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**PIRP PROCESS FOR MSMES UNDER IBC: ISSUES & CHALLENGES**- Yogesh Thakur<sup>1</sup>**ABSTRACT**

The new alteration in the Insolvency and Bankruptcy Code, 2016, which was proclaimed by the President of India on August 2021, is being seen as the most noticeable milestone substitute inside the whole indebtedness technique as it has presented an exceptionally expected and completely new plan/system. The pre-packaged insolvency process and the fundamental points of this cycle are to acquire expanded productivity concerning cash, time, and cost to shareholders and is additionally a similarly less intrusive system in helping miniature, small and medium organizations and undertakings. The accompanying paper endeavors to completely examine and expand on this new system of pre-packaged insolvency process for micro, small and medium enterprises in India.

Moreover, a point-by-point explanatory examination of the technique and a correlation of the new interaction with the more seasoned system of the Corporate Insolvency Resolution Process has been embraced. Taking everything into account, this paper features the expected difficulties and issues which this new system may face from present to future.

The research methodology used in this paper is Doctrinal, analytical study, sources are secondary which includes books, legal statutes, case studies, legal journals, articles, etc. The objective of this paper is to find out how new amendment in pre-packaged insolvency process can help micro, small and medium enterprises. The possible issues and challenges we may face through this new insolvency process.

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## INTRODUCTION

The micro, small and medium enterprises (MSMEs) structure the underpinning of the economy and are the critical operator of business, creation, financial development, business venture, also, monetary consideration. MSME area is the basic subsistence of job for almost 110 million individuals in India and an aggregate of 30% of the country's GDP<sup>2</sup>. This has been imagined that the MSME section would represent half of GDP and can add 50 million new positions over the course of the following five years. It may not be unexpected that MSMEs are especially helpless against monetary collapse. The most significant justification for this is the trouble in getting to fund in the right amount, with flawless timing; second is drawing in and holding qualified labor force, and third is entering territorial, domestic, and worldwide business sectors. The rise of the second wave of COVID-19 was unforeseen because of which the section was not well ready, having barely recuperated from the blow of the primary wave of a pandemic.

It is prosaic to specify here that these endeavors are progressively perceived just like the spine of numerous economies yet face explicit obstacles in utilizing the indebtedness framework. Also, in India MSMEs have generally experienced the major throughout the current pandemic times and the issue of deferred installment stays probably the greatest test to these MSMEs.

The Insolvency and Bankruptcy Code, 2016 [hereinafter "IBC" or "the Code"] which was approved over a large portion of 10 years prior, was and keeps on being a notable regulation that has introduced tremendous changes to the country's corporation design. The target of the IBC was to manage the connections among lenders and indebted individuals; to ensure a more effective process, and to determine the convincing issue of developing strain resources in the Nation. It was trailed by the time duration from 2008 to 2014, during this the Indian banks were granting cash at high dangers without a reasonable level of effort. The result of this was an exorbitantly high level of non-performing assets, and the IBC was at long last acquired to determine this.

The IBC defines explicit time-bound strategies and methods as severe courses of events exist for the entire Corporate Insolvency Resolution Process [hereinafter "CIRP"], in any case if the

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<sup>2</sup><https://www.ibef.org/industry/msme> (last visited on March 20, 2022 at 5:00pm)

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defined timeframe don't consolidate the time consumed by legal or judicial procedures and subsequently, for all intents and purposes lead to many procedures surpassing the greatest number of days expressed inside the Code's timeframe. In this way, the best appropriate and applicable reform which was required to handle these problems and acquire a speedy and viable resolution procedure has been included through the latest revision to the Code.

The President of India has recently propagated the Insolvency and Bankruptcy Code (Alteration) Ordinance, 2021 which included Chapter III-A to the Insolvency and Bankruptcy Code, 2016 which introduces the framework for Prepackaged Insolvency Resolution Process (PIRP) explicitly for Corporate Debtors (CD) comes under the scope of micro, small and medium enterprises (MSMEs) defined in section 7 of the Micro, Small, and Medium Enterprises Development Act, 2006 (MSME) Act. The Ministry of Corporate Affairs (MCA) and IBBI has additionally given the Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021 and the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021 (Guidelines) these come into force from the effective date of April 9, 2021.

Afterward, on August 11, 2021, the recent amendment which have been approved by the Parliament of India got the consent of the President<sup>3</sup>. The MSMEs are basic for India's economy as they contribute fundamentally to India's GDP what's more they give work to a large populace. In the time of Covid 19, when a critical number of MSMEs have been affected by liquidity limitations on account of supply imperatives, lockdown, and so forth, PIRP gives a productive effective option of insolvency procedure to MSMEs under the IBC guaranteeing speedier, price-efficient along with esteem boosting results for every one of the shareholders. PIRP method is non-antagonistic because the financial creditors are part of it from pre-application step.

