

Pre-Packaged Insolvency Resolution Process

Lesson 20

KEY CONCEPTS

■ Pre-packaged insolvency commencement date ■ Pre-packaged insolvency resolution process costs ■ Pre-packaged insolvency resolution process period ■ Applicant ■ Resolution Professional ■ Preliminary Information Memorandum ■ Committee ■ Participant ■ Resolution applicant

Learning Objectives

To understand:

- Concept of Pre-packaged Insolvency Resolution Process (PPIRP)
- Time period for completion of PPIRP
- Initiation of the process
- Duties and powers of Resolution Professional
- Conduct and conclusion of the process

Lesson Outline

- Introduction
- Initiation of Pre – Packaged Insolvency Resolution Process
- Time-period for completion of process
- Duties and powers of Resolution Professional
- List of claims and preliminary information memorandum
- Consideration and approval of Resolution Plan
- Termination of Pre-packaged Insolvency Resolution process
- Lesson Round-Up
- Test Yourself

REGULATORY FRAMEWORK

- Section 54A to 54P of the Insolvency and Bankruptcy Code, 2016
- Insolvency and Bankruptcy Board of India (Pre - packaged Insolvency Resolution Process) Regulations, 2021

INTRODUCTION

It appears that 'pre-pack' has no statutory definition. It is probably because it has evolved over the time, differently in different jurisdictions and every jurisdiction has a unique variant(s) of pre-pack, which allows the stakeholders to modify it further to an extent to suit their needs. It has different nomenclature such as pre-packaged insolvency resolution, pre-arranged insolvency resolution and pre-plan sale in the USA, pre-pack sale in the UK, scheme of arrangement in Singapore, etc. As nomenclature suggests, pre-pack is a restructuring plan which is agreed to by the debtor and its creditors prior to the insolvency filing, and then sanctioned by the court on an expedited basis. In the UK context, it generally refers to a pre-agreed business sale by an insolvency practitioner which does not require prior court and/or creditor sanction.

With the background of the formal process in India being afflicted with high costs, pre-pack allows for a cost-effective and speedy resolution process. Pre-pack also identifies and alienates the role of the Insolvency/Resolution professional as an expert in the process.

Benefits of pre - pack insolvency resolution process

- It consolidates the benefit of both formal and informal proceedings of resolution, thus broadening the options for stakeholders
- It enables faster resolution as the corporate debtor can prepare a settlement plan or resolution plan with the creditors before going to NCLT
- Reduced burden on NCLT due to out of court settlements
- With the suspension of CIRP until March 2021, pre-pack has come as a relief to promoters and corporate debtors
- It allows the corporate debtor retain control till a settlement is reached with the creditors

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

Section 54A to 54P of the Insolvency and Bankruptcy Code, 2016 ('Code') read with the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 lays down the provisions of a pre-packaged insolvency resolution process with respect to its initiation, manner of carrying out the process, appointment of resolution professional, termination etc.

Corporate debtors eligible for pre-packaged insolvency resolution process (Section 54A)

- (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 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--

MSME Threshold			
Class	Capital Investment in Plant and Machinery or Equipment (Crore)	Cap in Turnover (crore)	Applicability of Pre-pack
Micro Enterprise	1 crore	5 crores	✓
Small Enterprise	10 crores	50 crores	✓
Medium Enterprise	50 crores	250 crores	✓

- (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:

What is the minimum default amount for pre-pack cases?

The Ministry of Corporate Affairs vide its notification dated April 09, 2021 specified ten lakh rupees as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor.

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 prepackaged 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 (Section 54B)

As per Section 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.

Section 54B (3) provides that 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 pre-packaged insolvency resolution process costs, if the application for initiation of pre-packaged insolvency resolution process is admitted.

When will the duties of insolvency professional under Section 54B (1) of the Code cease?

Section 54B(2) provides the following circumstances:

- (a) If 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 sub-section (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.

Application to initiate pre-packaged insolvency resolution process (Section 54C)

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

Applicant: As per Regulation 2(1) (a) of IBBI (PIRP) Regulations, 2021, 'applicant' means the corporate applicant, filing an application for initiation of pre-packaged insolvency resolution process under section 54C;

- (3) The corporate applicant shall, along with the application, furnish-
- 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;
 - 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;
 - 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;
 - 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,--
- admit the application, if it is complete; or
 - 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.

Time limit for completion of pre-packaged insolvency resolution process (Section 54D)

- 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.
- 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 sub-section (12), as the case may be, of section 54K, within a period of ninety days from the pre-packaged insolvency commencement date.
- 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.

