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## 4. An Analysis of Companies Adopting Route for Resolution Through Ppirp (Pre-Package Insolvency Resolution Plan

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### **ABSTRACT:**

*During Covid-19 pandemic and lock down, approximately 9% of the MSMEs i.e., 520 MSMEs had to shut down their businesses. This was brought into lime light by the survey conducted by National Small Industries Corporation Ltd. This led to a need to have some mechanism for MSMEs which ultimately brought PPIRP (Pre-packaged Insolvency Resolution Process) into existence in April, 2021 by way of amendment in the Insolvency and Bankruptcy Code, 2016, to revive these enterprises in a quicker and cost effective way. Pre-packs help the resolution process of such debt distressed companies through an agreement between present owners and creditors. Since the introduction of PPIRP, India witnessed only eight cases that initiated for Pre-pack insolvency out of which only six cases were admitted which needs to be analysed.*

### **KEYWORDS:**

*Micro, Small and Medium Enterprises (MSMEs), Pre-Package Insolvency Resolution Process (PPIRP), Insolvency and Bankruptcy Code (IBC), pre-pack cases, resolution plan.*

### **Introduction:**

India is a developing country. After the industrial reforms lot of small players entered the service and manufacturing sector, which were actually needed at that time for the then world's second largest populated country. This led to the generation of employment. MSMEs were considered as one of the pillars of Indian economy contributing the major chunk of the GDP. MSMEs rooted its feet in the economy with Khadi in rural areas but later it started spreading its wings into food, agriculture, textile, pharma, chemicals, auto parts as well as in service sectors. After the Independence, a major push was necessary to the manufacturing sector. Hence governments were keen on forming the MSME sector. Many favourable industrial policies, easy access to capitals, encouragement for FDIs, listings on SME platforms, interest subventions, etc. contributed to MSME development. Due to opening of industries, large players entered Indian market, which were ultimately dependent

on MSME for their supplies. All these factors lead to contribution by over 63 million MSME's contributing to 30.5% of India's GDP in FY 19 and 30% in FY 20.

Insolvency and Bankruptcy Code, 2016 was enacted with the object of providing for reorganisation and insolvency resolution of persons like individuals, firms, limited liability partnership, companies, etc. in financial distress. From a 'debtor in possession' regime, it was a shift to a 'creditor in control'. It provides a mechanism for insolvency resolution of debtors in a time bound manner to enable the maximisation of value of assets with a view to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.- Dr. M.S. Sahoo, Ex-Chairperson, Insolvency and Bankruptcy Board of India. There are two processes viz, (i) Corporate Insolvency and Resolution Plan (CIRP) and (ii) Pre-packaged Insolvency Resolution Process (PPIRP).

A research conducted by Centre for Insolvency and Bankruptcy<sup>1</sup> highlighted stagewise delay in Corporate Insolvency Resolution Process (CIRP) and explore the relationship between the respective sector and the delay occurring in the CIRP. The following are the summarized key findings of that report:

- a. Inordinate delay from the side of Adjudicating Authority
- b. Challenge with sale of distressed assets
- c. Non-cooperation by CD (Corporate Debtor)
- d. Higher rate of liquidation
- e. Services sector lagging

The deadlier COVID-19 virus has impacted the economy of the whole world claiming not only human lives but also corporates and economies as a whole.

Almost 9% of the MSMEs comprising of 540 in numbers required to shut down their shops. This was an eye opener for the government and in order to grant relief for such distress, it increased the threshold limit for admission of CD into CIRP from Rs.1 lakh to Rs.1 crore. However, this did not suspend the liabilities of the debtor in respect of defaults under various other laws though there was some moratorium provided by RBI during COVID period. The formal CIRP process would lead to losing promoters control on the companies. The existing process of CIRP had some rigidities and hence a flexibility is a call of the order to work out a tailor made resolution best suited to each circumstance. Such an informal model of settlement is called Pre-pack.

