

### Salient Features of the Pre-Pack Process

<b>Availability</b>	<ul style="list-style-type: none"> <li>○ PPIRP is made available for Corporate Debtors (<b>CD</b>) which are classified as Micro, Small and Medium Enterprises (<b>MSMEs</b>). It may be expanded to larger companies (and higher defaults) over time.</li> <li>○ To mitigate the risk of repeated use of the PPIRP, this process will not be available to CDs who have undergone a PPIRP or CIRP in the 3 years preceding the date of the application.</li> </ul>
<b>Initiation</b>	<ul style="list-style-type: none"> <li>○ Unlike CIRP, PPIRP is to be initiated by the CD.</li> <li>○ Minimum threshold default for initiation of PPIRP is INR 10 lakh.</li> <li>○ If a PPIRP application is pending when a CIRP application is filed, the PPIRP application is to be dealt with first. If a CIRP application is pending but a PPIRP application is filed within 14 days, then the NCLT is to dispose of the PPIRP application first. If, however, this is filed after 14 days of the CIRP application, then the NCLT is to dispose of the CIRP application first. And it is clarified that this provision is not applicable where a CIRP application is already pending as of the date of the Ordinance.</li> </ul>
<b>Tasks prior to Pre-pack</b>	<ul style="list-style-type: none"> <li>○ A CD initiating PPIRP needs consent from (i) a <b>66% of unrelated financial creditors (FC)</b>; and (ii) <b>shareholders of the CD by special majority (75%)</b>.</li> <li>○ Majority directors of the CD should submit a declaration that, <i>inter alia</i>, (i) the RP proposed by the creditors is approved; and (ii) PPIRP is not being initiated to defraud any person.</li> <li>○ To reduce timelines, it is proposed that the CD should also submit a preliminary information memorandum with all information relevant for formulating a resolution plan. This includes, <i>inter alia</i>, a true and complete list of claims against the CD with details of respective creditors and their security interests within 2 days of the PCD.</li> <li>○ To mitigate risk of mis-information by the CD, every person who is a promoter or director (at the time of submission of the list of claims or the preliminary information memorandum by the corporate debtor) or has authorised the preliminary information memorandum, is made liable to pay compensation to every person who has sustained any loss/damage (as a consequence of the CD furnishing incorrect or omitting to furnish complete information).</li> </ul>
<b>Management of the CD</b>	<ul style="list-style-type: none"> <li>○ A <b>debtor-in-possession with creditor-in-control model</b> has been chosen for resolution of stress through PPIRP.</li> <li>○ Key decisions enumerated under Section 28 of the IBC (such as raising of interim</li> </ul>

	<p>finance, creation of security interest over assets, and change in capital structure), only permitted with approval of the committee of creditors (<b>CoC</b>).</p> <ul style="list-style-type: none"> <li>○ The CoC may, by 66% votes, resolve to vest the management of the CD with the RP in certain cases (for instance – where the affairs of the CD are conducted in a fraudulent manner, or in the case of gross mismanagement). Following such resolution, the RP is to file appropriate application before the NCLT for orders. And if such order is passed by the NCLT, the resolution plan under PPIRP needs to involve change of management or control of the CD.</li> </ul>
<b>RP – Appointment &amp; Role</b>	<ul style="list-style-type: none"> <li>○ Unrelated FCs with more than 10% of the financial debt may propose a RP, who is then to be appointed with consent of 66% unrelated FCs.</li> <li>○ Unlike CIRP, ordinarily the role of the RP is limited to <b>overseeing the process. The RP does not by default assume management of the CD nor run its business.</b></li> <li>○ Prior to commencement - the RP's role is to ensure the CD complies with all applicability requirements and has obtained the requisite consents.</li> <li>○ During PPIRP - the RP is tasked with ensuring transparency and fairness of the process, safeguarding the interests of stakeholders, business, and the public, and ensuring compliance with the law.</li> </ul>
<b>Decisions by the CoC</b>	<ul style="list-style-type: none"> <li>○ CoC must approve decisions relating to approval or rejection of the resolution plan by 66% majority, as well as matters under Section 28 and transactions above a certain threshold as determined by the committee, also by 66% majority.</li> <li>○ The CoC may, at any time, with a 66% majority, pass a resolution to initiate CIRP against the CD or terminate the PPIRP process.</li> <li>○ Meetings of the CoC require a quorum of at least 33% of creditors by voting share.</li> </ul>
<b>Timeline</b>	<ul style="list-style-type: none"> <li>○ The timeline anticipates a <b>maximum of 90 days</b> from the commencement date for submission of the resolution plan to the NCLT, and 30 days thereafter for NCLT to approve or reject. If no resolution plan is submitted to the NCLT in 90 days, the RP should apply to NCLT for termination of PPIRP.</li> </ul>
<b>Process</b>	<ul style="list-style-type: none"> <li>○ RP should appoint two valuers to assess liquidation value and fair value.</li> <li>○ Moratorium under Section 14 of the IBC should be available till closure of the process (i.e. approval of plan / liquidation / CIRP, as applicable). Moratorium to not cover essential services (electricity, water, telecommunication services and information technology services).</li> <li>○ Within 7 (seven) days the RP should constitute the CoC based on the list of claims furnished by the CD which have been verified by RP. The RP should convene the first meeting of the CoC during this time as well.</li> <li>○ For value maximization, the following process is proposed: <ul style="list-style-type: none"> <li>(i) The RP receives a resolution plan prepared by the CD within 2 days from commencement of PPIRP, subject to any conditions specified (<b>Base Plan</b>). The CoC may allow the CD to revise its Base Plan (before voting / introducing other</li> </ul> </li> </ul>

applicants).

- (ii) The CoC may, by vote of 66%, select the Base Plan if it does not impair the rights of OCs (i.e. > 100c recovery) and is approved by the CoC. Then the RP shall conclude PPIRP. If the Base Plan does not achieve 66% approval by the CoC or impairs the rights of OCs the RP shall be directed to conduct a competing process. So rights of OCs can be impaired but, in that case the CD's base resolution plan cannot be approved without a process where competing plans are invited to ensure correct price discovery.
- (iii) If a competing process is required, the RP shall invite prospective resolution applicants, who meet certain criteria approved by the CoC, to submit additional resolution plans.
- (iv) The plans received are evaluated pursuant to predetermined parameters.
- (v) The resolution professional shall present the highest ranking resolution plan amongst those received from third parties to the CoC for its approval. The CoC may vote on such resolution plan, if it is significantly better than the Base Plan (i.e. better by a certain number or percentage pursuant to prespecified parameters). If it is not significantly better or the CoC does not approve it, the CoC may then initiate a competing process (where each bidder has a fixed 48 hours to increase their bid over the higher bidder by a prespecified percentage) between such highest ranking resolution plan and the Base Plan. The winning plan is to be chosen by the CoC with a vote of 66%.

***Resolution Applicants and 29A***

- The **CD / potential resolution applicants should meet the requirements as under Section 29A of the IBC as applicable to MSMEs** – which means the NPA and guarantee disqualification do not apply.

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