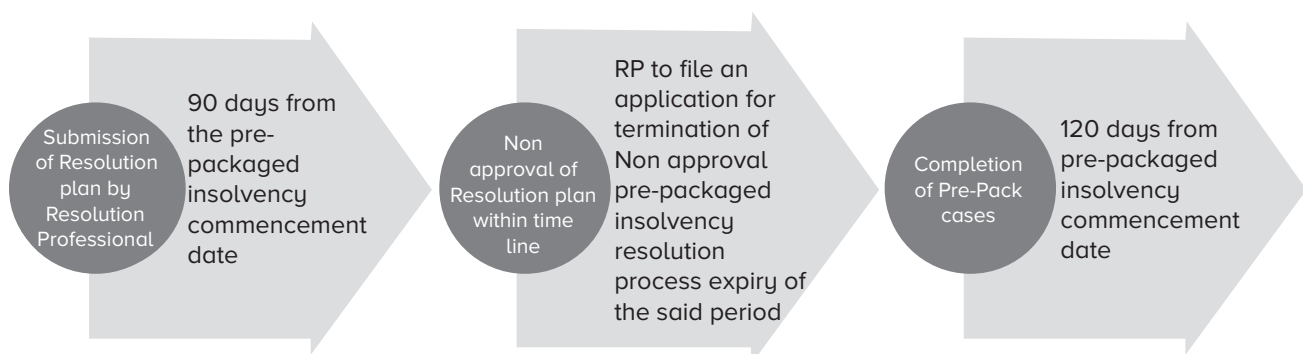


Fig. Timeline of pre-packaged insolvency resolution process

Declaration of moratorium and public announcement during pre-packaged insolvency resolution process (Section 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 pre-packaged insolvency resolution process period comes to an end.

Timeline for public announcement:

The RP shall make a public announcement within two days of the commencement of the process.

Duties and powers of resolution professional during pre-packaged insolvency resolution process (Section 54F)

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

Duties of resolution professional [Section 54F(2)]

- (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;

Powers of resolution professional [Section 54F(3)]

- (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;

- (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.

- (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 pre-packaged 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 subsections (2) and (3) of section 19 shall, *mutatis mutandis* apply, in relation
- (6) The fees of the resolution professional and any expenses incurred by him for conducting the pre-packaged 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.

Who shall bear the fee of RP where the corporate debtor fails to file an application or the application for initiation of the process is rejected?

In such a case, the fee payable to the resolution professional for performing duties under sub-section (3) of section 54B shall be borne by the corporate debtor.

List of claims and preliminary information memorandum (Section 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.

Preliminary information memorandum

Section 5(23A) of the Code states that “preliminary information memorandum” means a memorandum submitted by the corporate debtor under clause (b) of sub-section (1) of section 54G.

Management of affairs of corporate debtor (Section 54H)

During the pre-packaged insolvency resolution process period,-

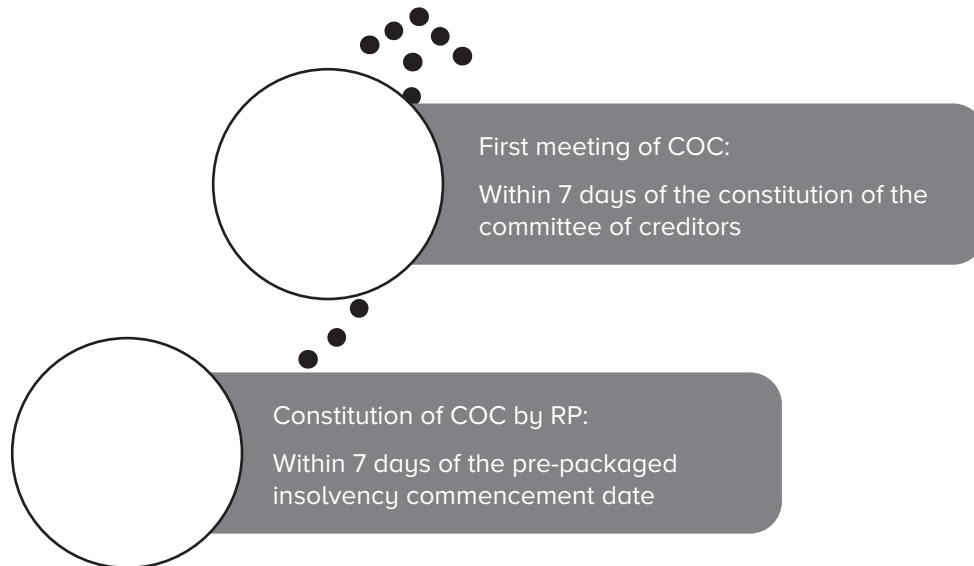
- (a) The management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, as the case may be, of the corporate debtor, subject to such conditions as may be specified;
- (b) The Board of Directors or the partners, as the case may be, of the corporate 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 (Section 54I)

- (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 sub-sections (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 (Section 54J)

Section 54J(1) provides that where the committee of creditors, at any time during the pre-packaged insolvency resolution process period, 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.

