

SIGNIFICANT AMENDMENTS FOR NOVEMBER 2021 EXAMINATION
PAPER 6D: ECONOMIC LAWS

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

1. Amendment in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015

Vide Notification No. FEMA 23(R)/(4)/2021-RB , dated January 08, 2021, the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021 has been enacted .

According to the amended Regulation, in exercise of the powers conferred by clause (a) of sub-section (1), sub-section (3) of section 7 and clause (b) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999, the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 through the enforcement of the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021.

In the Principal Regulations, **in regulation 4, for sub-regulation (ea)**, the following shall be substituted, namely:-

“(ea) re-export of leased aircraft/helicopter and/or engines/auxiliary power units (APUs), either completely or in partially knocked down condition repossessed by overseas lessor and duly de-registered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorisation (IDERA) holder under ‘Cape Town Convention’ or any other termination or cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s.”

2. The Prevention of Money Laundering Act, 2002

A. Vide Notification G.S.R. 798(E) [F. NO. P-12011/14/2020-ES CELL-DOR], Dated 28-12-2020, in exercise of the powers conferred by sub-clause (iv) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 , the Central Government hereby rescinds the notification of the Government of India, Ministry of Finance, Department of Revenue, No. 8/2017, dated 15 November, 2017, published in the Gazette of India, Part II, Section 3, Sub-section (ii), extraordinary, *vide* GSR 1423 (E) dated the 16 November 2017, except as respects things done or omitted to done before such recession and **notifies the "Real Estate Agents", as a**

person engaged in providing services in relation to sale or purchase of real estate and having annual turnover of Rupees twenty lakhs or above, as "persons carrying on designated businesses or professions".

- B. **Vide Notification G.S.R. 799(E) [F. NO. P-12011/14/2020-ES CELL-DOR], Dated 28-12-2020**, in exercise of the powers conferred by sub-clause (iv) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002, the Central Government hereby notifies **the dealers in precious metals, precious stones as persons carrying on designated businesses or professions - if they engage in any cash transactions with a customer equal to or above Rupees ten lakhs, carried out in a single operation or in several operations that appear to be linked.**
- C. **Vide Notification G.S.R. 59(E) [F. NO. P-12011/24/2017-ES CELL-DOR-PART(1)], Dated 28-1-2021**, in exercise of the powers conferred by sub-section (1) of section 11A of the Prevention of Money-laundering Act, 2002, the Central Government on being satisfied that the reporting entities mentioned below comply with standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) and it is necessary and expedient to do so, and after consultation with the Unique Identification Authority of India established under sub-section (1) of section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 and the regulatory authority, namely the Reserve Bank of India, **hereby notifies the reporting entity specified below to undertake Aadhaar authentication service of the Unique Identification Authority of India under section 11A of the Prevention of Money-laundering Act, 2002, namely:—**

"National Payments Corporation of India."

The Insolvency & Bankruptcy Code, 2016

(A) The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021

The President promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 4th April 2021. The Cabinet had approved on 31st March 2021 the proposal to make amendments in the Insolvency and Bankruptcy Code, 2016 (Code), through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.

The amendments aims to provide an efficient alternative insolvency resolution framework for corporate persons classified as micro, small and medium enterprises (MSMEs) under the Code, for ensuring quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least

disruptive to the continuity of MSMEs businesses and which preserves jobs. The initiative is based on a trust model and the amendments honour the honest MSME owners by trying to ensure that the resolution happens and the company remains with them.

It is expected that the incorporation of Pre-Packaged insolvency resolution process for MSMEs in the Code will alleviate the distress faced by MSMEs due to the impact of the pandemic & the unique nature of their business, duly recognizing their importance in the economy. It provides an efficient alternative insolvency resolution framework for corporate persons classified as MSMEs for timely, efficient & cost-effective resolution of distress thereby ensuring positive signal to debt market, employment preservation, ease of doing business and preservation of enterprise capital. Other expected impact and benefits of the amendment in Code are lesser burden on Adjudicating Authority, assured continuity of business operations for corporate debtor (CD), less process costs & maximum assets realization for financial creditors (FC) and assurance of continued business relation with CD and rights protection for operational Creditors (OC).

