TO

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

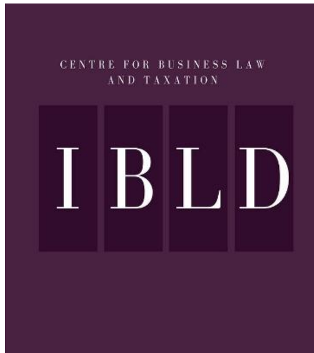
भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India

COMMENTS AND SUGGESTIONS ON

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS REGULATIONS, 2021

JULY 2025



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SUBMISSION OF COMMENTS ON IBBI'S CONSULTATION ON REGULATIONS

The Insolvency and Bankruptcy Board of India (IBBI), through its press release dated 7th April 2025, had invited public comments on all regulations under the Insolvency and Bankruptcy Code, 2016.

The initiative aimed to simplify, ease, and reduce the cost of compliance while ensuring regulations remain robust, relevant, and aligned with market needs. Suggestions were being sought until 30th June 2025, with revised regulations expected by 30th September 2025.

As part of this consultation, we have submitted our comments specifically on the Pre-Packaged Insolvency Resolution Process (PPIRP) Regulations, 2021, highlighting key issues and recommendations for strengthening the framework.

RATIONALE FOR CHOOSING PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS (PPIRP) REGULATIONS, 2021 FOR COMMENTS

We have chosen to submit comments on the Pre-Packaged Insolvency Resolution Process (PPIRP) Regulations, 2021 because, while PPIRP was introduced as a swift, cost-effective, debtor-in-possession framework for MSMEs, its implementation has fallen short of its objectives. The process remains heavily dependent on the NCLT, causing delays and judicial overreach that undermine creditor autonomy and efficiency. Ambiguities in promoter eligibility, impractical statutory timelines, exclusion of non-corporate MSMEs, and lack of transparency in disclosures further dilute its effectiveness. Additionally, the high voting threshold for initiation and absence of robust creditor oversight have restricted its accessibility. Given the global best practices of single-window clearance, pre-filing negotiations, and wider creditor participation, reforms to PPIRP are urgently needed to restore its intent and make it a truly MSME-friendly resolution mechanism.

STRUCTURE FOLLOWED IN SUBMISSION OF COMMENTS ON PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS (PPIRP) REGULATIONS, 2021

In submitting our comments on the Pre-Packaged Insolvency Resolution Process (PPIRP) Regulations, 2021, we have followed a uniform structure to ensure clarity, consistency, and a constructive approach to reform. To make the suggestions practical and implementable, amended texts of the regulations have also been proposed wherever necessary.

The structure followed is as under:

1. **TITLE OF THE ISSUE** - A thematic heading summarising the concern.
2. **EXISTING LEGAL FRAMEWORK** - Extract of the current provision in the regulations.
3. **CHALLENGES IN THE CURRENT FRAMEWORK** - Analysis of gaps, inefficiencies, and practical difficulties in implementation.
4. **PROPOSED AMENDMENT/REFORMS** - Suggested amendments to the regulation.
5. **INTERNATIONAL PERSPECTIVE** - Reference to global best practices that can guide Indian reforms.
6. **CONCLUSION** - A brief summation of how the proposed amendment will strengthen the PPIRP framework and align it with its intended objectives.

List of Abbreviations	
Abbreviation	**Term**
IBBI	Insolvency and Bankruptcy Board of India
IBC	The Insolvency and Bankruptcy Code
PPIRP	Pre-Packaged Insolvency Resolution Process
MSME	Micro, Small and Medium Enterprises
NCLT	National Company Law Tribunal
CD	Corporate Debtor
CoC	Committee of Creditors
CIRP	Corporate Insolvency Resolution Process
RP	Resolution Professional
AA	Adjudicatory Authority
HUF	Hindu Undivided Family
NCLAT	National Company Law Appellate Tribunal
EU	European Union
MSMED	Micro, Small and Medium Enterprises Development
CP	Corporate Person
LLP	Limited Liability Partnership
NSS	National Sample Survey
SHG	Self Help Groups
GDP	Gross Domestic Product
IRP	Interim Resolution Professional
FC	Financial Creditors
BLRC	Bankruptcy Law Reform Committee
DIP	Debtor-in-possession
CIP	Creditor-in-possession
UK	United Kingdom
USA	United States of America
PSB	Public Sector Banks
CBI	Central Bureau of Investigation

NBFCs	Non-Banking Financial Companies
SIDBI	Small Industries Development Bank of India
PSL	Priority Sector Lending
IMF	International Monetary Fund

Summary of Suggestions

1. Reining in Judicial Overreach: Strengthening the Pre-Pack Framework through Limited Adjudicatory Intervention

The Pre-Packaged Insolvency Resolution Process (PPIRP) was introduced under the Insolvency and Bankruptcy Code (IBC) to offer a faster, creditor-driven restructuring process for MSMEs with minimal judicial interference. Its core objective is to combine the benefits of informal restructuring with the legitimacy of a formal insolvency process, thereby preserving value while ensuring creditor confidence. However, in practice, the existing legal framework has created bottlenecks that dilute its effectiveness.

The current framework requires the NCLT's involvement at multiple stages, including admission, approval or rejection of resolution plans, declaration of moratorium, and appointment of the resolution professional. This heavy reliance on the tribunal undermines the PPIRP's purpose of reducing judicial intervention. With the NCLT already overburdened, this dependency has led to delays. For instance, though Section 54C provides for a 14-day admission timeline, cases like *Loon Land Developers Ltd.* have taken over a year due to objections and procedural scrutiny. Similarly, unrealistic statutory deadlines, 90 days for submission of a resolution plan and 30 days for approval, are impractical, given the complexities of valuations, creditor negotiations, and CoC approvals.

To address these shortcomings, reforms have been proposed. These include introducing a single-window clearance system to streamline approval and reduce tribunal dependency, along with strengthening pre-filing negotiations so that plans filed are creditor-backed and enforceable. NCLT's role should be limited to defined trigger points, such as fraud, gross misconduct, or valid creditor objections, preventing unnecessary judicial gatekeeping. Regulations must also restrict rejection of plans to specific statutory grounds, ensuring judicial discipline and respecting creditor wisdom.

2. Exemption from Section 29A

The Pre-Packaged Insolvency Resolution Process (PPIRP) was introduced to provide MSMEs with a quicker and less disruptive restructuring mechanism, allowing promoters to retain control under the supervision of a resolution professional. However, a critical ambiguity persists, whether MSME promoters are exempt from disqualifications under Section 29A of the IBC, as they are in regular insolvency proceedings under Section 240A. Section 29A bars

promoters with NPAs or unpaid personal guarantees, but its strict application to PPIRP could undermine the process by excluding the very individuals best positioned to revive the business. Judicial rulings like K. Satheesh Babu Rajesh v. George Varkey have clarified that Section 240A exempts MSMEs from these disqualifications in CIRP, yet the 2021 Ordinance introducing PPIRP remains silent, creating uncertainty and potentially forcing viable businesses into liquidation.

The absence of an explicit exemption for PPIRP poses significant challenges. MSMEs are particularly vulnerable to external economic shocks, and their promoters are often the only parties with the knowledge and incentive to steer a successful turnaround. Unlike larger corporations, MSMEs rarely attract external bidders, meaning that barring promoters could lead to fire sales or liquidation, harming creditors and employees alike. Global frameworks, such as the U.S. Chapter 11 and UK pre-pack administrations, recognize the value of promoter-led resolutions while imposing safeguards against fraud. India's PPIRP framework should similarly balance flexibility with accountability, ensuring that promoters can participate without compromising creditor interests.

To address this gap, Section 240A should be amended to explicitly extend its exemptions to PPIRP, subject to conditions such as creditor approval and anti-fraud protections. A 51% creditor voting threshold would ensure commercial viability while preventing misuse, aligning with international best practices. Legislative clarity is urgently needed to prevent the unintended consequence of pushing distressed but viable MSMEs into liquidation. By refining the law, India can preserve the original intent of PPIRP, providing MSMEs with an efficient, promoter-friendly restructuring tool while maintaining robust safeguards for creditors and the insolvency ecosystem.

3. INCLUSION BEYOND INCORPORATION: AMENDING PPIRP REGULATIONS FOR MSME REALITIES

Micro, Small, and Medium Enterprises (MSMEs) constitute a fundamental component of India's economic framework, playing a crucial role in the nation's Gross Domestic Product (GDP), export activities, and employment generation. In an effort to assist financially distressed MSMEs, the Pre-Packaged Insolvency Resolution Process (PPIRP) was established as a more expedient and cost-efficient insolvency solution. Nonetheless, the existing eligibility criteria restrict access to this mechanism solely to registered corporate MSMEs, specifically companies and Limited Liability Partnerships (LLPs), thereby excluding a significant

proportion of MSMEs that operate as sole proprietorships, partnerships, or Hindu Undivided Families (HUFs).

The limitations faced by unregistered MSMEs stem from various legal and procedural barriers, including the requirement for mandatory incorporation, the absence of a verification process for unregistered entities, and the stringent definitions established under the Insolvency and Bankruptcy Code (IBC), which emphasize formal structure over economic substance. In contrast, international models, such as the U.S. Small Business Reorganization Act (Subchapter V, Chapter 11), permit a wider array of small business debtors to undergo restructuring without necessitating formal incorporation.

To enhance the inclusivity of the PPIRP and align it more closely with the realities of the Indian economy, several reforms are recommended: (1) permitting self-declaration of MSME status, supported by documentation verified by resolution professionals, (2) requiring resolution professionals to facilitate Udyam registration during the PPIRP process, (3) establishing a framework for the verification of MSME status for unregistered entities utilizing tax and financial records, and (4) broadening PPIRP eligibility to encompass non-corporate business structures such as sole proprietorships and HUFs.

Implementing these reforms would extend the reach of the PPIRP, assist in the recovery of a greater number of distressed enterprises, safeguard employment, and enhance economic resilience. Promoting inclusivity within the PPIRP is vital for ensuring equitable policy support and sustaining the essential contributions of the MSME sector to India's economic growth.

4. Introducing a Statutory Calm Period in PPIRP: Safeguarding the Debtor-in-Possession Model and Preventing Premature Displacement

The Pre-Packaged Insolvency Resolution Process (PPIRP) under Section 54J allows creditors, with 66% voting share, to transfer a corporate debtor’s management to the Resolution Professional (RP) if mismanagement or fraud is suspected. However, this provision shifts de facto control to creditors, undermining the debtor-in-possession (DIP) model and exposing promoters to premature removal. While intended to prevent asset siphoning, it risks delaying or derailing the restructuring effort, creating instability for MSMEs.

The key challenge is the absence of a statutory “calm period.” Creditors can invoke Sections 54J and 54O from the start, leaving promoters under constant threat of displacement. This weakens the cooperative spirit of PPIRP and discourages genuine restructuring. To address this,

reforms propose introducing a minimum 30-day calm period during which the Committee of Creditors (CoC) cannot displace management or initiate CIRP. Additionally, any such action should require judicial assessment of “commercial unviability” based on evidence, ensuring fairness and balance between debtor and creditor interests.

A statutory calm period in India would protect promoters, ensure stability in the early stages, and align PPIRP with global standards. Coupled with judicial review before displacing management, this reform would preserve enterprise value, uphold cooperative restructuring, and reinforce the Code’s objective of resolution over liquidation.

5. STRENGTHENING TRANSPARENCY AND CREDITOR OVERSIGHT IN THE PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

The current PPIRP is based on a good-faith relationship where the preparation of critical documents like the Memorandum Claim and the Creditor Claims is prepared by the creditor. Section 54K of the IBBI Act highlights that the debtor is responsible of submitting the documents to the resolution professional. However, this whole process is concerning due to the lack of transparency in the process. There is a chance of a phoenixing issue, in which the management tends to maintain control over the company, because the RP lacks independent investigation powers. Therefore, the debtor's good faith and voluntary disclosure are essential to the PPIRP procedure as a whole. The PPIRP procedure is less likely to be adopted as a result of the issue of a lack of trust and fairness.

Since it gives a chance to the debtor to conceal important information, it is important that a third-party resolution professional be appointed who will be responsible for overseeing the insolvency process. In furtherance of that, all the information disclosed must be provided to the creditors who have a greater interest in the whole insolvency process. Therefore, to ensure the smooth resolution process, an amendment under Sec. 54(C)(3) and Regulation 43 are required where an independent, resolute professional is appointed who will be responsible for ensuring the publication of documents in a transparent manner.