Before the Amendment of 2021, the Government had given a notice in the exercise of its powers under Sections 239(1) and 239(2)(fd) read with Section 54C(2) of the IBC as revised by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, in this way delivering into the

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<sup>3</sup> The Insolvency And Bankruptcy Code (Amendment) Ordinance, 2021, No. 3, Acts of Parliament, 2021, [https://ibbi.gov.in/uploads/legalframework/52f66d913dfe1c637b6a\\_38f82d38bcbd.pdf](https://ibbi.gov.in/uploads/legalframework/52f66d913dfe1c637b6a_38f82d38bcbd.pdf) (last visited on March 11, 2022 at 4:00pm),

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impact of the Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021 (henceforth "Rules")<sup>4</sup>. Some regulations for the pre-pack procedure have additionally been delivered by the market controller, i.e., Insolvency and Bankruptcy Board of India (henceforth "IBBI"). The law was regarding the pre-packaged insolvency resolution process (henceforth "PIRP"] for the micro, small and medium ventures. Previously India didn't have specific standards like the PIRP for MSMEs. Be that as it may, this type of system has been predominant in a few western nations. In reality, considering the continuous COVID-19 epidemic, the World Bank and the International Monetary Fund likewise prescribed participant States to initiate and support the inescapable effect of the epidemic on their economies<sup>5</sup>.

The Interim Report of the Bankruptcy Law Reform Committee [hereinafter "BLRC"] of 2015 talked about the practicality of 'pre-packs' without precedent for the Indian circumstances. The conversation was dismissed considering the non-reasonability of out-of-court settlements in the Indian bankruptcy rule later on this was considered as not so savvy step<sup>6</sup>. Inferable from COVID-19, the disturbance of the financial process in India prompted a gigantic influx of bankruptcies, with independent companies and ventures bearing the greatest brunt attributable to their size and scale. This challenge required an adjustment of India's indebtedness system, as far as specific intervals and temporary measures to level everything out of bankruptcies and safeguard the small and medium ventures, hence prompting the current revision in law.

### **CONCEPT OF PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS**

All things considered in the USA, the PIRP system has been in force following its Bankruptcy Reform Act of 1978 because of the fast development of its obligation value operation<sup>7</sup>. As indicated by an examination, around 20% of all open liquidation in the USA had pre-bundled

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<sup>4</sup> Insolvency & Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Rules, 2021, [https://ibbi.gov.in/uploads/legalframework/f75906d8657a51f214785c697\\_d9bb296.pdf](https://ibbi.gov.in/uploads/legalframework/f75906d8657a51f214785c697_d9bb296.pdf). (last visited on March 24, 2022 at 8:00pm),

<sup>5</sup> COVID-19 (Coronavirus) Response, The World Bank, <https://www.worldbank.org/en/region/sar/coronavirus; Questions and Answers, The IMF's response to COVID-19, International Monetary Fund, https://www.imf.org/en/About/FAQ/imf-response-to-covid-19> (last visited on March 19, 2022 at 9:00pm),

<sup>6</sup> DEPARTMENT OF ECONOMIC AFFAIRS, MINISTRY OF FINANCE INTERIM REP. OF THE BANKRUPTCY LAW REFORM COMM. (2015), [https://msme.gov.in/sites/default/files/Interim\\_Report\\_BLRC.pdf](https://msme.gov.in/sites/default/files/Interim_Report_BLRC.pdf).(last visited on March 18, 2022 at 3:00pm),

<sup>7</sup> United States Bankruptcy Act, 11 U.S.C. § 101(1978)(last visited on March 15, 2022 at 7:00pm).

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before the completion of the nineteenth century<sup>8</sup>. From there PIRP has been supported by numerous Nations, for example, France, Netherlands, Germany, South Korea, Singapore and the U. K. Pre-packs are alluded to as 'facilitated redesign procedures' by the United Nations Commission on International Trade Law [henceforth "UNCITRAL"]<sup>9</sup>, with the reasoning that they are a mix of willful rebuilding dealings wherein the arrangement is arranged and settled upon by every single applicable stakeholders and partner, as well as a rearranged process or cycle that starts very quickly and right away.

Coronavirus has affected organizations, endeavors and economies of the worldwide pioneers and our country India is in the same way. The coronavirus has gigantically affected the organizations of India and others are confronting monetary torment. This monetary pain is more lethal for Micro Small Medium Endeavors (MSMEs), in light of their little monetary well and more straightforward corporation design. The MSMEs are liable for the major GDP development of the nation and utilizing a large number individuals and like some other section, coronavirus pandemic has hit it enormously. It uncovered numerous MSMEs to monetary trouble to the degree of indebtedness. The government has in this manner gone to a few lengths to alleviate the trouble brought about by the epidemic, counting expanding the base measure of delinquency for the inception of CIRP to 1 crore rupees, and suspending documenting of any requisition for the proposition in regard to starting from March 25 2020 to March 24, 2021.

The PIRP has highlights which convert a CIRP sacred and has the thoroughness and strictness of the CIRP. This is casual to a certain degree and formal from thereon. It mixes borrowers under lock and key with creditor-in-charge. This process is neither completely private nor a completely open procedure - it permits the organization if qualified under section 29A, to present the base resolution plan (BRP) which is presented to challenge for esteem boost. It shields the privileges of shareholders as similar to CIRP and has sufficient governing rules to forestall any possible abuse. It involves a restricted job of the courts and IPs. Not at all like CIRP, it doesn't yield

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<sup>8</sup>Vanessa Finch, CORPORATE INSOLVENCY LAW PERSPECTIVES AND PRINCIPLES 454 (2nd ed. 2009).

