

Law Audience Journal, Volume 3 & Issue 1, 7th July 2021,
e-ISSN: 2581-6705, Indexed Journal, Published at
<https://www.lawaudience.com/volume-3-issue-1/>, *Pages: 330 to 347,*

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Cite this article as:

MS. PRIYANKA BHATTACHARYYA & MR. CHANDRAMOULI GHOSHAL, *Analyzing the Pre-Packaged Insolvency Regime: A Benison for MSMEs Sectors*, Vol.3 & Issue 1, Law Audience Journal, Pages 330 to 347 (7th July 2021), available at <https://www.lawaudience.com/analyzing-the-pre-packaged-insolvency-regime-a-benison-for-msmes-sectors/>.

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(E-ISSN: 2581-6705)

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ABSTRACT:

“Amid the outbreak of Novel Coronavirus, despite all the precautionary measures opted by the government and the various authorities, there has been an enumerable rise in the number of cases relating to coronavirus in India. The Government of India on 24th March 2020 had announced a nationwide lockdown. The pandemic has dealt a crushing blow to the world economy and has placed businesses in almost all jurisdictions under severe financial strain.

*The unprecedented spread of this pandemic has impacted each and every sector in the country and majorly impacted the economy and employment of the country, but the most vivid sufferers of this lockdown have been, **Micro, Small and Medium Enterprises (MSME)** and they have eventually faced the imminent threat of going out of business, considering the nature of these enterprises, they mostly feared Insolvency.*

*Therefore, in order to curtail their fear, the government came with some steps in order to strengthen them and in the same process, recently with the amendment of the **Insolvency and Bankruptcy Code, 2016**, there has been certain laws enacted offer corporate entities an effective alternative to resolution process especially to the **Micro, Small, And Medium Enterprises (“MSMEs”)**. Its goal is to create a cost-effective, quick, and value-maximizing system for resolving insolvency with the least amount of disturbance to business activities as possible (during the process)¹. The Central Government and the **Insolvency and Bankruptcy Board of India (“IBBI”)** have also issued notifications, rules, and regulations to make the pre-pack procedure more operational”.*

Keywords: Insolvency Code, MSMEs, Covid-19, Pre-Pack plan and Central Government.

¹ ‘Report of the Sub-Committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process’; Ministry of Corporate Affairs, Government of India

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I. INTRODUCTION:

A *Pre-Packaged Plan*, is a sort of reorganisation or restructuring in which creditors and debtors collaborate on an informal agreement before submitting it for approval. Substantially, the term Pre-pack has a broad definition, but Bo Xie defines it clearly in his book *Comparative Insolvency Law*²: “Pre-pack has developed as a unique corporate rescue strategy that includes the 65 qualities of both informal (out-of-court) and formal (judicial) insolvency proceedings.” Another definition of Pre-Pack plan was given by Vanessa Finch which explains the process in a layman's terms: “a struggling company and its creditors reach an arrangement ahead of statutory administration proceedings,” which “allows statutory procedures to be completed at maximum speed.”

The Pre-Packed Resolution has benefited *Micro, Small and Medium Enterprises (MSMEs)* that are often operated by promoters, making it impossible for them to be resurrected if the administration is removed via the standard *Corporate Insolvency Resolution Process (“CIRP”)*. It further aids the promoters to participate with the board for maintaining power and the debtor are encouraged to present the base resolution package, which will then be put to the bidding process through the Swiss challenge. As a result, pre-packs will assist corporate debtors in reaching an agreement with creditors and addressing the whole liabilities side of the company. The latest *Insolvency and Bankruptcy Code (Amendment) Ordinance 2021*, was promulgated on April 4, 2021, which encourages to introduce pre-packaged insolvency resolution process which has majorly created a positive impact on the MSME Sectors.

The Amendment ordinance substantially introduces Chapter III A³ to the IBC Code and amends it further. The amendment was the need of an hour, keeping in mind that the Sections 7, 9, and 10 have been suspended for a year due to the COVID-19 pandemic, which has wreaked havoc

² ‘Pre-packs in the Indian Insolvency Regime’; IIMA Working Papers, Indian Institute of Management, Ahmedabad.

³ THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE, 2021 (Act No. 3 of 2021)

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on enterprises across the country and resulted in a sharp rise in penury, bad loans, and stressed assets. The main aim of government to introduce this regime was due to the extreme economic problems posed by COVID-19, the Preamble asserts the importance and urgency of such intervention, for an MSME corporate debtor to commence a pre-packaged insolvency resolution process, the law establishes a default requirement of Rs. 10,00,000. While the pre-packaged resolution is for defaults up to Rs 1,00,00,000, the adjustment will alert the minimum default value for initiating the settlement procedure.

The *Pre-packaged Insolvency Resolution Process (hereinafter referred to as PPIRP)*, ordinance for MSMEs has benefited the industry in a variety of ways as it is a time and cost-effective insolvency resolution that will cause the least amount of market disruption, maximise value, protect employment, and reduce the *National Company Law Tribunal’s (hereinafter referred to as NCLT)* burden. In India currently has about 6-7 lakh companies that are classified as MSMEs and potentially these many could benefit from the newly introduced pre-packaged insolvency framework.

II. BACKGROUND OF REGIME:

In order to mitigate the difficulties faced by micro, small, and medium enterprises ('MSMEs') in the aftermath of the tumultuous past year, the *Ministry of Law and Justice* amended the *Insolvency and Bankruptcy Code, 2016 ('IBC/the Code')* by an Ordinance dated 04.04.2021 to introduce pre-packaged insolvency resolution processes exclusively for MSMEs as defined under *Section 7(1) of the Micro, Small, and Medium Enterprises Act, 2006*. Chapter III-A of *Part II of the IBC [Sections 54A-58]* read with *Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021 ('Regulations')* and *Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021, ('Rules')* governs the pre-packaged insolvency resolution process ('PPIRP'). The Concept of pre-packaged insolvency resolution process has eminently emerged from the case of *Lokhandwala Kataria Construction Pvt. Ltd. vs. Nisus Finance and Investment Managers*

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*LLP*⁴, in this case the parties had agreed to an out-of-court settlement. When applied the matter was applied to *National Company Law Appellate Tribunal (hereinafter referred to as NCLAT)* whereby the NCLAT dismissed the application to quash NCLT Mumbai's ruling and admitted the CIRP application with consideration to *Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (“AA Regulations”)*, which only allowed the CIRP application to be withdrawn prior to admission. The embedded word of the Adjudicating Authority Regulations clashed with the pragmatic approach of the settlement for the parties' benefit. Later the matter was adjudicated in Supreme Court, and it was held that for the benefit of all the stakeholders and to accomplish the goals of justice, the Apex Court used its power under Article 142 of the Constitution to accept the settlement and enable the withdrawal of the case.

With the increasing use of the settlement process, the cases began to be unloaded on the SC for getting temporary judicial remedy. In the matter of *Uttara Food and Feeds Pvt. Ltd*⁵, the Supreme Court stated that, in order to avoid superfluous appeals, the applicable Rules should be amended to allow for the withdrawal of a petition after it has been admitted if the parties reach an out-of-court settlement. Finally, on November 16th, 2018, the *Insolvency Law Committee (Committee)* was constituted, which suggested, among other things, that withdrawal of an application after admission be permitted only if 90 percent of the *Committee of Creditors (“CoC”)* agrees. This was materialised as Section 12A of the IBC.

In circumstances where the parties reach an agreement before a CIRP is requested or approved, the agreement never makes it to the court for review. Is only notified to the Court and is only permitted if the applicable consensus conditions are met. A pre-arrangement scheme is nothing more than a commercial contract without the sanction of the court. Outside of bankruptcy, such agreements require the creditors' unanimous written consent. If even one party backs out, it

⁴ (2017) 140 CLA 215 (India).

⁵ C. A. No. 18520 of 2017

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might be difficult to enforce such agreements. Holdouts or non-responsive parties can sabotage agreements, making enforcement and execution difficult.

While a pre-admission settlement just necessitates the Applying Creditor's withdrawal of the Application, a post-admission withdrawal necessitates the CoC's near-unanimous agreement. Such draconian standards may obstruct a settlement that would benefit all parties involved, including creditors. Non-responsive parties and holdouts can easily derail a settlement and obstruct the common good in both scenarios.

With the proliferation of settlement schemes, there is an urgent need for a provisional support to these out-of-court settlements so that a corporate debtor can work in conjunction with the CoC and adopt reforms with more flexible criteria in order to accomplish a settlement.

