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A CRITICAL STUDY ON PRE-PACKAGED INSOLVENCY RESOLUTION AND CORPORATE ACQUISITIONS WITH SPECIAL REFERENCE TO CREDITOR CONTROL UNDER INDIA'S INSOLVENCY AND BANKRUPTCY CODE

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Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) revolutionized India's insolvency regime by shifting from debtor-in-possession to creditor-in-control. The Pre-Packaged Insolvency Resolution Process (PPIRP), introduced in 2021 for MSMEs, promised faster resolution, lower costs, and management continuity. However, nearly five years into implementation, fewer than 50 PPIRP cases have been resolved compared to thousands under CIRP, signalling underlying structural and operational deficiencies. This study critically examines PPIRP with special reference to creditor control dynamics and corporate acquisition risks. Through doctrinal legal research analyzing statutes, regulations, case law, and policy documents, the paper addresses three core questions: How does creditor control operate under PPIRP? What dynamics and regulatory gaps characterize corporate acquisitions through pre-packs? What structural impediments plague the regime, and what reforms are necessary? The findings reveal that creditor control remains structurally skewed. The Committee of Creditors excludes operational creditors—suppliers, vendors, and employees holding significant MSME trade credit—while public sector banks wield disproportionate influence, creating institutional bias. Corporate acquisitions through PPIRP present unique risks: incumbent management participation enables entrenchment, Section 29A disqualifications are circumvented during pre-negotiation, and Competition Commission of India oversight remains ambiguous. Interim finance protections are inadequate, and

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information asymmetry between creditor classes undermines informed decision-making.The study concludes that realizing PPIRP's promise requires multi-pronged reforms: enhancing operational creditor participation, closing Section 29A loopholes, strengthening interim finance protections, building insolvency professional capacity, mandating pre-negotiation disclosure, and aligning with UNCITRAL Legislative Guide and World Bank Principles. Only through such reforms can India achieve an equitable, transparent, and efficient pre-pack framework for MSME rescue.

Keywords: *Pre-Packaged Insolvency, Creditor Control, Corporate Acquisitions, IBC 2016, MSME Resolution*

1.INTRODUCTION

India's journey toward modern insolvency law has been long and fraught with institutional failure. For nearly two decades, the Sick Industrial Companies Act, 1985 (SICA) dominated the landscape, but its focus on industrial revival rather than creditor recovery, coupled with overburdened tribunals, rendered it largely ineffective. Successive attempts at reform—through the SARFAESI Act of 2002, the Recovery of Debts and Bankruptcy Act of 1993, and the try-out mechanismfailed to address the core problem i.e. the average time to resolve insolvency in India exceeded three years and recovery rates hovered around 26 percent.

The Insolvency and Bankruptcy Code, 2016 (IBC) marked a paradigm shift. Designed around time-bound resolution, creditor control, and a clear hierarchy of payouts, the IBC transformed insolvency from a debtor-in-possession framework to a creditor-in-control model. The Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India* upheld the constitutional validity of the IBC, emphasizing its objective of balancing the interests of all stakeholders while prioritizing resolution over liquidation. Yet, even as the IBC succeeded in reducing resolution timelines for large corporates, MSMEs continued to languish under the conventional Corporate Insolvency Resolution Process (CIRP), which demanded resources and expertise beyond their capacity.

Recognizing these gaps, the Ministry of Corporate Affairs constituted a Sub-Committee of the Insolvency Law Committee in 2020 to examine pre-packaged insolvency mechanisms. Pre-packs, as practiced in the United States (Chapter 11) and the United Kingdom, allow debtors and creditors to negotiate a resolution plan before filing for insolvency, with court approval following swiftly thereafter.[1] This hybrid model combines the efficiency of out-of-court settlements with the finality and enforceability of formal insolvency proceedings.