<sup>9</sup> UNCITRAL, LEGISLATIVE GUIDE ON INSOLVENCY LAW 25 ¶ 16 (2005), (last visited on March 19, 2022 at 7:00pm), [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf)

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assuming there is no goal plan. However PIRP and CIRP are substitute choices, a few partners may one over the other in specific conditions.

## Meaning of MSMEs

The Micro, Small and Medium Enterprises Development Act, 2005 [henceforth "MSME Act"], embraced by the government of India which is characterized as micro, small, and medium enterprise in light of two variables:

- (i) interest in plant and apparatus, and
- (ii) business turnover.

The corporations, who are in the business of assembling and administration areas, various limits for being assigned as a MSME were determined in light of the two contemplations. Although, according to the government authority's "independent India" movement, prevalently known as Aatmanirbhar Bharat Abhiyan, the term MSME has been corrected by the Ministry of MSME and further classified by presenting a composite standard for both plant and apparatus speculation and an annual turnover of enterprise in its notification dated June 1, 2020<sup>10</sup>. Furthermore, the differentiation among assembling and administrations enterprises in the past interpretation of MSME has been dispensed. This evacuation of definition will unite the areas closer to each other.

<b>Composite Criteria:</b> Investment in Plant & Machinery/equipment and Annual Turnover			
Classification	Micro	Small	Medium
<b>Manufacturing Enterprises and Enterprises rendering Services</b>	Investment in Plant and Machinery or Equipment: Not more than Rs.1	Investment in Plant and Machinery or Equipment: Not more than Rs.10	Investment in Plant and Machinery or Equipment: Not more than Rs.50

<sup>10</sup> Ministry of Micro, Small and Medium Enterprises, S.O. 1702(E) (Notified on June 01, 2020)(last visited on March 11, 2022 at 6:00pm).

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	crore and Annual Turnover ; not more than Rs. 5 crore	crore and Annual Turnover ; not more than Rs. 50 crore.	crore and Annual Turnover ; not more than Rs. 250 crore.
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This classification is in force w.e.f July 1, 2020<sup>11</sup>

The concept of PIRP, rather than a public offering procedure, the resolution of a bothered organization's obligation is made with an immediate course of action between a secured creditor and existing proprietors or outside financial capitalists. The monetary lender/creditors will consent to terms with the advertisers or a potential financial backer under the PIRP methodology, and the resolution plan will be submitted to the National Company Law Tribunal [henceforth "NCLT"] for endorsement.

Any outsider could propose a resolution plan for the bothered organization under the Swiss test methodology, and the first application would need to match the superior resolution plan or renounce the funding. The interaction as a harmony among long and casual arrangement processes which proposes specific intrinsic benefits, few of them are speedy resolution; price viability; bragging the worth, and conservation of business and legal accommodation from the time and exertion expected before the legal authority would be significantly less attributable to a great extent well-disposed and adaptable nature of the approach/plan. Along these lines, the interaction flourishes with insignificant obstruction.

## MAJOR AMENDMENTS IN IBC, 2021 WITH EFFECT TO PIRP

### Initiation of Process

The PIRP can be started exclusively by the CD, contrary to the procedure of CIRP which can be documented both by the CD or lender. The accompanying standards should be satisfied by the CD to have the option to initiate the procedure for PIRP, as expected under Section 54A of the IBC (as altered in 2021 Amendment):

The CD should be adhering to the fair treatment of regulation under Section 29A and Section 240A of the IBC to be qualified to present a resolution scheme<sup>12</sup>:

<sup>11</sup><https://msme.gov.in/know-about-msme>(last visited on March 13, 2022 at 7:00pm).

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The CD should not be going through the CIRP procedure;

o No organization to exchange the concerned organization of the CD which ought to have been passed under Section 33 of the code;

o The bracing period for starting a new PIRP from the consummation of the past PIRP or CIRP is three years. Subsequently, the CD should not have gone through a PIRP or CIRP for a period of three years; and

o Most of the stakeholders and chief officers of the CD more likely documented a presentation under Form P6<sup>13</sup> as recommended in Section 54A(2)(f) of the code expressing that a requisition for starting PIRP will be initiated by the CD in time duration of 90 days of the commencement of the PIRP, and the expectation of the interaction isn't to deceive any individual.

This process will also define the name of the Insolvency Professional who would be designated for executing the interaction.

### **Role of the Creditors**

The PIRP course for indebtedness resolution must be settled up by at least 66% of the commercial lender's vote, it must not be connected to the gatherings addressing the worth of the monetary obligation because of such lenders. The structure of the Committee of Creditors [henceforth "CoC"] for this reason and needs have to communicate their assent for starting PIRP by approving an extraordinary resolution. Section 54A(2)(e) of the 2021 Amendment states that a condition in which the CD has no monetary lenders, no relation to the interested parties, a proposition and endorsement will be given by such parties as might be determined.