### **Concepts:**

Pre-Packs - A pre-pack is the resolution of the debt of a distressed company through an agreement between secured creditors and investors instead of a public bidding process. Under the pre-pack system, financial creditors will agree to terms with a potential investor and seek approval of the resolution plan. The IBC (Amendment) Ordinance, 2021, w.e.f 4th April, 2021, made a special provision for Pre-packaged Insolvency Resolution Process ("PPIRP") by inserting sections 54(A) to 54(P) in IBC, 2016. The Code has taken all the strengths of the pre-package designs from other countries in a sense that it promotes consensus between corporate debtor and creditor, distinguishing between MSMEs and other

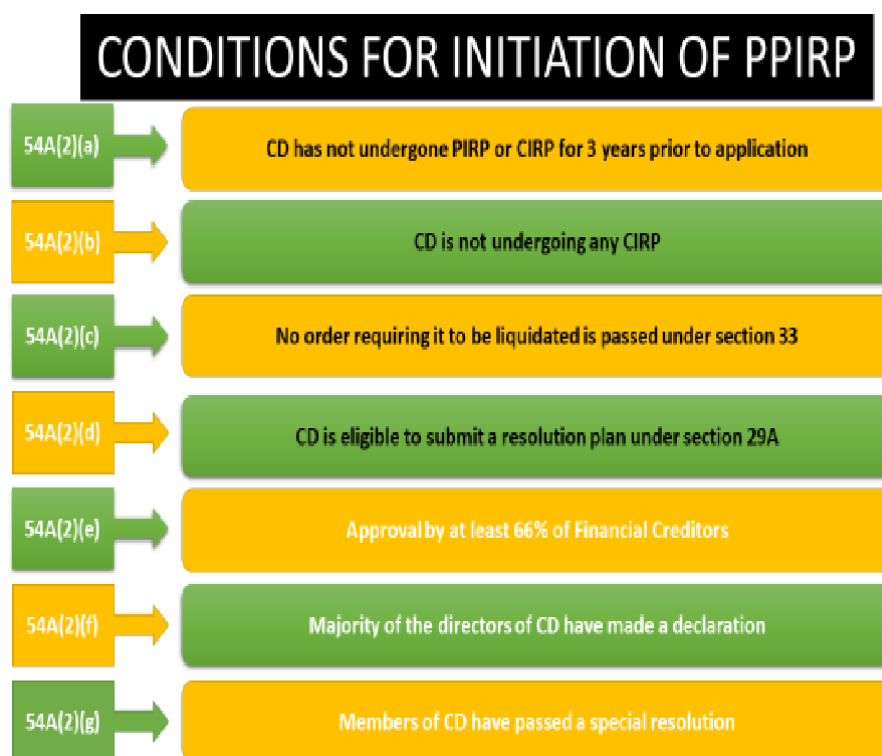
debtors, role of adjudicating authorities, emphasising transparency amongst corporate debtors, creditors, promoters, prospective applicants, etc.

A Corporate Debtor which is an MSME under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, is eligible to apply for initiation of PPIRP. MSMEs - Section 7 of the MSME Act, 2006 classifies enterprises in Micro, Small and Medium Enterprises based on their investment in plant and machinery/equipment and Annual Turnover as below:

**Composite Criteria: Investment in Plant & Machinery/equipment and Annual Turnover**

<b>Classification</b>	<b>Micro</b>	<b>Small</b>	<b>Medium</b>
<b>Manufacturing Enterprises and Enterprises rendering Services</b>	Investment in Plant and Machinery or Equipment: Not more than Rs.1 crore and Annual Turnover not more than Rs.5 crore	Investment in Plant and Machinery or Equipment: Not more than Rs.10 crore and Annual Turnover not more than Rs.50 crore	Investment in Plant and Machinery or Equipment: Not more than Rs.50 crore and Annual Turnover not more than Rs.250 crore

A Corporate Debtor which is an MSME shall be eligible to apply for initiation of PPIRP if it has committed a default of Rs.10 lakh and fulfils following conditions:



### **Objectives:**

1. To study the PPIRP (Pre-Package Insolvency Resolution Plan).
2. To analyse the companies that have adopted PPIRP for resolution.
3. To study the resolution status of these companies.
4. To analyse the time taken for successful resolutions under PPIRP.

### **Statement of Hypothesis:**

1. Practically, PPIRP takes more time for settlement of resolution than intended.
2. Cases are not settled without court intervention.
3. Need of push for encouragement from various participants.
4. Other factors affect the MSMEs from going into PPIRP route for resolution.

### **Research Methodology:**

For this study, secondary data has been considered which includes articles, journals and websites on internet. Pre-pack cases and their status have been taken from NCLT website.

