

**Handbook on
Pre-packaged Insolvency Resolution Process
under
The Insolvency and Bankruptcy Code, 2016**



Committee on Insolvency & Bankruptcy Code
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

The essence as envisioned under the Insolvency and Bankruptcy Code, 2016 is to provide a time bound framework for insolvency resolution process in India. Over the last five years since the implementation of the Code, several developments have taken place and the Code is continuously evolving to cater to the emerging issues. One such significant development that took place last year is the amendment in the Code to introduce Pre-packaged Insolvency Resolution Process (PPIRP) for Micro, Small and Medium Enterprises (MSMEs) in the country.

MSMEs as we know, contribute significantly to the country's economy in terms of Gross Domestic Product (GDP) and providing ample employment to a large size of the population. Due to COVID-19 pandemic, the businesses of MSMEs were also impacted leading to financial distress. To mitigate this distress and to provide an efficient alternative insolvency resolution framework, PPIRP was introduced with the objective of ensuring quicker, cost effective and value maximising outcomes and for preservation of jobs so that continuity of business operations is assured.

I commend the Committee on Insolvency & Bankruptcy Code of ICAI for taking this important initiative in bringing out the publication - **Handbook on Pre-packaged Insolvency Resolution Process under The Insolvency and Bankruptcy Code, 2016** to help the professionals to understand the provisions relating to PPIRP under the Code and also to know about its applicability and intricacies.

I congratulate the entire Committee and particularly appreciate the efforts put in by CA. Durgesh Kumar Kabra, Chairman, Committee on Insolvency & Bankruptcy Code and CA. Prakash Sharma, Vice- Chairman, Committee on Insolvency & Bankruptcy Code in bringing out this important publication at this juncture.

I am sure that this publication would be of great help to the members, especially to insolvency professionals and other stakeholders.

CA. Nihar N. Jambusaria
President ICAI

Date: 19th January, 2022

Place: New Delhi

Preface

Pre-packaged Insolvency Resolution Process (PPIRP) under the Insolvency and Bankruptcy Code, 2016 was introduced by the promulgation of The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 4th April, 2021. It is a hybrid framework that incorporates both informal and formal insolvency proceedings for corporate debtors 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 benefits as envisaged under PPIRP are assured continuity of businesses for corporate debtor, maximum assets realization for financial creditors, rights protection for operational creditors and lesser burden on Adjudicating Authority.

The introduction of PPIRP is aimed to relieve the financial distress faced by MSMEs caused by the pandemic and also to address the specific requirements relating to the resolution of their insolvency due to their unique nature of businesses and simpler corporate structure. Further the Central Government specified 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. Some of the features of PPIRP are that it shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date and the management of affairs of the corporate debtor shall continue to be vested with the Board of Directors or the partners, subject to certain conditions and restrictions.

Considering the importance of PPIRP under the Code, the Committee on Insolvency & Bankruptcy Code of ICAI has taken the initiative to bring out this publication - **Handbook on Pre-packaged Insolvency Resolution Process under The Insolvency and Bankruptcy Code, 2016** so as to help members appreciate and understand the provisions relating to PPIRP under the Code, the timelines for completion of processes and the responsibilities of Corporate Debtor, Resolution Professional and Creditors.

We take this opportunity in thanking the President of ICAI, CA. Nihar N. Jambusaria and Vice President of ICAI, CA. (Dr) Debashis Mitra for their support and encouragement in bringing out this publication.

We would like to thank all the Committee Members for their guidance in bringing out this publication.

We would like to sincerely appreciate and thank the Group of Insolvency Professionals- CA. Snehal Kamdar, CA. Apoorva Bookseller, CA. Mohit Bipinchandra Adatiya, CA. Amit Chandrashekhar Poddar and CA. Rajkumar I. Kothari who prepared the Draft of the publication under the Convenorship and guidance of Chairman of the Committee.

We appreciate the efforts put in by Shri Rakesh Sehgal, Director, Directorate of Corporate and Economic Laws, ICAI, Ms. S. Rita, Secretary, Committee on Insolvency & Bankruptcy Code, ICAI, CA. Sarika Singhal, Deputy Secretary, ICAI and the Committee Secretariat comprising of CA. Abhishek Tarun and Shri Eshaan Kambiri for providing their technical and administrative support in bringing out this publication.