The Amendment Ordinance seeks to amend sections such as 4, 5, 11, 33, 34, 61, 65, 77, 208, 239, 240 & insert new sections such as 11A, 67A, 77A and a new chapter as IIIA on Pre-Packaged insolvency resolution process for MSMEs in the Code based on recommendations made by the Insolvency Law Committee (ILC).

Details of the amendments are given at under:

1. This Ordinance may be called the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021. It shall come into force at once.

2. Amendment of Section 4- Application of this Part II of the Code

After the given proviso in the said section, the following proviso shall be inserted, namely:—

“Provided further that the Central Government may, by notification, specify such minimum amount of default of higher value, which shall not be more than one crore rupees, for matters relating to the prepackaged insolvency resolution process of corporate debtors under Chapter III-A.”.

3. Amendment of Section 5- Definitions covered under this part of the Code.

(i) after clause (2), the following clause shall be inserted, namely:—

(2A) “**base resolution plan**” means a resolution plan provided by the corporate debtor under clause (c) of sub-section (4) of section 54A;’;

- (ii) in clause (5), in sub-clause (b), after the words “corporate insolvency resolution process”, the words “or the pre-packaged insolvency resolution process, as the case may be,” shall be inserted;
- (iii) in clause (11), after the words “corporate insolvency resolution process”, the words “or prepackaged insolvency resolution process, as the case may be” shall be inserted;
- (iv) in clause (15), after the words, “process period”, the words “or by the corporate debtor during the pre-packaged insolvency resolution process period, as the case may be,” shall be inserted;
- (v) in clause (19), after the words “for the purposes of”, the words and figures “Chapter VI and” shall be inserted;
- (vi) after clause (23), the following clauses shall be inserted, namely: —
 - (23A) “preliminary information memorandum” means a memorandum submitted by the corporate debtor under clause (b) of sub-section (1) of section 54G;
 - (23B) “pre-packaged insolvency commencement date” means the date of admission of an application for initiating the pre-packaged insolvency resolution process by the Adjudicating Authority under clause (a) of sub-section (4) of section 54C;
 - (23C) “pre-packaged insolvency resolution process costs” means—
 - (a) the amount of any interim finance and the costs incurred in raising such finance;
 - (b) the fees payable to any person acting as a resolution professional and any expenses incurred by him for conducting the pre-packaged insolvency resolution process during the prepackaged insolvency resolution process period, subject to sub-section (6) of section 54F;
 - (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern pursuant to an order under sub-section (2) of section 54J;

(d) any costs incurred at the expense of the Government to facilitate the pre-packaged insolvency resolution process; and

(e) any other costs as may be specified;

(23D) “pre-packaged insolvency resolution process period” means the period beginning from the pre-packaged insolvency commencement date and ending on the date on which an order under sub-section (1) of section 54L, or sub-section (1) of section 54N, or sub-section (2) of section 54-O, as the case may be, is passed by the Adjudicating Authority;’;

(vii) in clause (25), after the words, brackets and figures “of sub-section (2) of section 25”, the words, figures and letter “or pursuant to section 54K, as the case may be” shall be inserted;

(viii) in clause (27), after the words “corporate insolvency resolution process”, the words “or the prepackaged insolvency resolution process (PPIRP), as the case may be,” shall be inserted.

4. Amendment of section 11- Persons not entitled to make application.

(i) in clause (a), after the words “corporate insolvency resolution process”, the words “or a prepackaged insolvency resolution process” shall be inserted;

(ii) after clause (a), the following clause shall be inserted, namely:—

“(aa) a financial creditor or an operational creditor of a corporate debtor undergoing a prepackaged insolvency resolution process; or”;

(iii) after clause (b), the following clause shall be inserted, namely:—

“(ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or”.

