

# **Insolvency & Bankruptcy Code 2016**

**Recent Amendments and case studies in IBC and  
COVID 19 impact on IBC proceedings**

**ICAI Ernakulum Branch, 23<sup>rd</sup> April 2021**

# Agenda

- IBC Developments in 2020 & 2021 so far (section-wise)
  - COVID -19 Restrictions
- Pre-package Insolvency Resolution
- Case Laws (SC & NCLAT)
- CIRP & Liquidation – Key Stats
- Disciplinary Committee orders

# **IBC – 2020 & 2021 DEVELOPMENTS**

## **Section-wise Analysis**

# Section 1 :

## Short title, extent and commencement

Areas	Amendment Brief
Applicability of IBC to Jammu & Kashmir	Earlier Proviso to Sub-Section (2) “Provided that Part III of this Code shall not extend to the State of Jammu and Kashmir.”
	Proviso <u>omitted</u> by Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, w.e.f. 18-3-2020.
	<b>Now IBC is applicable to</b> <ul style="list-style-type: none"><li>✓ <b>Union Territory of Jammu &amp; Kashmir</b></li><li>✓ <b>Union Territory of Ladakh</b></li></ul> <b>w.e.f 18<sup>th</sup> March 2020</b>

# Section 4 :

## Applicability

Areas	Amendment Brief
Increase of Minimum amount of Default for CIRP initiation	<p>Earlier Minimum Default – 1 Lakh</p> <p><b>Revised Minimum Default – 1 Crore</b> [w.e.f 24<sup>th</sup> March 2020]</p> <p><i>Notification No. S.O. 1205(E) [F.No.30/9/2020-Insolvency], dated 24-03-2020</i></p>
Applicability of Part II of the Code (Pre-packaged Insolvency Resolution Process of CD)	<p>New Provision <b>inserted</b> by Ordinance No. 3 of 2021, sec.2 (w.e.f. 04-04-2021)</p> <p><b>“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 pre-packaged insolvency resolution process of corporate debtors under Chapter III-A.”</b></p> <p><b>Central Govt. Notified the minimum amount of default to be</b></p> <p><b>✓ 10,00,000/-</b></p> <p><i>Notification No. S.O. 1543(E) [F.No.30/20/2020-Insolvency], dated 09-04-2021</i></p>

# Section 5 :

## Definitions

Areas	Amendment Brief
<p>New Definitions introduced Ordinance No. 3 of 2021, sec.3 (w.e.f. 04-04-2021)</p>	<p>Section 5(2A) – Base Resolution Plan - <i>means a resolution plan provided by the corporate debtor under clause (c) of sub-section (4) of section 54A</i></p>
<p><b>Amendments</b> in Definition Ordinance No. 3 of 2021, sec.3 (w.e.f. 04-04-2021)</p>	<p>Section 5(15) – Interim Finance [addition of words – “<i>or by the corporate debtor during the prepackaged insolvency resolution process period, as the case may be</i>”]</p> <p>Earlier – Only RP arranged interim debt during CIRP is treated as Interim finance</p>
<p>New Definitions introduced Ordinance No. 3 of 2021, sec.3 (w.e.f. 04-04-2021)</p>	<p>Section 5(23A) – preliminary information memorandum - <i>means a memorandum submitted by the corporate debtor under clause (b) of sub-section (1) of section 54G</i></p> <p>Section 5(23A) – “pre-packaged insolvency commencement date” - <i>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</i></p>

# Section 5 :

## Definitions

Areas	Amendment Brief
<p>New Definitions introduced <b>Ordinance No. 3 of 2021, sec.3 (w.e.f. 04-04-2021)</b></p>	<p>Section 5(23B) – “pre-packaged insolvency resolution process costs” - <i>means</i></p> <ul style="list-style-type: none"><li><i>(a) the amount of any interim finance and the costs incurred in raising such finance;</i></li><li><i>(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 pre-packaged insolvency resolution process period, subject to sub-section (6) of section 54F;</i></li><li><i>(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;</i></li><li><i>(d) any costs incurred at the expense of the Government to facilitate the repackaged insolvency resolution process; and</i></li><li><i>(e) any other costs as may be specified;</i></li></ul>
	<p>Section 5(23C) – “pre-packaged insolvency resolution process period” - <i>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</i></p>

# Section 10A :

## Suspension of initiation of CIRP

Areas	Amendment Brief
Suspension of new CIRP cases for 1 year for COVID-19 reasons	<p>Notwithstanding anything contained in sections 7, 9 and 10, <b><u>no application for initiation of corporate insolvency resolution process</u></b> of a corporate debtor shall be filed, <b><u>for any default arising on or after 25th March, 2020</u></b> for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:</p> <p>Provided that <b><u>no application shall ever be filed</u></b> for initiation of corporate insolvency resolution process of a corporate debtor <b><u>for the said default occurring during the said period.</u></b></p> <p>Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.</p>
<b>Inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, w.e.f. 5-6-2020.</b>	<ul style="list-style-type: none"><li>✓ Extended IBC suspension by another 3 months from the 25th September, 2020 – N. No. S.O. 3265(E) dated 24.09.2020</li><li>✓ IBC Suspension extended further period of three months from the 25<sup>th</sup> December, 2020 under Section 10A – Notification No. S.O. 4638(E) dated 22.12.2020</li></ul>



# Section 11 :

## Persons not entitled to make application

Areas	Amendment Brief
New additions in the Section (in RED)	<p>The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely: -</p> <ul style="list-style-type: none"><li>(a) a corporate debtor undergoing a corporate insolvency resolution process [or a pre-packaged insolvency resolution process]; or</li><li>[(aa) a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or];</li><li>(b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or</li><li>[(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]</li><li>(c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or</li><li>(d) a corporate debtor in respect of whom a liquidation order has been made.</li></ul> <p>Explanation 1[I]. - For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.</p> <p>[Explanation II.- For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.]</p>

Inserted by Ordinance No. 3 of 2021, sec.4 (w.e.f. 04-04-2021)

# Section 11A :

Disposal of applications under section 54C and under section 7 or section 9 or section 10

Areas	Amendment Brief
New section defining priority of disposal of CIRP petition / Pre-package petition	<p>(1) Where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application, before considering any application filed under section 7 or section 9 or section 10 during the pendency of such application under section 54C, in respect of the same corporate debtor.</p> <p>(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.</p> <p>(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.</p> <p>(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.]</p>

Inserted by Ordinance No. 3 of 2021, sec.5 (w.e.f. 04-04-2021)



**Pre-Packaged Deal**  
**Debtor arranges**  
resolution  
plan with  
creditors'  
acceptance  
prior to court proceedings