6. LOWERING THE VOTING THRESHOLD

The Pre-Packaged Insolvency Resolution Process (PPIRP) under Section 54A(3) of the IBC requires 66% approval from unrelated financial creditors before initiation. Although intended as a debtor-in-possession (DIP) model to preserve MSMEs’ continuity, in practice the process

is dominated by creditors, particularly through provisions like Section 54J that allow replacement of management.

Key challenges undermine PPIRP's accessibility and effectiveness. First, the 66% threshold is impractical for MSMEs, which rely heavily on related-party financing, making unrelated creditors a minority. As a result, very few PPIRPs have been initiated. Second, operational creditors are excluded from the Committee of Creditors (CoC), despite MSMEs often being operational creditors themselves. This exclusion contradicts global practices, such as in the U.S. and U.K., where unsecured and operational creditors have formal voting rights. Third, public sector banks (PSBs) hesitate to approve plans due to fear of scrutiny over haircuts, despite the Supreme Court's recognition of CoC's commercial wisdom in *K. Sashidhar*.

Reforms are needed to make PPIRP viable. Reducing the initiation threshold to 51% of unrelated financial creditors would better reflect MSME creditor structures and align with international norms like U.S. Chapter 11. Operational creditors should be given representation and voting rights, ensuring equitable participation and legitimacy of resolutions. Additionally, legal immunity for PSB officials should be clarified to encourage decision-making without fear of investigation.

Internationally, frameworks like U.S. Chapter 11 grant all impaired creditor classes voting rights, while requiring at least one impaired class's approval for confirmation. Such inclusive practices ensure fairness, prevent marginalization of smaller creditors, and strengthen restructuring outcomes.

ADDITIONAL SUGGESTIONS

1. STRENGTHENING INTERIM FINANCE FOR MSME RESOLUTION UNDER PPIRP

Interim finance is crucial for the survival of Micro, Small, and Medium Enterprises (MSMEs) during the Pre-Packaged Insolvency Resolution Process (PPIRP) in India, as it allows them to cover essential operational costs. Despite its super-priority status under the Insolvency and Bankruptcy Code (IBC), MSMEs face significant challenges in accessing this funding. These challenges include a lack of unencumbered assets for collateral, creditor hesitations, low cash flow, high liquidation risks, and delays caused by the Committee of Creditors' approval processes. The inherent financial stress of MSMEs, coupled with their limited experience in financial and legal matters, exacerbates these issues, often leading to late filings and poor creditor returns.

To strengthen interim finance for MSMEs, several reforms are proposed. Firstly, Non-Banking Financial Companies (NBFCs) should be leveraged as a key source of credit. This requires expanding the role of the Small Industries Development Bank of India (SIDBI) to provide more wholesale financing to NBFCs and reinstating Priority Sector Lending (PSL) norms that classify bank loans to NBFCs for MSME lending as indirect finance. Secondly, equity support for MSME insolvency is vital. This could involve direct equity injections, quasi-equity instruments like "profit participation loans," and the establishment of a central fund by the IBBI, SIDBI, NABARD, or the Ministry of MSME to aid MSMEs undergoing PPIRP. Finally, leveraging technology through platforms like NeSL's "Marketplace for Interim Finance" can enhance transparency, reduce search costs for financiers, and build confidence among stakeholders, ultimately facilitating quicker and more accessible interim finance for distressed MSMEs. These measures aim to preserve viable MSMEs, align with the IBC's goal of resolution over liquidation, and ensure a faster, simpler, and more affordable insolvency process.

2. BOARD REPRESENTATION IN POLICY MAKING

The Pre-Packaged Insolvency Resolution Process (PPIRP) was introduced under India's IBC to offer a swift and less disruptive insolvency resolution for MSMEs, aiming to preserve business value with a debtor-in-possession (DIP) model. However, its effectiveness is undermined by several legal provisions that grant significant control to financial creditors. Specifically, Sections 54A(3) and 54J of the IBC require 66% creditor approval for both initiating the PPIRP and retaining existing management, essentially eroding the debtor's autonomy and the true spirit of a DIP model.

A critical flaw in the current framework is the exclusion of the statutory MSME Board, established under the MSMED Act to represent MSME interests, from the design and review of the PPIRP. This omission has led to a disconnect between policy and ground realities, resulting in an overly technical, creditor-driven process ill-suited for MSMEs. The lack of harmonization between the IBC and MSMED Act further creates legal ambiguities and inconsistent policy implementation. Consequently, PPIRP has seen poor adoption, with only 13 applications filed since its inception and limited successful resolutions, indicating a lack of awareness, creditor hesitancy, and inadequate responsiveness to MSME-specific needs.

Amending the PPIRP regulations to mandate the inclusion of MSME Board representatives in all relevant committees is crucial. This would inject essential sectoral expertise, bridge the gap

between regulation and ground-level needs, and foster a better balance between creditor rights and debtor viability. Such inclusion would also facilitate legal harmonization between the IBC and MSMED Act, improving clarity and administrative efficiency. Ultimately, involving the MSME Board would lead to simplified processes, greater MSME participation and trust, reduced creditor resistance, and improved recovery outcomes, making PPIRP a truly effective tool for MSME recovery and preserving businesses.

1. REINING IN JUDICIAL OVERREACH: STRENGTHENING THE PRE-PACK FRAMEWORK THROUGH LIMITED ADJUDICATORY INTERVENTION

Sno.	Existing Regulation	Proposed Amendment
1.	**Regulation 49** **Application to Adjudicating Authority.** **49.** (1) Where a resolution plan is approved by the committee, the resolution professional shall submit an application, along with a compliance certificate in Form P12, to the Adjudicating Authority for approval. (2) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant. (3) The resolution professional shall, within seven days of the order of the Adjudicating Authority approving a resolution plan, intimate each claimant, the principle or formula, as the case may be, for payment of debts under such resolution plan. (4) Where no resolution plan is approved by the committee or where the committee has approved the termination of process, the resolution professional shall file an application in Form P13 to the Adjudicating Authority for termination of process.	***Regulation 49A*** ***(1) Notwithstanding anything contained in these regulations, where the corporate debtor has submitted a resolution plan approved by the Committee of Creditors in accordance with Regulation 48 at the time of filing the application under Section 54C, the Adjudicating Authority shall consider the application for initiation of the process and for approval of the resolution plan in accordance with the applicable provisions of the Code and these regulations.*** ***(2) In such cases, the resolution professional shall submit a compliance certificate in Form P12 along with the application under Section 54C, certifying that -*** ***(a) the resolution plan meets the requirements of Section 30(2) read with Section 54K(3);*** ***(b) the approval of the resolution plan by the Committee of Creditors has been obtained with not less than fifty-one per cent. of the voting share; and*** ***(c) no other resolution plan was invited under sub-Section (8) of Section 54K.*** ***(3) The involvement of the Adjudicating Authority under this***

		Chapter shall be limited to the following instances: ***(a) approval or rejection of the resolution plan under Section 54L; and*** ***(b) termination of the process under Section 54N;*** ***except in cases involving allegations or prima facie evidence of fraud, gross misconduct, significant procedural irregularities, or where intervention is necessary in the public interest.*** ***(4) Nothing in this regulation shall limit the powers of the Adjudicating Authority under Section 65 or in cases involving fraud, gross misconduct, or significant procedural irregularities.***
2.	**Regulation 46:** **Submission of resolution plans.** 46. (1) A resolution applicant may submit resolution plan or plans prepared in accordance with the Code and these Regulations to the resolution professional through electronic means within the time given in the invitation for resolution plan. (2) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.	**Regulation 46:** **Submission of resolution plans.** 46. (1) A resolution applicant may submit resolution plan or plans prepared in accordance with the Code and these Regulations to the resolution professional through electronic means within the time given in the invitation for resolution plan. (2) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected. ***(3) The Adjudicating Authority shall not reject a resolution plan solely on the ground that a more advantageous***

		or significantly better resolution plan could have been devised.

Existing Legal Framework

- The current regulations require that the application for initiating a PPIRP must be either admitted or rejected within 14 days of its filing. (Section 54C)[1]
- Under Section 54L,[2] the NCLT is required to either approve or reject the resolution plan within 30 days of its submission, provided the plan complies with all statutory requirements, including approval by at least 66% of the CoC voting share. If the NCLT rejects the application, it has to provide 7 days for the CD to rectify any defects in the application.
- Once admitted, the pre-packaged insolvency resolution process officially commences under Section 54D,[3] which mandates the submission of a resolution plan to the NCLT within 90 days from the commencement date. The entire process must be completed within 120 days, failing which the PPIRP shall stand terminated.
- Alternatively, a PPIRP can end if 66% of the committee of creditors (CoC) approves the termination of the PPIRP and the NCLT passes an order terminating the PPIRP (Section 54N[4] r/w 54-O[5]).

Challenges in the Current Framework

1. ***Purpose v. Practice:*** Although the purpose of PPIRP was to reduce judicial intervention and promote a quicker, creditor-centric resolution, however, the role of the NCLT continues to be significant and frequently indistinguishable from the more formal CIRP procedure. The legal framework of Chapter III-A under the Code is dependent on the NCLT almost at every level of the process: the initiation of the process,[6] filing and approval or rejection of the resolution plan,[7] declaration of moratorium,[8] and appointment of the Resolution

[1] The Insolvency and Bankruptcy Code 2016, s 54(c).
[2] The Insolvency and Bankruptcy Code 2016, s 54(l).
[3] The Insolvency and Bankruptcy Code 2016, s 54(d).
[4] The Insolvency and Bankruptcy Code 2016, s 54(n).
[5] The Insolvency and Bankruptcy Code 2016, s 54(o).
[6] The Insolvency and Bankruptcy Code 2016, s 54(e)(1)(c).
[7] The Insolvency and Bankruptcy Code 2016, s 54(c).
[8] The Insolvency and Bankruptcy Code 2016, s 54(e)(1)(a).

Professional (RP).[9] This overburdens the tribunal that is already facing a mountain of pending cases

2. ***Delays from Judicial Gatekeeping:*** This widespread judicial intervention usually leads to undue gatekeeping and delays. For instance, the 14 - day statutory period for admission of applications[10] is extended repeatedly because of objections and procedural examination as was seen in the case of *Loon Land Developers Ltd,*[11] where objections took 445 days to finalize.
3. ***Undermining the Commercial Wisdom of the CoC:*** The NCLT's jurisdiction goes to the extent of stepping in if alleged fraud or misconduct is involved or if a percentage of creditors are against the process. This has the effect of overstepping into operational issues and second-guessing the commercial sense of the CoC, as in the case *of GCCL Infrastructure and Projects Limited,*[12] where the tribunal questioned the proposal for merger even when approved by CoC. This not only prolongs the resolution process but also undermines the efforts of RPs and the CoC in resolving insolvencies going against the doctrine of "*Commercial Wisdom of Committee of Creditors*" as reinforced by the Supreme Court of India which emphasizes that NCLT should respect the commercial decisions made by the CoC.
4. ***Unrealistic Statutory Timelines:*** A corporate debtor has 90 days to present the adjudicating authority with a resolution plan approved by the CoC under Regulation 49.[13] It has 30 days to issue an order approving or rejecting the resolution plan. Given the past records of adherence to CIRP timelines, this rigorous 90+30-day timeline is impractical. The 90-day period covers transaction inquiry, corporate debtor appraisal by registered valuers, and the creation of a CoC. Obtaining a creditor's approval could also take a long time. Therefore, this will only work if the corporate debtor puts in the groundwork before the PIRP's official start date.
5. ***Lack of Defined Boundaries in NCLT's Role:*** There is no clear legal framework defining the NCLT's role in PPIRP, leading to inconsistent decisions and prolonged hearings. Judges, often unfamiliar with the process and lacking precedents, hesitate to approve resolution plans, especially when they involve waiving government dues until a government representative appears before the tribunal. For instance, in the case of *GCCL*

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[9] The Insolvency and Bankruptcy Code 2016, s 54(e)(1)(b).

[10] The Insolvency and Bankruptcy Code 2016, s 54(c)(4).

[11] Loon Land Developers Limited (2021) SCC OnLine NCLT 25531.

[12] *GCCL Infrastructure and Projects Limited* (2021) SCC OnLine NCLT 32742.

[13] Pre-packaged Insolvency Resolution Process Regulations 2021, reg 49.

Infrastructure,[14] the proceedings continued for over 700 days. The application was accepted on 14th September 2021, and the resolution plan received approval on 5th September 2023. The hearing was postponed due to non-fulfillment of procedural requirements owing to paucity of time and the bench requesting timely clarifications.