5. After section 11 of the principal Act, following new section 11A shall be inserted,.

“**11A.** (1) Where an application filed under section 54C is pending, the Adjudicating Authority shall pass applications under section an order to admit or reject such application, before 54C and under considering any application filed under section 7 or section 7 or section 9 or section 10

during the pendency of such section 9 or application under section 54C, in respect of the same section 10. corporate debtor.

(2) Where an application under section 54C is filed within fourteen days of filing of any application under section 7 or section 9 or section 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application under section 54C.

(3) Where an application under section 54C is filed after fourteen days of the filing of any application under section 7 or section 9 or section 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under sections 7, 9 or 10.

(4) The provisions of this section shall not apply where an application under section 7 or section 9 or section 10 is filed and pending as on the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.”.

6. In section 33 of the principal Act, which deals with the initiation of liquidation, in sub-section (3), after the words, “approved by the Adjudicating Authority”, the words, figures, brackets and letter “under section 31 or under sub-section (1) of section 54L,” shall be inserted.

7. Amendment of section 34- Appointment of liquidator and fee to be paid.

In section 34 of the principal Act, in sub-section (1), after the words and figures, “under Chapter II”, the words, figures and letter “or for the pre-packaged insolvency resolution process under Chapter III-A” shall be inserted.

8. After Chapter III of the principal Act, the following Chapter III-A, shall be inserted, namely:—

CHAPTER III-A

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

Corporate debtors eligible for pre-packaged insolvency resolution process.

54 A. (1) An application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development 27 of 2006. Act, 2006.

(2) Without prejudice to sub-section (1), an application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor, who commits a default referred to in section 4, subject to the following conditions, that—

- (a) it has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of three years preceding the initiation date;
- (b) it is not undergoing a corporate insolvency resolution process;
- (c) no order requiring it to be liquidated is passed under section 33;
- (d) it is eligible to submit a resolution plan under section 29A;
- (e) the financial creditors of the corporate debtor, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the pre-packaged insolvency resolution process of the corporate debtor, and the financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, have approved such proposal in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the proposal and approval under this clause shall be provided by such persons as may be specified;

- (f) the majority of the directors or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified, stating, *inter alia*,—
 - (i) that the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days;
 - (ii) that the pre-packaged insolvency resolution process is not being initiated to defraud any person; and
 - (iii) the name of the insolvency professional proposed and approved to be appointed as resolution professional under clause (e);
- (g) the members of the corporate debtor have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor have passed a resolution, approving the filing of an application for initiating pre-packaged insolvency resolution process.

(3) The corporate debtor shall obtain an approval from its financial creditors, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due

to such creditors, for the filing of an application for initiating pre-packaged insolvency resolution process, in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the approval under this sub-section shall be provided by such persons as may be specified.

- (4) Prior to seeking approval from financial creditors under sub-section (3), the corporate debtor shall provide such financial creditors with —
- (a) the declaration referred to in clause (f) of sub-section (2);
 - (b) the special resolution or resolution referred to in clause (g) of sub-section (2);
 - (c) a base resolution plan which conforms to the requirements referred to in section 54K, and such other conditions as may be specified; and
 - (d) such other information and documents as may be specified.

Duties of resolution professional before initiation of pre-packaged insolvency resolution process.

54B. (1) The insolvency professional, proposed to be appointed as the resolution professional, shall have the following duties commencing from the date of the approval under clause (e) of sub-section (2) of section 54A, namely:—

- (a) prepare a report in such form as may be specified, confirming whether the corporate debtor meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in clause (c) of sub-section (4) of section 54A;
 - (b) file such reports and other documents, with the Board, as may be specified; and
 - (c) perform such other duties as may be specified.
- (2) The duties of the insolvency professional under sub-section (1) shall cease, if, —
- (a) the corporate debtor fails to file an application for initiating pre-packaged insolvency resolution process within the time period as stated under the declaration referred to in clause (f) of subsection (2) of section 54A; or
 - (b) the application for initiating pre-packaged insolvency resolution process is admitted or rejected by the Adjudicating Authority, as the case may be.
- (3) The fees payable to the insolvency professional in relation to the duties performed under sub-section (1) shall be determined and borne in such manner as may be specified and such

fees shall form part of the prepackaged insolvency resolution process costs, if the application for initiation of pre-packaged insolvency resolution process is admitted.