**Faster, cheaper process**  
~~but can lead to malafide~~  
~~intent being~~  
**realised**



BCL

Source: Economic Times

# Pre-packaged Insolvency Resolution Process

Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021

# Chapter IIIA - Section 54A to 54P :

## PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

S.No.	Sec.No.	Headings
1	54A	Corporate debtors eligible for pre-packaged insolvency resolution process
2	54B	Duties of resolution professional before initiation of pre-packaged insolvency resolution process
3	54C	Application to initiate prepackaged insolvency resolution process
4	54D	Time-limit for completion of pre-packaged insolvency resolution process
5	54E	Declaration of moratorium and public announcement during prepackaged insolvency resolution process
6	54F	Duties and powers of resolution professional during prepackaged insolvency resolution process
7	54G	List of claims and preliminary information memorandum
8	54H	Management of affairs of corporate debtor
9	54I	Committee of creditors
10	54J	Vesting management of corporate debtor with resolution professional
11	54K	Consideration and approval of resolution plan
12	54L	Approval of resolution plan
13	54M	Appeal against order under section 54L
14	54N	Termination of pre-packaged insolvency resolution process
15	54-O	Initiation of corporate insolvency resolution process
16	54P	Application of provisions of Chapters II, III, VI, and VII to this Chapter

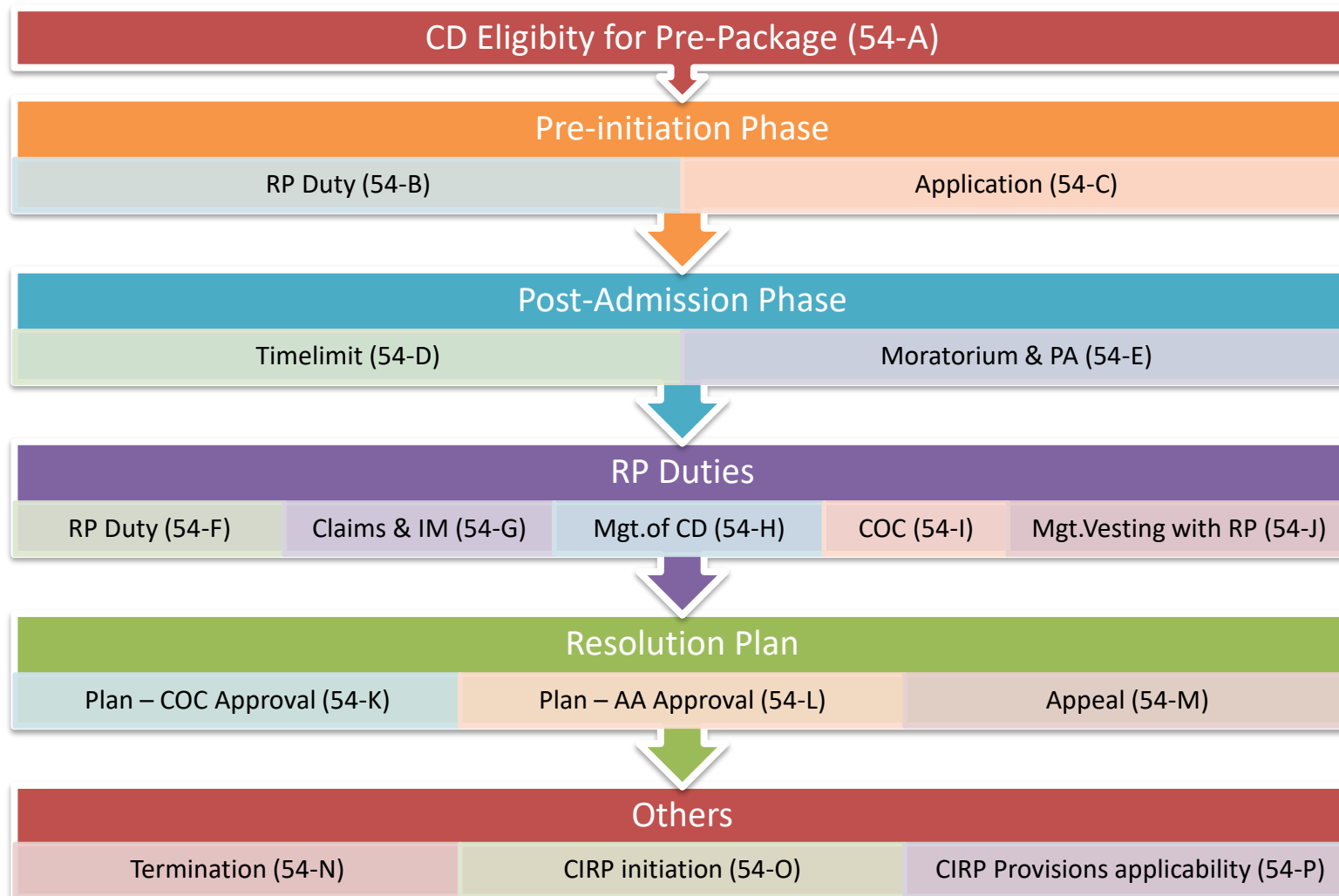
Act-  
16 New  
Sections

1 Rule &  
1 Form

1 Regulation  
& 14 Forms

# Chapter IIIA - Section 54A to 54P :

## PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS



# Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021

Rule No.	Heading
1	Short title and commencement [9 <sup>th</sup> April 2021]
2	Application
3	Definitions
4	Filing of application

---

**Form 1**

**APPLICATION BY CORPORATE APPLICANT TO INITIATE PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS UNDER CHAPTER III-A OF THE CODE**