A lender/creditor, as characterized by Section 3(10)<sup>14</sup> of the Code, is any person who is owed an obligation, containing a monetary lender, a functional lender, a safe creditor, an unstable lender, and a pronouncement holder.

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<sup>12</sup> The Insolvency and Bankruptcy Code (Amendment) Act, 2017, No. 8, Acts of Parliament, 2018 (last visited on March 24, 2022 at 4:00pm).

<sup>13</sup> The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, Gazette of India, pt. II sec. 4 (Nov. 30, 2021) (No. 828 of 2016) (last visited on March 16, 2022 at 5:00pm).

<sup>14</sup> Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016, §3(10) (last visited on March 18, 2022 at 9:00pm).

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### **Documenting of the Application**

Once supported by the CoC, the request for PIRP must be documented through Form P4 to the Adjudicating Authority which is the NCLT. The NCLT should support or disapprove the application in a time duration of 14 days of its acceptance. On the off chance that any rectifications should be made to the arrangement, the CD must be notified in time duration around 7 days of requesting to correct the shortcoming.

### **Default Amount**

The amendment of 2021 has drawn the upper line of the delinquency sum at INR 1 crore (USD 134,699). Subsequently, the PIRP can be documented when the delinquent obligation goes from INR 10 lakh (USD 13,470) to INR 1 crore (USD 134,699.70). At the point when every one of the standards is satisfied and the Adjudicating Authority acknowledges the request presented, a Resolution Professional [henceforth "RP"] is designated to complete the procedure.

### **Organization Management**

The management of the organization is held by the CD, or anyone who is authorised by them on their place for the interaction. Just in instances of the current administration being associated with deceitful movement is the obligation to deal with the organization is moved to the RP. One fundamental attribute of the 2021 correction is that not at all like in CIRP, where the obligation of the administration of the enterprise gets moved to RP, in PIRP, the executives of the undertaking don't transform, it keeps on vesting in the Board of Chiefs or the stakeholders, as the case may be<sup>15</sup>. Although, this administration can be revised any duration of time after the PIRP initiation date, by CoC, with a vote of at least 66% of the offering stakes<sup>16</sup>. The the executives can be altered on the chances if there has been any blunder or deceitful movement with respect to present administration or for whatever other explanation of CoC.

### **Base Resolution Plan**

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<sup>15</sup> Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, Sec. 54H (last visited on March 24, 2022 at 8:00pm),

<sup>16</sup> Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, Sec. 54J (last visited on March 18, 2022 at 3:00pm),

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Before the commencement of PIRP, the debtor is required to deposit the resolution plan within two days so that PIRP can be initiated. Within 7 days the base resolution plan will be on consideration before the CoC for approval or rejection. If the basic resolution plan is accepted by the CoC then they may approve its submission before NCLT, in a situation when the plan is not approved then committee may ask for new resolution applicants. This is necessary to approve resolution plan which is submitted by resolution applicant, from the CoC with at least 66% majority from total voting shares. Although it is necessary to approve resolution plan in a time span of 90 days before the beginning of commencement date. According to section 54K it is guided that CD may formulate a base resolution plan for reconstruction of debt and then concede it to the RP in two days before the starting of resolution process. CoC have the power to approve and authorize CD to review it. In a situation where the base resolution plan is rejected by CoC even after alteration then RP can appoint potential resolution applicant to present their resolution plan and may fight with base resolution plan.

### **Approval from COC**

All the resolution plan which are according to the description of section 30(2) of the insolvency code are issued by RP before CoC. Then, CoC will evaluate these resolution plan and then select a one according to section 54K which includes sub-section 10, 11 or 12. Within time span of 90 days this selected resolution plan is submitted before the adjudicating authority<sup>17</sup>.

### **Approval from Adjudicating Authority**

When the resolution scheme is submitted the NCLT can approve the plan within time duration of 30 days. The timeline to finish the entire process is 120 days. Although, if there is a situation when NCLT does not accept the plan and then give the order for cancellation of PIRP on the defined points<sup>18</sup>:

- a.** the NCLT does not receive any resolution scheme within time period of 90 days.,
- b.** the preferred resolution plan is not accepted by CoC, or
- c.** the resolution is passed by CoC seeking for cancellation.

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<sup>17</sup> Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016, §54L.(last visited on March 19, 2022 at 6:00pm),

<sup>18</sup> Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016, §54L(3)(last visited on March 24, 2022 at 4:00pm).

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In such instances the RP is required to request NCLT for cancellation of the PIRP.

