



Pre-Packaged Insolvency Resolution Process for MSMEs



Contributed by:

CA. Hiten Abhani

With respect to the unique nature of their businesses and simpler corporate structures, the Indian Government has considered it necessary to introduce an insolvency resolution process for MSME (Micro, Small, and Medium Enterprises).

In the pandemic, the government suspended the filing of applications for initiation of corporate insolvency resolution process in respect of the defaults arising during One Year beginning from 25th March 2020 till 24th March 2021.

The Government also considered it expedient to provide an efficient alternative insolvency resolution process to ensure quicker, cost-effective, and value-maximizing outcomes for all the stakeholders, in a manner that is least disruptive to the continuity of their businesses, and which preserves jobs.

To achieve these objectives, the Government introduced a pre-packaged insolvency resolution process for Corporate Persons classified as MSMEs through Insolvency and Bankruptcy Code (IBC, 2016) (Amendment) Ordinance 2021-04-04-2021.

In this article, we help you understand the pre-packaged Insolvency Resolution Process.

First, Let Us Understand Who Are the Corporate Persons Classified As MSMEs?

- Corporate Persons such as
- Any Company as per [Companies Act 2013](#) or
- Limited Liability Partnership Registered as Micro, Small, and Medium Enterprises based on the Micro, Small, and Medium Enterprises Development (MSMED) Act in 2006. However, it does not include any financial service provider.
- Corporate Person should either be engaged in manufacturing or production of goods in any industry or engaged in providing or rendering services.

What Are Pre-packs?

“Pre-Pack” means a resolution of the Debt Amount of the Corporate Debtor through an agreement or arrangement with Secured Creditor/s. In other words, its restructuring of the Corporate Debt with consensus from the Lender.

Who Can Apply for The Pre-packaged Insolvency Resolution Process?

Only a Corporate Debtor is entitled to initiate a pre-packaged Insolvency Resolution Process. In other words, neither Financial Creditors nor Operational Creditors can initiate a pre-packaged Insolvency Resolution Process against Corporate Debtors.

Further, the amount of default for Corporate Debtor to apply for pre-packaged Insolvency Resolution Process shall not be more than One Crore Rupees.

What Are the Main Differences Between The Corporate Insolvency Resolution Process (CIRP) And The Pre-packaged Insolvency Resolution Process?

- The time limit to complete the CIRP is 270 days, whereas pre-pack, in contrast, is limited to a maximum of 120 days with only 90 days available to the stakeholders to bring the resolution plan to the NCLT (National Company Law Tribunal).
- In pre-packs, existing management retains control, while under CIRP, the resolution professional takes control of the debtor as a representative of financial creditors.
- Litigation by erstwhile promoters and potential bidders under the pre-packaged insolvency process will be minimal in contrast to CIRP resulting in effective and timely resolution of debt of the corporate debtor.

What Are the Pre-requisites For a Corporate Debtor Classified As MSMEs To Initiate A Pre-packaged Insolvency Resolution Process?

- Corporate Debtor should not have undergone the pre-packaged Insolvency Resolution Process, nor have completed CIRP during the last three years from the initiation date.
- A Corporate Debtor under CIRP or liquidation cannot initiate a pre-packaged insolvency resolution process.
- 66% in the value of the Financial Creditor unrelated to Corporate Debtor need to approve the proposal of the pre-packaged insolvency resolution process and propose the name of Insolvency Professional for conducting the pre-packaged insolvency resolution process.
- The majority of the Directors or the Partners of the Corporate Debtors have to file a declaration that.
- Corporate Debtor will initiate pre-pack insolvency resolution process within 90 days;
- That the process is not initiated to defraud





anyone and

- Declares the name of an insolvency professional proposed and approved to be as the resolution professional.
- Corporate Debtor should pass a special resolution or approve with not less than three-fourths of the total number of partners and pass the resolution approving the filing of an application to initiate the pre-packaged insolvency resolution process.

• 66% in value of the Financial Creditors unrelated to the Corporate Debtor need to approve the filing of the application before the Adjudicating Authority for initiating the pre-packaged insolvency resolution process.

What Are the Timelines Under The Pre-packaged Insolvency Resolution Process?

• Within One Hundred Twenty (120) days from the date of admission of the pre-packaged insolvency resolution process of Corporate Debtor by Adjudicating Authority, the pre-packaged insolvency resolution process should be completed.

• Within Fourteen (14) days of submission of application for initiating the pre-packaged insolvency resolution process, Adjudicating Authority should either accept or reject the application.

• Within Ninety (90) days from the date of admission of the pre-packaged insolvency resolution process of Corporate Debtor by Adjudicating Authority, Resolution Professional should submit the Resolution Plan.