Application to initiate pre-packaged insolvency resolution process.

54C. (1) Where a corporate debtor meets the requirements of section 54A, a corporate applicant thereof may file an application with the Adjudicating insolvency Authority for initiating pre-packaged insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars, in such manner and accompanied with such fee as may be prescribed.

(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 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.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order,—

- (a) admit the application, if it is complete; or
- (b) reject the application, if it is incomplete:

Provided that the Adjudicating Authority shall, before rejecting an application, give notice to the applicant to rectify the defect in the application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The pre-packaged insolvency resolution process shall commence from the date of admission of the application under clause (a) of sub-section (4).

Time-limit for completion of pre-packaged insolvency resolution process.

54D. (1) The pre-packaged insolvency resolution process shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date.

(2) Without prejudice to sub-section (1), the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or subsection (12), as the case may be, of section 54K, within a period of ninety days from the pre-packaged insolvency commencement date.

(3) Where no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2), the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.

Declaration of moratorium and public announcement during prepackaged insolvency resolution process

54E. (1) The Adjudicating Authority shall, on the pre-packaged insolvency commencement date, along with the order of admission under section 54C —

(a) declare a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter;

(b) appoint a resolution professional —

(i) as named in the application, if no disciplinary proceeding is pending against him; or

(ii) based on the recommendation made by the Board, if any disciplinary proceeding is pending against the insolvency professional named in the application.

(c) cause a public announcement of the initiation of the pre-packaged insolvency resolution process to be made by the resolution professional, in such form and manner as may be specified, immediately after his appointment.

(2) The order of moratorium shall have effect from the date of such order till the date on which the prepackaged insolvency resolution process period comes to an end.

Duties and powers of resolution professional during pre-packaged insolvency resolution process.

54F. (1) The resolution professional shall conduct the pre-packaged insolvency resolution process of a corporate debtor during the pre-packaged insolvency resolution process period.

(2) The resolution professional shall perform the following duties, namely:—

- (a) confirm the list of claims submitted by the corporate debtor under section 54G, in such manner as may be specified;
 - (b) inform creditors regarding their claims as confirmed under clause (a), in such manner as may be specified;
 - (c) maintain an updated list of claims, in such manner as may be specified;
 - (d) monitor management of the affairs of the corporate debtor;
 - (e) inform the committee of creditors in the event of breach of any of the obligations of the Board of Directors or partners, as the case may be, of the corporate debtor, under the provisions of this Chapter and the rules and regulations made thereunder;
 - (f) constitute the committee of creditors and convene and attend all its meetings;
 - (g) prepare the information memorandum on the basis of the preliminary information memorandum submitted under section 54G and any other relevant information, in such form and manner as may be specified;
 - (h) file applications for avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, if any; and
 - (i) such other duties as may be specified.
- (3) The resolution professional shall exercise the following powers, namely:—
- (a) access all books of accounts, records and information available with the corporate debtor;
 - (b) access the electronic records of the corporate debtor from an information utility having financial information of the corporate debtor;
 - (c) access the books of accounts, records and other relevant documents of the corporate debtor available with Government authorities, statutory auditors, accountants and such other persons as may be specified;
 - (d) attend meetings of members, Board of Directors and committee of directors, or partners, as the case may be, of the corporate debtor;
 - (e) appoint accountants, legal or other professionals in such manner as may be specified;
 - (f) collect all information relating to the assets,

finances and operations of the corporate debtor for determining the financial position of the corporate debtor and the existence of any transactions that may be within the scope of provisions relating to avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, including information relating to —

- (i) business operations for the previous two years from the date of pre-packaged insolvency commencement date;
 - (ii) financial and operational payments for the previous two years from the date of prepackaged insolvency commencement date;
 - (iii) list of assets and liabilities as on the initiation date; and
 - (iv) such other matters as may be specified;
- (g) take such other actions in such manner as may be specified.