### **CoC's Power of Termination**

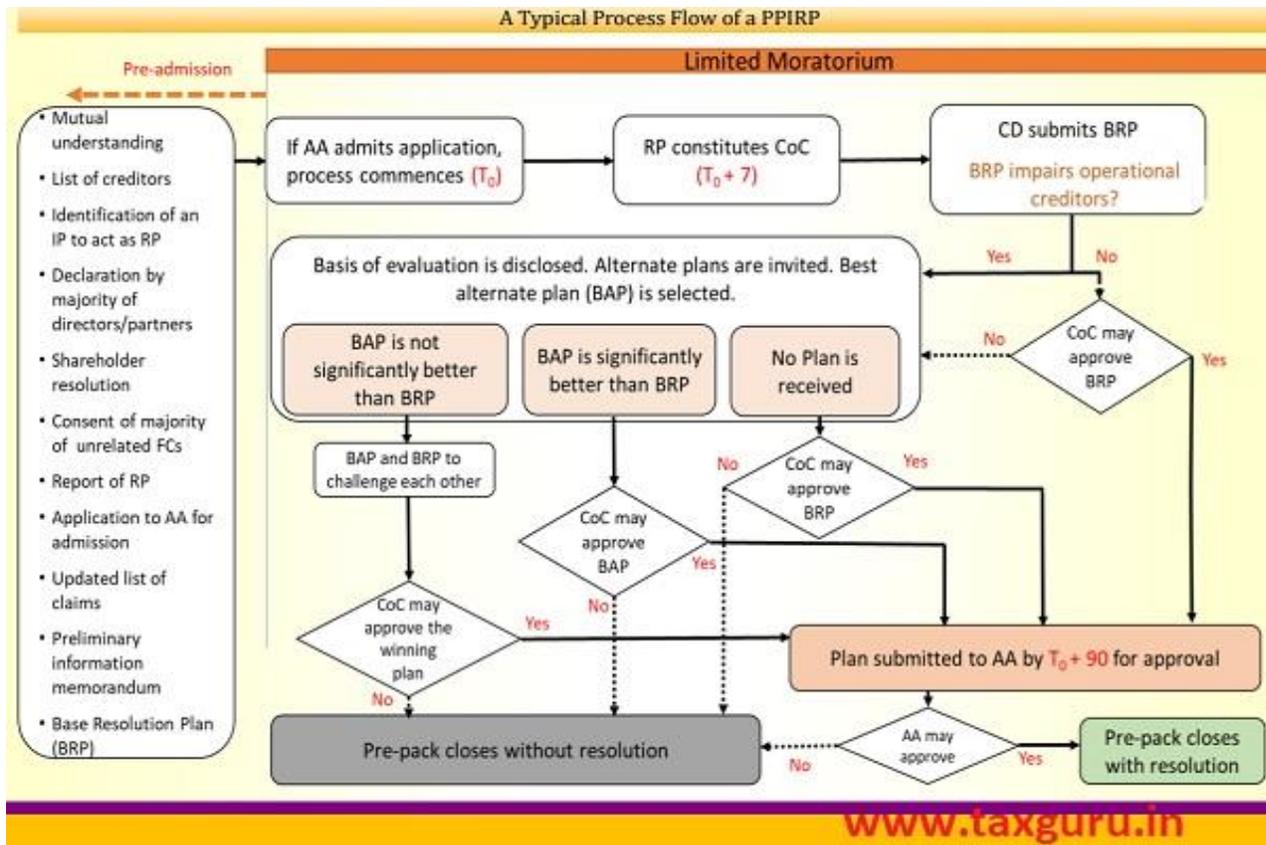
As defined in Section 54N(2) of the code that CoC can terminate PIRP at any time before the acceptance of resolution scheme with a majority of 2-3<sup>rd</sup> votes from total voting shares. The CoC can also authorize by vote to initiate the CIRP in place of PIRP (in a situation when CD is qualified for CIRP), before the authorization of PIRP from the NCLT. In this type of situation the RP is needed to be informed accordingly.

### **Cost Efficiency:**

The expense of the PIRP has been diminished when contrasted with the heavy amount of cash expected for completing the CIRP. It is because of the intentional type of rebuilding with greater contribution from the partners that every single superfluous prosecution, expenses, and postponement can stay away from. The Memorandum Regarding Delegated Legislation of the 2021 Amendment enables the Government of India and the IBBI to make and correct the principles in regard to issues connecting with structures, expenses, situations, and limitations on releasing of the privileges of the elaborate gatherings.

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## Analysis between PIRP and CIRP

### Legal Procedure

The legality of PIRP and CIRP process emerges from different sources. The CIRP is heavily dependent on statutes instead of regulations whereas PIRP process depends more on regulations and then on statutes.

### Time Limit

The process of CIRP and PIRP have the same agenda to settle the matter in efficient and effective time bound manner. In both processes, a time duration is defined and everyone is bound to do their work according to it. In the process of CIRP the time duration awarded for its completion is 180 days. Then, an extension of 90 days can be given if required after that there is

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a provision of further extension but on condition to complete the whole process within 330 days from the beginning date of insolvency. On the other hand, in PIRP a strict time line is awarded only of 120 days in which 90 days are for filling of resolution plan to adjudicating authority and 30 days for approval of the plan by NCLT.

### **Default Limit**

In CIRP the breaking point is above Rs. 1 Cr. This is barring the Covid-19 delinquency. On account of PIRP, the pre and post-default pressure, including the Coronavirus delinquency in a staged way, whenever required.

### **Termination**

Experiencing the same incidence in which the interaction settled on can't follow through with responsibility, there are schemes set up to determine the matter of all things in equal. In CIRP when the interaction neglects to be finished in the given time frame, a request is made in form of an application before the arbitrating expert for liquidation. While in PIRP, the interaction can't give any outcomes, an application must be petitioned for the end of such procedures.