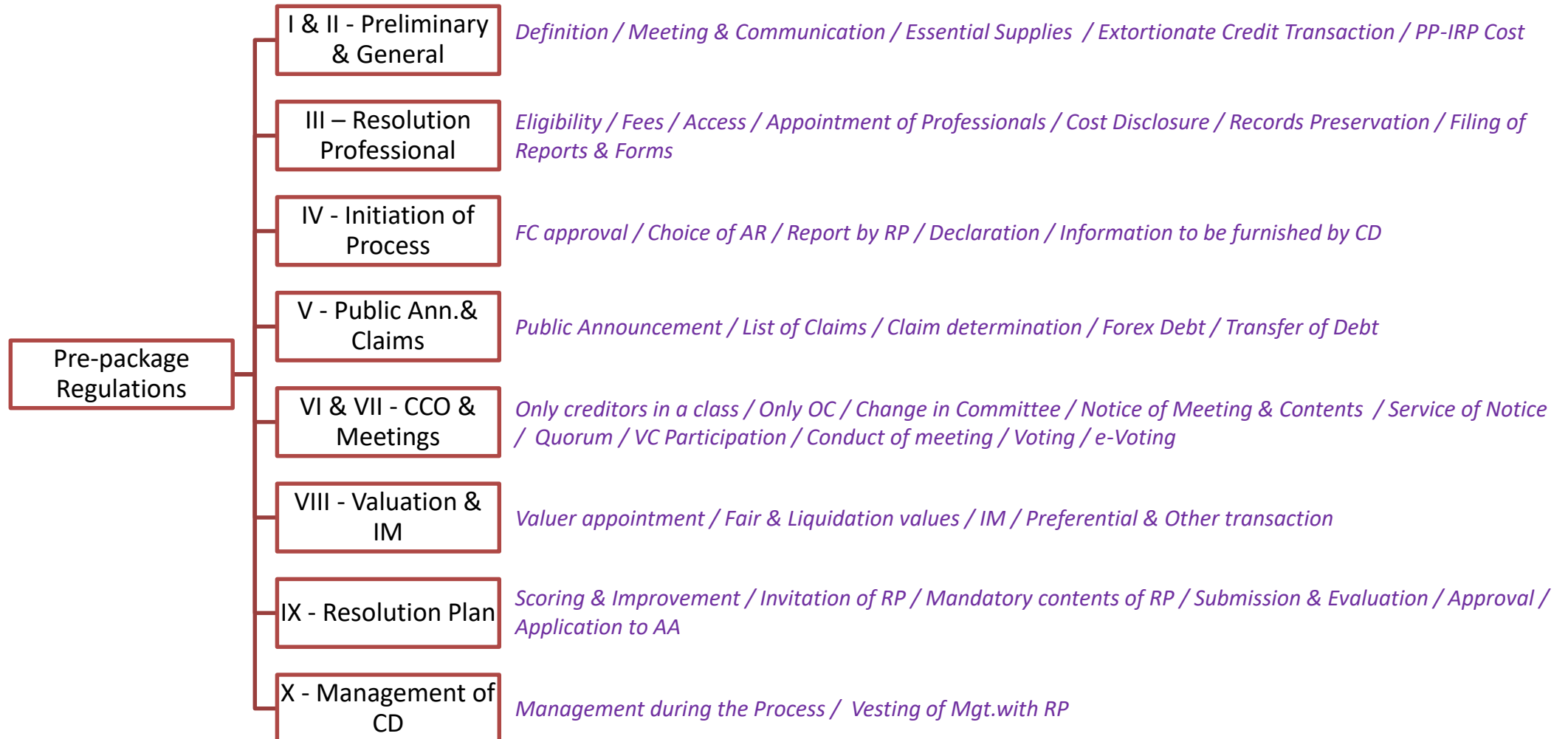
---

Fees – Rs. 15,000/-

Serve a copy of the application to IBBI

# Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021

IBBI/2021-22/GN/REG071 Dt: 9<sup>th</sup> April 2021



# IBBI (Pre-Packaged Insolvency Resolution Process) Regulations, 2021

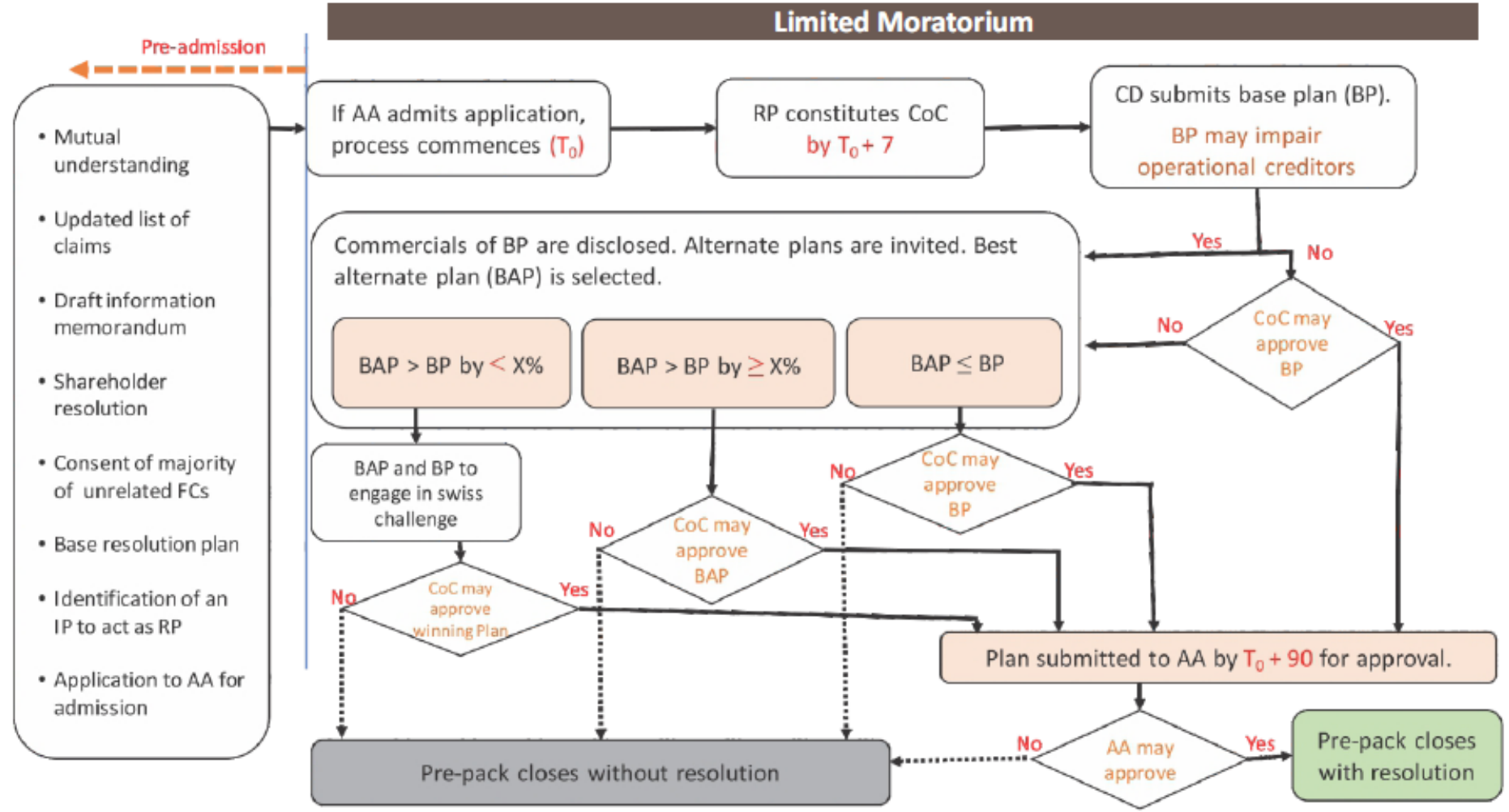
## FORMS

Form No.	Headings
P1	Written Consent
P2	List of Creditors of ____ (CD) ____
P3	Approval of Terms of Appointment of RP
P4	Approval for Initiating Pre-package Insolvency resolution Process of ____ (CD) ____
P5	Written Consent to act as Authorized Representative
P6	Declaration by Directors / Partners
P7	Declaration regarding existence of Avoidance Transaction
P8	Report of Insolvency Professional
P9	Public Announcement
P10	List of Claims
P11	Invitation for Resolution Plans
P12	Compliance Certificate
P13	Application for Termination of Pre-package Insolvency resolution Process
P14	Application for Vesting Management with Resolution Professional