The Indian government has proposed introducing the concept of pre-packaged insolvency (“pre-pack”), which is popular in the United States and the United Kingdom. In pre-pack, a firm works with its owners and creditors to create a reorganisation plan that will take effect as soon as the company enters CIRP.⁶

To investigate this concept, an 11-member working committee led by Mr Injeti Srinivas has been constituted. Before anyone may submit an application in NCLT, the pre-pack scheme will normally allow a stressed company to create a reorganisation plan with at least two-thirds of its creditors and shareholders. The plan would then be presented to the NCLT for approval, and once accepted, it could be executed immediately. Because the creditors have already authorised the plan, it will move through the different steps needed by the IBC. This would assist free up the clogged NCLTs while also reducing the time and litigation costs of the overall resolution process.

⁶ ‘Interim Report of The Bankruptcy Law Reform Committee’, The Bankruptcy Law Reform Committee, Department of Economic Affairs, Ministry of Finance, February 2015

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III. OBJECTIVE OF THE PRE-PACKAGED INSOLVENCY

RESOLUTION PROCESS:

Insolvency is a state of financial Crisis, it arises company or individual becomes insolvent, they are unable to satisfy their financial commitments to creditors as they become due. Before pursuing legal insolvency, a company or individual may attempt to reach an informal agreement with creditors, such as devising alternative payment methods but if such alternative payment method fails then the company seeks to file bankruptcy which acts as a protection, whereby the court order that controls the disposal of the company's assets. Insolvency has always highly affected the Companies financially and its affect has lead Companies in filing bankruptcy to pay of their credits. Insolvency especially affected the start-ups and MSMEs Sectors. During the Covid Period, the MSME sector was devastated. The obligatory provisions amended under the Insolvency and Bankruptcy Code to safeguard MSMEs from being liquidated and, more importantly, to revive MSME.

The MSME's Sector plays a unique role in the Indian economy as vital generators of employment, growth, and financial inclusion, and they account for a significant portion of operational creditors, alongside employees and trade creditors. Basically, the pre-pack plan is a resolution process of a distressed company's debt through an agreement between secured creditors and investors instead of public bidding process or going public process. The Prepacked plan are seen as a possible alternative to the present corporate insolvency procedure, as it was reported that by end December 2020, over 86 % of the ongoing insolvency resolution proceedings had crossed the 270-day threshold and one of the main cause for CIRP delays was prolonged litigation by former promoters and possible bidders is one of the main causes of CIRP delays where as in the pre-pack resolution procedure the maximum period involved was 120 days with only 90 days available to the stakeholders to bring the resolution plan to the NCLT.⁷ Hence, it can be stated that the prepacked resolution plan is a less time-consuming

⁷ Karunjit Singh; Pre-pack: Insolvency resolution option for MSMEs, The Indian Express, April 7, 2021

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procedure and is also less costly procedure as compared to the formal insolvency proceedings. Basically, the main objective of this resolution plan was to uplift the MSME sectors.

The Ministry of Corporate Affairs established a Sub-Committee of the Insolvency Law Committee in June 2020, which suggested a separate legal framework for pre-packs in India, recognising the importance of pre-packs for the insolvency ecosystem in India. With certain revisions, the pre-pack architecture provided by the aforementioned Ordinance builds on the recommendations made by the Sub-report, Committee's which was released in October 2020. The final framework incorporates numerous characteristics of traditional pre-packs while also drawing extensively on the Code's formal insolvency process (CIRP).

IV. ANALYSING THE PRE-PACKAGED RESOLUTION

PROCESS:

Essentially, the pre-pack process is an alternative bankruptcy resolution method for MSME corporate debtors, involving a "debtor-in-possession with creditor-in-control" paradigm and a shorter completion timeline.

The framework's main features are described below:

IV.I PRE-COMMENCEMENT REQUIREMENTS:

Before legally commencing the pre-pack process, the corporate debtor and its unrelated financial creditors must meet certain conditions. Once the pre-commencement requirements are met, the corporate debtor can file an application with the Adjudicating Authority ("AA"), and if the application is accepted, official procedures will begin. The corporate debtor should, first and foremost, be eligible to begin a pre-pack process under the Code. This means the corporate debtor must be a small business that has defaulted on its loans (the minimum amount of default being Rs. 10 lakh). The corporate debtor can demonstrate its MSME status by submitting its '*Udyam*' registration details, or information regarding investment in plant and machinery or equipment, as well as turnover, as computed by the MSME Ministry in a

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notification released on June 26, 2020.⁸ In addition, the corporate debtor should be eligible to file a resolution plan under Code Section 29A. (subject to section 240A which carves out certain exceptions for MSME resolution applicants). Furthermore, if the corporate debtor has been through a CIRP or pre-pack procedure in the previous three years, is currently undergoing a CIRP at the time of filing an application for pre-pack, or has had a liquidation order issued against it, it will be precluded from starting a pre-pack process.