6. ***No Objective Criteria for Rejection of Plans:*** Lack of objective criterion for rejecting a resolution plan enables the NCLT to reject plans at times on the hope that a superior plan can be prepared, even when Supreme Court directions are to apply powers strictly in accordance with the statute. Section 54L[15] says that the Adjudicating Authority shall approve the resolution plan provided that the conditions provided therein, meets the requirements as referred to in sub-Section (2) of Section 30.[16] However, there is no specific objective criteria for the rejection of the plan. The Hon'ble Supreme Court in the case of *K Sashidhar v. Indian Overseas Bank and Ors*,[17] laid down that NCLT has no jurisdiction and/or authority to analyse or evaluate the decision of the CoC to enquire into the viability of the rejection of the resolution plan by the dissenting financial creditors. Despite this judgement, in many cases, NCLT evaluates the CoC's decision and rejects the plan without any set criteria. The rejection of plan can be due to various reasons which differs in every case.

These difficulties cumulatively cause delays, higher costs, and inefficiencies, diluting the efficacy of PPIRP as a quick and minimalist judicial insolvency resolution framework.

Proposed Reforms

1. ***A Single-Window Clearance Framework and Strengthening Pre-Filing Negotiation and Enforcement Mechanisms:*** Pre-pack resolution means a "*pre-agreed*" resolution. However, the current framework provides for a 2-stage approval of the AA:[18]
    (1) Firstly, at the admission stage after the Base Resolution Plan is prepared
    (2) Secondly, at the approval stage (Base Resolution Plan v. Best Alternate Plan)

This hinders the process's efficiency and goes against the pre-packaged process's core principles.

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[14] *Ibid*.
[15] The Insolvency and Bankruptcy Code 2016, s 54(l).
[16] The Insolvency and Bankruptcy Code 2016, s 30(2).
[17] *K Sashidhar v Indian Overseas Bank and Ors* (2019) 12 SCC 150.
[18] Yasir D Prathan, 'Pre-Packaged Insolvency Resolution in India: A Comprehensive Analysis of PPIRP under the IBC' (*IBC Laws*, 11 March 2025) <https://ibclaw.in/pre-packaged-insolvency-resolution-in-india-a-comprehensive-analysis-of-ppirp-under-the-ibc-by-yasir-d-pathan/ > accessed 21 June 2025.

Therefore, Sub-Regulation 1 of the proposed amendment (Regulation 49A) proposes a single window clearance framework reducing the involvement of AA in the process. This aligns with the essence of PPIRP with minimal involvement of the AA. The focus will henceforth be shifted to pre-agreed plans with the consent of the financial creditors. Mandatory pre-filing negotiation meetings between debtors and creditors to draft a resolution plan for filing will thereby reduce the time needed for CoC deliberations. Legal recognition for these pre-filing agreements between the creditors and the debtors should be granted rendering the negotiations enforceable.

2. ***Restricting Plan Rejection Grounds:*** Regulation 46 Sub-Regulation 3 of the proposed amendment provides that NCLT should not reject an application mainly on the ground that a better plan could be devised. This aligns with the principle laid down in the case of *Essar Steel,*[19] the Supreme Court clarified that the NCLT must exercise its power to reject a plan within the limits of the Code. NCLT must exercise restraint and not replace its own commercial judgment with that of the CoC. The Court determined that as long as the resolution plan meets the requirements of Section 30(2)[20] and has received approval from the CoC with the necessary majority, the NCLT has a narrow and defined role. It should not make subjective comparisons with hypothetical better plans.
   In the context of the PPIRP, which aims to be quicker and based on cooperation between creditors and debtors, this judicial restraint becomes even more crucial. Allowing the NCLT to reject a resolution plan based merely on speculation would undermine the goal of timely resolution and discourage promoters and creditors from participating in the process with good faith. Therefore, the proposed sub-regulation reinforces that the criteria for rejecting a resolution plan in PPIRP must be specific, limited to the reasons clearly stated in the Code, such as fraud, procedural violations, or non-compliance with Section 30(2)[21] read with Section 54K(3).[22] This provides procedural clarity, judicial discipline, and supports the main goals of the Code.
3. ***Limiting NCLT's Involvement to Defined Trigger Points:*** Regulation 49A Sub-regulation 3 of the proposed amendment aims to limit the role of the AA (NCLT) to specific triggers, such as fraud, gross misconduct, or when at least 25% of creditors raise a valid objection to starting the PPIRP. This seeks to maintain the process's time-bound and collaborative

[19] *Committee of Creditors of Essar Steel India Limited (through authorized signatory) v Satish Kumar Gupta and Ors*. (2020) 8 SCC 531.
[20] The Insolvency and Bankruptcy Code 2016, s 30(2).
[21] The Insolvency and Bankruptcy Code 2016, s 30(2).
[22] The Insolvency and Bankruptcy Code 2016, s 54K(3).

nature by restricting judicial interference to rare cases. Recent court decisions support this approach. For instance, in *Trimex Industries (P) Ltd. v. Sathavahana Ispat Ltd*.,[23] the NCLT imposed a fine of ₹5 lakh on a resolution applicant for submitting a frivolous application under Section 60(5).[24] The Tribunal determined that the applicant had misused judicial proceedings to delay the process after exhausting remedies with the NCLAT and the Supreme Court. This case shows how unnecessary applications can disrupt the resolution timeline and overburden the tribunal. To prevent such misuse in PPIRP, a committee could be formed which would create a code of conduct that outlines valid reasons for intervention. The scope of NCLT's inherent powers under Rule 11[25] and Section 60(5)[26] should be reassessed to ensure that they do not unduly interfere with or delay the insolvency process. Clear guidelines for the use of inherent powers to prevent unnecessary judicial intervention and ensure timely resolution of cases need to be formulated. This would provide an initial filter for the NCLT and serve as a reference to evaluate these applications, ensuring the limited 90-day period is not wasted on baseless litigation and remains focused on achieving meaningful resolution.

International Perspective

The recommendation can be corroborated by the functioning of PPIRP worldwide. For instance, in the United States (Chapter 11 Bankruptcy),[27] debtors and creditors negotiate terms and reach a consensus before filing, addressing several challenges inherent in traditional bankruptcy proceedings, offering a more efficient path to financial restructuring. This has proved to be successful. For instance, in *Belk Inc.,*[28] a department store chain, filed for bankruptcy under Chapter 11 and the entire process was completed in approximately 12 hours.

The United Kingdom also uses pre-pack resolution process, wherein sales of assets and proposed restructuring are negotiated beforehand and completed quickly upon initiation of

[23] *Trimex Industries (P) Ltd v Sathavahana Ispat Ltd* (2023) SCC OnLine NCLT 104.
[24] The Insolvency and Bankruptcy Code 2016, s 60(5).
[25] National Company Law Tribunal Rules 2016, r 11.
[26] The Insolvency and Bankruptcy Code 2016, s 60(5).
[27] *Office of the U.S. Courts, Administrative*, *Chapter 11 – Bankruptcy Basics* <https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics > accessed 21 June 2025.
[28] *Belk Inc v Meyer Corp* 679 F 3d 146 (4th Cir. 2012).

formal proceedings under the transparency directives like the Statement of Insolvency Practice 16 (SIP 16).[29]

Singapore follows a hybrid model, fusing pre-negotiated schemes with court approval, subject to the requirement that a supermajority of creditors approve the plan prior to filing.[30]

The European Union, in recent directives, is shifting toward pre-pack models harmonized across the continent with a need for only one judicial endorsement of compliance, as opposed to successive stages of review.[31]

These global best practices affirm single-window or single-stage judicial clearance, backed by effective pre-filing negotiations and creditor consensus, results in quicker, more predictable, and more effective restructuring outcomes. Implementing comparable steps in India, as suggested, would place the PPIRP on par with the world's best practices and make it a more effective pre-agreed, creditor-driven resolution mechanism.

Additional Suggestions

Enhancing Institutional Capacity: In addition to a single clearance window framework, the capacity of the NCLT by appointing more judges with expertise in handling insolvency matters should be increased to further expedite the process. It is necessary to increase the number of NCLT benches to more cities which would distribute the caseload significantly and guarantee a prompt resolution. The number of judicial benches in India that are able to handle matters connected to insolvency and bankruptcy is currently inadequate. There are only 16 judicial benches located around the country, and there are 27 judges who are able to make decisions about these cases.[32]

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[29] Insolvency Practitioners Association, 'Statement of Insolvency Practice 16: Pre-Packaged Sales in Administration'<https://insolvencypractitioners.org.uk/uploads/documents/f30389ce35ed923c06b2879fecdb616a.pdf> accessed 20 June 2025.

[30]Ashutosh Ravikrishnan, 'Pre-Packaged Insolvency- Doing it the Indian Way'(*Singapore Academy of Law*, 26 July2021)<https://sal.org.sg/articles/prepackagedinsolvencydoingittheindianway/#:~:text=The%20PPIRP%20is%20a%20hybrid%20of%20the%20debtorinpossession,vote%20on%20the%20approval%20of%20a%20restructuring%20proposal> accessed 21 June 2025.

[31] Cleary Gottlieb, 'The EU Commission's Proposal on Pre-Pack Sales and Other Insolvency Matters' (*Cleary Gottlieb*, 6 February 2023) <https://www.clearygottlieb.com/news-and-insights/publication-listing/the-eu-commissions-proposal-on-pre-pack-sales-and-other-insolvency-matters> accessed on 21 June 2025.

[32] Urja Joshi, 'Balancing Formality and Flexibility: Understanding Pre-Packaged Insolvency' (*IBC Law*, 13 May 2025)<https://ibclaw.in/balancingformalityandflexibilityunderstandingprepackagedinsolvencybyurjajoshi/#:~:text=The%20number%20of%20judicial%20benches%20in%20India,able%20to%20make%20decisions%20about%20these%20cases.> accessed 22 June 2025.

Conclusion

The Pre-Packaged Insolvency Resolution Process was created to provide a fast way for MSMEs to handle insolvency while allowing them to stay in control. This relies on cooperation from creditors and needs little involvement from the courts. However, the current heavy reliance on the NCLT at every step, along with unclear reasons for rejecting plans and broad judicial discretion, has reduced the efficiency and predictability of PPIRP.

The proposed changes aim to bring back the original goals of the pre-pack framework. They will introduce a single-window clearance system, clearly define grounds for court intervention, uphold the judgment of creditors, and remove vague comparisons between resolution plans. Limiting the NCLT's role to clear and narrow trigger points, such as fraud or major process errors, ensures that the process stays focused, timely, and practical.

By implementing these reforms and strengthening institutional capacity, India can align PPIRP with global best practices. This will create a stronger, more accessible, and resolution-friendly system for MSMEs facing insolvency.

2. EXEMPTION FROM SECTION 29A

SNO.	Existing Provision	Proposed Amendment
1.	**Regulation 16: Declarations.** 16. (1) The declaration under clause (f) of sub-Section (2) of Section 54A shall be made in Form P6. (2) The declaration under clause (c) of sub-Section (3) of Section 54C shall be made in Form P7.	**Regulation 16: Declarations.** 16. (1) The declaration under clause (f) of sub-Section (2) of Section 54A shall be made in Form P6. (2) The declaration under clause (c) of sub-Section (3) of Section 54C shall be made in Form P7. ***(3) Notwithstanding anything contained in the Code, the provisions of Section 54A(d) of the Code shall not apply to the pre-packaged insolvency resolution process undertaken under Chapter III-A of Part II of the Code.***

Existing Legal Framework

Central to the PPRIP framework is the DIP model, wherein the existing promoters continue managing the business under the supervision of a RP, enabling swift restructuring and minimization of value erosion. However, a serious interpretive ambiguity threatens the effectiveness of this framework; It is unclear whether MSME promoters are entitled to the benefit of exemptions under Section 240A of the IBC, [33] which relaxes certain disqualifications imposed by Section 29A. Given that many MSMEs face defaults or have extended personal guarantees on loans, a literal application of Section 29A[34] could render promoters ineligible to initiate or participate in their own PPIRP, directly contradicting the objective of enabling debtor-led resolution for MSMEs.

Section 29A(c)[35] disqualifies people whose accounts have been classified as Non-Performing Assets for more than a year, and Section 29A(h)[36] disqualifies those who have provided personal guarantees that have been invoked and remain unpaid. Section 240A, inserted in 2018, relaxes these two clauses for MSMEs in CIRP proceedings. However, the 2021 Ordinance

[33] The Insolvency and Bankruptcy Code 2016, s 240A.
[34] The Insolvency and Bankruptcy Code 2016, s 29A.
[35] The Insolvency and Bankruptcy Code 2016, s 29A(c).
[36] The Insolvency and Bankruptcy Code 2016, s 29A(h).

introducing PPIRP does not explicitly extend this carve-out to the new pre-pack regime. This ambiguity effectively excludes many MSME promoters from proposing resolution plans or continuing in management, thereby defeating the core purpose of PPIRP.