# Pre-Package IR Process

Figure: A tentative process flow of proposed Pre-packaged Insolvency Resolution Process



**Debtor in possession and Creditor in control model**

(Dr. M. S. Sahoo)

# Pre-Packaged Insolvency

## Who can initiate pre-packaged Insolvency against whom ?

---

- By a corporate applicant with the Adjudicating Authority in respect of a corporate debtor classified as a Micro, Small or Medium enterprise (MSME)

S. No.	Category	Investment in plant and machinery or equipment	Turnover
1	Micro Enterprise	not exceed Rs. 1 crore	not exceed Rs. 5 Crore
2	Small Enterprise	not exceed Rs. 10 Crore	not exceed Rs. 50 Crore
3	Medium Enterprise	not exceed Rs. 50 Crore	not exceed Rs. 250 Crore

Sec 5(5) - corporate applicant means:

- (a) corporate debtor; or
- (b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or
- (c) an individual who is in charge of managing the operations and resources of the corporate debtor; or
- (d) a person who has the control and supervision over the financial affairs of the corporate debtor.

# Pre-Packaged Insolvency

## Pre-Conditions

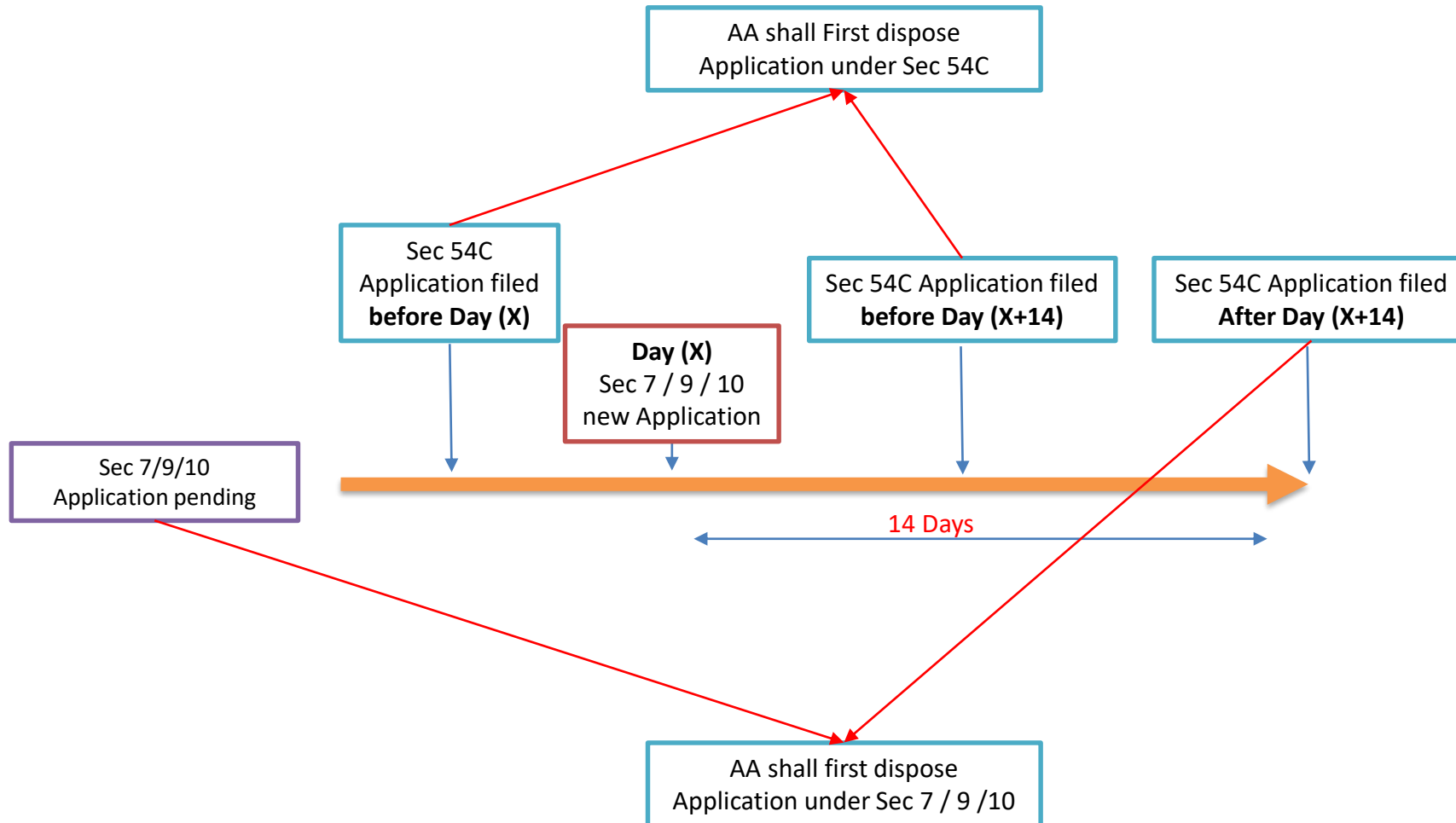
---

- **CD Commits Default [Minimum Amount - 10 Lakhs]**
  - it has not undergone pre-packaged insolvency resolution process or completed CIRP, as the case may be, during the period of 3 years preceding the initiation date;
  - it is not undergoing a CIRP;
  - no order requiring it to be liquidated is passed under section 33;
  - it is eligible to submit a resolution plan under section 29A;
- **Majority of Directors / Partners make declaration**
  - Shall file application within 90 days
  - Not being initiated to defraud any person
  - Name of the Resolution Professional Proposed [needs prior-approval of FC (non-related parties) – 66%]
- **Special Resolution (of Shareholder or at least  $\frac{3}{4}$  of partners)**
- **Approval from FC (not related parties) representing 66% of Financial Debt value**

# Pre-Packaged Insolvency

## Application admission Priority (Sec 11A)

---



# Pre-Packaged Insolvency

## Application Admission, Moratorium & Time Limit

---

- Adjudicating Authority shall dispose the application
  - Within 14 days
  - For defect rectification (7 days be provided)
- Moratorium under section 14 shall, mutatis mutandis apply
- Commencement Date – Date of AA's admission order
  - Public Announcement – within 2 days
- Appoint Registered Valuers to determine Fair / Liquidation value of CD
  - Within 3 days of commencement / 2 Valuers
- Overall Time Limit - 120 days
  - Time limit for COC approved Resolution plan to AA – 90 days

# Pre-Packaged Insolvency

## Duties of RP – Pre & Post admission

---

- Pre-admission
  - prepare a report confirming whether the corporate debtor meets the requirements of section 54A [**Form P8**]
- If application not filed / Rejected
  - RP fees payable by CD
- Post-admission
  - Confirm & Maintain updated list of Claims
  - Constitute COC (within 7 days)
  - Convene COC meetings (1st CoC within 7 days of constitution)
  - Prepare IM
  - Application for Avoidance / Fraudulent Transaction