Apart from meeting the fundamental eligibility requirements, the corporate debtor must additionally meet the following additional requirements before the pre-pack procedure may begin:

- *First, it must schedule a meeting of unrelated financial creditors to propose and agree the appointment of an insolvency professional as the pre-pack process resolution professional. The prospective resolution professional will need to give her assent to be appointed and fulfil the regulations' eligibility conditions (e.g., not be a related party of the corporate debtor, be eligible to be appointed as an independent director for the corporate debtor, etc.).*
- *Second, prior to initiating the pre-pack procedure, the corporate debtor must get specific internal permissions. The majority of the debtor's partners or directors must sign a declaration outlining the timeframe for filing the application, the name of the resolution professional offered and authorised by unrelated financial creditors, and so on. Its members must also approve the start of the procedure with a specific resolution.*
- *Third, the 66 % majority of unrelated financial creditors must approve the start of the process. When obtaining such approval, the corporate debtor must provide enough information to allow the creditors to make an educated decision.⁹ This contains a*

⁸ RP Vats and Srijal Sinha, 'Pre-Packaged Insolvency Resolution Process Under the Insolvency And Bankruptcy Code'; Mondaq, May 12, 2021.

⁹ 'Understanding the IBC-KEY JURISPRUDENCE AND PRACTICAL CONSIDERATIONS: A Handbook', The Insolvency and Bankruptcy Board of India.

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declaration signed by the majority of the company's directors or partners, a special resolution passed by its members, and a base resolution plan proposing the company's resolution as a going concern.

IV.II APPROVAL OF AN APPLICATION TO BEGIN THE PRE-PACK PROCEDURE:

Once the pre-commencement conditions have been met, a corporate debtor's applicant may file an application to begin the process. The application must be submitted within the timeframe specified in the preceding statement. A report from the suggested resolution professional must be included with the application, certifying that the corporate debtor meets the eligibility conditions and that the base resolution plan meets the stated requirements. If the application is deemed to be complete, the AA is required to admit it within fourteen days from the date of filing. The AA issues an order of admission when the application is accepted, signalling the start of the process. The AA will declare a moratorium for the purposes of section 14(1) and (3), appoint the resolution professional (“RP”), and make a public statement at the time of admission (to be made by the RP). The public notice will be sent to creditors and information utilities, as well as posted on the corporate debtor's (if any) and the IBBI's websites.

IV.III CONDUCT OF THE PRE-PACK PROCESS:

The pre-pack process must be completed within a certain amount of time, according to the legislation. It must be completed within 120 days after admission, which is split into two parts: 90 days for approval of the resolution plan by the committee of creditors (“CoC”), and 30 days for adjudication by the Adjudicating Authority. If the CoC does not adopt a resolution plan within 90 days, the resolution professional must petition to the AA to have the pre-pack procedure terminated. The role and obligations of three important players in the pre-pack process may be understood by looking at the roles and responsibilities of the corporate debtor, the resolution professional, and the creditors. While the corporate debtor is responsible for

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managing the business, the resolution expert is responsible for overseeing the process (*as well as assisting the CoC in making decisions*). The CoC, which is made up of the corporate debtor's financial creditors, is in charge of overseeing the corporate debtor's and resolution professional's operations.