Recently, in the case of *K. Satheesh Babu Rajesh v. Mr. George Varkey,*[37] the Kochi Bench of NCLT held that a Promoter of an MSME Corporate Debtor will be eligible to submit an Expression of Interest/ Resolution Plan in his individual capacity. This Order clears the position of law regarding Section 240A of the IBC, which states that the eligibility criteria laid down in Section 29A(c) and 29A(h) of IBC will not be applicable to insolvency of MSMEs. Hence, the law was clear regarding the eligibility of Resolution Applicants to submit Resolution Plans during insolvency of MSMEs. However, a query now arises due to the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021[38] (Ordinance) which makes Section 29A applicable to Pre-Packaged Insolvency for MSMEs.

On one hand, the 2020 Report by the Insolvency Law Committee,[39] based on which the Ordinance was promulgated, recommends that all the conditions enumerated under Section 29A must be fulfilled prior to filing an application for initiation of the Pre-Packaged Insolvency. On the other hand, the judicial pronouncements prior to the Ordinance emphasized the importance of diluting certain disqualifications provided under Section 29A to Insolvency of MSMEs. In the case of *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors*.,[40] the Hon'ble Supreme Court held that the rationale for excluding MSMEs from the eligibility criteria laid down under Section 29A(c) and 29A(h) is due to the business model of MSMEs. It stated that in these types of businesses, there might not be any other forthcoming Resolution Applicant other than the Promoter and this in turn, may lead to inevitable liquidation of the Corporate Debtor, which is against the object of the IBC.

Proposed Reforms

To balance the commercial viability of PPIRP with the need for creditor protection, it is proposed that Section 240A be revised to include a conditional exemption for promoters under PPIRP. The MSMEs are distinctive in their business model, thus requiring different redressal.

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[37] *K Satheesh Babu Rajesh v George Varkey*, National Company Law Tribunal (31 May 2021) IA(IBC)/84/KOB/2021 IN IBA/52/KOB/2019.

[38] The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (No 3 of 2021).

[39] Ministry of Corporate Affairs, *Report of the Sub-Committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process* (Government of India, 2020).

[40] *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17.

MSMEs are small in size with limited assets. Therefore, on the default of debt it is unlikely that other companies in the industry will be willing to purchase the business of the CD. In such cases, the incumbent management is often the only one willing to purchase the business of the company. In these situations, sales to connected parties are often the only option to preserve the business of the company.

International Perspective

In line with the proposed reforms, in the United States, a pre-packaged plan, even with creditor support, will not be confirmed if it is tainted by fraudulent transfers or collusion among insiders.[41] Such fraud could manifest in the form of phoenixes,[42] insider trading, or other means.

In the United Kingdom,[43] the law permits pre-packs but requires court sanction and independent evaluation to detect fraud. While India's NCLT already provides independent evaluation, this amendment places the onus on promoters to submit bona fide claims aimed at restoring the enterprise rather than incentivising misuse.

Additionally, under Article 6(2) of the EU Preventive Restructuring Directive,[44] a transparency in negotiations is mandated. Judicial precedent, such as *Re Virgin Active Holdings Ltd.* reinforces the rejection of resolution plans if fraud is found in their formulation.[45]

Thus, the recommended amendment aligns with global best practices, ensuring that while promoters can participate in prepackaged resolutions, the process remains safeguarded against fraudulent exploitation.

Conclusion

The effectiveness of the PPIRP framework hinges on striking a balance between preserving MSMEs through debtor-led resolutions and safeguarding creditor interests against misuse. While Section 240A rightly carves out exemptions for MSMEs under CIRP, its ambiguous

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[41] *In re Tribune Co, No 08-13141* (Bankr D Del 2013), Dkt No 10234 at 56-57.

[42] Insolvency Service, *FOI 155: Investigations into phoenixing* (Freedom of Information Response, 29 March 2021) <https://www.gov.uk/government/publications/insolvency-service-foi-responses-january-to-march-2021/foi-155-investigations-into-phoenixing> accessed 15 May 2025.

[43] Corporate Insolvency and Governance Act 2020 (UK).

[44] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency), *O.J.* L 172/18.

[45] *Re Virgin Active Holdings Ltd* [2021] EWHC 1246 (Ch).

application to PPIRP undermines the very objective of enabling promoter-led restructuring. Judicial precedents like *Swiss Ribbons* and *K. Satheesh Babu Rajesh* underscore the necessity of such exemptions, given that MSME promoters are often the only viable resolution applicants. At the same time, international frameworks demonstrate that conditional participation of promoters, subject to safeguards against fraud, collusion, or abuse, can maintain both commercial viability and creditor confidence. Accordingly, revising Section 240A to extend limited exemptions under PPIRP, with mandatory oversight and transparency measures, would align Indian law with global best practices while ensuring that MSMEs are restructured effectively without being driven into liquidation.

3. Inclusion Beyond Incorporation: Amending PPIRP Regulations for MSME Realities

Sno.	Existing Regulation	Proposed Amendment
1.	**Regulation 2: Definitions.** 2. (1) In these Regulations, unless the context otherwise requires, - (a) "applicant" means the corporate applicant, filing an application for initiation of pre-packaged insolvency resolution process under Section 54C;	**Regulation 2: Definitions** (1) In these Regulations, unless the context otherwise requires, - (a) "applicant" means: (i) the corporate applicant, filing an application for initiation of the pre-packaged insolvency resolution process under Section 54C of the Code; ***or*** ***(ii) a proprietorship, partnership firm, Hindu Undivided Family (HUF), or any other entity classified as a micro, small or medium enterprise under sub-Section (1) of Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, filing an application for initiation of the pre-packaged insolvency resolution process in such manner and with such procedural modifications as may be prescribed under the Code or notified by the Board from time to time.***
2.	**Regulation 16: Declarations** (1) The declaration under clause (f) of sub-Section (2) of Section 54A shall be made in Form P6. (2) The declaration under clause (c) of sub-Section (3) of Section 54C shall be made in Form P7.	**Regulation 16: Declarations** (1) The declaration under clause (f) of sub-Section (2) of Section 54A shall be made in Form P6. (2) The declaration under clause (c) of sub-Section (3) of Section 54C shall be made in Form P7. ***(3) An applicant which is a micro, small or medium enterprise, including***

		a sole proprietorship, partnership firm, Hindu Undivided Family, or any other entity under sub-Section (1) of Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 and does not possess a Corporate Identity Number or date of incorporation shall not be rendered ineligible to submit declarations under this Regulation solely for want of such particulars. ***The Board may specify modified forms for such applicants, omitting or adapting references to corporate-specific details.***

A significant part of the Indian industrial landscape comprises of MSMEs serving as backbone of India's economy, contributing approximately 45% to manufacturing output, over 40% to exports, and more than 28% to GDP while also employing about 111 million people.[46] PPIRP introduced with the motive to provide a faster, cost-effective resolution for distressed MSMEs by enabling them to negotiate a resolution plan with creditors before formal insolvency proceedings. This mechanism is critical for MSMEs, which very often lack the resources to navigate prolonged insolvency processes, ensuring minimal disruption in their operations and preserve business value. However, the existing eligibility criteria for PPIRP quintessentially limits the amendment's accessibility, particularly for unregistered MSMEs and those operating as non-corporate entities. Currently, only MSMEs operating as companies and limited liability partnerships are eligible to use this established resolution machinery. Thus, it limits to the amount of MSMEs that are qualified for pre-pack by keeping sole proprietorship, partnerships, and Hindu Undivided Families out of the pre-pack resolution procedure.

[46]'Contribution of MSMES to the Country's GDP' <https://www.pib.gov.in/www.pib.gov.in/Pressreleaseshare.aspx?PRID=1985020> accessed 15 June 2025; 'The Need for Developing a New Taxonomy for MSME | Economic and Political Weekly' (25 August 2023) <https://www-epw-in.rgnul.remotexs.in/journal/2023/34/commentary/need-developing-new-taxonomy-msme.html> accessed 13 June 2025.

This proposal seeks for amendments in existing eligibility criteria to make PPIRP more inclusive, eventually enhancing its impact on MSME recovery and economic resilience.

Existing Legal Framework

In *Edelweiss Asset Reconstruction Company Ltd. v. Bharati Defence and Infrastructure Ltd.*, the NCLT (Mumbai) observed that "*The purpose and object of the Code is to straighten the credit system in the country and augment the growth of the growing country, if at all this Bench, for any reason, makes mole out of the mountain to dismiss petition despite the petition is otherwise furnished with all material as mandated, then we don't know whether we do injustice to the corporate debtor or not but it is obvious the purpose and object of the Code would be knocked down and the cause of the country at large will get eclipsed*." [47]

As per Section 54A of IBC,[48] a corporate debtor (defined as a corporate person owing debt) must satisfy two criteria to initiate PPIRP. *Firstly*, he needs to be a registered MSME under the Section 7[49] of Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, to initiate the process. This legislation holistically covers entities such as Hindu Undivided Families (HUFs), Associations of persons, Co-operative societies, Partnerships, Companies etc. [50]

Secondly, the Corporate Debtor[51] must come under the provided definition "Corporate Person" under Section 3(7) of the IBC,[52] which is inclusive of two entities i.e. Companies and Limited Liability Partnerships (LLPs) incorporated under the Companies Act, 2013,[53] or the Limited Liability Partnership Act, 2008.[54] These requirements create certain restrictions namely:

1. **Registration Requirement**: According to the 73rd round of the National Sample Survey (NSS) conducted in 2015-16, India has approximately 63 million unincorporated non-farm MSME enterprises.[55] As of 15 June, 2025, only about 37 million MSMEs were registered on the Udyam portal, meaning nearly 41% remain

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[47] *Edelweiss Asset Reconstruction Company Ltd. v Bharati Defence and Infrastructure Ltd.* 2017 SCC OnLine NCLT 2060.
[48] Insolvency and Bankruptcy Code 2016, s 54A (1).
[49] Micro, Small and Medium Enterprises Development Act 2006, s 7.
[50] Micro, Small and Medium Enterprises Development Act 2006, s 7(1).
[51] Insolvency and Bankruptcy Code 2016, s 3(8).
[52] Insolvency and Bankruptcy Code 2016, s 3(7).
[53] The Companies Act, 2013.
[54] Limited Liability Partnership Act, 2008.
[55] 'Report Titled "Key Indicators of Unincorporated Non-Agricultural Enterprises (Excluding Construction) in India" Released by NSSO' <https://www.pib.gov.in/newsite/printrelease.aspx?relid=166982> accessed 15 June 2025.

unregistered.[56] Even if we consider NSS' 73rd round (2015-16) estimates of a total of 63.4 million MSMEs in the country, then this results in the registration of 59% per cent MSMEs. The true proportion of registered enterprises is likely to be lower as the total number of MSMEs (the denominator) has possibly increased now compared to the 2015-16 estimates. This excludes a vast majority of eligible MSMEs from accessing PPIRP, despite many meeting the investment and turnover thresholds (investment in plant and machinery up to INR 1 crore and annual turnover up to INR 5 crore).[57]

2. **Exclusion of Non-Corporate Entities**: The IBC's reliance on Companies Act, 2013 and Limited Liability Partnership Act, 2008[58] for defining corporate person for initiating PPIRP excludes sole proprietorships, partnerships, and Hindu Undivided Families (HUFs), which constitute a significant portion of MSMEs. Data from the NSS indicates that 51.3% of MSMEs are in rural areas, and many operate as sole proprietorships or partnerships, particularly in trading (36.3%) and services (32.6%) sectors. Proprietary enterprises (i.e. enterprises wholly owned by a single individual) had the highest share (96%) in the unincorporated non-agricultural enterprises in the country. Partnership enterprises had a share of 2 % and Self-Help Groups (SHGs) accounted for 1.8 %. Trusts and 'others' had only a negligible presence of 0.1% each.[59]

   Furthermore, Under Chapter I of the regulation,[60] the identification number of the refers to limited liability partnership identification number or the corporate identity number of the debtor but remains silent on sole proprietorship, partnerships and Hindu Undivided Family.