(4) From the date of appointment of the resolution professional, the financial institutions maintaining accounts of the corporate debtor shall furnish all information relating to the corporate debtor available with them to the resolution professional, as and when required by him.

(5) The personnel of the corporate debtor, its promoters and any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the resolution professional as may be required by him to perform his duties and exercise his powers, and for such purposes, the provisions of sub-sections (2) and (3) of section 19 shall, *mutatis mutandis* apply, in relation to the proceedings under this Chapter.

(6) The fees of the resolution professional and any expenses incurred by him for conducting the prepackaged insolvency resolution process shall be determined in such manner as may be specified:

Provided that the committee of creditors may impose limits and conditions on such fees and expenses:

Provided further that the fees and expenses for the period prior to the constitution of the committee of creditors shall be subject to ratification by it.

(7) The fees and expenses referred to in sub-section (6) shall be borne in such manner as may be specified.

List of claims and preliminary information memorandum.

54G. (1) The corporate debtor shall, within two days of the pre-packaged insolvency commencement date, submit to the resolution professional the following information, updated as on that date, in such form and manner as may be specified, namely:—

- (a) a list of claims, along with details of the respective creditors, their security interests and guarantees, if any; and
 - (b) a preliminary information memorandum containing information relevant for formulating a resolution plan.
- (2) Where any person has sustained any loss or damage as a consequence of the omission of any material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum submitted by the corporate debtor, every person who—
- (a) is a promoter or director or partner of the corporate debtor, as the case may be, at the time of submission of the list of claims or the preliminary information memorandum by the corporate debtor; or
 - (b) has authorised the submission of the list of claims or the preliminary information memorandum by the corporate debtor,
- shall, without prejudice to section 77A, be liable to pay compensation to every person who has sustained such loss or damage.
- (3) No person shall be liable under sub-section (2), if the list of claims or the preliminary information memorandum was submitted by the corporate debtor without his knowledge or consent.
- (4) Subject to section 54E, any person, who sustained any loss or damage as a consequence of omission of material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum shall be entitled to move a court having jurisdiction for seeking compensation for such loss or damage.

Management of affairs of corporate debtor

54H. During the pre-packaged insolvency resolution process period,—

- (a) the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, as the case may be, of the corporate debtor, subject to such conditions as may be specified;
- (b) the Board of Directors or the partners, as the case may be, of the corporate debtor, shall make every endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern; and
- (c) the promoters, members, personnel and partners, as the case may be, of the corporate debtor, shall exercise and discharge their contractual or statutory rights and obligations in relation to the corporate debtor, subject to the provisions of this Chapter and such other conditions and restrictions as may be prescribed.

Committee of creditors

54-I. (1) The resolution professional shall, within seven days of the pre-packaged insolvency commencement date, constitute a committee of creditors, based on the list of claims confirmed under clause (a) of sub-section (2) of section 54F:

Provided that the composition of the committee of creditors shall be altered on the basis of the updated list of claims, in such manner as may be specified, and any such alteration shall not affect the validity of any past decision of the committee of creditors.

(2) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(3) Provisions of section 21, except sub-section (1) thereof, shall, *mutatis mutandis* apply, in relation to the committee of creditors under this Chapter:

Provided that for the purposes of this sub-section, references to the “resolution professional” under subsections (9) and (10) of section 21, shall be construed as references to “corporate debtor or the resolution professional”.

Vesting management of corporate debtor with resolution professional

54J. (1) Where the committee of creditors, at any time during the pre-packaged insolvency resolution corporate process, by a vote of not less than sixty-six per cent. of the voting shares, resolves to vest the management of the corporate debtor with the resolution professional, the resolution professional shall make an application for this purpose to the Adjudicating Authority, in such form and manner as may be specified.