The following are the duties and responsibilities of these stakeholders:

- *As previously stated, the corporate debtor's affairs will be managed by the current management throughout the procedure. This, however, is subject to certain legal requirements and obligations. For example, the corporate debtor's affairs cannot be managed in a way that is unfair to the corporate debtor's creditors or that is dishonest. Furthermore, the corporate debtor's board of directors or partners have a duty to do everything possible to maintain and preserve the value of the corporate debtor's assets, as well as conduct the company's operations as a going concern. Furthermore, the Central Government has reserved the right to restrict the corporate debtor's persuasion.*
- *The process is mostly under the supervision of the CoC. To begin, certain measures must be approved by the CoC by a vote of 66 % of the CoC's voting share. This includes actions such as entering into transactions over certain thresholds defined by the CoC, establishing any security interest over the corporate debtor's assets, recording any change in the corporate debtor's ownership interest, engaging in any related party transaction, and so on. Second, where the corporate debtor meets the conditions of Chapter II of Part II of the Code, the CoC has the authority to decide the outcome of the pre-pack process by approving or rejecting a resolution plan, terminating the pre-pack process, or initiating a CIRP (by a vote of 66 percent of its voting share).*
- *Third, the CoC may pass a resolution requesting that the Adjudicating Authority entrust the corporate debtor's management to the resolution expert. If the Adjudicating Authority is convinced that the corporate debtor's affairs have been conducted fraudulently or with gross mismanagement, it might issue an order vesting*

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administration of the corporate debtor in the resolution professional. Finally, by a vote of 66 percent of its voting share, the CoC has the authority to demand the replacement of the resolution professional at any time.

IV.IV CONSIDERATION AND APPROVAL OF RESOLUTION

PLANS:

The pre-pack process includes a three-stage review and approval process for the resolution plan¹⁰:

IV.IV.I STAGE I: SUBMISSION AND DISCUSSION OF THE BASE RESOLUTION PLAN:

Before obtaining approval from financial creditors to begin the process, the corporate debtor, who is eligible under section 29A, must share a base resolution plan with them at the pre-initiation stage. After that, within two days of admission, the base resolution plan is provided to the resolution expert. The CoC may approve this proposal for submission to the AA for final approval if it does not affect operational creditors' claims. Otherwise, the resolution expert will begin the invitation process for competing resolution plans with the base resolution plan.

IV.IV.II STAGE II: PUBLIC INVITATION, APPRAISAL, AND RESOLUTION PLAN SELECTION:

Prospective resolution applicants are invited to submit resolution plans in order to compete with the base resolution plan. The CoC reviews the resolution plans submitted in response to the public invitation and chooses one. The CoC may approve and submit the preferred resolution plan to the Adjudicating Authority if it is significantly superior to the base resolution

¹⁰ 'Report of the Sub-Committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process' ; Ministry of Corporate Affairs, Government of India (October 2020)

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plan. If the chosen resolution plan is not accepted, it will compete in Stage III with the base resolution plan.

IV.IV.III STAGE III: COMPETITION BETWEEN THE BASE RESOLUTION PLAN AND THE RESOLUTION PLAN THAT HAS BEEN CHOSEN:

The resolution applicant whose plan is chosen and the corporate debtor who submitted the base plan will compete by upgrading their respective proposals (in comparison with each other). The improvement must be at least as good as the other resolution plan in terms of a score, as determined by the CoC. The applicant with the lowest score will be given the opportunity to enhance their resolution strategy. The other applicant will get the chance to enhance their resolution strategy as well. This procedure will be repeated until one of them outscores the other within the time limit (forty-eight hours). The winning plan will be reviewed by the CoC for final approval before being submitted to the AA. The CoC may accept resolution plans at various stages with a 66 percent voting share, after examining the plan's practicality and viability, as well as the distribution method presented. The CoC may consider diluting the promoter's equity, voting, or control rights if the basic resolution plan proposes to impair any claims against the corporate debtor (and record reasons if it chooses to not do so). The CoC-approved resolution proposal must be submitted to the AA for approval. The resolution plan will have the same effect as a CIRP-approved resolution plan after it has been authorised by the AA.

IV.V CLOSURE OF PROCESS:

Once the Adjudicating Authority has authorised an application for the commencement of a pre-pack process in the case of a corporate debtor, it can only conclude in one of four ways;

- *First, the resolution plan approved by the CoC is submitted to the Adjudicating Authority for approval.*

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- *Second, the CoC passes a resolution seeking termination; a resolution plan is not submitted to the Adjudicating Authority within 90 days; the resolution plan that wins the competition between the base resolution plan and the selected resolution plan is not approved by the CoC; and a resolution plan that is approved by the CoC is rejected by the Adjudicating Authority the Adjudicating Authority issues an order of termination.*
- *Third, based on a resolution passed by the CoC requesting CIRP, the AA issues an order to commence it.*
- *Fourth, if the AA issues a liquidation order after an order vesting the corporate debtor's management in the RP, the CoC approves a resolution plan that does not involve a change in control or management to a third party, or the pre-pack process is required to be terminated, the AA issues a liquidation order.*