### **Moratorium**

With the initiation of the PIRP, the arbitrating authority alongside the request for confirmation- Pronounce a ban/moratorium for the reasons alluded to it in subsection (1) read with subsection (3) of segment 14, as it indicates:

- A resolution professional will be designated.
- A public declaration of the start of PIRP must be announced in the predetermined manner and configuration, following their arrangement.

The moratorium proclaimed in the PIRP is much more restricted in comparison to CIRP.

### **Collection of Claim**

In CIRP, the resolution professional will do a public declaration welcoming the cases lenders, and they need to mark the date referenced in the declaration. After that they will gather this large number of cases and based on this data, they will make a board of creditors.

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On account of PIRP, this information must be given by the corporate indebted person. This must be done somewhere around 2 days from the commencement of the procedure. The indebted person needs to give out data in the configuration expressed in Form P10. They need to furnish the rundown of cases alongside subtleties of creditors making the case and their security advantages and certifications on the off chance that there are any. The resolution professional will confirm and conclude the rundown of assertions. They will refresh this rundown as indicated by the prerequisite.

**Data Memorandum:** In CIRP, the resolution proficient requirements to make the reminder in the manner and structure determined by the Board. It should have all the significant data as it can be utilized to make the resolution scheme. The resolution professional is required to give the candidate all the significant data in both physical and electronic structure, given the way that the expert adhere to these guidelines -

1. To consent to arrangements of regulation for the time being in force connecting with classification and insider trading.
2. To safeguard the protected innovation of the corporate indebted person it might approach.
3. Not to impart this data to outsiders except if it conforms to the over two provisions.

For the situation of PIRP, the corporate indebted person needs to give a report comprising of all the significant data to the expert. This must be done around 2 days of initiation of the procedure. Where any individual that has supported any misfortune as they give no data in the report or gave wrong data are-

1. Promotor or chief or stakeholders to the corporate indebted person who at the hour of accommodation of the fundamental report to the resolution profession.
2. Has approved the fundamental data by the corporate indebted person.
3. They are responsible to give remuneration to individuals who have experienced the harm.

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The expert needs to conclude the data and submit it to a board of committee in around fourteen days from the initiation of the PIRP. At this time, they may not uncover this data to acquire unjustifiable impact over individuals.

**Nomination of Resolution Professional:** This arrangement is a significant perspective for both the cycles however it is a smidgen more convoluted in CIRP than PIRP. The resolution professional is named by an idea on both monetary leasers as well as corporate account holders. On the off chance that there is a discretionary lender, they have the ability to name an interval resolution plan. Presently, regardless of whether they do at last the adjudicating authority will select one which will be supplanted by one the advisory group of banks.

On account of PIRP, the expert is basically delegated by an irrelevant monetary lender/ financial creditors.

**The executives:** During the interaction, there are rules for delegating individuals to take care of borrowers (corporate account holders) and their exercises. In the PIRP, a resolution professional is selected to take care of their movements of every kind, the expert is in the ownership of their resources and the leasers are in charge of it. On account of CIRP, there is more organization to corporate indebted individuals as they need to take care of their own behavior, just lenders are the ones who are in charge.

**Resolution plan:** The definition of a resolution plan is a bit more intricate in PIRP than CIRP. Proposal to a resolution plan is an open procedure in CIRP. Presently, in PIRP the main right is held for the stakeholders. The points of interest of the proposal of the resolution plan must be distributed in a concise way by the resolution professional, as per Form P11. This must be done in around 21 days from the initiation of the PIRP<sup>19</sup>.

**Cooling Period:** This is fundamentally the time frame an organization or individual needs to stand by prior to beginning another interaction. In PIRP, it is a more extended cool-down period.

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<sup>19</sup>[http://www.bsklegal.org/blogs/comprehensive-analysis-of-prepackaged-insolvency-resolutionprocess/#:~:text=For%20CIRP%20if%20the%20process,filed%20for%20termination%20of%20proceedin gs.\(last visited on March 24, 2022 at 9:00pm\),](http://www.bsklegal.org/blogs/comprehensive-analysis-of-prepackaged-insolvency-resolutionprocess/#:~:text=For%20CIRP%20if%20the%20process,filed%20for%20termination%20of%20proceedin gs.(last visited on March 24, 2022 at 9:00pm),)

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One needs to hang tight for a long time before they are permitted to record another request. Whereas CIRP is significantly more permissive, one needs to wait for twelve months prior to filing the subsequent application.

### ISSUES AND CHALLENGES

One of the vital denunciations of the CIRP has been the time it takes for a resolution. Toward the end of March 2021, 79 percent of the 1,723 continuous indebtedness resolution procedures had passed the 270-day boundary. A significant justification behind the deferrals is the delayed case by recent stakeholders and potential bidders. Interestingly, the pre-pack is restricted to a limit of 120 days with simply 90 days accessible to partners to bring a resolution plan for endorsement prior to the NCLT. One of the key distinctions between pre-packs and CIRP is that the current administration holds control on account of pre-packs; on account of CIRP, a resolution professional assumes command over the indebted person as an agent of monetary lenders. Specialists note that this guarantees insignificant interruption of tasks compared with a CIRP.