Section 54J(3) provides that notwithstanding anything to the contrary contained in this chapter, the provisions of:

- (a) sub-sections (2) and (2A) of section 14 (moratorium)
- (b) section 17 (Management of affairs of corporate debtor by IRP)
- (c) clauses (e) to (g) of section 18 (Duties of IRP)
- (d) sections 19 and 20 (Personnel to extend co-operation to IRP and management of operations of corporate debtor as going concern)
- (e) sub-section (1) of section 25 (Duty of RP to preserve and protect the assets of corporate debtor)
- (f) clauses (a) to (c) and clause (k) of sub-section (2) of section 25 (duties of RP) and

Section 54J(2) of the Code provides that 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.

- (g) section 28 (Approval of COC for certain actions) shall, *mutatis mutandis* apply, to the proceedings under this chapter, from the date of the order under sub-section (2), until the pre-packaged insolvency resolution process period comes to an end.

Consideration and approval of resolution plan (Section 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 prepackaged insolvency commencement date, and the resolution professional shall present it to the committee of creditors.

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.

- (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.

Explanation II – For the purposes of subsections (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.

- (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.

Requirements of resolution plan

A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.

The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
- (b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-
 - (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
 - (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.
- (c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;
- (d) The implementation and supervision of the resolution plan;
- (e) does not contravene any of the provisions of the law for the time being in force;
- (f) confirms to such other requirements as may be specified by the Board.

- (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 sub-section (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 sub-section (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.