(2) On an application made under sub-section (1), if the Adjudicating Authority is of the opinion that

during the pre-packaged insolvency resolution process—

(a) the affairs of the corporate debtor have been conducted in a fraudulent manner; or

(b) there has been gross mismanagement of the affairs of the corporate debtor,

it shall pass an order vesting the management of the corporate debtor with the resolution professional.

(3) Notwithstanding anything to the contrary contained in this Chapter, the provisions of—

(a) sub-sections (2) and (2A) of section 14;

(b) section 17;

(c) clauses (e) to (g) of section 18;

(d) sections 19 and 20;

- (e) sub-section (1) of section 25;
- (f) clauses (a) to (c) and clause (k) of sub-section (2) of section 25; and
- (g) section 28,

shall, *mutatis mutandis* apply, to the proceedings under this Chapter, from the date of the order under subsection (2), until the pre-packaged insolvency resolution process period comes to an end.

Consideration and approval of resolution plan

54K. (1) The corporate debtor shall submit the base resolution plan, referred to in clause (c) of sub-section (4) of section 54A, to the resolution professional within two days of the pre-packaged insolvency commencement date, and the resolution professional shall present it to the committee of creditors.

(2) The committee of creditors may provide the corporate debtor an opportunity to revise the base resolution plan prior to its approval under sub-section (4) or invitation of prospective resolution applicants under sub-section (5), as the case may be.

(3) The resolution plans and the base resolution plan, submitted under this section shall conform to the requirements referred to in sub-sections (1) and (2) of section 30, and the provisions of sub-sections (1), (2) and (5) of section 30 shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

(4) The committee of creditors may approve the base resolution plan for submission to the Adjudicating Authority if it does not impair any claims owed by the corporate debtor to the operational creditors.

(5) Where —

(a) the committee of creditors does not approve the base resolution plan under sub-section (4); or

(b) the base resolution plan impairs any claims owed by the corporate debtor to the operational creditors, the resolution professional shall invite prospective resolution applicants to submit a resolution plan or plans, to compete with the base resolution plan, in such manner as may be specified.

(6) The resolution applicants submitting resolution plans pursuant to invitation under sub-section (5), shall fulfil such criteria as may be laid down by the resolution professional with the approval of the committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified.

(7) The resolution professional shall provide to the resolution applicants, —

- (a) the basis for evaluation of resolution plans
for the purposes of sub-section (9), as approved by the committee of creditors subject to such conditions as may be specified; and
- (b) the relevant information referred to in section 29, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter, in such manner as may be specified.
- (8) The resolution professional shall present to the committee of creditors, for its evaluation, resolution plans which conform to the requirements referred to in sub-section (2) of section 30.
- (9) The committee of creditors shall evaluate the resolution plans presented by the resolution professional and select a resolution plan from amongst them.
- (10) Where, on the basis of such criteria as may be laid down by it, the committee of creditors decides that the resolution plan selected under sub-section (9) is significantly better than the base resolution plan, such resolution plan may be selected for approval under subsection (12):
Provided that the criteria laid down by the committee of creditors under this sub-section shall be subject to such conditions as may be specified.
- (11) Where the resolution plan selected under sub-section (9) is not considered for approval or does not fulfil the requirements of sub-section (10), it shall compete with the base resolution plan, in such manner and subject to such conditions as may be specified, and one of them shall be selected for approval under subsection (12).
- (12) The resolution plan selected for approval under sub-section (10) or sub-section (11), as the case may be, may be approved by the committee of creditors for submission to the Adjudicating Authority:
Provided that where the resolution plan selected for approval under sub-section (11) is not approved by the committee of creditors, the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.
- (13) The approval of the resolution plan under sub-section (4) or sub-section (12), as the case may be, by the committee of creditors, shall be by a vote of not less than sixty-six per cent. of the voting shares, after considering its feasibility and viability, the manner of distribution proposed, taking into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified.