V. THE ADVANTAGES OF PRE-PACKED PLAN AS A RESPONSE TO COVID-19:

Insolvency is a formal procedure which can be greatly reduced, the advantages of a pre-pack in terms of time and expenses, as well as little damage to the debtor's company, make it a useful choice for enterprises facing financial difficulties as a result of the COVID-19 pandemic. In addition to these benefits, a pre-pack would likely require less files and court time than a regular CIRP, easing the pressure on tribunals. Pre-packs is included in the Indian insolvency framework during the COVID-19 timeframe and beyond for these reasons.

Pre-packs are described as agreements in which the sale of all or part of a company's business or assets is agreed with a purchaser prior to the appointment of a resolution professional, and the resolution professional affects the sale immediately after his appointment, or shortly afterward. In simple terms, a pre-pack is an agreement between a financially distressed firm (including its creditors) and a buyer to sell the company before the insolvency proceedings begin.

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Advantages of Pre-packaged Insolvency Resolution Process (PPIRP) over Corporate Insolvency Resolution Process (CIRP)¹¹;

- *The Pre-packaged Insolvency Resolution Process is scheduled to be completed in 120 days, including a 30-day grace period for the Adjudicating Authority to approve the settlement plan.*
- *Corporate Debtor will bear the cost of the PPIRP procedure, which will save him money in the future, but he will retain control.*
- *Corporate Debtor is unlikely to file a lawsuit because he is in charge of the company and the process is only carried out with his and Financial Creditor's consent.*
- *Corporate Debtor will establish a Base Resolution Plan for Financial Creditor based on their business viability and underlying security, and will only implement it with Financial Creditors' prior approval.*
- *The Resolution Process is not required to run the unit and instead focuses solely on the Resolution Plan, which is the backbone of IBC procedures.*
- *Moratorium has a significant impact in terms of reducing the burden on Resolution Process/ Corporate Creditor.*
- *the Basic Resolution plan is to be executed, no impairment to operational creditors is permitted. However, if the Basic Resolution Plan is impaired, it must compete in a public bidding process.*
- *To compete with other plans, a Basic Resolution Plan may be necessary, and the Swiss Challenge method is offered to maximise value.*
- *All stakeholders, including financial creditors and operational creditors, including I-Tax and GST dues, will be bound by the approved resolution plan, which will relieve the Corporate Debtor of all past defaults and ailments.*
- *The approved plan is easily explainable by Bankers also being result of a plan approved by Adjudicating Authority after due deliberation & as COC member, they have only*

¹¹ Abhishek Bagga, 'Pre-Packaged Insolvency Resolution Procedure'; Mondaq, May 5, 2021.

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limited say in it. Even otherwise, if PPRIP isn't undertaken, the CD was not in a position to pay & the whole debt was going to be an NPA, and liquidation was not a viable economic solution.

VI. ANALYSING THE INTERNATIONAL PERSPECTIVES OF PRE-PACK PLAN:

As per the *United Nations Commission on International Trade Law (UNCITRAL)*, refers to pre-packs as "expedited reorganisation proceedings" because they combine voluntary restructuring negotiations, in which a plan is negotiated and agreed to by the majority of impacted stakeholders, with reorganisation proceedings that begin immediately.

The pre-packaged plan restructurings scheme under *South Korea's Rehabilitation and Bankruptcy Act* has proven to be an effective tool for facilitating insolvent company recovery in a shorter period of time, and it is intended to be widely used by many distressed companies in need of restructuring and sustainability. In order to meet the pre-packaged deal restructuring's initial target, the Korean judiciary is likely to play a larger role in the pre-packaged deal restructuring by holding talks with the claimant, lenders, and other interested parties.

The Insolvency Act of 1986 did not allow for or control pre-packaging, which has evolved out of commercial practise through business and technology innovation in the United Kingdom, despite the judiciary's endorsement of the progression. It's a tried-and-true method for keeping a company surviving those entails utilising the executive's incentive to sell a business asset without the agreement of creditors.