As indicated by sources conscious of the turns of events, pre-packs are generally pointed toward giving MSMEs a chance to rebuild their liabilities and begin with a fresh start while as yet giving sufficient securities so the framework isn't abused by firms to try not to make installments to creditors. Currently, just corporate debt holders themselves are allowed to start a PIRP subsequent to acquiring the endorsement of 66% of the vote from their creditors. The pre-pack system does notwithstanding, take into consideration a 'Swiss test' to any resolution plan that gives not exactly full recuperation of contribution for functional/operational creditors. Under the Swiss test instrument, any outsider would be allowed to present a resolution plan for the upset organization, and the first candidate would need to either match the better resolution plan or waive the venture.

As per sources mindful of the turns of events, pre-packs are generally pointed toward furnishing MSMEs with a chance to rebuild their liabilities and begin with a fresh start while as yet giving sufficient securities so the framework isn't abused by enterprises to bypass installments to leasers.

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Presently, just corporate debt holders are allowed to start a PIRP subsequent to getting the endorsement of 66% of support from their creditors. The pre-pack component does in any case, take into consideration a 'Swiss test' to any resolution plan that gives not exactly full recuperation of levy for functional leasers. Under the Swiss test component, any outsider would be allowed to present a resolution plan for the upset organization, and the first candidate would need to either match the superior resolution plan or waive the speculation.

### Challenges

Although, it is appropriate to take note that there are difficulties in the PIRP system. These comprise over-reliance on the current administration of MSMEs for effective fulfillment of PIRP and the necessity of NCLT endorsement in spite of getting the assent of 66% of the monetary leasers/financial creditors. Besides, the PIRP component surmises collaboration among various classes of lenders and borrowers, which might be conceivable hypothetically, however, it may present hardships during execution. Basically, assuming one needs to apply this to a real estate designer organization wherein the monetary lenders incorporate home purchaser/client of such an organization and a bank/monetary foundation moneylender to such an organization; their premium may not be adjusted in a PIRP.

While there is no question that PIRP holds incredible potential for restoration of monetarily troubled MSMEs, its feasibility must be surveyed upon the finish of a critical number of cycles under the proposed component; and there might be a few revisions not too far off for its successful execution<sup>20</sup>.

Specialists define the course of events for the PIRP might be hard to meet for moneylenders and bothered companies, and that legal reviews were especially significant in situations where the control of the company remains in part with a similar administration. "Conventionally where hair-cuts are in practice, measurable/exchange reviews become basic, and a negative report turns

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<sup>20</sup>Sachdeva Hardeep, Singh Anurag MSMEs and pre-packaged insolvency resolution process – An overview (last visited on March 11, 2022 at 6:00pm),<https://www.azbpartners.com/bank/msmes-and-pre-packaged-insolvency-resolution-process-an-overview/>

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into a barrier in resolution including a similar administration," Anoop Rawat, Partner, Insolvency and Bankruptcy at Shardul Amarchand Mangaldas and Co., said. Rawat additionally said that assuming a firm rebuilds its extraordinary obligation through a PIRP with the current administration holding control, the NPA status of the organization's record with creditors may not be naturally updated under RBI guidelines." In request to inspire resolution under the PIRP, the RBI rules on account status might be lined up with the target of IBC and the moneylenders might be given the advantage of record up-gradation on resolution. There is a requirement for the IBBI and RBI to track down the center ground on these guidelines and to make the PIRP more appealing," he said.

Specialists additionally noticed that the indebted person under lock and key model might militate against the Swiss test choice, as the current administration might make obstacles for an external financial backer looking for data to possibly put resources into the company. Under CIRP, a resolution proficient is responsible for functioning the organization and giving data to expected financial backers<sup>21</sup>.

## CONCLUSION

This has been acknowledged through the course of the PIRP in different jurisdictions that it is a viable component for a quick resolution. Although, there are additionally sure difficulties in its activity. The main issue is that a reasonable level of investment might be ignored considering the fast finish of the resolution method. On the off chance that distributors accept the legitimate system was not followed, the organization's standing might be hurt, and this will create unexpected issues assuming the organization is subsequently offered to an outsider. Since the court's inclusion is insignificant, leasers have been known to the later case that their advantages were ignored (since the assent of just 66% of financial lenders should be taken). Unsecured lenders, specifically, is much of the time kept in obscurity until the strategy is finished, hence causing them to feel estranged all through the procedure.

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<sup>21</sup> Singh Karunjit **How resolution 'pre-packs' for MSMEs can speed up insolvency cases**(last visited on March 23, 2022 at 4:00pm), <https://indianexpress.com/article/explained/explained-pre-packaged-insolvency-resolution-process-of-msmes-7426810/>

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There is likewise a concernment that since the cycle is ordinarily classified and just gets the assent of substantial lenders, there is deficient impetus to lead broad promoting that is in light of a legitimate concern for all lenders, particularly unstable ones. Considering this, the worth of unstable lenders might be caught by different partners<sup>22</sup>. There have been additionally a few examples where pre-bundles host been utilized by connected parties where the organization is simply specialized and not bankrupt to benefit from accounting report reshuffle, particularly to subvert its business rivals.