• Within Thirty (30) days of receipt of the Resolution Plan, the Adjudicating Authority should either accept or reject the Resolution Plan.

Now, let us understand the duties and powers of a Resolution Professional.

Following are the duties of an Interim Resolution Professional before the corporate insolvency resolution process:

- Prepare a report that Corporate Debtor is eligible to initiate the pre-packaged insolvency resolution process.
- Prepares a report that the base resolution plan submitted by Corporate Debtor is in compliance with the provisions of the Insolvency and Bankruptcy Code (Amendment) Ordinance 2021-04-04-2021.
- Submitting the report to the appropriate authority.
- Perform any other duties as may be specified.
- Public announcement of the initiation of pre-packaged insolvency resolution process in the case of Corporate Debtor.
- Confirm the list of claims submitted by the

Corporate Debtor.

- Inform creditors about the claims on Corporate Debtor.
- Maintain the updated list of Claims on Corporate Debtor.
- Constitute the Committee of Creditors and convene and attend all the meetings.
- Prepare Information Memorandum based on preliminary information memorandum submitted by Corporate Debtor.
- Monitor affairs of management of Corporate Debtors.
- Intimate Committee of Creditors about the breach of any of the obligations by the management of the Corporate Debtors.
- File an application for the avoidance of transaction or fraudulent or wrongful trading before the appropriate authority.

Following are the duties of Resolution Professional during the pre-packaged insolvency resolution process:

- Access to books of accounts, records and information available with Corporate Debtor physically or in electronic mode available with any information utility or with Government or with the statutory auditor or with any other specified person.
- Attending all meetings of the Management of Corporate Debtor i.e., board meetings or meetings of the committee of directors or partners.
- Appoint any accountants, legal or other professionals.
- Collect all information about assets, finance and operations of Corporate Debtor to assess its financial position and the existence of any avoidance of transaction or fraudulent or wrongful trading.

Now, let us take a look at the Corporate Debtor What Are The Duties Of The Corporate Debtor In The Pre-packaged Insolvency Resolution Process?

- Within Two (2) days, prepare a list of claims with details, security interest and guarantees, if any.
- Within Two (2) days, prepare an information Memorandum containing information relevant for formulating a Resolution Plan.

Responsibility Of Management Of Affairs Of Corporate Debtor

In the pre-packaged insolvency resolution process, the management of affairs of Corporate Debtor will be with the existing management i.e., the Board of Director or





- Partners as the case may be.
- Alternatively, the Committee of Creditors during the pre-packaged insolvency resolution process having no less than 66% of the voting shares can resolve to vest the management of Corporate Debtors with Resolution Professional.

What Are the Considerations And Processes For Approval Of The Resolution Plan In The Pre-packaged Insolvency Resolution Process?

- Corporate Debtor shall submit a base Resolution Plan within two (2) days of initiation of the pre-packaged insolvency resolution process.
- The Resolution Professional will present it to the Committee of Creditors.
- The Committee of Creditors may provide an opportunity to Corporate Debtor to revise the base Resolution Plan.
- The Base Resolution Plan submitted by the Corporate Debtor should not impair any claim of its Operational Creditors.
- Committee of Creditors upon rejection of the base resolution plan of Corporate Debtor may instruct Resolution Professional to invite a prospective resolution applicant to submit the resolution plan and decide the criteria that the prospective resolution applicant must fulfill and the basis of the evaluation of prospective resolution applicant.
- Resolution Professional then presents the Resolution Plan which confirms all the requirements to the Committee of Creditors for its evaluation.

- The Committee of Creditors evaluates the Resolution Plan and if they find it better than the base resolution plan, they shall select a resolution plan amongst them.
- The Committee of Creditors shall, by not less than 66% of the voting shares after considering its feasibility and viability and manner of distribution and other requirements, approve the resolution plan.
- Suppose the resolution plan submitted by the Corporate Debtor requires impairment of any claim, the Committee of Creditors may need the promoter of the Corporate Debtor to dilute their shareholding or voting or control rights in the Corporate Debtor.
- Suppose the resolution plan submitted by the Corporate Debtor does not provide for dilution of shareholding or voting or control rights in the Corporate Debtor. In that case, the Committee of Creditor should record a reason for the same.
- A Resolution Professional shall then submit the resolution plan approved by the Committee of Creditors to the Adjudicating Authority.
- If the Adjudicating Authority is satisfied that the resolution plan submitted by a resolution professional is in conformity with the provisions of the law, then within 30 days of filing an application, may approve the Resolution Plan.
- If the Adjudicating Authority is satisfied that the resolution plan submitted by a resolution professional is in non-conformity with the provision of the law, within 30 days of filing an application may reject the Resolution Plan.