Nonetheless, the system has prompted concerns about transparency and accountability, particularly when a sale is made to a related party or when the insolvency practitioner has a

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conflict of interest. The *Insolvency Practitioners Association issued Statement of Insolvency Practice (SIP) in 2009*, to address the complaints by regulating pre-pack via administrator control.¹²

For unsecured creditors, the SIP lacked any kind of transparency. During an evaluation of the success of voluntary actions implemented in 2015, the British Government noted the restricted use of the pre-pack pool targeted at giving creditors and other investors trust that a connected company pre-pack sale is appropriate.

It has adopted new regulations to allow for the scrutiny of pre-pack transactions with related parties, building on current voluntary activities and reducing the harmful consequences of the pandemic's increased usage of pre-pack transactions. As a result, the pre-package, which started out as an informal agreement between the parties, is becoming increasingly regulated in order to address developing issues.

The Section 363 of the United States Bankruptcy Code allows for pre-packaged insolvency proceedings in the United States, as well as pre-arranged Chapter 11 bankruptcy proceedings. In the United Kingdom, pre-plan transactions are comparable to pre-pack sales. It allows an insolvency trustee, or administrator in the UK, to liquidate all or substantially all of a CD's assets before reorganisation proceedings are initiated.

It requires the debtor to notify all interested parties, give them the opportunity to object to the proposed deal, and obtain bankruptcy court approval in order to ensure that such businesses are "*free and clear*" of any involvement in the assets because they were not created during the normal operating cycle. The law makes no standards or criteria for court evaluations of pre-plan transactions, nor does it prescribe how a transaction should be carried out.

¹² 'PRE-PACKAGED SALES IN ADMINISTRATIONS'- STATEMENT OF INSOLVENCY PRACTICE 16, Insolvency Practitioners Association, UK.

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The CD negotiates the parameters of a proposal with key creditors and seeks permission from distinct groupings of creditors in a pre-packaged bankruptcy case. It sends the plan, as well as a disclosure statement, to all creditors. After securing the required number of votes in favour of the initiative, the CD files a Chapter 11 petition.

In Canada, the pre-packaged sales of a financially challenged organisation as a viable business, led by management, is commonly utilised, with the revenue used to make a plan to creditors. When a business is in financial trouble, it normally starts looking for a buyer.

The debtor firm's management then files for protection under the *Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36)*, allowing them to restart their efforts to sell the company, as because the business is sold as a going concern rather than a liquidation, worker security is a major driver and component in the court acceptance process.

When a buyer is found, the court accepts the sale (*without shareholder or bulk purchase act permission*) and issues an order vesting title in the buyer's properties free and clear of any liens, protection rights, and encumbrances, all of which are deducted from the sale profits.

In Singapore, Under Section 211(I) of the Singapore Companies Act, the court will approve a compromise or agreement. When a corporation and its creditors or a class of creditors offer an agreement or arrangement, the Court may issue an order permitting the resolution on the corporation's application, even if no creditors or class of creditors' meeting has been scheduled. The agreement or arrangement binds the corporation as well as the stakeholders or creditors who are expected to be governed by it.¹³ *The Insolvency, Restructuring, and Dissolution (Amendment) Bill, 2020*, creates a new pre-pack system for micro and small firms in the COVID-19 position. When a company is accepted into the programme, it is subjected to an

¹³ Companies Act, Chapter 50 (Act No 42 of 1967) - THE STATUTES OF THE REPUBLIC OF SINGAPORE.

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immediate moratorium. Scheduling a meeting with the company's creditors would be insufficient.

Alternatively, if the corporation can establish that if a committee had been convened, a majority of the creditors, representing at least two-thirds of the total amount of the creditors, would have supported the arrangement, the court will sanction it.

VII. CONCLUSION:

The Insolvency and Bankruptcy Code, which is only four years old, is dynamic and evolving. To safeguard the interest of Micro, Small, and Medium Enterprises, the government along with Insolvency and Bankruptcy Board of India is attempting to provide various reliefs through ordinances.

The cost of recovery proceedings is a significant element for MSMEs when deciding whether to pursue such debt through the IBC route or not, taking into account the amount of debt, the recovery rate, and the time it takes to realise the amount.

Therefore, an enabling provision in IBC for Pre-Pack Insolvency resolution Process will encourage the MSMEs to trust IBC route more which will result in overall development of the economy in these stressed times.