# Pre-Packaged Insolvency

## Duties of Corporate Debtor & Management

---

- Submit to RP (within 2 days of admission)
  - List of Claims (& creditor details) / Security Interest
  - Preliminary Information Memorandum
- Management of Corporate Debtor
  - Management of affairs vests with the Board / Partners and they shall
    - Endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern;
    - Shall exercise and discharge their contractual or statutory rights and obligations in relation to the corporate debtor

# Pre-Packaged Insolvency

## Vesting of Management with RP

---

- If the affairs of the corporate debtor have been conducted
  - in a fraudulent manner; or
  - gross mismanagement of the affairs of the CD.
- COC with 66% voting resolves to vest the management of the corporate debtor with the resolution professional
- RP shall make an application to AA for vesting of management
  - AA shall pass an order based on the facts of the case



# Pre-Packaged Insolvency

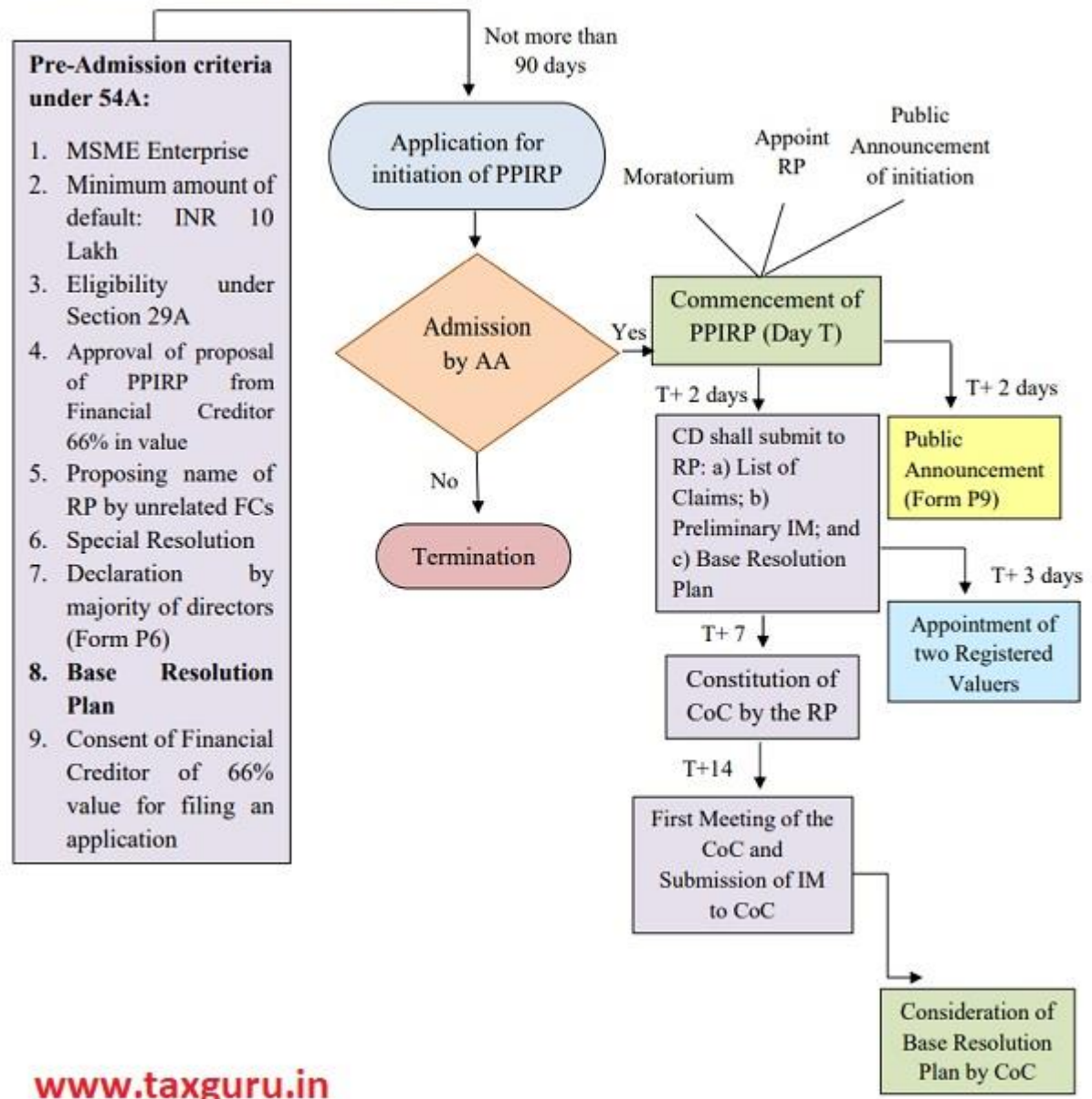
## Resolution Plan Process

---

- Pre-pack process provides for a three-stage process for consideration and approval of the resolution plan
  - Stage I - Submission of base resolution plan and its consideration
  - Stage II – Public invitation, evaluation and selection of resolution plan
  - Stage III – Competition between base resolution plan and the selected resolution plan

# Pre-Package IR Process

## Procedure of Pre-Packaged Insolvency:



# Pre-Packaged Insolvency

## Base Resolution Plan

---

- CD to submit Base Resolution Plan (BRP)
  - Within 2 days of CIRP commencement
  - Either Individually or Joint with any other person
  - CoC may provide one opportunity to revise BRP
  - CoC may approve BRP if it does not impair any claims owed by the corporate debtor to the operational creditors
  - BRP shall comply with all the requirements of sec 30

In case BRP proposes to impair any claims against the corporate debtor and CoC considers BRP for approval (after alternate plan comparisons), CoC can consider

- ✓ to dilute the promoter's shareholding, voting or control rights (and record reasons if it chooses to not do so).

# Pre-Packaged Insolvency

## Alternate Resolution Plan

---

- CoC shall invite Resolution plan
  - CoC rejects the BPR; or
  - If BRP impairs any claims owed by the corporate debtor to the operational creditors
- Eligibility Criteria / Evaluation Matrix procedures – apply mutatis mutandis

# Pre-Packaged Insolvency

## Competition - BRP vs Resolution Plan

---

- SWISS Challenge
- Significantly better / Tick size / Manner of Improving
- 48 hrs time limit

<b>Basis for Evaluation</b>	
Criteria Fixed by COC & Formula	X, Y, & Z $1.5 X + 2 Y + 2.5 Z = \text{_____}$ (Score)
Significantly Better [COC to fix a score (say 5 or 10 or...)]	Score of A shall exceed B by at least ___ score
Tick Size	Improve Plan A - Score of A shall exceed B by at least by a tick size Improve Plan B - Score of B shall exceed revised score of A by at least by a tick size