### **Analysis of the Pre-pack cases: Findings:**

Since the PPIRP was introduced, India witnessed only eight cases that initiated for Pre-pack insolvency out of which only six cases were admitted.

### **The CDs who initiated PPRIP were as follows:**

<b>Sr. No.</b>	<b>CDs who opted PPIRP</b>
1	Krrish Realtech Private Limited
2	CHD Developers Limited
3	GCCL Infrastructure and Projects Limited
4	Loon Land Developers Limited
5	Enn Tee International Limited
6	Amrit India Limited
7	Shree Rajasthan Syntex
8	Sudal Industries Limited

Let us understand the status of each above mentioned cases

#### **1. Krrish Realtech Private Limited:**

In this case there was substantial debt due and involved numerous Financial Creditors (FCs) and homebuyers from incomplete real estate projects. Objections were filed soon after the PPIRP application was filed by the company with the NCLT. The Objectors claimed that as per the requirements of PPIRP, proper consent of the FCs is a must which was not obtained in this case before application was filed. NCLT decided in favour of the Objectors.

Being aggrieved by the decision of NCLT, Krish Realtech filed an appeal before the NCLAT claiming that the objections of FCs be heard after the admission of the PPIRP application. However, the objectors argued that the manner of filing the PPIRP application indicated Krrish Realtech's malafide and fraudulent intentions.

NCLAT prima facie found that as mandated by the regulations, approval of the FCs for filing the PPIRP application was not obtained. NCLAT reasoned, when an application under section 54C did not fulfil the statutory requirement, a person having a claim in PPIRP could point out the infirmity and object to the admission of an improper application. The NCLAT further held that NCLT was guided by the principles of natural justice, and it was appropriate to provide reasonable time to file the objections. The NCLAT upheld NCLT's decision to hear the objections. Subsequent to the decision of the NCLAT, Krrish Realtech withdrew the PPIRP application. The time taken from the date of filing to the date of withdrawal was 137 days.

## **2. CHD Developers Limited:**

An application was filed by the financial creditors under section 7 of the IBC for initiation of CIRP of CHD Developers Limited and was undecided. Meanwhile, upon PPIRP provisions coming into effect, CHD developers initiated the application for PPIRP while CIRP application was pending before the NCLT. In these cases, CHD admitted the default and did not dispute the section 7 application.

Here the NCLT had to determine whether to admit the pending section 7 petition or the newly filed section 54C application. Section 54C covers the procedure to initiate an application and section 54A covers eligibility. The NCLT drew upon section 11A(4) of the IBC, which states that if a section 7 application was filed before the coming into effect of Part IIIA of IBC, then the order of precedence provided under section 11A (1), (2) and (3) would not be applicable. Accordingly, the PPIRP application was rejected. In this case, the time taken between the date of filing and the rejection of the PPIRP application was 55 days. The decision of the NCLT is currently under appeal.

## **3. GCCL Infrastructure and Projects Limited:**

The major cause of default was due to the pandemic where the company was not able to recover money from sundry debtors which resulted in a delay in making timely payment to the financial creditors. The CD was admitted in PPIRP on 14.09.2021. The Resolution Applicant M/s. GCCL Infrastructure & Projects Limited proposed to pay a sum of Rs.1,14,74,000 i.e., 100% against the total admitted claim.

During the proceedings before the Tribunal, on 18th Jan 2023, the Bench raised a query as to how the shareholders in different category, being shareholders having shares in demat form and shareholders having physical shares and how part of the shares are proposed to be extinguished completely and some part of the share capital proposed for reduction along with issuance of new shares to the new shareholders. The Learned Counsel for the applicant submitted a detailed note on the query raised by the bench. The same was taken as clarification and recorded.

Further the salient features of the resolution plan proposed were explained to the bench on 22nd June 2023 and on 28th August 2023. The Bench sought clarification on the updated status of the financial position of the applicant in view of the fact that lot of time was lapsed from the date of application, whether the debt due to the financial and other creditors still continued and would be repaid in full as per plan and whether the MSME status continued after the approval of the resolution plan. It was submitted that the resolution plan proposed through demerger (spin off) of the subsidiary entity Shreyarth Aaspas Limited with the transferee company M/s GCCL Infrastructure and Projects Limited (applicant) would bring in synergy and there were no regulatory or other non-compliances and that the COC still comprised of sole Financial Creditor (who was not a related party) confirmed to abide by the resolution plan submitted and there were no objections or Interim Applications against the Resolution Plan received till date. It was also submitted that the company was being run as a going concern. In this regard an affidavit dated 31.08.2023 was filed clarifying that the corporate debtor would remain as MSME after approval of resolution plan.