The Insolvency and Bankruptcy Board of India (IBBI) introduced the Pre-Packaged Insolvency Resolution Process (PPIRP) through Regulations in 2021, specifically tailored for MSMEs. The legislative design rests on three pillars: (i) initiation through a base resolution plan negotiated between the corporate debtor and financial creditors; (ii) continued management oversight during the process, unlike the complete displacement under CIRP; and (iii) a condensed timeline of 90 days, extendable by 60 days. The rationale is clear—reduce costs, preserve enterprise value, and enable faster Clearance of stressed MSMEs without the disruption of full CIRP.

1.1 RELEVANCE OF STUDY

The Insolvency and Bankruptcy Code, 2016 (IBC) transformed India's insolvency regime by establishing a creditor-in-control model. The Pre-Packaged Insolvency Resolution Process (PPIRP), introduced in 2021 for MSMEs, promised faster resolution and lower costs. Yet, nearly five years later, fewer than 50 PPIRP cases have been resolved compared to thousands under CIRP, revealing a gap between legislative intent and operational reality.

This study is critically relevant for three reasons. First, creditor control under PPIRP remains structurally skewed. The Committee of Creditors excludes operational creditors—suppliers, vendors, and employees who hold significant trade credit in MSMEs—while public sector banks dominate voting, raising concerns about institutional bias. Second, corporate acquisitions through PPIRP present regulatory gaps. Incumbent management participation creates entrenchment risks, Section 29A disqualifications are circumvented in pre-negotiation, and competition law oversight by the CCI remains ambiguous. Third, existing literature examines PPIRP in isolationi.eprocedural, comparative, or doctrinalbut few connect creditor control dynamics with acquisition risks holistically.

For India to realize PPIRP's promise as an effective MSME rescue mechanism, these structural inequities must be addressed. This research provides the analytical foundation for reforms enhancing transparency, strengthening creditor accountability, and aligning India's framework with UNCITRAL and World Bank international standards.

[1] Himani Singh, *Pre-Packaged Insolvency in India: Lessons from USA and UK* (Jan. 13, 2020) .

1.2 STATEMENT OF PROBLEM

Despite its promise, the PPIRP framework suffers from structural and operational deficiencies. Three interlocking problems emerge from both the literature and early case experience.

First, **creditor control** remains heavily skewed. The Committee of Creditors (CoC) under PPIRP is dominated by financial creditors, with operational creditors effectively excluded from voting. Public sector banks, as the largest financial creditors, wield disproportionate influence, raising concerns about institutional bias and inadequate representation of smaller stakeholders.

Second, **corporate acquisitions through PPIRP** present unique risks. The pre-negotiated nature of the base resolution plan allows incumbent management to remain involved, creating entrenchment risks and potential conflicts of interest. Section 29A disqualifications, which bar ineligible persons from submitting resolution plans, create a paradox where incumbents may influence negotiations despite being barred from formal bidding. Furthermore, competition law oversight by the Competition Commission of India (CCI) remains ambiguous in pre-pack acquisitions.

Third, **regulatory gaps** persist in interim finance protections, information disclosure, and insolvency professional capacity. The super-priority status of interim finance lacks robust enforcement mechanisms, and information asymmetry between creditor classes undermines informed decision-making.

1.3 SCOPE, LIMITATION AND RESEARCH METHODOLOGY

This study focuses on the PPIRP framework as established under the IBC and the 2021 IBBI Regulations, with particular attention to MSMEs. It examines judicial precedents up to 2025, including *Swiss Ribbons*, *Essar Steel*, and *K. Sashidhar*, and draws upon comparative insights from U.S. and U.K. pre-pack regimes.

The research employs a **doctrinal legal methodology**, analysing statutes, regulations, case law, and policy documents. Secondary sources include journal articles, committee reports, and international frameworks such as the UNCITRAL Legislative Guide and World Bank Principles. The study also incorporates empirical observations from IBBI Annual Reports and quarterly newsletters where available.