We are sure that the members of the profession, industries and other stakeholders will find the publication helpful.

CA. Durgesh Kumar Kabra
Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

CA. Prakash Sharma
Vice- Chairman
Committee on Insolvency &
Bankruptcy Code, ICAI

Date: 18th January, 2022

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Chapter 1

Introduction

The Insolvency and Bankruptcy Code, 2016 (“IBC”) was introduced to provide a framework for time-bound process for insolvency resolution and wherever not possible ensuring ease of exit by liquidation process. The IBC is an all-encompassing law that deals with the insolvency of not only Corporate Persons, but partnership firms and individuals as well. The emergence of the Insolvency and Bankruptcy Code, 2016 has led to a turnaround in the corporate distress resolution framework of India. Under the IBC the standard procedure is the Corporate Insolvency Resolution Process (CIRP).

The Regulators are continuing their drive to improve ‘insolvency resolution process’ and ‘ease of doing business’ further by enriching the insolvency regime with innovative options and features, with primary focus on time bound rescue of businesses as going concerns. During this time of pandemic several important measures were rolled out such as moratorium on loan repayments, infusion of liquidity into the banking system to provide credit to financially distressed entities, relief in banking norms for asset classification, suspension of filing of insolvency proceedings by the creditors.

The financial slowdown during the COVID-19 pandemic saw a scarcity of resolution applicants for the revival of the Corporate Debtor, stretching the stress period and also affecting the creditor’s expectations. It was observed that the completion of insolvency proceedings generally exceeded the stipulated timelines as given under the IBC and during this adversity which has been causing hardships to several businesses in India, the number of insolvency proceedings are likely to rise.

In the Indian context, most of the organizations are largely promoter driven. In many cases the MSME borrowers were suffering due to the elongated Corporate Insolvency Resolution Process and closure of their existing units. The Government of India amended and widened the definition of MSMEs to refine the business scenario for Indian enterprises and to change the criteria to classify MSMEs to “Investment in Plant and Machinery and Annual Turnover” to bring more and more enterprises in the ambit of the definition of MSMEs.

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It was considered necessary to urgently address the specific requirements of the MSMEs relating to the resolution of their insolvency, due to the unique nature of their businesses and simpler corporate structures.

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 was promulgated on 4th April, 2021 in the backdrop of the Covid-19 pandemic, basically to rescue the MSMEs, given that the pandemic exposed many of such businesses to severe financial distress.

Therefore, introduction of Pre-packaged Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 by this Ordinance has emerged as an innovative corporate rescue method that incorporates the virtues of both informal (out-of-Court) and formal (judicial) insolvency proceedings. Although it involves an informal mechanism, it still comes within the purview of the Courts and Tribunals for their ultimate sanctioning which would in turn be binding on the parties. This scheme allows the Corporate Debtor and its Creditors to negotiate the terms of an insolvency resolution plan prior to the commencement of the formal insolvency process and which allows formal process to be implemented at great speed.

The objective of this Pre-packaged Insolvency Resolution Process is to provide an “efficient alternative insolvency resolution process” for corporate debtor classified as micro, small and medium enterprises (“MSMEs”) which are covered under the definition of “MSME” as defined in Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006. It aims to provide a cost-effective and value-maximizing mechanism for resolving insolvency with minimum disruption to business operations and thus preserving jobs.

Earlier, recognizing the need for protecting smaller businesses, the Government of India, by way of a notification dated 24th March 2020, had also raised the minimum threshold for initiating corporate insolvency resolution process (CIRP) to Rs.1.00 crore from earlier Rs.1.00 lakh. This was followed by a 1-year suspension on initiation of any new insolvency proceedings for defaults occurring on or after 25th March 2020, irrespective of the size of default.

