

**PRE PACKED INSOLVENCY MECHANISM UNDER INSOLVENCY AND BANKRUPTCY
CODE**

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Abstract

This research paper attempts to give a quick overview of the rules governing the Pre-Packaged Insolvency Resolution Process, highlighting the deadlines and providing background information on how the National Company Law Appellate Tribunal has so far interpreted the rules. The Insolvency and Bankruptcy Code, 2016 ("IBC") was proclaimed with a goal to unite and change the regulations connecting with the redesign and bankruptcy goal of corporate people, organization firms, and people in a period-bound way. IBC has gone through numerous revisions since its proclamation and different inquiries have been addressed by the Hon'ble High Court in this way welcoming clarity on the arrangements of IBC. It has been over and over explained that IBC is focused on expanding the corporate people's worth of resources, adjusting the interests of the multitude of partners and that it's anything but a course of recuperation. Likewise, the statute on different parts of the IBC is developing as we compose this and continue to compose increasingly more on IBC.

Keywords: Company Law Appellate Tribunal, MSME, Default, Pre-packed Insolvency Package

Introduction

The Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtors was the sole area in which the IBC regulations that were initially put into operation applied. Following that, a notification came into effect that included the Personal Guarantors to the Corporate Debtors. The Hon'ble Supreme Court maintained the legitimacy of the notification as well as the rules and regulations made thereunder, despite challenges to their legality. Via a further revision to IBC viz., IBC (Amendment) Act, 2021, the Pre-Packaged Insolvency Resolution Process ("PIRP") has been presented. This was without a doubt a milestone correction to IBC.

"The PIRP is appropriate Just for Micro, Small, and Medium Enterprises ("MSMEs"). The limits of who the entire fall inside the ambit of MSMEs are given under the Micro, Small, and Medium Enterprises, 2006, and rules and guidelines outlined thereunder. Micro, small, and medium-sized businesses ("MSMEs") have made critical commitments to the development of the Indian economy, especially through the making of occupations."¹ Roughly 26.42 lakh MSMEs are presently enlisted in India. Most organizations have seen critical interference because of the Coronavirus episode, and keeping in mind that bigger enterprises might have a stash to climate these difficult stretches, the greater part of MSMEs don't.

The Insolvency and Bankruptcy Code (Amendment) Ordinance gave April 4, 2021, presented a pre-packaged insolvency resolution process (PIRP) in affirmation of the job of MSMEs and to give them some help from the financial difficulties brought about by the continuous pestilence ("Ordinance").

Application

Application for the PIRP may only be made in relation to a corporate debtor that the Micro, Small and Medium Enterprises Development Act of 2006 deems to be an MSME under Section 7(1).

Threshold

"Default amounts between INR 10,00,000 (Indian Rupees Ten Lakhs only) and INR 1,00,00,000 may cause an MSME to be subject to the PIRP (Indian Rupees One Crore only). Under the Insolvency and Bankruptcy Code, 2016, the MSME would have to start the corporate insolvency resolution process (CIRP) for defaults of greater amounts ("the Code")."²

¹ Schönfeld, J., 2020. Financial situation of pre-packed insolvencies. *Journal of Business Economics and Management*, 21(4), pp.1111-1127.

² Voráčková, T., Potůček, A., Sýkora, F. and Schönfeld, J., 2018. Pre-packed insolvencies. *Acta Oeconomica Pragensia*, 2018(4), pp.3-11.

Prerequisites and other necessities:

The MSME (being the corporate debt holder) ("Candidate") can start a PIRP by presenting an application in recommended form, joined by sworn statement, reports, announcements, or records alongside an expense of INR 15,000 (Indian Rupees Fifteen Thousand in particular) in the span of 90 days from the date of default, gave:

- where such Candidate is an organization, it has the endorsement of 75% of its investors or on the other hand if it is an association firm, it has the endorsement of 3/4 the of its accomplices;
- it has acquired the endorsement of irrelevant monetary lenders addressing 66% in worth of the absolute monetary obligation due and payable by the Candidate;
- the Candidate isn't going through and has not gone through CIRP/PIRP during a 3-year time span before the PIRP commencement;
- no request for liquidation ought to have been passed against the Candidate; and
- the Candidate is qualified to present a goal plan under segment 29A of the Code.