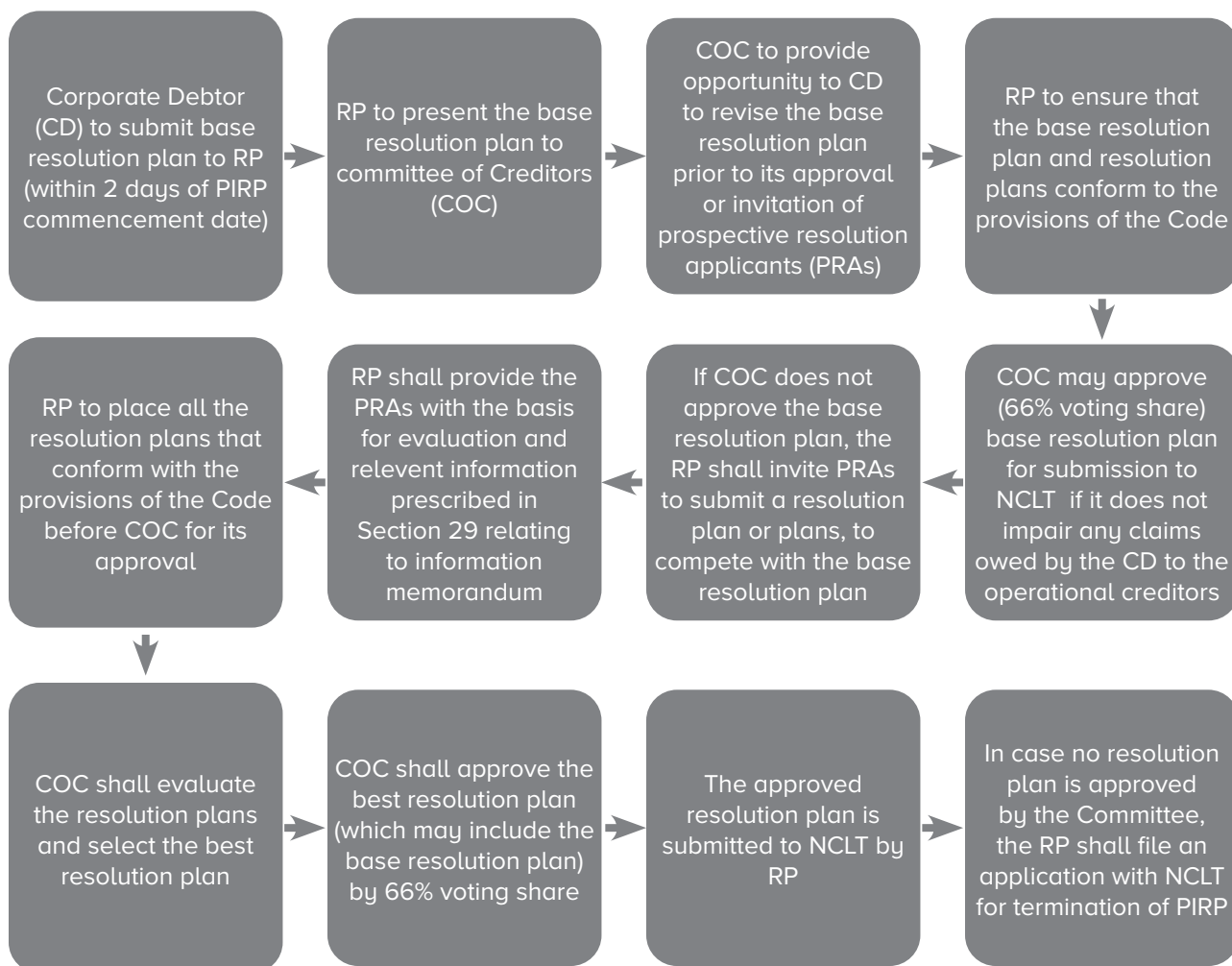


Fig: Consideration and approval of Resolution Plan

Approval of resolution plan (Section 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 sub-section (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 sub-clauses (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.

Termination of pre-packaged insolvency resolution process (Section 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 sub-section (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.

What happens when the Adjudicating Authority has passed an order for termination of pre-packaged insolvency resolution process pursuant to the decision of COC?

As per Section 54N(4) of the Code, the Adjudicating Authority shall further pass an order —

- (a) of liquidation of corporate debtor;
- (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.

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 (Section 54M)

Initiation of corporate insolvency resolution process (Section 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 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 Adjudicatory 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.

Section 54-O(4) of the Code provides that 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 transaction under Chapter III or proceedings initiated under section 66 and section 67 A, 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 prepackaged insolvency resolution process shall also be included, notwithstanding anything to the contrary contained in sections 43, 46 and 50.
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Application of provisions of Chapters II, III, VI and VII to this Chapter (Section 54P)

- (1) Save as provided under this Chapter, the provisions of sections 24, 25A, 26, 27, 28, 29A, 32A, 43 to 51, and the provisions of Chapters VI and VII of this 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 “prepackaged 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 “prepackaged insolvency resolution process period.”

LESSON ROUND-UP

- Sections 54A to 54P of the Code contain provisions relating to Pre-packaged Insolvency Resolution Process.
- 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 Act, 2006. The minimum amount of default for initiating pre-packaged insolvency resolution process is Rs. 10 lakhs.
- Pre-packaged insolvency resolution process shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date.
- The resolution professional shall submit the resolution plan, as approved by the committee of creditors to the Adjudicating Authority within a period of ninety days from the pre-packaged insolvency commencement date.
- A application for pre-packaged insolvency resolution process may be filed by a corporate applicant.
- Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 contains the procedure for pre-packaged insolvency resolution process.
- The corporate debtor shall, within two days of the pre-packaged insolvency commencement date, submit to the resolution professional a list of claims and a preliminary information memorandum.
- During the pre-packaged insolvency resolution process period, 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.

- 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. As per Section 54I(2), the first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.
- The committee of creditors, at any time during the pre-packaged insolvency resolution process period, by a vote of not less than sixty-six per cent. of the voting shares, resolve to vest the management of the corporate debtor with the resolution professional.
- The corporate debtor shall submit the base resolution plan 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.
- The committee of creditors shall evaluate the resolution plans presented by the resolution professional and select a resolution plan from amongst them. The resolution plan approved by the committee of creditors is submitted to the Adjudicating Authority by the Resolution Professional.
- 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.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation).

1. What is the rationale behind the introduction of pre-packaged insolvency resolution process?
2. How is pre-packaged insolvency resolution process different from the corporate insolvency resolution process under Chapter II of Part II of the Code?
3. State the powers and duties of Resolution Professional in relation to pre-packaged insolvency resolution process.
4. What is the role of the Committee of Creditors in pre-packaged insolvency resolution process?
5. Discuss the provisions relating to the approval of resolution plan in relation to pre-packaged insolvency resolution process.
6. Explain the provisions pertaining to termination of pre-packaged insolvency resolution process.