# Pre-Packaged Insolvency

## Approval of Resolution Plan

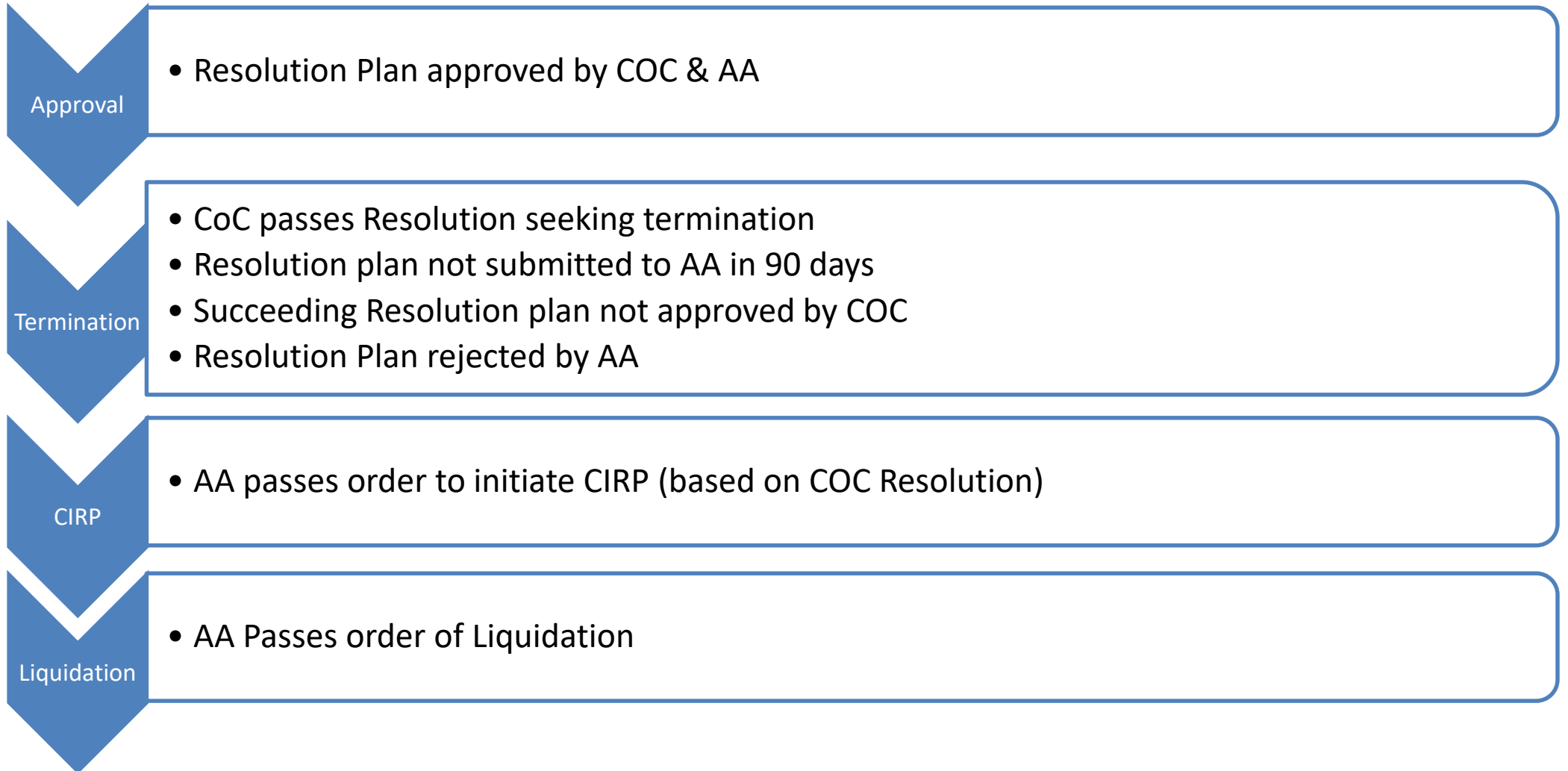
---

- COC approved Resolution Plan before AA
  - Within 30 days Approve or Reject resolution plan
- In case of 54J(2) order [vesting of management with RP] & no change in the management in the approved resolution plan – AA shall order
  - Rejecting the plan
  - Order for Liquidation
  - Pre-package process cost treated as Liquidation cost

# Pre-Packaged Insolvency

## Closure of Pre-package Process [4 ways]

---



# Prepackage IRP vs CIRP

Basis	CIRP	Pre-Package IRP
Applicability	All Company & LLP	MSME Company & LLP
Minimum Default	Rs. 100 Lakhs	Rs. 10 Lakhs
Initiation	Direct Petition to NCLT (for OC a prior notice)	Consensus of FC (not a related party) is a pre-requisite [66% voting share]
Management	IP in possession Creditor in Control	Debtor-in-possession Creditor-in- control
Public Announcement	Invitation of Claim (Form A)	Only an Intimation (Form P9)
Time Limit	180 days (+ 90 days)	120 days (No extension)
Resolution Plan	Equal Opportunity to All	First Opportunity to Promoters
Termination	Results in Liquidation	Only in case of 54J order – Liquidation Other case – Management continues CD



# Section 61 :

## Appeals and Appellate Authority

Areas	Amendment Brief
Appeal against Liquidation order / CIRP Initiation order	<p>Insertion in the Section (in Red)</p> <p>(4) An appeal against a liquidation order passed under section 33, or sub-section (4) of section 54L, or sub-section (4) of section 54N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.</p> <p>(5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-O may be filed on grounds of material irregularity or fraud committed in relation to such an order.</p>

Inserted by Ordinance No. 3 of 2021, sec.9 (w.e.f. 04-04-2021)

# Section 65 :

## Fraudulent or malicious initiation of proceedings

Areas	Amendment Brief
Penalty for Fraudulent initiation of Pre-Package IRP	<p>Insertion of New Sub section</p> <p>(3) If, any person initiates the pre-packaged insolvency resolution process—</p> <p>(a) <b>fraudulently</b> or <b>with malicious intent</b> for any purpose other than for the resolution of insolvency; or</p> <p>(b) with the <b>intent to defraud any person,</b></p> <p>the Adjudicating Authority may impose upon such person a penalty which shall <b><u>not be less than one lakh rupees</u></b>, but may <b><u>extend to one crore rupees</u></b>.</p>

Inserted by Ordinance No. 3 of 2021, sec.10 (w.e.f. 04-04-2021)

# Section 67A :

Fraudulent management of corporate debtor during pre-packaged insolvency resolution process

Areas	Amendment Brief
Penalty for Fraudulent management of Pre-Package IRP	Insertion of New section  On and after the pre-packaged insolvency commencement date, where an <b><u>officer of the corporate debtor</u></b> manages its affairs with the <b><u>intent to defraud</u></b> creditors of the corporate debtor or for <b><u>any fraudulent purpose</u></b> , the Adjudicating Authority may, on an application by the resolution professional, pass an order imposing upon any such officer, a <b><u>penalty</u></b> which shall not be less than <b><u>one lakh rupees</u></b> , but may extend to <b><u>one crore rupees</u></b> .