   The Form P6[61] - Declaration by Director/Partners as given under Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations,

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[56] 'Udyam Registration : Zero Cost, No Fee and Free Registration of MSMEs. This Is Official Website of Govt. of India, Ministry of MSME. No Other Website/Portal/App Is Official. MSMEs Are Requested to Do MSME Registration Here Only' <https://udyamregistration.gov.in/Government-India/Ministry-MSME-registration.htm> accessed 11 June 2025.
[57] 'Formalization of Nano Enterprises through Digital Platforms: Potential and Challenges | LEAD at Krea University' (*LEAD at Krea University* |, 10 June 2024) <https://ifmrlead.org/formalization-of-nano-enterprises-through-digital-platforms-potential-and-challenges/> accessed 13 June 2025.
[58] Limited Liability Partnership Act, 2008.
[59] 'Report Titled "Key Indicators of Unincorporated Non-Agricultural Enterprises (Excluding Construction) in India" Released by NSSO' (n 8).
[60] Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, ch I.
[61] Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations 2021, sch Form P6.

2021 calls for the date of incorporation of the corporate debtor thereby making incorporation a mandatory requisite for the entities.

Another pertinent dimension is that legal form should not override economic substance. A business entity like HUF operating a business with valid Udyam registration essentially pays taxes, employs workers, takes business loans, and enters into contracts. Denying such an entity access to insolvency resolution machinery merely because it is not incorporated is form-over-substance, violating principles of economic justice and efficient resolution under the IBC.

3. **Lack of Verification Framework**: There is no mechanism to verify the MSME status of unregistered non- corporate enterprises, even if they are creditworthy and meet the other eligibility criteria. This administrative oversight disproportionately affects majority of informal and rural MSMEs.

International Perspective

United States – Subchapter V of Chapter 11 (Small Business Reorganization Act, 2019)

"§ 1182. Definitions "In this subchapter: (1) DEBTOR. - The term 'debtor' means a small business debtor.

The U.S. Small Business Reorganization Act (SBRA) of 2019[62] introduced Subchapter V to Chapter 11 of the Bankruptcy Code, creating a streamlined, cost-effective restructuring process exclusively for "*small business debtors*." Under § 1182,[63] a "debtor" is defined as a small business debtor i.e., a person or entity engaged in commercial activities with total non-contingent debts below a set threshold (currently around US $3 million). Subchapter V empowers such businesses to retain control of their operations as a "Debtor-in-Possession" benefits from expedited timelines, avoids costly U.S. Trustee fees, and bypasses the automatic appointment of creditor committees. Research shows this approach has notably helped small firms reorganize and preserve employment, with Subchapter V accounting for about 30% of Chapter 11 filings since its implementation.[64]

[62] Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079.
[63] 11 U.S.C. § 1182.
[64] Dietrich Knauth, 'Small Business Bankruptcy Rules Get Tighter after US Law Expiration' *Reuters* (21 June 2024) <https://www.reuters.com/legal/government/small-business-bankruptcy-rules-get-tighter-after-us-law-expiration-2024-06-21/> accessed 19 June 2025.

India could adopt a similar approach by extending eligibility beyond corporate companies and LLPs to smaller businesses entities such as HUF who are satisfying other PPIRP eligibility criteria but are not able to avail the benefits of efficient restructuring due to lack of awareness and administrative oversight. The law should focus on the nature of the enterprise, not the identity or form of ownership.

Additional Suggestions

To address these limitations and make PPIRP more inclusive, the following amendments are proposed:

1. Allowing Self-Declared MSME Status

The regulations should permit corporate debtors to apply for PPIRP, subject to verification by the resolution professionals. Acceptable documents for verification could include:

- Audited financial statements
- Income tax returns
- Bank certificates
- Balance sheets

This approach would ensure that unregistered and non-corporate but eligible MSMEs, particularly those in rural areas or operating informally, can access PPIRP without being excluded due to administrative barriers. It aligns with the economic reality that many creditworthy MSMEs meet the investment and turnover thresholds but remain unregistered. By facilitating the recovery of MSMEs, these amendments would strengthen India's economy, given the sector's substantial contributions to GDP, exports, and employment.

2. Assisting with Udyam Registration

Alternatively, the regulations could mandate that resolution professionals assist unregistered MSMEs in completing their registration on the Udyam portal as part of the PPIRP process. This would streamline formalization, promote compliance, and ensure that MSMEs benefit from both PPIRP and the broader advantages of registration, such as access to government schemes and credit facilities. Assisting with Udyam registration would align with India's digital public infrastructure goals, increasing the formalization rate of the MSME sector.

3. Establishing a Verification Framework

To address the lack of a mechanism for verifying unregistered MSME claims, a new provision inclusive of non-corporate enterprises should outline acceptable documentation for confirming

MSME status. This could include tax filings, bank statements, or other financial records that demonstrate compliance with MSME criteria. Such a framework would prevent the exclusion of informal or rural MSMEs due to administrative oversights and ensure equitable access to PPIRP.

4. Including Non-Corporate Business Forms

The current restriction to incorporated companies and LLPs excludes many MSMEs operating as sole proprietorships, partnerships or Hindu undivided family. The regulations should be amended to provide that these business forms as eligible under the IBC, the PPIRP framework will apply to them with appropriate procedural adjustments. This forward-looking approach would create a pathway for a more inclusive resolution system, ensuring accommodation for the diverse structures of MSMEs in India. Allowing unregistered MSMEs to participate would enable more distressed enterprises to recover, preserving jobs and economic value.

Supporting Data

The following table summarizes key statistics on MSME registration and sector composition:[65]

Metric	Value	Source
Total MSMEs (unincorporated, non-farm)	~63 million	NSS 73rd Round (2015-16)
Registered MSMEs (Udyam portal)	~37 million (as of June 2025)	Udhyam Portal
Percentage of Unregistered MSMEs	~41%	Calculated
MSMEs in Rural Areas	51.3%	NSSO (2017)
Sector Distribution: Manufacturing	31%	NSSO (2017)
Sector Distribution: Trading	36.3%	NSSO (2017)

[65] 'Contribution of MSMES to the Country's GDP' <https://www.pib.gov.in/www.pib.gov.in/Pressreleaseshare.aspx?PRID=1985020> accessed 15 June 2025; 'The Need for Developing a New Taxonomy for MSME | Economic and Political Weekly' (25 August 2023) <https://www-epw-in.rgnul.remotexs.in/journal/2023/34/commentary/need-developing-new-taxonomy-msme.html> accessed 13 June 2025.

Sector Distribution: Services	32.6%	NSSO (2017)
MSME Contribution to GDP	>28%	Ministry of Micro, Small & Medium Enterprises
MSME Contribution to Manufacturing	~40%	Ministry of Micro,Small & Medium Enterprises 2024
MSME Contribution to Exports	>45%	Ministry of Micro,Small & Medium Enterprises 2024

Conclusion

The PPIRP is a critical tool for supporting distressed MSMEs, but its current eligibility criteria exclude a significant portion of the sector due to registration requirements and the limitation to corporate entities. By allowing self-declared MSME status with verification, assisting with Udyam registration, establishing a verification framework, and planning for the inclusion of non-corporate business forms, the regulations can be made more inclusive. These amendments would enhance the accessibility and effectiveness of PPIRP, supporting the recovery of MSMEs, promoting formalization, and strengthening India’s economic resilience. Given the sector’s vital role in employment and GDP, these changes are essential for fostering equitable policy attention and sustainable growth.

4. Introducing a Statutory Calm Period in PPIRP: Safeguarding the Debtor-in-Possession Model and Preventing Premature Displacement

Sno.	Existing Regulation	Proposed Amendment
1.	**Regulation 14: Approvals by financial creditors.** **14.** (1) For the purposes of clause (e) of sub-Section (2) and sub-Section (3) of Section 54A, the applicant shall convene meetings of the financial creditors, who are not related parties of the corporate debtor. (2) The notice of the meeting under sub-regulation (1) shall be served to the financial creditors, who are not related parties of the corporate debtor, at least five days before the date of the meeting, unless a shorter time is agreed to by all of them. (3) The notice of the meeting under this regulation shall indicate the date, time and venue of the meeting, and enclose a list of creditors along with the amount due to them in Form P2. (4) The financial creditors who are not related parties of the corporate debtor and have not less than ten per cent. of the value of the total financial debt of such creditors may propose names of insolvency professionals for the purposes of	**Regulation 14: Approvals by financial creditors.** **14.** (1) For the purposes of clause (e) of sub-Section (2) and sub-Section (3) of Section 54A, the applicant shall convene meetings of the financial creditors, who are not related parties of the corporate debtor. (2) The notice of the meeting under sub-regulation (1) shall be served to the financial creditors, who are not related parties of the corporate debtor, at least five days before the date of the meeting, unless a shorter time is agreed to by all of them. (3) The notice of the meeting under this regulation shall indicate the date, time and venue of the meeting, and enclose a list of creditors along with the amount due to them in Form P2. (4) The financial creditors who are not related parties of the corporate debtor and have not less than ten per cent. of the value of the total financial debt of such creditors may propose names of insolvency professionals for the purposes of clause (e) of sub-Section (2) of Section 54A. (5) The approval of the terms of appointment of resolution professional

	clause (e) of sub-Section (2) of Section 54A. (5) The approval of the terms of appointment of resolution professional under clause (e) of sub-Section (2) of Section 54A shall be in Form P3. (6) The terms of appointment of the resolution professional under this regulation shall include– (a) fee payable to him for performing duties under sub-Section (1) of Section 54B; (b) fee payable to him and expenses to be incurred by him for conducting the process; and (c) fee payable to him and expenses to be incurred by him in case management of the corporate debtor is vested with him under Section 54J. (7) The approval for filing of application under sub-Section (3) of Section 54A shall be in Form P4. (8) Where the corporate debtor has no financial debt or where all financial creditors are related parties, the applicant shall convene a meeting of operational creditors, who are not related parties of the corporate debtor and provisions of sub-regulations (1) to (7) shall *mutatis mutandis* apply.	under clause (e) of sub-Section (2) of Section 54A shall be in Form P3. (6) The terms of appointment of the resolution professional under this regulation shall include– (a) fee payable to him for performing duties under sub-Section (1) of Section 54B; (b) fee payable to him and expenses to be incurred by him for conducting the process; and (c) fee payable to him and expenses to be incurred by him in case management of the corporate debtor is vested with him under Section 54J. (7) The approval for filing of application under sub-Section (3) of Section 54A shall be in Form P4. (8) Where the corporate debtor has no financial debt or where all financial creditors are related parties, the applicant shall convene a meeting of operational creditors, who are not related parties of the corporate debtor and provisions of sub-regulations (1) to (7) shall *mutatis mutandis* apply. ***9) Notwithstanding anything contained in this regulation or in Section 54J, the Committee of Creditors shall not pass a resolution to vest the management of the corporate debtor with the resolution professional under Section 54J(1) within thirty days from the pre-***

		packaged insolvency commencement date.

Existing Legal Framework

Under Section 54J,[66] during PPIRP, CoC may, by at least 66% voting share, resolve to transfer the management of the corporate debtor to the RP. Upon such resolution, the RP must apply to the AA. Subsequently, if the AA finds that the corporate debtor's affairs have been conducted fraudulently or there has been gross mismanagement, it shall order the vesting of management with the RP.

Once such an order is passed, several provisions applicable to regular CIRP, including those related to the moratorium, management powers of the RP, cooperation by personnel, and restrictions on transactions will apply *mutatis mutandis* to the PPIRP until the process concludes.

Once the RP informs the AA of the CoC's decision, the Authority must, within 30 days:

- Terminate the PPIRP and initiate CIRP;
- Appoint the existing RP as Interim Resolution Professional (IRP), if consented;
- Include PPIRP costs as part of CIRP costs.

Challenges in the Current Framework

Even though it appears that the PPIRP has adopted the DIP Model, a closer look at the relevant provisions shows that creditors control the resolution process. The *de jure* control is vested with the CD, however, *de facto* control remains with the financial creditors. Under Section 54J,[67] creditors have the power to change the company's management from the board to the RP. The management powers of the corporation and the settlement procedure favour creditors. This situation can disrupt the process if creditors disagree with the promoters' views. Creditors can also hinder the insolvency process by filing unnecessary applications that consume a significant amount of time in the resolution process.

[66] Insolvency and Bankruptcy Code 2016, s 54J.
[67] Insolvency and Bankruptcy Code 2016, s 54J.

The goal of this provision was to stop promoters from siphoning off company assets. However, it might delay the process if creditors do not agree with the promoters. When Section 54O[68] is invoked, the PPIRP terminates prematurely. Control shifts to the RP, and the company enters a process that is mainly formal and driven by creditors.