Statement of Problem

The purpose of this study is to clarify the pre-packaged insolvency method. This study paper describes the causes of IBC and how it developed. It has been time and again explained that IBC is intended at maximizing of the value of assets of the corporate persons and balancing the interests of all the stakeholders and that it is not a procedure of recovery.

Objective

In relation to the resolution strategy, this study aims to highlight an alternative dispute procedure for MSMEs. For MSME business debtors, the pre-pack process primarily offers an alternate insolvency resolution approach that involves a "debtor-in-possession with-creditor-in-control" paradigm and anticipates a quicker turnaround time.

Review of Literature

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Research Methodology

The reasons, effects, and relationship between this research provides a comprehensive analysis of the application that must be submitted within the time frame specified in the aforementioned declaration. Only secondary data are used in this research. Examining the roles and obligations of the corporate debtor, the resolution specialist, and the creditors can help in understanding how to analyse the pre-pack process efficiently.

How do Pre-Packs work?

The corporate insolvency resolution process ("CIRP") under the Code is one example of a formal insolvency procedure that can be time-consuming and expensive in both direct and indirect costs. However, because to a lack of statutory support and legal certainty, informal workouts do not have the same legal sanctity as a court-approved resolution plan, although offering a flexible and affordable option for dealing with insolvency.

Pre-packaged insolvency proceedings, often known as "pre-packs," provide a special method that tries to combine the advantages of informal workouts with the legal security of formal insolvency proceedings. Pre-packs are essentially hybrid systems that enable for the recognition of out-of-court settlements under insolvency law with the necessary safeguards for all parties.

The pre-packaged insolvency resolution process's main characteristics

For MSME business debtors, the pre-pack process primarily offers an alternate insolvency resolution approach that involves a "debtor-in-possession with-creditor-in-control" paradigm and anticipates a quicker turnaround time. Below is an explanation of the framework's main components.

Requirements for Pre-Commencement

Before officially starting the pre-pack procedure, the corporate debtor and its unaffiliated financial creditors must meet several formalities. The corporate debtor can submit an application to the Adjudicating Authority if the conditions of this pre-commencement stage have been met, and formal proceedings will start if the application is accepted.

Acceptance of the application to start the pre-pack process

When the prerequisites for pre-commencement have been met, a corporate applicant of the corporate debtor may submit an application to start the procedure. Within the time frame specified in the aforementioned declaration, the application must be submitted. "A report from the suggested resolution professional stating whether the corporate debtor satisfies the eligibility requirements and the base resolution plan complies with the set requirements must also be submitted with the application. A declaration regarding the existence of any antecedent transactions under Chapter III or VI of Part II of the Code must also be provided by the corporate applicant."³

In the span of fourteen days from the date of documenting of the application, the AA is expected to concede the application, assuming that it is viewed as complete. "Where the application is conceded, the AA passes a request for affirmation which denotes the beginning of the cycle. At the hour of confirmation, the AA will pronounce a ban for the reasons alluded to in segment 14(1) and (3), designate the goal proficient ("RP") and prompt a public declaration (to be made by the RP)."⁴ The public declaration will be shipped off leasers, data utilities and distributed on the site of the corporate indebted person (if any) and the IBBI.

The pre-pack process is carried out

The law sets a brief deadline for the pre-pack procedure' completion. It must be finished within 120 days of admission, which are divided into 90 days for the committee of creditors' ("CoC") approval of the resolution plan and 30 days for the AA's adjudication. If no resolution plan is accepted by the CoC within 90 days, the resolution professional must submit an application to the AA asking for the pre-pack procedure to be terminated. The pre-pack cycle might be perceived by looking at the jobs and obligations of three vital partners in the process-the corporate borrower, the goal proficient, and the leasers. Though the obligation of dealing with the business stays with the corporate debt holder, the obligation of directing the interaction (alongside working with decision-production by the CoC) is with the goal of proficiency. The CoC, which contains monetary banks of the corporate indebted person, supervises the working of the corporate borrower as well as the goal proficiency.

Resolution plans are taken into account and approved.

The three-stage pre-pack process stipulates how the resolution plan will be examined and approved. –

³ Eidenmuller, H., 2018. What is an insolvency proceeding. Am. Bankr. LJ, 92, p.53.

⁴ Kastrinou, A., 2016. Comparative Analysis of the Informal Pre-Insolvency Procedures of the UK and France. International Insolvency Review, 25(2), pp.99-118.