Inserted by Ordinance No. 3 of 2021, sec.11 (w.e.f. 04-04-2021)

# Section 77A :

## Punishment for offences related to pre-packaged insolvency resolution process

Areas	Amendment Brief
Penalty for Pre-Package IRP related offence	<p>Insertion of New section</p> <p>(1) Where—</p> <p>(a) a corporate debtor provides <u>any information the application</u> under section 54C which is <u>false in material particulars</u>, knowing it to be false or omits any material fact, knowing it to be material; or</p> <p>(b) a corporate debtor provides any information in the <u>list of claims or the preliminary information memorandum</u> submitted under sub-section (1) of section 54G which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material; or</p> <p>(c) any person who <u>knowingly and wilfully authorised or permitted the furnishing of such information</u> under sub-clauses (a) and (b), such corporate debtor or person, as the case may be, shall be <b>punishable with imprisonment</b> for a term which shall not be less than <b>three years</b>, but which may <b>extend to five years or</b> with <b>fine</b> which shall not be less than <b>one lakh rupees</b>, but which may extend to <b>one crore rupees, or with both</b>.</p> <p>(2) If a <u>director or partner</u> of the corporate debtor, as the case may be, <u>deliberately contravenes</u> the provisions of Chapter III-A, such person shall be <b>punishable with imprisonment</b> for not less than three years, but which may extend to five years, <b>or with fine</b> which shall not be less than one lakh rupees, but which may extend to one crore rupees, <b>or with both</b>.</p> <p>Explanation.—For the purposes of this section, and sections 75, 76 and 77, an application shall be deemed to be false in material particulars in case the facts mentioned or omitted in the application, if true, or not omitted from the application as the case may be, would have been sufficient to determine the existence of a default under this Code.</p>

Inserted by Ordinance No. 3 of 2021, sec.13 (w.e.f. 04-04-2021)

# CPE for IP's

Areas	Amendment Brief
Effective date	✓ 1 <sup>st</sup> Jan 2020
Minimum CPE per Calender Year	✓ 10 Hours
Minimum CPE per 3 year block	✓ 60 Hours for three calendar year block (2020-2022)
Exemption	✓ Not applicable for IP aged above 65 years

# NCLT – Reconstituted Benches

Location	Principle Bench	Division Bench	Single Member Bench
New Delhi	1	5	
Ahmedabad		2	
Allahabad			1
Bengaluru		1	
Chandigarh		1	
Chennai		2	
Guwahati		1	
Hyderabad		2	1 (Amaravati)
Kolkatta		2	
Mumbai		5	
Jaipur		1	
Cuttack		1	
Kochi			1
Indore		1 (Ahmd)	

28  
Benches

Pronounced by Supreme Court

**CASE LAWS**

# Supreme Court Pronouncements - 2021

Citation	Parties	Facts / Held (brief)
(2021) ibclaw.in 55 SC	Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal & Anr. [15.04.2021]	Hon'ble Supreme Court set aside several judgments of NCLAT and one judgment of Calcutta High Court and held that an <b>entry made in a balance sheet of a corporate debtor is amount to an acknowledgement of liability</b> under Section 18 of the Limitation Act.
(2021) ibclaw.in 54 SC	Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. [CD-Orissa Manganese & Minerals Ltd.] [13.04.2021]	<p>(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on all stake holders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished;</p> <p>(ii) 2019 amendment to Section 31 of the I&amp;B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&amp;B Code has come into effect;</p> <p>(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.</p>



# Supreme Court Pronouncements - 2021

Citation	Parties	Facts / Held (brief)
(2021) ibclaw.in 52 SC	Indus Biotech Private Limited Vs. Kotak India Venture (Offshore) Fund & Ors. [26.03.2021]	Even if an application under <b>Section 8 of the Arbitration Act, 1996</b> is filed, the <b>Adjudicating Authority has a duty to advert to contentions</b> put forth on the application filed under Section 7 of IBC, examine the material placed before it by the financial creditor and record a satisfaction as to whether there is <b>default or not</b>
(2021) ibclaw.in 53 SC	Laxmi Pat Surana Vs. Union Bank of India [26.03.2021]	Whether an action under Section 7 of the Code can be initiated by the Bank against a <b>Corporate Person (being a Corporate Debtor) concerning Guarantee</b> offered by it in respect of a loan account of the Principal Borrower, who had committed default and is not a “Corporate Person” within the meaning of the Code? [Held – YES]
(2021) ibclaw.in 46 SC	Arun Kumar Jagatramka Vs. Jindal Steel And Power Ltd. & Anr. [15.03.2021]	The Promoter, if <b>ineligible u/s 29A</b> cannot make an application for Compromise & Arrangement <b>u/s 230</b> of the Companies Act, 2013

# Supreme Court Pronouncements - 2021

Citation	Parties	Facts / Held (brief)
(2021) ibclaw.in 37 SC	IN RE: Cognizance for Extension of Limitation [Sou Motu WP(C)-03/2020-SC] [08.03.2021]	In computing the period of limitation for any suit, appeal, application or proceeding, the period from <b>15.03.2020 till 14.03.2021</b> shall stand excluded
(2021) ibclaw.in 24 SC	P. Mohanraj & Ors. Vs. M/S. Shah Brothers Ispat Pvt. Ltd. [ <i>CD: Diamond Engineering Chennai Pvt. Ltd.,</i> ] [01.03.2021]	<u>Section 138/141 proceeding</u> against a corporate debtor is covered by Section 14(1)(a) of the IBC Such proceedings can <u>continue against erstwhile Directors/persons in charge</u> of and responsible for the conduct of the business of the corporate debtor
(2021) ibclaw.in 26 SC	Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. [ <i>CD: Jaypee Infratech Ltd.,</i> ] [02.03.2021]	SC directs immediate release of the Interim Resolution Professional of Jaypee Infratech Ltd. who is presently in custody of UP Police

# Supreme Court Pronouncements - 2021

Citation	Parties	Facts / Held (brief)
(2021) ibclaw.in 36 SC	Kridhan Infrastructure Pvt Ltd (Now known as Krish Steel and Trading Pvt Ltd) Vs. Venkatesan Sankaranarayan & Ors [ <i>CD: Tecpro Systems Ltd.,</i> ] [01.03.2021]	Failure to implement the commitments of the Resolution Plan Liquidation Ordered is Correct [Forfeited Rs. 20 Crs]
(2021) ibclaw.in 08 SC	Ramesh Kymal Vs. M/s. Siemens Gamesa Renewable Power Private Limited [09.02.2021]	Whether <u>Section 10A</u> would stand attracted to a situation where the application under Section 9 was filed prior to <u>05.06.2020</u> , when Section 10A was inserted, and in respect of a <u>default which has taken place after 25.03.2020</u> [Held Yes]
(2021) ibclaw.in 03 SC	Phoenix Arc Pvt. Ltd. Vs. Spade Financial Services Ltd. & Ors. [ <i>CD: AKME Projects Ltd.,</i> ] [01.02.2021]	Those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2) should be considered as being covered by the exclusion from CoC