This setup comes from a suggestion by the Bankruptcy Law Reform Committee (BLRC).[69] They believed that resolution professionals lack strong control over the company. Because of this, value might be lost during the calm period. They suggested giving more power to creditors. However, this approach ignores the need to protect the company's overall value (enterprise value). By granting creditors too much power to interfere and potentially take over the process, the law risks harming the business instead of helping it survive. It also leads to an imbalance between the rights of the promoters (company owners) and the creditors.

It puts the MSME in a "*Sword of Damocles*" situation, where planning occurs under a coercive threat and the CD is always functioning at a gunpoint. As a result, the DIP model offers only conditional and weak autonomy, dependent on creditor discretion.

Proposed Reforms

It has been held in the case of *M/S. Innoventive Industries Ltd. v. ICICI Bank & Anr. S,* that

"The law must set up a calm period for insolvency resolution where the debtor can negotiate in the assessment of viability without fear of debt recovery enforcement by creditors." [70]

This calm period keeps the process organized, timely, and fair. It allows everyone to focus on evaluating the financial health of the corporate debtor. The PPIRP also needs a procedural safeguard, which includes a minimum initial window where the promoters have stability and cannot be removed by the CoC under Section 54J[71] or 54O.[72] This approach helps maintain the cooperative spirit of PPIRP and prevents the restructuring effort from being derailed too soon. Therefore, adding a statutory calm period, even by delaying creditor actions under Section

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[68] Insolvency and Bankruptcy Code 2016, s 54O.
[69] Bankruptcy Law Reform Committee, *The Report of the Bankruptcy Law Reform Committee: Volume I – Rationale and Design* (Ministry of Finance, Government of India, 2015).
[70] *M/S Innoventive Industries Ltd v ICICI Bank* (2017) AIR SC 4084.
[71] Insolvency and Bankruptcy Code 2016, s 54J.
[72] Insolvency and Bankruptcy Code 2016, s 54O.

54J[73] and 54O,[74] would naturally extend the method used in CIRP and strengthen the PPIRP framework.

A minimum initial window of 30 days is proposed as the calm period during which the CoC cannot vote out and displace the management under Section 54J and initiate CIRP under Section 54O. In addition to this, a procedural safeguard could be introduced requiring the NCLT to assess "*commercial unviability*" based on evidence before permitting the Committee of Creditors (CoC) to:

1. Displace management under Section 54J, or
2. Initiate CIRP under Section 54O.

This is not only a sound procedural safeguard, but also a necessary reform to preserve the intent of the PPIRP.

In every major jurisdiction, the removal of management or conversion from pre-pack to a full insolvency proceeding:

- Is not left to creditor vote alone, and
- Requires judicial or quasi-judicial approval based on objective evidence of commercial unviability.

International Perspectives

In the UK, under Part A1 Moratorium (Corporate Insolvency Governance Act, 2020)[75] the insolvency process includes a 20 business-day moratorium on creditor actions. This applies to distressed companies seeking temporary breathing space (often before formal restructuring). It can be extended by another 20 business days without any consent, or for a longer period with the agreement of the pre-moratorium creditors or the court. Early termination is also an option. The moratorium is quite similar to the administration moratorium and includes restrictions on insolvency proceedings, enforcement of security, and forfeiture, among others. This time allows a struggling company to restructure and potentially save the business as a going concern. During this period, the company's directors stay in charge, but an insolvency practitioner serves as a monitor to oversee the process and make sure the rescue remains possible.

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[73] Insolvency and Bankruptcy Code 2016, s 54J.
[74] Insolvency and Bankruptcy Code 2016, s 54O.
[75] Insolvency Act 1986, Part A1.

In the United States, Section 1121 of the U.S. Bankruptcy Code[76] gives the debtor an initial exclusivity period of 120 days. During this time, only the debtor can file a reorganization plan, and creditors cannot submit competing plans. This creates a legally protected calm period. It allows the debtor to focus on restructuring without outside pressure or disruption. In contrast, India's PPIRP does not have this safeguard. Creditors can invoke Section 54J or 54O from Day 1. This risks the premature removal of the promoter before the base plan is even submitted. Introducing a statutory calm period of 30 days before creditors can take action would align PPIRP with global best practices, like the U.S. model. It would also ensure that the process remains truly promoter-driven and time-bound.

In jurisdictions like US, UK and Singapore, A clear assessment of unviability, either financial or operational, is a precondition to removing management or altering process.

Conclusion

The PPIRP was designed as a DIP framework to allow timely and cooperative restructuring for MSMEs. However, the lack of a statutory calm period weakens this aim. It exposes corporate debtors to early removal through creditor-driven rules under Sections 54J and 54O. This leads to uncertainty, undermines the restructuring process, and goes against global best practices that support a pause for possible recovery.

Adding a minimum 30-day calm period, during which the CoC cannot remove management or switch to CIRP, would balance creditors' rights with the corporate debtor's control. Additionally, requiring a judicial review of commercial unviability before allowing such actions would ensure fairness and maintain the economic value of the business.

These reforms would bring the Indian PPIRP framework in line with successful international practices in the U.S., U.K., and Singapore. They would reinforce the Code's original purpose: prioritizing resolution over liquidation, preserving enterprise value, and ensuring fair treatment for all stakeholders.

[76] 11 USC § 1121 (2018).

5. STRENGTHENING TRANSPARENCY AND CREDITOR OVERSIGHT IN THE PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

S. No.	Existing Regulation	Proposed Amendment
1.	54C (3): (3) The corporate applicant shall, along with the application, furnish- (a) the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating pre-packaged insolvency resolution process in terms of Section 54A; (b) the name and written consent, in such form as may be specified, of the insolvency professional proposed to be appointed as resolution professional, as approved under clause (e) of sub-Section (2) of Section 54A, and his report as referred to in clause (a) of sub-Section (1) of Section 54B; (c) a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter	Sec. 54C ***(3A): Notwithstanding anything contained in this chapter, upon receiving the application under (1), the insolvency professional shall independently prepare the information memorandum, with full cooperation of the principal debtor, and shall verify all the claims submitted by the creditors.*** ***The principal debtor shall be required to disclose all the information required by the insolvency professional.*** ***Provided that on receiving the documents by the insolvency professional, the insolvency professional shall submit all the documents and information provided confirming compliance with the sub-Section.***

	VI, in such form as may be specified; (d) information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.	
2.	Regulation 43. (1) For the purposes of sub-Section (5) of Section 54K, the resolution professional shall publish brief particulars of the invitation for resolution plans in Form P11 not later than twenty-one days from the pre-packaged insolvency commencement date. (2) The resolution professional shall publish Form P11- (a) on the website, if any, of the corporate debtor; (b) on the website, if any, designated by the Board for the purpose; and (c) in any other manner as may be decided by the committee. (3) The Form P11 shall – (a) state where the invitation for resolution plans can be downloaded or obtained from, as the case may be; and (b) provide the last date for submission of resolution plan which shall not be less than fifteen	Regulation 43. (1) For the purposes of sub-Section (5) of Section 54K, the resolution professional shall publish brief particulars of the invitation for resolution plans in Form P11 not later than twenty-one days from the pre-packaged insolvency commencement date. (2) The resolution professional shall publish Form P11- (a) on the website, if any, of the corporate debtor; (b) on the website, if any, designated by the Board for the purpose; and (c) in any other manner as may be decided by the committee. (3) The Form P11 shall – (a) state where the invitation for resolution plans can be downloaded or obtained from, as the case may be; and (b) provide the last date for submission of resolution plan which shall not be less than fifteen days from the date of issue of invitation

	days from the date of issue of invitation for resolution plan under sub-regulation (2). (4) The invitation for resolution plans shall- (a) detail each step in the process, and the manner and purposes of interaction between the resolution professional and the resolution applicant, along with corresponding timelines; (b) include- (i) the basis for evaluation; (ii) basis for considering a resolution plan significantly better than another resolution plan; (iii) tick size; and (iv) the manner of improving a resolution plan; and (c) not require any non-refundable deposit for submission of or along with resolution plan. (5) The resolution professional shall require the resolution applicant, in case its resolution plan is approved under sub-Section (13) of Section 54K, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the	for resolution plan under sub-regulation (2). (4) The invitation for resolution plans shall- (a) detail each step in the process, and the manner and purposes of interaction between the resolution professional and the resolution applicant, along with corresponding timelines; (b) include- (i) the basis for evaluation; (ii) basis for considering a resolution plan significantly better than another resolution plan; (iii) tick size; and (iv) the manner of improving a resolution plan; and (c) not require any non-refundable deposit for submission of or along with resolution plan. (5) The resolution professional shall require the resolution applicant, in case its resolution plan is approved under sub-Section (13) Section 54K, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of

	failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule. Explanation 1. - For the purposes of this sub-regulation, "performance security" shall mean security of such nature, value, duration and source, as may be specified in the invitation for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor. Explanation 2. - A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.	the plan and its implementation schedule. ***(6): The insolvency professional withing 7 days of publication of the documents, circulate the information memorandum, list or claims, and all the other relevant documents necessary for the purpose of insolvency proceedings, to all the creditors having claim of not less than 10% of the aggregate claim.*** ***(7): The creditors, to whom all the documents have been provided, have the option to submit their objections within 14 days of receiving the documents, in the format specified by the government.*** Explanation 1. - For the purposes of this sub-regulation, "performance security" shall mean security of such nature, value, duration and source, as may be specified in the invitation for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor. Explanation 2. - A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to

		one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.

Existing Legal Framework

Under Section 54C (3) of the IBC,[77] a corporate applicant is required to submit several documents while initiating a PPIRP. These include a declaration of intent, the consent of financial creditors, the written consent of a proposed RP, and a declaration regarding avoidance transactions. Further, Regulation 43[78] of the PPIRP Regulations governs the publication of the invitation for resolution plans and lays out procedural obligations of the RP in coordinating the plan submission. However, despite these formal requirements, the current structure permits the existing management (debtor) to remain in control of the company and to prepare key documents such as the information memorandum and list of claims. This diverges significantly from the CIRP model, where such documents are prepared independently by the RP.

Such a framework creates an inherent conflict of interest. Since the debtor continues to exercise control over business assets and possesses intimate knowledge of financial dealings, there exists an incentive to conceal or misrepresent material facts during the preparation of these documents. The RP is largely relegated to a passive role and lacks independent investigative authority. The debtor's exclusive role in disclosing financial information without external verification risks compromising the integrity of the process, especially where the debtor lacks genuine intention to resolve insolvency or seeks to manipulate proceedings for personal gain. Consequently, this has led to diminished confidence among financial creditors and poor adoption rates of the PPIRP.

Challenges in the current framework

PPIRP was envisioned as a DIP insolvency resolution mechanism specifically designed for MSMEs under the IBC. Its primary aim was to provide a streamlined, cost-effective alternative to the traditional CIRP, by preserving business value and facilitating quicker debt resolution.

[77] The Insolvency and Bankruptcy Code 2016, s 54C (3).
[78] The Insolvency and Bankruptcy Code 2016, r 43.

However, the practical application of PPIRP has revealed a serious structural flaw: the lack of robust transparency and independent oversight, particularly in the preparation and circulation of key documents such as the information memorandum and list of claims. The absence of a mechanism to verify disclosures made by the debtor has led to concerns of manipulation, non-disclosure, and conflicts of interest.

These deficiencies undermine the credibility of the process and deter creditor participation, thereby defeating the foundational purpose of PPIRP, necessitating the following proposed amendments.

Proposed Amendments

The proposed insertion of Section 54C(3A) seeks to empower the RP to independently prepare the information memorandum and verify creditor claims upon receipt of the application, with mandatory disclosure by the debtor. Additionally, Regulation 43 should be amended to include a process for circulating these documents to significant creditors (those with at least 10% of aggregate claims), who would be entitled to submit objections within a 14-day window.

This approach aims to introduce third-party verification and checks against information asymmetry, thereby enhancing procedural fairness and credibility. The inclusion of a 10% threshold for objection rights is also intended to balance transparency with administrative efficiency, avoiding unnecessary procedural delays from smaller creditors who may lack a significant stake or capacity for effective review.

The rationale for these amendments stems from the fundamental conflict of interest in allowing the debtor to retain control over both assets and disclosure. Since the RP lacks any independent power of investigation and is dependent on the debtor for information, the process becomes overly reliant on voluntary and good-faith disclosures by the management.[79] In practice, this has resulted in misaligned incentives and reduced creditor trust. Without a mechanism for independent scrutiny, the risk of asset stripping, creditor exclusion, or phoenix, where the business is covertly transferred to another entity while leaving liabilities behind, remains unacceptably high.