- (14) While considering the feasibility and viability of a resolution plan, where the resolution plan submitted by the corporate debtor provides for impairment of any claims owed by the corporate debtor, the committee of creditors may require the promoters of the corporate debtor to dilute their shareholding or voting or control rights in the corporate debtor:

Provided that where the resolution plan does not provide for such dilution, the committee of creditors shall, prior to the approval of such resolution plan under sub-section (4) or sub-section (12), as the case may be, record reasons for its approval.

- (15) The resolution professional shall submit the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12), as the case may be, to the Adjudicating Authority.

Explanation I.—For the removal of doubts, it is

hereby clarified that, the corporate debtor being a resolution applicant under clause (25) of section 5, may submit the base resolution plan either individually or jointly with any other person.

Explanation II.—For the purposes of sub-

sections (4) and (14), claims shall be considered to be impaired where the resolution plan does not provide for the full payment of the confirmed claims as per the updated list of claims maintained by the resolution professional.

Approval of resolution plan

54L. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12) of section 54K, as the case may be, subject to the conditions provided therein, meets the requirements as referred to in sub-section (2) of section 30, it shall, within thirty days of the receipt of such resolution plan, by order approve the resolution plan:

Provided that the Adjudicating Authority shall, before passing an order for approval of a resolution plan under this sub-section, satisfy itself that the resolution plan has provisions for its effective implementation.

(2) The order of approval under sub-section (1) shall have such effect as provided under sub-sections (1), (3) and (4) of section 31, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

(3) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, within thirty days of the receipt of such resolution plan, by an order, reject the resolution plan and pass an order under section 54N.

(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the resolution plan approved by the committee of creditors under sub-section (4) or subsection (12), as the case may be, of section 54K, does not result in the change in the management or control of the corporate debtor to a person who was not a promoter or in the management or control of the corporate debtor, the Adjudicating Authority shall pass an order —

- (a) rejecting such resolution plan;
- (b) terminating the pre-packaged insolvency resolution process and passing a liquidation order in respect of the corporate debtor as referred to in subclauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and
- (c) declaring that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.

Appeal against order under section 54L

54M. Any appeal from an order approving the resolution plan under sub-section (1) of section 54L, shall be on the grounds laid down in sub-section (3) of section 61.

Termination of pre-packaged insolvency resolution process.

54N. (1) Where the resolution professional files an application with the Adjudicating Authority,—

- (a) under the proviso to sub-section (12) of section 54K; or
- (b) under sub-section (3) of section 54D, the Adjudicating Authority shall, within thirty days of the date of such application, by an order, —
 - (i) terminate the pre-packaged insolvency resolution process; and
 - (ii) provide for the manner of continuation of proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any.

(2) Where the resolution professional, at any time after the pre-packaged insolvency commencement date, but before the approval of resolution plan under subsection (4) or sub-section (12), as the case may be, of section 54K, intimates the Adjudicating Authority of the decision of the committee of creditors, approved by a vote of sixty-six per cent. of the voting shares, to terminate the pre-packaged insolvency resolution process, the Adjudicating Authority shall pass an order under sub-section (1).

(3) Where the Adjudicating Authority passes an order under sub-section (1), the corporate debtor shall bear the pre-packaged insolvency resolution process costs, if any.

(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the pre-packaged insolvency resolution process is required to be terminated under sub-section (1), the Adjudicating Authority shall pass an order —

- (a) of liquidation in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and
- (b) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.

Initiation of corporate insolvency resolution process.

54-O. (1) The committee of creditors, at any time after the pre-packaged insolvency commencement date but before the approval of resolution plan under sub-section (4) or sub-section (12), as the case may be, of section 54K, by a vote of sixty-six per cent. of the voting shares, may resolve to initiate a corporate insolvency resolution process in respect of the corporate debtor, if such corporate debtor is eligible for corporate insolvency resolution process under Chapter II.