Limitations include the nascent stage of PPIRP implementation where few cases have been resolved under the frameworkand limited publicly available data on pre-negotiation dynamics. The study acknowledges these constraints but argues that the identified structural issues are fundamental and will persist without reform.

1.4 LITERATURE REVIEW

The legislative foundation of India's Pre-Packaged Insolvency Resolution Process (PPIRP) is traceable to the Bankruptcy Law Reforms Committee Report (2015), which articulated the shift from a debtor-in-possession to a creditor-in-control paradigm under the Insolvency and Bankruptcy Code, 2016 (IBC). The Ministry of Corporate Affairs' Sub-Committee Report on PPIRP (2021) and the IBBI's Discussion Paper (2020) subsequently provided the direct policy rationale for Chapter IIIA of the IBC, emphasising speed, informality, and out-of-court negotiation as the hallmarks of the pre-pack model.

The most significant doctrinal analysis of India's PPIRP is offered by M. P. Ram Mohan and Vishakha Raj in Pre-Packs in the Indian Insolvency Regime (2021), which traces the mechanism's origins in the United States and United Kingdom and critically examines its Indian adaptation, identifying risks of incumbent management entrenchment and inadequate transparency safeguards. This comparative concern is echoed by Himani Singh's manuscript (2020), which identifies key protections embedded in UK and US pre-packs that remain absent in the Indian framework, particularly regarding dissenting creditor rights. Aurelio Gurrea-Martínez's monograph, The Future of Reorganization Procedures in Insolvency (2020), reinforces this analysis by arguing that the efficiency gains of pre-packs are conditional on sophisticated creditor negotiation environments — a precondition India's financial sector only partially satisfies.

Empirically, Ram Mohan and Prasad's contribution to the IBBI Annual Publication (2023) documents patterns of underutilisation and creditor reluctance in actual PPIRP cases, while the article A Panacea for Small Firm Insolvencies? (2022) critically questions whether structural constraints — information asymmetry, underdeveloped insolvency professional capacity, and judicial unfamiliarity — will allow the PPIRP to deliver meaningful MSME rescue. Abhishek Bansal (2025) further introduces a financial economics lens, arguing that the PPIRP's pre-negotiation opacity may paradoxically raise the cost of credit for MSMEs by increasing lender uncertainty.

On creditor control, the jurisprudential framework established by the Supreme Court in Swiss Ribbons v. Union of India (2019), Essar Steel v. Satish Kumar Gupta (2020), and K. Sashidhar v. Indian Overseas Bank (2019) entrenches Committee of Creditors (CoC) primacy and limits judicial review of commercial decisions. Jyoti Nair and Bhavika Nemade (2023) demonstrate, however, that CoC decision-making is concentrated in a handful of public sector banks, raising concerns of institutional bias that are amplified in PPIRP proceedings conducted outside judicial oversight. Umakanth Varottil (2020) and Jasper Vikas George (2019) further illuminate the tension between the IBC's exclusionary approach to promoters under Section 29A and the PPIRP's express permission for existing management to submit the base resolution plan.

Ancillary dimensions of the subject are addressed by Amol Baxi (2023) on the underdevelopment of interim finance protections, Susan Block-Lieb (2017) on secured transactions law deficits, and Neha Chauhan and Ghazala Abidin (2025) on competition law risks arising from pre-negotiated acquisitions — an intersection that remains largely uncharted in Indian scholarship. International benchmarks, including the UNCITRAL Legislative Guide on Insolvency Law (2005), the World Bank Principles (2021), and the INSOL Statement of Principles (2017), collectively provide the external evaluative framework against which the PPIRP's design may be measured. The foregoing survey reveals that while the conceptual case for the PPIRP is well established, its operational legitimacy, creditor accountability mechanisms, and corporate acquisition implications remain insufficiently theorised — gaps this study seeks to address.