Moreover, this lack of transparency has dampened the willingness of creditors, particularly financial institutions, to actively engage with or approve resolution plans. Unlike CIRP, where

[79] *Ebix Singapore Pte Ltd v Committee of Creditors of Educomp Solutions Ltd and Anr*. (2023) 24 Comp Cas-OL 240.

the RP serves as a neutral intermediary and undertakes a due diligence role, PPIRP places critical disclosure functions in the hands of a party with vested interests in the outcome.

These risks necessitate statutory intervention to elevate the RP from a facilitator to an independent verifier, and to involve creditors more directly in the scrutiny of insolvency proceedings. By mandating information circulation to key creditors and creating a framework for raising timely objections, the process becomes more transparent, accountable, and participatory.

International Perspective

The concern around transparency and fairness in pre-pack insolvency regimes is not unique to India. Jurisdictions such as the UK and international bodies like UNCITRAL have recognized these issues and responded with specific institutional safeguards. For instance, the UNCITRAL Legislative Guide on Insolvency for MSMEs recommends empowering an independent professional with investigative authority to instil trust among stakeholders. Similarly, the Graham Report (2014) in the United Kingdom[80] led to the establishment of the Pre-Pack Pool,[81] an independent body tasked with reviewing pre-pack sales and issuing objective assessments that must be disclosed to creditors. This model ensures that all stakeholders are informed and that pre-pack sales are not conducted in secrecy or for private benefit.

In the UK, the Statement of Insolvency Practice (SIP 16) mandates detailed disclosure of the rationale behind a pre-pack sale, the parties involved, and the administrator's assessment of its fairness.[82] These reports must be circulated to all creditors, accompanied by a justification of why the transaction was pursued over other alternatives. Such measures greatly enhance transparency and creditor confidence.

Even within India, precedents such as Section 7(1)[83] of the IBC set quantitative thresholds (100 or 10% of allottees) for creditor actions in real estate cases. This principle of material interest

[80] Adebola B, 'Proposed Feasibility Oversight for Pre-Pack Administration in England and Wales: Window Dressing or Effective Reform?' (*SSRN*) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2675534> accessed 22 August 2025.
[81] 'Graham Review into Pre-Pack Administration' (*GOV.UK*, 16 June 2014) <https://www.gov.uk/government/publications/graham-review-into-pre-pack-administration> accessed 22 August 2025.
[82] (*Statement of insolvency practice 16 pre-packaged sales in administrations*) <https://insolvency-practitioners.org.uk/uploads/documents/f30389ce35ed923c06b2879fecdb616a.pdf> accessed 22 August 2025.
[83] The Insolvency and Bankruptcy Code 2016, s 7(1).

being a criterion for participatory rights lends legitimacy to the proposed 10% claim threshold for receiving documents and raising objections under PPIRP.

Conclusion

While the introduction of PPIRP marked a progressive step in addressing MSME distress, its success is undermined by procedural opacity and limited stakeholder oversight. The current framework's reliance on debtor disclosures without meaningful verification compromises the integrity of the process and deters active creditor engagement. By amending Section 54C to require independent preparation and verification of disclosures by the RP, and by modifying Regulation 43 to allow creditor review and objections, the proposed changes seek to create a more transparent, accountable, and trustworthy insolvency resolution environment. Drawing on best practices from international jurisdictions and existing provisions within Indian law, these reforms will help restore confidence in PPIRP, promote higher adoption, and deliver on its promise of efficient and equitable resolution.

6. Lowering the Voting Threshold

Existing Legal Framework

Under Section 54A(3)[84] of the IBC, a corporate debtor seeking to initiate a PPIRP must obtain the prior approval of at least 66% in value of unrelated financial creditors before submitting an application to the AA (NCLT) for the initiation of the PPIRP. Once admitted, the process follows a DIP model overseen by a RP and is required to be completed within 120 days.

The PPIRP was built to accommodate the unique position of MSMEs by allowing a DIP model, wherein the existing management remains in control during the resolution process. This was seen as essential because, in MSMEs, "*There are small details that only the promoters know, so their involvement is vital in the day-to-day functioning of the company.*"[85]

Nevertheless, the actual implementation of PPIRP departs from the DIP model in practice. Though the debtor nominally retains control, key procedural requirements reinforce creditor dominance. This can be seen through Section 54J of the IBC,[86] which empowers creditors to replace management with the same voting threshold, subject to NCLT approval.

Challenges in the Current Framework

Despite the original intent of PPIRP to streamline insolvency resolution for MSMEs, the process remains largely inaccessible due to structural impediments.

1. ***Impractical for MSMEs:*** MSMEs typically raise capital from related parties, such as promoters, group entities, and family-run networks resulting in a highly concentrated creditor structure and unrelated financial creditors often constitute only a small minority. This structural characteristic tends to pose a serious challenge under the current framework of the PPIRP, which mandates a 66% approval from unrelated FCs for initiation under Section 54A(3). As Vinod Kumar, President of the India SME Forum, noted, "*There have been only 13 PPIRP applications till date, of which five resolution plans have been approved, one case was withdrawn, and seven are*

[84] The Insolvency and Bankruptcy Code 2016, s 54A(3).
[85] Chitranshi A and Singhal S, 'Promoter of a Company: Role and Types' (2024) IV Indian Journal of Integrated Research in Law <https://ijirl.com/wp-content/uploads/2024/11/PROMOTER-OF-A-COMPANY-ROLE-AND-TYPES.pdf> accessed 22 August 2025.
[86] The Insolvency and Bankruptcy Code 2016, s 54J.

ongoing."[87] In practice, this threshold becomes unachievable for many genuine MSME applicants. While the PPIRP is intended to function on a DIP model, allowing the existing management to retain operational control during the resolution process, the imposition of an entry threshold requiring supermajority creditor approval effectively superimposes CIP characteristics at the admission stage. This incongruity undermines the very rationale of adopting a DIP framework, which is designed to preserve business continuity, expedite resolution, and reduce litigation costs.

2. ***Conflict between FCs and OCs and exclusion of Operational Creditors***: The Code has inter alia historically excluded the OCs from any participation within the CoC; however, it did provide them with the right to initiate the CIRP against the debtor. The amendment excludes such rights of the OCs, as only the debtor can initiate PPIRP. The CoC constituted therein is identical to that under CIRP and excludes the operational creditors from any participation. The reasoning for exclusion given by the Apex Court in the *Swiss Ribbons Case* is based on the flawed distinction that the financial creditors have the expertise to evaluate the viability of the resolution plan, while the OCs are merely concerned with the recovery of the value of goods and services. [88] The rationale is tenacious as it is made on the assumption that the creditors shall approve the plan on the basis of viability and not on the basis of their interest in maximizing their asset recovery. This is also in contrast to the practices in other jurisdictions such as the United States,[89] wherein a committee of unsecured creditors is formed to protect the interest of such creditors who may not be given adequate consideration. Similarly, in the United Kingdom[90], any company under resolution shall require the approval of such creditors, representing 75% of value of each class of creditors. The exclusion is also prejudicial to the interest of the MSMEs as they themselves are considered as operational creditors.[91] Thus, any future framework of PPIRP for bigger corporations would

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[87]MSME Desk, 'MSME Insolvency: Pre-Pack Scheme sees only 13 Applications admitted since 2021'(*Financial Express*, 12 November 2024) <https://www.financialexpress.com/business/sme-msme-insolvency-pre-pack-scheme-sees-only-13-applications-admitted-since-2021-3662971/> accessed 21 June 2025.

[88] *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17.

[89]US Department of Justice, *Official Committee of Unsecured Creditors Information Sheet* (Region 11, Chicago, Office of the United States Trustee)<https://www.justice.gov/ust/ust-regions-r11/file/ch11_mtl_ofcl_cmte_info_sheet_chicago.pdf/dl#:~:text=Powers%20and%20Duties%20of%20Unsecured%20Creditors%27%20Committees.&text=Section%201103%20of%20the%20Bankruptcy,of%20a%20plan%20of%20reorganization.> accessed 21 June 2025.

[90] The Companies Act 2006.

[91]Financial Express, 'IBC: These 3 provisions can be potential threat to MSMEs unless government takes this key step'(*Financial Express*, 25 March 2020) <https://www.financialexpress.com/business/sme-msme-eodb-ibc-

certainly become prejudicial to the MSMEs themselves, given that they would not have a vote or opinion on the matter.

3. ***Public Sector Bank Apprehension:*** Financial creditors, particularly Public Sector Banks (PSBs), face scrutiny for approving haircuts under insolvency proceedings. In the absence of clear statutory immunity, PSB officials are wary of post-facto investigations by agencies like the CVC or CBI. This contributes to reluctance in approving even viable PPIRPs. The Supreme Court in *K. Sashidhar v. Indian Overseas Bank,* upheld the commercial wisdom of the CoC as non-justiciable, but in practice, this judgment does not shield officials from administrative action, thereby stifling risk-taking.[92]

Proposed reforms

To correct the main problems in the existing PPIRP framework, various specific solutions are advanced.

1. ***Reduction of threshold limit***: For starters, the initiation and approval voting threshold of a resolution plan should be reduced from the current 66% to 51% of the unrelated financial creditors. Such a shift would make the process conform to the creditor demographics that are characteristic of MSMEs, where there are normally fewer unrelated creditors, and would push Indian practice closer to international norms like the U.S. Chapter 11[93] regime that is based on simple majority approval. Reducing the threshold would greatly increase access to PPIRP and prevent actual cases from being held up by the failure to muster a supermajority, without undermining creditor agreement.
2. ***Power to operational creditors***: Operational creditors must be given a seat on the CoC or at least be given voting rights through the establishment of impaired and unimpaired classes of creditors. This would involve adding the law to permit operational creditors a formal position in the decision-making process, particularly when their claims are affected. This inclusion would provide more equitable representation, minimize disputes, and enhance the legitimacy of the process, similar to international best practices where unsecured creditors have effective input in restructuring results.

these-3-provisions-can-be-potential-threat-to-msmes-unless-government-takes-this-key-step-1908802/> accessed 21 June 2025.
[92] *K. Sashidhar v. Indian Overseas Bank* (2019) 12 SCC 150.
[93] 11 USC Ch 11.

International Perspective

In the U.S., 11 U.S.C. Section 1126[94] explicitly grants voting rights to all impaired classes of creditors, including unsecured and operational creditors, provided their claims are not fully satisfied by the plan. Under Section 1122,[95] creditors are also classified into separate classes based on the nature and treatment of their claims, and each class is entitled to vote independently. This ensures that any creditor class whose rights are altered has a meaningful say in the approval process. Furthermore, Section 1129(a)(10)[96] requires that at least one impaired class must approve the plan for it to be confirmed, reinforcing the principle that no resolution plan can succeed without the consent of affected creditors. These provisions underscore a commitment to equitable representation and accountability, preventing the marginalization of creditors whose claims, though smaller in value, may be critical to ongoing business operations.

Together, these solutions seek to render the PPIRP process more inclusive, effective, and responsive to the realities of MSMEs, while providing a voice for all the major stakeholders and keeping the process palatable to debtors and creditors alike.

Conclusion

The current 66% approval requirement under Section 54A of the IBC is misaligned with the creditor profile of most MSMEs, thereby impeding access to the PPIRP and weakening its practical utility. The exclusion of OCs and the absence of legal protections for institutional creditors further dilute the effectiveness of the process. By reducing the approval threshold to 51%, incorporating operational creditors into the decision-making framework, and extending immunity and tax incentives to creditors, the PPIRP can be revitalized into a more inclusive, responsive, and credible mechanism. These proposed reforms will ensure that the framework serves its intended purpose, delivering fast, efficient, and equitable resolutions for MSMEs without being stifled by rigid thresholds and procedural inefficiencies

[94] 11 U.S.C. s 1126.
[95] 11 U.S.C. s 1122.
[96] 11 U.S.C. s 1129(a)(10).

ADDITIONAL SUGGESTIONS

1. STRENGTHENING INTERIM FINANCE FOR MSME RESOLUTION UNDER PPIRP

Existing Legal Framework

Under the IBC, interim finance refers to short-term funding raised to keep the corporate debtor operational during the resolution process. As defined in Section 5(15),[97] it includes any financial debt raised by the RP during CIRP or by the corporate debtor during PPIRP, and any other debt as may be notified.

In the PPRIP introduced under Section 54A to address the specific needs of financially stressed MSMEs, the debtor retains management control and is permitted to raise interim finance directly. This enables access to funds for essential costs such as wages, operations, and professional fees.

Interim finance enjoys super-priority status under the Code. As per Section 5(13),[98] the cost of raising such finance forms part of the insolvency resolution process cost, which ranks first in priority under Section 53(1)(a)[99] during liquidation. Despite this protection, lenders remain cautious due to repayment being restricted to pre-liquidation periods and the lack of long-term certainty.