Chapter 2

Highlights related to the Pre-packaged Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 (IBC)

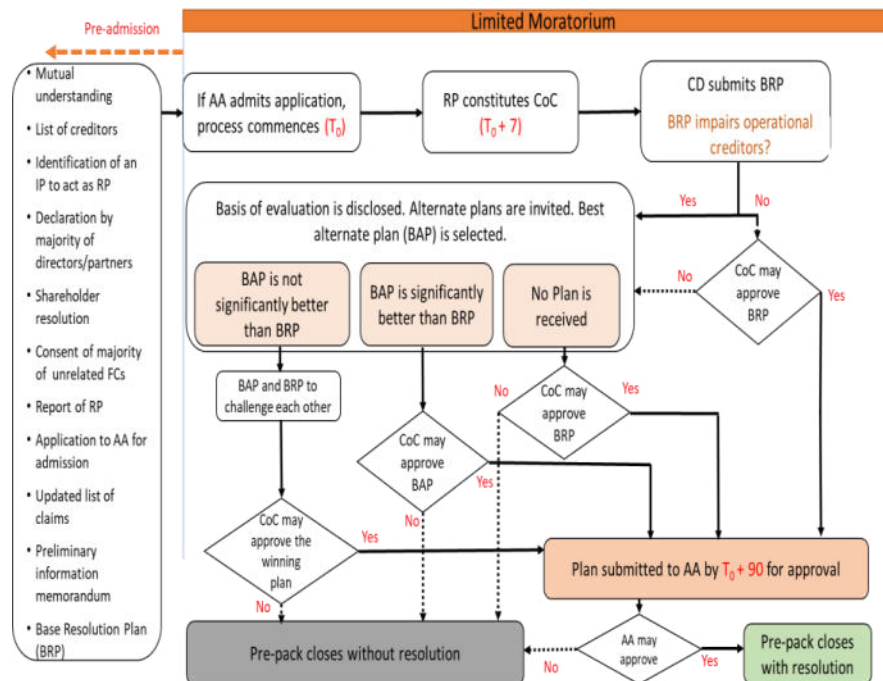
1. The Pre-packaged Insolvency Resolution Process (PPIRP) is specifically introduced in respect of a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and medium Enterprises Development Act, 2006. It has the advantages of involving both informal and formal processes.
2. Pre-packaged Insolvency Resolution process is a boon to the MSME sector in India. It is an opportunity for promoters to sustain their business with amicable restructuring between Creditors and Corporate Debtor which is with judicial approval by Adjudicating Authority.
3. Corporate Debtor (CD) can file the application with minimum default of Rs. Ten Lakhs, to initiate the process as specified through the Notification dated 9th April 2021.
4. Eligible Corporate Debtor for PPIRP
 - a. Not undergone PPIRP or
 - b. Not completed CIRP during the period of 3 years preceding the initiation date. or
 - c. Not undergoing CIRP
 - d. No order for liquidation of Corporate Debtor is passed
 - e. Corporate Debtor is eligible to submit a Resolution Plan under section 29A of IBC
 - f. Financial Creditors have proposed an Insolvency Professional and approved (with 66% voting by value of financial debt) the person to act as Resolution Professional for conducting PPIRP
 - g. Majority Directors of the Company / Partners of the LLP have made declaration in specified manner

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- h. Members of the Corporate Debtors have passed the Special Resolution or at least three-fourth of the total No. of partners have passed the resolution approving the filing of an application for initiation of PPIRP.
- 5. No order requiring it to be liquidated is passed under section 33.
- 6. Following structural changes, amendments, insertions have been made to the Insolvency & Bankruptcy Code 2016.
 - a. Following sections have been amended through the ordinance Section 4, 5, 11, 11A, 33, 34, 61, 65, 67A, 77A, 208, 239, 240 and 240A
 - b. A new Chapter IIIA containing section 54A to 54P has been added to the IBC 2016
 - c. New definitions under section 5 have been added related to Pre-packaged Insolvency Resolution Process like – “Base resolution plan”, “Preliminary information memorandum”, “Pre-packaged insolvency commencement date”, “Pre-packaged insolvency resolution process costs”, “Pre-packaged insolvency resolution process period”, etc.
 - d. New Penalties for fraudulent Management of Corporate Debtor has been specified in section 67A whereas offences related to PPIRP will be taken care of by Section 77A.
- 7. Time limit to complete the entire process (PPIRP) is One Hundred and twenty days from Pre-packaged insolvency commencement date.
- 8. Resolution Professional shall submit the Resolution Plan within the Ninety days from Pre-packaged insolvency commencement date.
- 9. No extension in the PPIRP Resolution process as like in CIRP.
- 10. Benefits of Pre-Packaged Insolvency Resolution Process-
 - a. Combination of informal (that offers flexibility) and formal process (Statutory benefits)
 - b. Cost- effective
 - c. Quicker Resolution
 - d. Value maximising outcomes for all the stakeholders
 - e. Minimum disruption to the continuity of MSMEs business