Stage I: Base resolution plan submission and consideration – Before asking for their consent to start the procedure, a corporate debtor who qualifies for it under Section 29A must first discuss a base resolution plan with the financial creditors. After that, the resolution professional receives the fundamental resolution plan within two days of admission. The CoC may approve this proposal for submission to the AA for final approval if it does not damage the claims of the operating creditors. If not, the resolution specialist will start the procedure for inviting resolution plans to compete with the first resolution plan.

Stage II - Public greeting, assessment, and choice of goal plan - “The goal proficiently welcomes forthcoming goal candidates to submit the goal and intends to contend with the base goal plan. The CoC assesses goal plans got as per the public greeting and chooses a goal plan. On the off chance that the chosen goal plan is fundamentally better compared to the base goal plan, the CoC might endorse and submit it to the AA. On the off chance that the chosen goal plan isn't supported, it will rival the base goal plan in Stage III.”⁵

Competition between the base resolution plan and the chosen resolution plan occurs in Stage III. The corporate debtor who filed the basic plan and the resolution applicant whose plan is chosen will compete with one another by enhancing their plans (in comparison with each other). Such an improvement must score at least one point higher than the alternative resolution plan, as determined by the CoC. The applicant with the lesser score has the opportunity to enhance its resolution strategy. The alternative applicant will also be given the chance to enhance their strategy for resolution. This will keep going until one of them beats the other inside the allotted time (forty-eight hours).

The CoC might support the goal plans at various stages by 66% democratic offer, and subsequent to considering the practicality and reasonability of the arrangement and the way of appropriation proposed by it. Where the base goal plan is being endorsed, the CoC can consider to weaken the advertiser's shareholding, casting a ballot or control freedoms in the event that the arrangement proposes to disable any cases against the corporate debt holder (and record reasons on the off chance that it decides to not do as such). “The goal plan supported by the CoC will be submitted to the AA for its endorsement. When supported by the AA, the goal plan will have a similar impact as a goal plan endorsed under the CIRP. Further, the AA won't endorse the base goal plan put together by the corporate debt holder, where a request for vesting the administration of the corporate debt holder with the RP is passed and base goal plan doesn't bring about an adjustment of the board or control of the corporate indebted person.”⁶

Once the AA has accepted the request to begin the pre-pack process in relation to a corporate debtor, there are only four possible outcomes: -

The CoC-approved resolution plan is initially presented to the AA for approval.

Second, when any of the following events occurs: the CoC adopts a resolution calling for termination; a resolution plan is not submitted to the AA within 90 days; the resolution plan that won the competition between the base resolution plan and the chosen resolution plan is not approved by the CoC; or a resolution plan that has been approved by the CoC is rejected by the AA.

Third, based on a CoC resolution requesting the same, the AA issues an order to launch CIRP.

Fourth, the AA issues an order of liquidation if the CoC accepts a resolution plan that foresees no transfer of control or management to a third party or if the pre-pack procedure needs to be terminated after an order vesting management of the corporate debtor with the RP.

Conclusion

The debtor-in-possession approach, which enables the existing management of the MSME to continue to control and manage the turnaround, is a significant benefit of PIRPs. This offers some protection against a loss of goodwill and commercial interruptions. Of course, there are controls on management powers to make sure that the procedure is employed by MSMEs who are actually impacted by unforeseen events rather than those who are deliberately in financial problems. For instance, the

⁵ Xie, B., 2016. Comparative insolvency law: the pre-pack approach in corporate rescue. Edward Elgar Publishing.

⁶ Linna, T., 2019. Insolvency proceedings from a sustainability perspective. International Insolvency Review, 28(2), pp.210-232.

resolution specialist is required to keep an eye on management and notify the COC of any violations. By approving the resolution specialist with a 66% majority, the COC is also given the authority to replace the management of the corporate debtor during the PIRP procedure.

Providing a flexible, quick, and collaborative procedure for resolving financial stress in the MSME sector is a good move. The process has the potential to be more quicker and less expensive than a CIRP process, particularly in the event that the base resolution plan is approved.

While the advantages are clear, the PIRP's ability to act quickly and effectively depends on stakeholders acting with initiative and adhering to the set deadlines. Due to the reliance on the AA/NCLT to approve the resolution plan even after COC approvals, the necessity of a Swiss challenge process when the base resolution plan is rejected, and the need for cooperation, there may be difficulties with timely completion of the PIRP.