(2) Notwithstanding anything to the contrary contained in Chapter II, where the resolution professional intimates the Adjudicating Authority of the decision of the committee of creditors under sub-section (1), the Adjudicating Authority shall, within thirty days of the date of such intimation, pass an order to —

- a. terminate the pre-packaged insolvency resolution process and initiate corporate insolvency resolution process under Chapter II in respect of the corporate debtor;
 - b. appoint the resolution professional referred to in under clause (b) of sub-section (1) of section 54E as the interim resolution professional, subject to submission of written consent by such resolution professional to the Adjudicating Authority in such form as may be specified; and
 - c. declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of insolvency resolution process costs for the purposes of the corporate insolvency resolution process of the corporate debtor.
- (3) Where the resolution professional fails to submit written consent under clause (b) of sub-section (2), the Adjudicating Authority shall appoint an interim resolution professional by

making a reference to the Board for recommendation, in the manner as provided under section 16.

- (4) Where the Adjudicating Authority passes an order under sub-section (2) —
- (a) such order shall be deemed to be an order of admission of an application under section 7 and shall have the same effect;
 - (b) the corporate insolvency resolution process shall commence from the date of such order;
 - (c) the proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any, shall continue during the corporate insolvency resolution process;
 - (d) for the purposes of sections 43, 46 and 50, references to “insolvency commencement date” shall mean “pre-packaged insolvency commencement date”; and
 - (e) in computing the relevant time or the period for avoidable transactions, the time-period for the duration of the pre-packaged insolvency resolution process shall also be included, notwithstanding anything to the contrary contained in sections 43, 46 and 50.

Application of provisions of Chapters II, III, VI, and VII to this Chapter

54P. (1) Save as provided under this Chapter, sections 24, 25A, 26, 27, 28, 29A, 32A, 43 to 51, and the provisions of Chapters VI and VII of this VI, and VII to Part shall, *mutatis mutandis* apply, to the pre-packaged insolvency resolution process, subject to the following, namely: —

- (a) reference to “members of the suspended Board of Directors or the partners” under clause (b) of sub-section (3) of section 24 shall be construed as reference to “members of the Board of Directors or the partners, unless an order has been passed by the Adjudicating Authority under section 54J”;
- (b) reference to “clause (j) of sub-section (2) of section 25” under section 26 shall be construed as reference to “clause (h) of sub-section (2) of section 54F”;
- (c) reference to “section 16” under section 27 shall be construed as reference to “section 54E”;
- (d) reference to “resolution professional” in sub-sections (1) and (4) of section 28 shall be construed as “corporate debtor”;
- (e) reference to “section 31” under sub-section (3) of section 61 shall be construed as reference to “sub-section (1) of section 54L”;

- (f) reference to “section 14” in sub-sections (1) and (2) of section 74 shall be construed as reference to “clause (a) of sub-section (1) of section 54E”;
- (g) reference to “section 31” in sub-section (3) of section 74 shall be construed as reference to “sub-section (1) of section 54L”.

(2) Without prejudice to the provisions of this Chapter and unless the context otherwise requires, where the provisions of Chapters II, III, VI and VII are applied to the proceedings under this Chapter, references to —

- (a) “insolvency commencement date” shall be construed as references to “pre-packaged insolvency commencement date”;
- (b) “resolution professional” or “interim resolution professional”, as the case may be, shall be construed as references to the resolution professional appointed under this Chapter;
- (c) “corporate insolvency resolution process” shall be construed as references to “pre-packaged insolvency resolution process”; and
- (d) “insolvency resolution process period” shall be construed as references to “pre-packaged insolvency resolution process period.”.

(B) Vide Notification S.O. 4638 (E) [F. NO. 30/33/2020-INSOLVENCY], dated 22-12-2020

In exercise of the powers conferred by section 10A of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby extended the period of suspension of insolvency proceedings by further period of three months from the 25th December, 2020, for the purposes of the said section.

(C) Vide MCA Notification S.O.1543(E) dated 9th April, 2021, in exercise of the powers conferred by the second proviso to section 4 of the Insolvency and

Bankruptcy Code, 2016 (31 of 2016), as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, the Central Government hereby specifies ten lakh rupees as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code.