In view of the submissions and clarifications obtained, taking the documents on record, the application filed under Section 54K was considered and the Resolution Plan submitted by the Corporate Debtor was approved.

#### **4. Loon Land Developers Limited:**

In case of Loon Land Developers Limited, the default was towards OCs. The default was over and above Rs. 10 lakhs. An affidavit was filed stating that the CD was eligible to submit resolution plan under the PPIRP. Then the meeting of Financial Creditors took place on 5th Oct, 2021 followed by filing of declaration by a majority of directors of CD, approval of the creditors for filing an application for initiating PPIRP and appointment of RP (Resolution Professional). The PPIRP application was admitted on 29.11.2021 but on 17.2.2023 the petition was withdrawn and dismissed.

#### **5. Enn Tee International Limited:**

The Company started incurring losses after demonetization in 2016 and implementation of GST in July 2017 as textile industry was an unorganized sector and due to non-availability of working capital which became insufficient during Covid pandemic and subsequent lockdowns. The company applied for PPIRP on 10.10.2022. NCLT called upon the counsels representing the corporate debtor and counsel for the RP as well as the officer of the Bank as to why there is delay in this matter for which extension was sought and granted by this Tribunal. It was pointed out that immediately on admission, the matter should have gone to the Stressed Assets Wing of the concerned Bank, whereas it went to the Branch, and it took some time before it got transferred to the Stressed Assets Wing of the Bank. The issue also consumed sometime in the negotiation process, which was held at the Stressed Assets Branch and with its superior authority which is situated in Mumbai. The inter-branch discussion on the proposal consumed a lot of time. Subject to these observations, the Resolution Plan was approved.

#### **6. Amrit India Limited:**

The CD was engaged in the business of trading and consultancy but it was not doing any business since last 2-3 years. There was trust deficit between the CD and the financial creditor which was the major cause of default. With the passage of time this went on increasing due to non-repayment of its dues. This non-payment to the financial creditor resulted in the corporate debtor going into Pre-packaged Insolvency Proceedings under the IBC, 2016 and all this resulted in mismatch of cash flow and subsequently default in bank accounts.

Amrit India had filed an application for pre-packed insolvency resolution process in November 2022. In the first successful resolution of a Pre-packed Insolvency Resolution Process (PIRP), Aquarius Fincap and Credits Private Limited has successfully won the rights to control Amrit India Limited. The Delhi bench of NCLT on 3 May 2023 approved the Rs 7.2 lakh resolution plan of Aquarius Fincap and Credits. As per the resolution plan, Aquarius Fincap and Credits has agreed to pay Rs 7.2 lakh against total dues of Rs 38 lakh. The secured financial creditors get Rs 5 lakh against their dues of Rs 12.70 lakh crore. Other creditors receive Rs 2.2 lakh against their admitted claims of over Rs 25 lakh.

#### **7. Shree Rajasthan Syntex:**

The CD had a business of manufacturing synthetic spun yarns, cotton yarns and polypropylene yarns. The CD started facing various operational and external challenges and since 2015 the company has been incurring losses. There was complete erosion of net worth due to different reasons like servicing of debt without cash accruals, closure of 8 MW captive power plant, volatile raw material prices, low bargaining power with suppliers, high finance charges, etc. Other than these, 2 out of the company's 4 spinning plants were lying shut since April 2019 and March 2020, thermal power plant was shut since 2017 and other 2 plants run on occasional basis as per availability of job work from customers. The total liability of CD was Rs.40.55 Crores. On 19.04.23 their application of PIRP was admitted. The case is still pending with NCLT. Last date of listing was 17.11.23 and next is on 19.12.23.

#### **8. Sudal Industries Limited:**

The Company was engaged in the business of manufacture of Aluminium Extrusions and Aluminium Base Alloys. Total Rs.141 Crores were outstanding. Company submitted a PIRP application while two CIRP applications were already pending.