Challenges in the Current Framework

The issue of interim financing was first addressed by the NCLAT in *Edelweiss Asset Reconstruction Co. Ltd. v. Sai Regency Power Corpn. Ltd*., by stating that *"Non-provision of expeditious interim finance will impede the goal of maximization of the asset value of the corporate debtor, and will bring it to a grinding halt"*.[100] The order highlighted the significance of interim finance during the continuance of CIRP and the negative implications that ensue from the denial of such finance to corporate debtors.

Being financially stressed, MSMEs face lack of working capital during PPIRPs and are unable to bear the cost of hiring professionals, fulfilling procedural requirements, or even managing the operational expenses. These costs increase further if the pre-pack fails, exacerbating the financial burden.

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[97] The Insolvency and Bankruptcy Code 2016, s 5(15).
[98] The Insolvency and Bankruptcy Code 2016, s 5(13).
[99] The Insolvency and Bankruptcy Code 2016, s 53(1) (a).
[100] *Edelweiss Asset Reconstruction Co Ltd v Sai Regency Power Corporation Ltd* [2019] NCLAT New Delhi.

The UNCITRAL Insolvency Recommendations assume that most MSMEs lack experience in financial, business management, legal, and insolvency issues.[101] They face greater stigma surrounding insolvency than large companies and encounter more uncooperative creditors than those involved in liquidation or reorganization procedures with larger firms. These factors lead to late filings, very low returns for creditors, and a relatively high number of disqualification orders against company directors.

To raise adequate rescue funds, financial institutions need information to assess the creditworthiness of MSMEs. This requires MSMEs to have a financial track record of at least three years and a good credit score. Because of this, MSMEs often find it hard to access credit.[102] The loan application process is complicated and time-consuming. Additionally, many MSMEs lack dedicated staff to manage their records, which makes the situation even more difficult.

Despite this being a high yielding-high risk debt, challenges remain, such as:

- Lack of unencumbered assets to secure interim finance.
- Contentions by the creditors on improper and non-judicious use of interim finance
- Low cash flow and liquidation risks make it a risky investment,
- Unwillingness of the CoC to approve interim finance also causes delays that harm the resolution process. By the time these approvals come, or documentations are completed, irreversible damage is caused to the debtor.

Proposed Reforms

One of the cardinal objectives of IBC is to protect and preserve the life of the corporate debtor as a going concern by yearning for resolution of insolvency through restructuring, keeping liquidation as the last resort. The goal is to find a practical solution with creditors and quickly liquidate and free non-viable MSMEs from debt. MSMEs need a fast, simple, and affordable

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[101] United Nations, 'UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises' (*United Nations Commission On International Trade Law,* 2021) <https://uncitral.un.org/en/lrimse> accessed 21 June 2025.

[102] Financial Express, 'Challenges in Raising Debt for MSMEs' (*Financial Express*, 27 August 2023) <https://www.financialexpress.com/business/sme-challenges-in-raising-debt-for-msmes-3223902/> accessed 21 June 2025.

process. They also require necessary guidance and support before initiation and throughout the proceedings, as recommended by the UNCITRAL Insolvency Recommendations.[103]

1. Non-Banking Financial Companies (NBFCs) as source of credit: NBFCs have emerged as a vital source of credit for MSMEs, especially in remote areas. NBFCs have also grown rapidly in the MSME credit space due to its quicker lending decisions, niche specialization and faster services.

One major roadblock that NBFCs face in providing credit to MSMEs is the high borrowing costs from banks, which stem from collateral requirements and risk premiums. As a result, they cannot offer competitive interest rates to MSMEs. This situation highlights the need for better lending structures and access to lower-rate wholesale funding for NBFCs.

Although the Small Industries Development Bank of India (SIDBI) is well-capitalized for its expected growth, it is important to expand its role to directly invest in smaller NBFCs. SIDBI needs to expand its balance sheet to provide more wholesale financing to NBFCs. This would improve their governance, operational capacity, and access to affordable funding.[104]

2. Equity Support for MSME Insolvency: In addition to this, to incentivise banks to support NBFCs, the earlier norms of Priority Sector Lending (PSL) allowing bank loans extended to NBFCs for further lending to MSMEs to be classified as indirect finance to MSMEs must be reinstated.

The International Monetary Fund (IMF) has also addressed the topic of MSME insolvencies in a staff discussion note published on 2 April 2021.[105] On that occasion, the group of experts advocated a three-pronged approach for addressing difficulties faced by MSMEs post-pandemic:

(i) Continuing equity injections and liquidity support;
(ii) Further developing quasi-equity injections for instance through “profit participation loans” and
(iii) Developing a tailored insolvency and debt-restructuring framework. According to the IMF, such framework should include “dedicated out-of-court restructuring mechanisms, hybrid restructuring, as well as strengthened reorganisation and

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[103] UNCITRAL Legislative Recommendations on Insolvency of Micro and Small Enterprises (2021) (n. 122).
[104] Standing Committee on Finance (17th Lok Sabha), Fifty-Second Report on *The Competition (Amendment) Bill, 2022* (Lok Sabha Secretariat, December 2022).
[105] FJ Diéz et al, ‘Insolvency Prospects Among Small and Medium Enterprises in Advanced Economies’ (n. 17).

liquidation procedures, including simplified reorganisation procedures for smaller firms".

These injections may come from the government or public funds by schemes or developmental banks, private investors or special finance vehicles designed to support small businesses. Historically, countries like Mexico (in the 1980s and 1990s) and Chile have successfully implemented financial support schemes, including equity injections, interest rate and exchange rate guarantees, and subsidies to creditors and debtors. These measures helped absorb systemic shocks while preserving viable businesses. To institutionalize such support in India, the IBBI in collaboration with SIDBI, NABARD or Ministry of MSME could establish a central fund dedicated to aiding MSMEs undergoing PPIRP.

3. Leveraging Technology to Support Insolvency: In addition to these policies, there should be consistent efforts to update the information shared through new technology, such as the "Marketplace for Interim Finance" by the National E-governance Services Ltd. (NeSL), an IBBI registered Information Utility. This offers an easy online repository to help provide interim finance. The easy access to information lowers search costs for insolvent entities and builds confidence among the stakeholders who support rescue financing to revive these entities. Digitalization not only improves the ability to collect and report data but also enhances transparency.

Conclusion

Interim finance is crucial for keeping MSMEs operational during the Pre-Packaged Insolvency Resolution Process. Even though it is recognized under the IBC, access is still limited because of procedural delays, lack of collateral, and creditor hesitation. Improving support through simpler procedures, empowering NBFCs, using digital financing platforms, and creating dedicated MSME distress funds can help close this gap. Making sure interim finance is timely and accessible is vital for maintaining enterprise value and achieving effective resolutions under PPIRP.

2. BOARD REPRESENTATION IN POLICY MAKING

Existing Legal Framework

The MSMED Act, 2006 establishes a statutory MSME Board under Section 3,[106] which is responsible for examining and recommending policy measures for MSME growth. Yet, this Board has not been involved in shaping or reviewing the PPIRP framework.

Challenges in the Current Framework

1. *Departure from True Debtor-in-Possession Model*: Although the IBC formally adopts the DIP model in PPIRP, in practice, key procedural decisions are placed in the hands of financial creditors. The initiation of the process, and even the continuation of existing management, is entirely conditional on creditor approval. This structure dilutes the spirit of DIP, especially for MSMEs where promoter knowledge is crucial for daily operations and business survival.

2. *Lack of MSME Board Representation*: The statutory MSME Board was created precisely to represent the interests and needs of MSMEs in policymaking. However, this Board was excluded from the sub-committees and regulatory bodies that designed the PPIRP. As a result, the final framework may not reflect sector-specific realities, leading to impractical or underutilized provisions.[107]

3. *Disconnection Between IBC and MSMED Act*: Both the IBC and MSMED Act govern financial recovery and business sustainability for MSMEs, yet there is no legal or operational harmonization between them.[108] This creates a fragmented regulatory regime, leading to confusion among stakeholders and inconsistent policy implementation.

4. *Poor Adoption of PPIRP*: Only 13 PPIRP applications have been filed since its inception. Out of these, just 5 resolution plans were approved, 1 was withdrawn, and 7 are ongoing.[109] This limited uptake, despite the program being specially designed for MSMEs, suggests:

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[106] The Micro Small and Medium Enterprises Development Act 2006, s 3.

[107] Swarnendu Chatterjee and G Vidya Kamath, 'India Spawns the Pre-Packaged Insolvency for MSMEs in Motion, The Insolvency and Bankruptcy Code (Amendment) Act, 2021' (*SCC Online Times*, 18 February 2022) <https://www.scconline.com/blog/post/2022/02/18/the-insolvency-and-bankruptcy-code-amendment-act-2021/> accessed 21 June 2025.

[108] Anant Merathia, Dhanisha Giri, and Poornima Devi, 'Debt Recovery under MSMED Act – an Alternative to IBC?'(*IBC Laws*, 8 May 2020) <https://ibclaw.in/debt-recovery-under-msmed-act-an-alternative-to-ibc/> accessed on 22 August 2025.

[109] MSME Desk, 'MSME Insolvency: Pre-Pack Scheme sees only 13 Applications admitted since 2021'(*Financial Express*, 12 November 2024) <https://www.financialexpress.com/business/sme-msme-insolvency-pre-pack-scheme-sees-only-13-applications-admitted-since-2021-3662971/> accessed 21 June 2025.

- A lack of awareness or accessibility.
- Hesitance from creditors to engage with the process.
- Inadequacies in the framework's responsiveness to MSME-specific needs.

5. *Design Disconnect with Ground Realities:* The lack of consultation with MSME-specific institutions (like the MSME Board) during the design of PPIRP has likely led to overly technical, creditor-driven frameworks, rather than supportive, simplified mechanisms. Creditors' reluctance to approve PPIRP cases, even for defaults as low as ₹10 lakh, illustrates this design flaw.[110]

Proposed Reform

The PPIRP regulations must be amended to mandate the inclusion of MSME Board representatives in all committees and sub-committees responsible for designing, reviewing, or implementing the PPIRP framework under the IBC. This can be done by:

1. ***Institutional Expertise and Representation*:** The MSME Board is uniquely equipped to understand:
    - The financial fragility, limited credit access, and operational constraints of MSMEs.
    - Sectoral patterns and challenges that generic financial regulation often overlooks.

Their inclusion will bridge the gap between top-down regulation and ground-level needs, resulting in:

- More practical frameworks
- Improved participation from MSMEs
- Greater balance between creditor rights and debtor viability

2. *Harmonizing IBC with MSMED Act:* Right now, the IBC and the MSMED Act operate in parallel silos. This lack of synergy:

- Creates legal ambiguity.
- Leads to conflicting interpretations, especially in insolvency and recovery matters.

Including MSME Board members would allow for legal harmonization between insolvency procedures and MSME policy, improving clarity and administrative efficiency.

[110] The Insolvency and Bankruptcy Board of India, 'Evolution, Learnings and Innovation' (*IBBI*, 1 October 2023) < https://ibbi.gov.in/uploads/whatsnew/525cbe1dd3b1f9fd9866fe77676a96ae.pdf> accessed 20 June 2025.

3. ***Improving Adoption and Recovery Outcomes*****:** Low participation in PPIRP and mediocre recovery rates point to fundamental problems in implementation. Involving the MSME Board can lead to:

- Simplified processes more suited to MSME capabilities.
- Greater awareness and trust within the MSME sector.
- Reduced creditor resistance, as policies will be seen as fairer and better grounded in operational realities.

This would make PPIRP a genuine alternative to CIRP, promote faster resolutions and preserve more viable businesses.

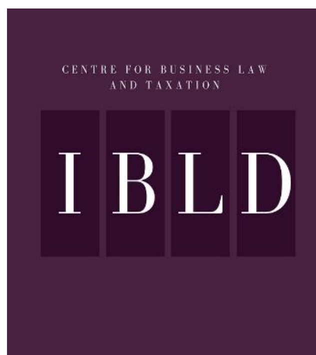
Conclusion

The PPIRP was introduced as a reform tool for MSMEs, but its limited success reflects a mismatch between design and on-ground realities. The absence of statutory MSME representation in the PPIRP architecture has contributed to this gap.

Inclusion of MSME Board members would:

- Provide sectoral expertise
- Ensure legal coordination between different frameworks
- Facilitate greater adoption and better outcomes

Thus, this amendment is not only desirable, but also essential to ensure the PPIRP becomes an effective tool for MSME recovery.



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