1.5 RESEARCH QUESTIONS

RQ1. Whether the PPIRP framework under the IBC adequately protects the rights of operational creditors and dissenting financial creditors in pre-packaged insolvency proceedings, or whether the concentration of control in the Committee of Creditors results in inequitable resolution outcomes?

RQ2. Whether the utilisation of the PPIRP as a corporate acquisition mechanism gives rise to structural risks of incumbent management entrenchment and regulatory gaps under Section 29A of the IBC and the Competition Act, 2002?

RQ3. Whether the existing legislative and regulatory framework governing the PPIRP sufficiently addresses the structural impediments to its effective functioning as a creditorcontrolled resolution mechanism for MSMEs, and what reforms are necessary to strengthen its design?

1.6 RESEARCH OBJECTIVES

1. To examine the legislative design and policy framework of the PPIRP under Chapter IIIA of the IBC, with particular reference to the structure and scope of creditor control exercised by the Committee of Creditors.
2. To critically analyse the implications of pre-negotiated corporate acquisitions under the PPIRP for the rights of operational creditors, dissenting financial creditors, and promoters subject to Section 29A disqualifications.
3. To comparatively evaluate India's PPIRP against the pre-packaged insolvency mechanisms of the United States and United Kingdom, with a view to assessing the adequacy of transparency safeguards and judicial oversight in the Indian framework.
4. To identify structural impediments to the effective utilisation of the PPIRP as an MSME rescue mechanism, including gaps in interim finance protection and information asymmetry between creditor classes.
5. To propose targeted legislative and regulatory reforms to the PPIRP framework that ensure equitable creditor treatment and alignment with international benchmarks under the UNCITRAL Legislative Guide and World Bank Principles.

1.7 HYPOTHESIS

H_0: The PPIRP framework under India's IBC does not exhibit structural bias in creditor control or significant regulatory gaps in corporate acquisitions that undermine fair and efficient insolvency resolution.

H_1: The PPIRP framework under India's IBC exhibits structural bias in creditor control favoring financial creditors over operational creditors and contains significant regulatory gaps in corporate acquisitions that undermine fair and efficient insolvency resolution.

2. CREDITOR CONTROL UNDER THE PPIRP: STRUCTURE, POWER, AND ACCOUNTABILITY

2.1 The Creditor-in-Control Paradigm Under the IBC: Philosophy and Constitutional Validity

The IBC fundamentally reoriented Indian insolvency law from a debtor-centric to a creditor-in-control paradigm. Under the conventional CIRP, the corporate debtor's management is displaced entirely, and the Committee of Creditors (CoC) assumes decision-making authority over resolution plans, interim finance, and even the appointment of insolvency professionals. This shift was justified on the grounds that creditors, as risk-bearers, are best positioned to evaluate recovery options and maximize asset value.

The constitutional validity of this creditor-dominated model was challenged in *Swiss Ribbons*,[2] where petitioners argued that the IBC violated equality by treating financial and operational creditors differently. The Supreme Court rejected this argument, holding that the classification was rational—financial creditors possess the expertise and financial stake to assess insolvency, while operational creditors do not. The Court emphasized that the IBC's primary objective is resolution, not just recovery, and that creditor control serves this objective by enabling swift, informed decisions.

2.2 Structure and Powers of the Committee of Creditors in PPIRP Proceedings

The PPIRP framework adapts the CoC model but with significant modifications. The CoC under PPIRP comprises only financial creditors, mirroring the CIRP structure but operating within a compressed timeline. Its powers include approving the base resolution plan, deciding on interim finance, evaluating alternative resolution plans submitted during the process, and ultimately approving or rejecting the final resolution plan by a 66% voting share.[3]

However, unlike CIRP where the insolvency professional assumes full management control, PPIRP allows the corporate debtor's management to retain operational oversight during the process, subject to the CoC's monitoring. This hybrid arrangement aims to reduce disruption but introduces unique accountability challenges—management remains in place while creditors exercise strategic control, creating potential for conflict and information asymmetry.