# NCLAT Pronouncements

- Even if vehicle hypothecation registered under the Motor Vehicles Act, 1988, it is mandatory to register with ROC to claim as Secured Creditor under Section 52 of IBC
  - Volkswagen Finance Private Limited Vs. Shree Balaji Printopack Pvt. Ltd – NCLAT New Delhi
  - Pending before SC for final decision [Civil Appeal 3858 of 2020]
- If the Resolution Plan contemplates a change in the nature of business of Corporate Debtor to another line when the existing business is obsolete or non-viable, it cannot be construed that the Resolution Plan is not feasible or viable
  - Next Orbit Ventures Fund Vs. Print House (India) Pvt. Ltd. – NCLAT New Delhi
- MSME certificate is required to take benefit of MSME under Section 240A of IBC, the Resolution Professional & AA are not expected to go into accounts and investigate if and in which category an application falls under Section 7 of MSME Act
  - Ashish Mohan Gupta Vs. The Liquidator of M/s. Hind Motors India Ltd (In Liquidation) – NCLAT New Delhi
- Once a Secured Creditor opts to relinquish its security interest, the distribution of assets would be governed by the provision engrafted in Section 53(1)(b)(ii) whereunder all Secured Creditors having relinquished security interest rank equally
  - Technology Development Board Vs. Mr. Anil Goel Liquidator of Gujarat Oleo Chem Limited (GOCL) – NCLAT New Delhi
- NCLAT denies to accept belated claim after the Resolution Plan as approved by the COC has been submitted to the Adjudicating Authority for approval
  - Office of the Asst. State Tax Commissioner State Tax Department, Government of Maharashtra Vs. Shri Parthiv Parikh Resolution Professional, M/s. Jaihind Projects Ltd. – NCLAT New Delhi

# **IBC – CIRP/LIQUIDATION - STATISTICS**

# No.of CIRPs(*upto Dec-20*)

**Table I: Corporate Insolvency Resolution Process**

(Number)

Year / Quarter	CIRPs at the beginning of the Period	Admitted	Closure by				CIRPs at the end of the Period
			Appeal/ Review/ Settled	Withdrawal under Section 12A	Approval of Resolution Plan	Commencement of Liquidation	
2016 - 17	0	37	1	0	0	0	36
2017 - 18	36	706	93	0	20	91	538
2018 - 19	538	1152	149	96	80	305	1060
Apr - Jun, 2019	1060	301	51	32	26	96	1156
Jul - Sep, 2019	1156	588	57	50	34	156	1447
Oct - Dec, 2019	1447	628	112	60	42	153	1708
Jan - Mar, 2020	1708	444	93	56	39	136	1828
Apr - Jun, 2020	1828	84	12	27	20	26	1827
Jul - Sep, 2020	1827	95	25	34	33	81	1749
Oct - Dec, 2020	1749	104	8	23	23	82	1717
<b>Total</b>	<b>NA</b>	<b>4139</b>	<b>601</b>	<b>378</b>	<b>317</b>	<b>1126</b>	<b>1717</b>

These CIRPs are in respect of 4060 CDs.

This excludes 1 CD which has moved directly from BIFR to resolution.

Source: Compilation from website of the NCLT and filing by Insolvency Professionals.

Source: IBBI newsletter (Oct-Dec-20)

# CIRP – Current Status of all CIRP's ? (*upto Dec-20*)

**Table 5: Status of CIRPs as on December 31, 2020**

Status of CIRPs	No. of CIRPs
Admitted	4139
Closed on Appeal / Review / Settled	601
Closed by Withdrawal under section 12A	378
Closed by Resolution	317
Closed by Liquidation	1126
<b>Ongoing CIRP</b>	<b>1717</b>
> 270 days	1481
> 180 days ≤ 270 days	69
> 90 days ≤ 180 days	71
≤ 90 days	96

Source: IBBI newsletter (Oct-Dec-20)

# Liquidation – Status(*upto Dec-20*)

**Table 9: Status of Liquidation Processes as on December 31, 2020**

Status of Liquidation	Number
<b>Initiated</b>	<b>1126*</b>
Final Report submitted#	194
Closed by Dissolution	94
Closed by Going Concern Sale	4
Compromise / Arrangement	2
<b>Ongoing</b>	<b>932</b>
> Two years	208
> One year ≤ Two years	413
> 270 days ≤ One year	129
> 180 days ≤ 270 days	31
> 90 days ≤ 180 days	70
≤ 90 days	81

\*This excludes 10 cases where liquidation order has been set aside by NCLT / NCLAT / Supreme Court.

# This includes 10 cases where application for early dissolution has been filed with the NCLT.

Source: IBBI newsletter (Oct-Dec-20)



# Disciplinary Committee – Orders (Oct-Dec)

Sl.	Order against (IP)	Professional Member of	Contraventions Found	Directions
1	Mr. Sundresh Bhat	IIIP ICAI	Payment to some creditors in preference over others during moratorium.	A penalty equal to 25% of the fee he received in the process.
2	Mr. Anil Goel	IIIP ICAI	Defiance of orders of the AA.	Interim Order: Debarred from undertaking any new assignment, under the Code for 90 days.
3	Mr. Manmohan Jhawar	IIIP ICAI	Failure in making efforts to take custody of the assets of the CD.	Shall not seek or accept any process or assignment or render any services under the Code for a period of six months.
4	Mr. Kamlesh Kumar Singhania	ICSI IIP	Accepted claims arising post CIRP commencement period as revised claim.	Shall undergo pre-registration educational course from his IPA.
5	Mr. Ajay Gupta	IIIP ICAI	Handing over the management of the CD back to the ex-management.	Shall not seek or accept any process or assignment or render any services under the Code for a period of six months.
6	Mr. Arun Mohan	ICSI IIP	FIR registered with CBI.	Shall not seek or accept any process or assignment in any capacity under the Code, till he is exonerated of the charges.
7	Mr. Sanjay Kumar Aggarwal	IIIP ICAI	FIR registered with CBI	Shall not seek or accept any process or assignment in any capacity under the Code, till he is exonerated of the charges.
8	Mr. Balaknath Bhattacharya	IPA ICAI	Failure to determine avoidance transactions and file applications in this	Shall not seek or accept any process or assignment or render any services under the Code for regard. a period of six months.
9	Mr. Sonu Jain	IIIP ICAI	Appointing unregistered valuers for valuation, delay in disclosures etc.	Directed to take reasonable care and be careful, and diligent and act strictly as per law.

Source: IBBI newsletter (Oct-Dec-20)

# Thank You

CA. M. Suresh Kumar

+91 73730 52341

[suresh@sppgroups.com](mailto:suresh@sppgroups.com)

SPP & Co, Chartered Accountants, No.27/9, Nivedh Vikas, Pankaja Mill Rd, Puliyakulam, Coimbatore, Tamilnadu – 641 045