transfer of management to the resolution professional.

Several PPIRP-related provisions of the 2026 Amendment Act came into force on 26 May 2026. These include the reduction of the pre-initiation approval threshold from 66 per cent to 51 per cent, modification of the information required with an application, expansion of cooperation obligations and changes concerning approval and implementation of resolution plans. However, the provisions introducing CIIRP and the corresponding CIIRP-related restrictions under Section 54A have not yet commenced. The paper must therefore distinguish between amendments that are presently operative and provisions that have merely been enacted.

5.12 Lack of Uniformity Across Jurisdictions

Pre-packaged insolvency does not have a uniform legal design across jurisdictions. The United Kingdom largely employs pre-packaged sales within administration, while the United States recognizes pre-packaged or pre-negotiated plans under Chapter 11. Other

⁵¹ *Id.* §§ 54C, 54E, 54J, 54L, 54N.

⁵² Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 37(b), inserting a proviso into § 54L(3) of the Insolvency and Bankruptcy Code, 2016.

jurisdictions follow different combinations of informal negotiation, creditor voting, and judicial confirmation.

These differences make direct comparison difficult. Criticisms derived from a private pre-pack sale cannot automatically be applied to Indian PPIRP, which is a statutory resolution-plan process. Nevertheless, comparative experience remains valuable for examining recurring concerns such as transparency, connected-party transactions, valuation, creditor participation, and judicial scrutiny.⁵³

The principal challenge for Indian PPIRP is to preserve the speed and flexibility of pre-initiation negotiation without compromising transparency, value maximization, and stakeholder protection. The statutory involvement of the Resolution Professional, CoC, and NCLT distinguishes Indian PPIRP from purely private pre-pack sales and provides important safeguards against abuse. However, concerns relating to information asymmetry, promoter influence, valuation, limited participation of operational creditors, minority-shareholder protection, and institutional delays continue to require attention.

Effective implementation requires independent valuation, accurate disclosure, active monitoring by the Resolution Professional, reasoned decision-making by the CoC, and timely judicial scrutiny. The reforms introduced through the IBC Amendment Act, 2026, may facilitate access to PPIRP and strengthen the legal effect of approved plans. Their practical success, however, will depend upon the applicable regulations, commencement notifications, and the way the amended provisions are interpreted and implemented.

6 CONCLUSION AND WAY FORWARD

The Indian PPIRP framework offers a structured alternative to CIRP for resolving the financial distress of eligible MSME corporate debtors. Its debtor-in-possession and creditor-in-control design seeks to preserve business continuity while subjecting the resolution plan to creditor approval and judicial supervision. The 2026 amendments strengthen this framework by reducing the pre-initiation approval threshold to 51 per cent, simplifying the statutory filing requirements, expanding cooperation obligations, permitting rectification of defective plans and clarifying the consequences of plan approval and liquidation.

Nevertheless, PPIRP continues to face challenges relating to limited stakeholder participation during pre-initiation negotiations, information asymmetry, valuation, promoter influence and institutional delays. The effectiveness of the process will depend upon accurate

⁵³ S. FRISBY, A PRELIMINARY ANALYSIS OF PRE-PACKAGED ADMINISTRATIONS: REPORT TO THE ASSOCIATION OF BUSINESS RECOVERY PROFESSIONALS (2007); TERESA GRAHAM, GRAHAM REVIEW INTO PRE-PACK ADMINISTRATION: REPORT TO THE RT HON VINCE CABLE MP (2014).

disclosure, independent professional supervision, commercially reasoned decisions by the CoC and timely adjudication by the NCLT.

The 2026 Amendment Act has also enacted a separate CIIRP framework. However, because Chapter IV-A has not yet commenced, CIIRP should presently be treated as a future statutory mechanism rather than an operational alternative. Further empirical study of PPIRP cases and careful implementation of the amended provisions will be necessary to determine whether the framework can achieve its objectives of speed, value maximisation and business rescue.

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