2.3 Financial Creditors versus Operational Creditors: An Entrenched Structural Asymmetry

The exclusion of operational creditors from the CoC remains one of the IBC's most contentious features, and PPIRP perpetuates this asymmetry. Operational creditors—typically

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[2] *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17.

[3] M.P. Ram Mohan & Vishakha Raj, Pre-Packs in the Indian Insolvency Regime, 29 *Am. Bankr. Inst. L. Rev.* 231 (2021).

suppliers, vendors, and employees—have no voting rights under PPIRP, though they may receive notice of proceedings and submit claims. Their payout priority is subordinate to financial creditors under the statutory waterfall mechanism in Section 53 of the IBC.

Critics argue this exclusion undermines the "creditor-in-control" philosophy by systematically marginalizing stakeholders who often constitute a significant portion of MSME liabilities. Nair and Nemade observe that the IBC's intent to create a creditor-driven regime has, in practice, become a "financial creditor-driven regime," with operational creditors reduced to passive observers. In MSME contexts, where trade credit often exceeds formal bank lending, this exclusion may distort recovery outcomes and damage long-term business relationships.

2.4 Rights of Dissenting Financial Creditors in Pre-Packaged Proceedings: Adequacy and Limits

Dissenting financial creditors—those who vote against the resolution plan—enjoy limited protections under PPIRP. The regulations mandate that dissenting creditors receive at least what they would obtain in liquidation, calculated based on the liquidation value of their claims. However, this floor is often inadequate, particularly in MSME cases where liquidation values are negligible due to asset obsolescence or lack of marketability.

Moreover, the process for determining liquidation value lacks transparency. The insolvency professional's valuation may be contested, but there is no independent appellate mechanism within the PPIRP timeline. The NCLT's review is limited to procedural compliance, not substantive fairness, as established in *Essar Steel*.[4] Consequently, dissenting creditors face a "take-it-or-leave-it" scenario with minimal recourse.

2.5 Subordination of Operational Creditor Interests Under PPIRP: A Critical Appraisal

The subordination of operational creditor interests under PPIRP is not merely a procedural feature but a structural design choice with distributive consequences. In MSME insolvencies, operational creditors often hold unsecured trade claims that may be completely wiped out under resolution plans favouring financial creditors. The 66% voting threshold enables financial creditors to approve plans that may leave operational creditors with pennies on the dollar.

[4] *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 S.C.C. 531.

This subordination raises normative questions about fairness and the broader social costs of insolvency. Employees, small vendors, and contractors—often unable to diversify risk—bear disproportionate losses when their claims are marginalized. While the IBC prioritizes resolution over equitable distribution, the PPIRP framework offers no additional safeguards for operational creditors beyond what exists in CIRP, despite MSMEs' greater reliance on trade credit.

2.6 Institutional Bias in CoC Decision-Making: Concentration of Power in Public Sector Banks

Public sector banks (PSBs) dominate the creditor landscape in India, particularly in MSME lending. As of 2024, PSBs held approximately 70% of stressed MSME assets subject to insolvency proceedings. This concentration creates institutional bias in CoC decision-making, as PSBs bring bureaucratic decision-making processes, risk aversion, and political considerations that may not align with value maximization.[5]

PSBs often favor liquidation over resolution when recovery prospects are uncertain, prioritizing avoidance of personal liability under the Prevention of Corruption Act over enterprise salvage. Additionally, the lack of specialized insolvency expertise within PSB credit risk teams undermines informed decision-making in complex pre-pack negotiations. This institutional bias risks distorting PPIRP outcomes, particularly in cases where private financial creditors or alternative investors might pursue more aggressive rescue strategies.