The critical highlights of the PIRP in the Amendment of 2021 have been intended to assume an instrumental part in saving the troubled MSMEs from going through complete liquidation and henceforth, will ideally furnish them with reprieve. The changed meaning of the MSME area covers practically 70% of the country's businesses. Simultaneously, the Supreme Court of India has held in the recent ongoing instance of *Silpi Industries v. Kerala SRTC*<sup>23</sup> that to look to service arrangements under MSME Act, the vendor ought to have enlisted under the arrangements of the Act, from the date of participating in the agreement. Regardless, for the provisions in accordance with the agreement made before the enrollment of the unit under arrangements of the MSME Act, no advantage can be looked for by such substance, as thought about under MSME Act<sup>24</sup>. The 90% of MSMEs are not registered, the ruling may possibly reject a larger part of the MSMEs in the country to be qualified to file for PIRP, thus this is a test that should be settled quickly for viable execution of the 2021 Amendment.

As of late, the IBBI expressed that in light of the incident of PIRP for MSMEs, there is plausible that the plan will be stretched out to enormous organizations and too later on. With the ascent of outside court settlements, PIRP might turn into a feasible choice to CIRP in the coming future<sup>25</sup>.

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<sup>22</sup> Sandra Frisby, *A Preliminary Analysis Of Pre-Packaged Administrations*, III GLOBAL (2007)(last visited on March 19, 2022 at 9:00pm), <https://www.iiiglobal.org/sites/default/files/sandrafrisbyprelim.pdf>.

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Nonetheless, on recognizing such matters in India, every regulation and fledgling framework should go through the afflictions of such a cycle and finish the assessment of time, to at last we have to select if such a switch was to be sure valuable and commendable.

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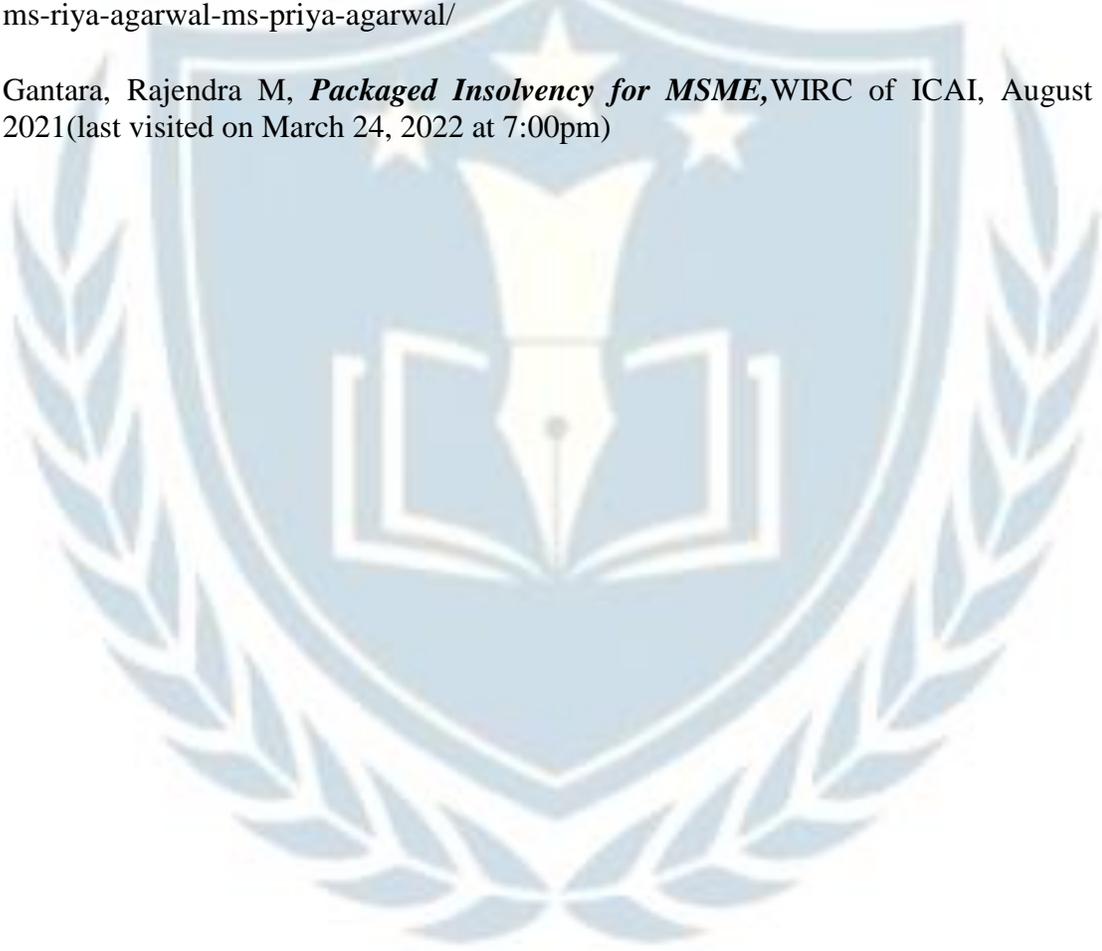
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