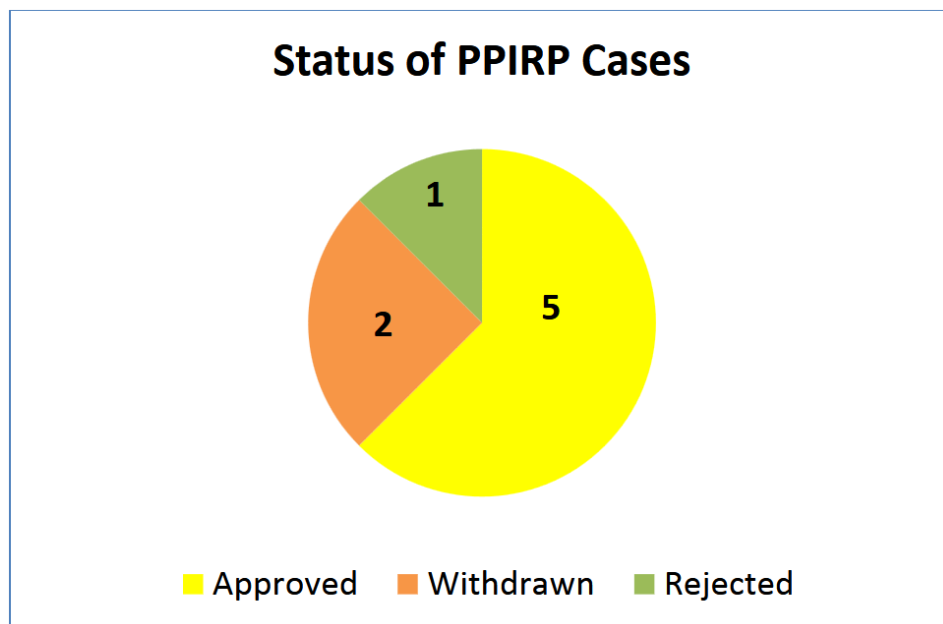
Of the two petitions, one was filed by Canara Bank (Canara) on July 17, 2020 which held 78.09% of total financial debt and had consented to the PIRP. The other petition was filed by Jaldhara Properties & Trading Private Limited (Jaldhara) on December 9, 2020 which held 10.56% of the financial debt. Jaldhara objected to the PIRP application and requested the Tribunal to decide the section 7 petition first, as was mandated under section 11A (4). On examining section 11A (4), the Tribunal found that the law mandated examining the section 7 petition first. Be that as it may, the Tribunal observed both section 7 and section 54A intended to achieve the same goal, which was resolution of insolvency. As Canara had consented to the PIRP application, NCLT dismissed its CIRP application as infructuous.

The Tribunal further found that Jaldhara’s ‘opposition stems from its intent to displace the existing promoter(s) from its management than to resolve the Corporate Applicant’ and held that the application was not ‘in accordance with the intent and object of the code and deserve[d] to be dealt with accordingly’. Thus, the Tribunal found Jaldhara’s application not maintainable.

After dismissing both section 7 petitions, the Tribunal found the section 54A application to be complete and admitted Sudal to PPIRP, 228 days after the initial filing of the PPIRP application. While this case was similar to CHD Developers, the Tribunal distinguished the case on facts and held that in CHD Developers, the CD had not disputed the section 7

application as was not the case in Sudal Industries.

#### Summary of Analysis of PPIRP Cases



#### **Suggestions and Conclusion:**

The PPRIP was introduced as a semi-formal process as compared to CIRP. It aims to protect the interests of MSMEs and provide faster completion of resolution process than in CIRP. But only few applications, as discussed, are initiated under this framework. The inherent conflict between debtor and creditor and voluntary haircuts could be the possible reasons for this. The process has ended being a court driven process with interference of the court at every step. This makes the 120-day timeline unachievable. Though it is in the primitive stages and more and more resolved cases will set the precedence, the expected development in this space is not visible as compared to the CIRP. From the analysis it can be suggested that the IBC and MSMED needs to be harmonized to meet the requirements of MSME Sector. There needs an encouragement to the scheme from the participants like the IBBI, Banks / Financial Institutions, Companies and NCLT.



**References:**

1. Insolvency and Bankruptcy Board of India. (2023). IBC: Evolution, Learnings and Innovation. <https://www.iiipicai.in>
2. <https://www.ibbi.gov.in>
3. <https://www.nclt.gov.in>