2.7 Judicial Review of CoC Decisions Under PPIRP: Lessons from Swiss Ribbons v. Union of India, Essar Steel v. Satish Kumar Gupta, and K. Sashidhar v. Indian Overseas Bank

Judicial review of CoC decisions under the IBC has been narrowly circumscribed by the Supreme Court. In *Swiss Ribbons*, the Court held that the NCLT's role is limited to ensuring procedural compliance, not substantive evaluation of the resolution plan's commercial merits. *Essar Steel* reinforced this principle, stating that the CoC's commercial wisdom is sacrosanct and judicial interference is permissible only in cases of manifest arbitrariness or procedural violation.

[5] Ministry of Corporate Affairs, *Report of the Sub-Committee of the Insolvency Law Committee on Pre-Packaged Insolvency Resolution Process* (2021).

K. Sashidhar[6] further clarified that the superiority of financial creditors' interests is intentional and constitutionally valid, rejecting challenges based on equitable distribution arguments. Together, these precedents establish a high bar for challenging CoC decisions under PPIRP. For dissenting creditors, particularly operational creditors excluded from voting, this means judicial recourse is minimal.

The implications for PPIRP are significant. The pre-negotiated nature of base resolution plans, combined with limited judicial review, creates a risk of coercion or collusion between incumbent management and dominant creditors. Without robust checks, the "commercial wisdom" shield may protect procedurally compliant but substantively unfair outcomes.

3. CORPORATE ACQUISITIONS THROUGH THE PPIRP: DYNAMICS, RISKS, AND REGULATORY GAPS

3.1 The PPIRP as a Corporate Acquisition Vehicle: Pre-Negotiation Dynamics and the Base Resolution Plan

The PPIRP framework enables corporate acquisitions through a unique mechanism: the base resolution plan. Before filing for insolvency, the corporate debtor and financial creditors negotiate a resolution plan that becomes the baseline for the PPIRP process.[7] This pre-negotiation phase is critical—it determines the acquisition price, treatment of creditors, and post-resolution governance structure.

Unlike CIRP, where multiple bidders compete in an open auction, PPIRP begins with a pre-selected acquirer or management-led buyout. Alternative plans may be submitted during the process, but the base plan enjoys structural advantages, including priority in evaluation and the ability to set the benchmark for comparison. This design accelerates resolution but raises concerns about market testing and value maximization.

3.2 Role of the Corporate Debtor and Financial Creditors in Shaping Pre-Negotiated Acquisitions

The corporate debtor plays an active role in PPIRP, retaining management control and participating in pre-negotiation. This contrasts sharply with CIRP, where management is

[6] *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 S.C.C. 150.
[7] A Panacea for Small Firm Insolvencies?—A Critical Review of the Pre-Pack Scheme Launched in India, 64 *Int'l J.L. & Mgmt.* 389 (2022).

completely displaced.[8] The debtor's involvement enables continuity and preservation of business relationships but also creates conflicts of interest, particularly when incumbent management seeks to retain control post-resolution.

Financial creditors, particularly lead banks, shape the acquisition terms through bilateral negotiations before the formal process begins. This private ordering offers efficiency but lacks transparency. Smaller financial creditors may face pressure to accept terms negotiated by dominant creditors, while operational creditors are entirely excluded from the pre-negotiation phase.

3.3 Section 29A Disqualifications and the Paradox of Incumbent Management Participation in PPIRP

Section 29A of the IBC bars certain persons from submitting resolution plans, including defaulting promoters, persons with delinquent loans, and those convicted of offenses. The provision aims to prevent defaulting promoters from regaining control of their companies. However, PPIRP creates a paradox: while Section 29A may bar incumbents from formally submitting resolution plans, they remain involved in pre-negotiation and may indirectly influence acquisition terms.

This regulatory gap undermines the intent of Section 29A. Incumbent management, even if barred from becoming the resolution applicant, can shape the base resolution plan to their advantage, potentially extracting value through employment contracts, consulting arrangements, or post-resolution advisory roles. The IBBI Regulations do not explicitly address this loophole, leaving a gap in governance.

3.4 Incumbent Management Entrenchment: Structural Risk and Regulatory Response

The retention of management control during PPIRP creates entrenchment risks. Unlike CIRP, where an insolvency professional assumes full control, PPIRP allows management to continue operating the business, subject to CoC monitoring. This arrangement preserves

[8] Abhishek Bansal, The Resolution Risk Premium: An Analysis of the Pre-Packaged Insolvency Resolution Process (PPIRP) Framework's Impact on an MSME's Access to Affordable Credit, *J. Banking & Ins. L.* (2025).

enterprise value but enables management to manipulate information, delay proceedings, or structure the base plan to favour their interests.[9]

Incumbent management may also use the pre-negotiation phase to secure favorable terms, such as retention bonuses or post-resolution employment, without adequate disclosure to creditors. The regulatory response has been inadequate—the PPIRP Regulations require disclosure of conflicts but lack enforcement mechanisms or penalties for non-compliance.

3.5 Competition Law Concerns in Pre-Negotiated Acquisitions: CCI Oversight and Regulatory Gaps

Pre-negotiated acquisitions through PPIRP raise competition law concerns that remain largely unaddressed. When an acquirer gains control of a distressed company through pre-pack, the transaction may trigger CCI filing requirements under the Competition Act, 2002. However, the interaction between IBC timelines and CCI approval processes is unclear.

The IBC mandates a 90-day resolution timeline, but CCI approval can take 3–6 months. This mismatch creates uncertainty—should the resolution plan await CCI approval before implementation, or can it proceed subject to conditional approval? The IBBI and CCI have issued limited guidance, leaving acquirers and creditors to navigate regulatory ambiguity.[10]

Chauhan and Abidin (2025) warn that rapid pre-pack resolutions may overlook anti-competitive risks, particularly in concentrated industries where distressed asset sales could consolidate market power. Without explicit CCI oversight, PPIRP acquisitions may inadvertently facilitate monopolistic outcomes.

3.6 Interim Finance and Super-Priority Claims: Adequacy of Protection Under the Indian Framework

Interim finance is critical for MSMEs undergoing PPIRP, as they often lack working capital during resolution. The IBC grants interim finance "super-priority" status, ranking it above even secured creditors in the payout waterfall. However, the practical protection for interim lenders is inadequate.

[9] Jasper Vikas George, Insolvency Resolution Plans: Right of Erstwhile Management, Corporate Debtor, 6 *NLUD J. Legal Stud.* 39 (2019).
[10] Neha Chauhan & Ghazala Abidin, Insolvency and Competition Law: Navigating Anti-Competitive Risks in Pre-Packaged Processes in India, *Int'l J. Env't Sci.* (2025).

The PPIRP Regulations do not specify standardized terms for interim finance, leaving lenders to negotiate individually. This uncertainty discourages lending, particularly from institutional players. Moreover, the super-priority claim lacks clear enforcement mechanisms—there is no automatic stay on enforcement actions by existing secured creditors that could undermine the interim lender's priority.

Baxi's analysis of interim finance in creditor-oriented bankruptcy codes highlights that India's framework lags behind advanced jurisdictions where super-priority claims are backed by robust statutory protections and standardized documentation. Without reform, interim finance will remain scarce, undermining PPIRP's effectiveness.[11]

4. STRUCTURAL IMPEDIMENTS AND REFORMS

4.1 PPIRP as an MSME Rescue Mechanism: Legislative Promise versus Operational Reality

The PPIRP was conceived as a lifeline for MSMEs, offering faster resolution, lower costs, and management continuity. Yet operational reality falls short. As of 2025, fewer than 50 PPIRP cases have been resolved, compared to thousands under CIRP. The low uptake reflects structural impediments: limited awareness among MSMEs, reluctance of financial creditors to engage in pre-negotiation, and insufficient insolvency professional capacity specialized in pre-packs.

Moreover, the MSME sector's reliance on trade credit and informal financing means that many stressed MSMEs lack the formal financial records required for PPIRP initiation. The framework's design assumes a level of financial sophistication that many MSMEs do not possess, creating a mismatch between legislative promise and operational reality.

4.2 Information Asymmetry Between Creditor Classes as a Structural Impediment

Information asymmetry between financial and operational creditors undermines fair decision-making under PPIRP. Financial creditors participate in pre-negotiation and receive detailed information about the debtor's financial condition, while operational creditors receive only notice of proceedings. This asymmetry enables financial creditors to approve resolution plans that may inadequately compensate operational creditors.

[11] Amol Baxi, Interim Finance in Creditor-Oriented Bankruptcy Codes: A Study in the Context of Insolvency & Bankruptcy Code, India, 48 *Vikalpa* 173 (2023).

The IBBI Regulations require disclosure of resolution plans to all creditors, but the timing and depth of disclosure are insufficient for operational creditors to evaluate claims meaningfully. Without mandatory pre-negotiation disclosure to operational creditors, information asymmetry will persist, perpetuating structural inequity.[12]

4.3 Inadequacy of Interim Finance Protections and Insolvency Professional Capacity

As noted in Chapter III, interim finance protections are inadequate. Beyond super-priority ambiguity, there is a shortage of insolvency professionals with pre-pack expertise. The IBBI has registered over 600 insolvency professionals, but few specialize in MSME pre-packs. This capacity gap delays proceedings and increases costs, undermining PPIRP's efficiency promise.

4.4 Strengthening Creditor Accountability: Legislative Reforms to the CoC Framework Under PPIRP

Reforming the CoC framework requires addressing institutional bias and enhancing accountability. Proposals include: (i) introducing voting caps to prevent PSB dominance; (ii) mandating independent directors on CoCs for large exposures; and (iii) requiring CoC decisions to include reasoned explanations for dissenting creditors. These reforms would enhance transparency without compromising decision-making efficiency.

4.5 Enhancing Transparency and Disclosure Obligations in the Pre-Negotiation Phase

The pre-negotiation phase requires mandatory disclosure obligations. Creditors should receive detailed information about the base resolution plan, including valuation methodology, treatment of all creditor classes, and conflicts of interest, before voting. The IBBI should prescribe standardized disclosure templates to ensure consistency and comparability.

4.6 Addressing Section 29A and Competition Law Gaps in Pre-Negotiated Acquisitions

Section 29A loopholes must be closed by explicitly barring incumbent management from participating in pre-negotiation if they are ineligible under Section 29A. Competition law

[12] M.P. Ram Mohan & Sriram Prasad, Lessons from Pre-Packaged Insolvency Cases in India: A Long Road Ahead, in *IBBI Annual Publication 2023: IBC—Evolution, Learnings and Innovation* (2023)

gaps require explicit coordination between IBBI and CCI, including a fast-track CCI approval process for PPIRP acquisitions that aligns with IBC timelines.[13]

4.7 Aligning India's PPIRP with UNCITRAL Legislative Guide and World Bank Principles

India's PPIRP should align with international best practices. The UNCITRAL Legislative Guide emphasizes creditor equality, transparency, and judicial oversight. The World Bank's Principles for Effective Insolvency Regimes stress the importance of interim finance protections and capacity building. Incorporating these standards would enhance India's insolvency framework and improve investor confidence.

5. CONCLUSION

The PPIRP framework represents a promising step toward MSME rescue, but its current design perpetuates structural inequities and operational inefficiencies. Creditor control remains skewed toward financial creditors, corporate acquisitions lack transparency and competition law oversight, and interim finance protections are inadequate.

Reform requires a multi-pronged approach: enhancing operational creditor participation, closing Section 29A loopholes, strengthening interim finance protections, building insolvency professional capacity, and aligning with international standards. Only through such reforms can India realize the PPIRP's promise of an equitable, transparent, and efficient pre-pack framework for MSMEs.

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