Highlights related to PPIRP under IBC

- f. Preservation of jobs
- g. Debtor-in-possession model
- h. Availability of moratorium
- i. Oversight of the process by Resolution Professional



(Source: IBBI- Information Brochure on Pre-Packaged Insolvency Resolution Process)

Chapter 3

Prepacks Practices in some of the Countries

Pre-packaged Insolvency Resolution Process is a new concept introduced in India. The same is already in practice in various countries. The details of pre-pack processes (prepacks) being followed in some of the countries are given below:

United Kingdom	
•	Pre-pack sale is an arrangement under which the sale of all or part of a company's business or assets is negotiated with a purchaser prior to the appointment of an Administrator and the Administrator affects the sale immediately on, or shortly after, appointment.
•	The Administrator is primarily required to rescue the company itself. He is required to record the reasons for opting for a pre-pack sale considering other alternatives available.
•	The Administrator is required to provide a detailed disclosure statement to the creditors explaining why a pre-pack sale has been undertaken and demonstrating how he has acted with due regard to their interests.
•	On a review of effectiveness of voluntary measures introduced in 2015, the UK Government observed the limited use of the pre-pack pool designed to give confidence to creditors and other stakeholders that a connected party pre-pack sale is appropriate.
•	It has proposed to introduce new regulations to require scrutiny of pre-pack sales to connected parties, to build on the existing voluntary measures and to mitigate any adverse consequences in the increased use of pre-pack sales arising from the pandemic.
•	Thus, the pre-pack which started as an informal arrangement between the parties is gradually getting regulated to address the emerging concerns.

Prepacks Practices in Some of the Countries

United States of America	
•	The US Bankruptcy Code facilitates three forms of pre-packs, namely, pre-plan sales under section 363, Pre-packaged bankruptcy proceedings and pre-arranged bankruptcy proceedings under Chapter 11.
•	Pre-plan sales is somewhat similar to pre-pack sales in UK. It allows a bankruptcy trustee, equivalent of Administrator in UK, to sell all or substantial assets of a Corporate Debtor once it enters reorganization proceedings.
•	The law does not prescribe either any standards or guidelines that guide judicial evaluations of pre-plan sales or the mode in which a sale should take place. Accordingly, Courts have developed their own standards to adjudicate applications and the sale typically involves a public auction and a public sale process.
•	In the case of Pre-packaged bankruptcy proceeding, the Corporate Debtor reaches an agreement on the terms of a plan with key creditors and solicits approval of the agreement from specific classes of creditors. It circulates the plan with a disclosure statement to all creditors. With the requisite votes in favour of the plan, the Corporate Debtor files a Chapter 11 petition.
•	In the case of pre-arranged (also known as pre-negotiated) bankruptcy proceedings, the Corporate Debtor reaches an agreement with its key creditors but does not circulate the plan or solicit actual votes on the plan prior to filing Chapter 11 petition. The solicitation of votes and confirmation of the plan are sought after filing of petition.
•	In either proceeding, the plan must be accepted by every class of impaired parties with at least two-thirds in amount and more than one-half in number accepting the plan.
Singapore	
•	Section 211I of the Companies Act empowers the Court to approve a compromise or arrangement.
•	The Singapore model gives very wide discretionary powers to the Court for approving the scheme of arrangement even if no meeting of creditors is held to seek their vote.

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•	The Insolvency, Restructuring, and Dissolution (Amendment) Bill, 2020 proposes to introduce a new pre-pack scheme for micro and small companies in the COVID-19 environment.
•	An automatic moratorium would come into place when a company is accepted into the scheme.
•	There would be no requirement to convene a meeting of the company's creditors. Instead, the Court can approve the scheme, provided that the company can satisfy the Court that if a meeting had been called, a majority representing at least two-thirds in value of the creditors would have approved the proposed scheme.
France	
•	Under the French law, there are four categories of proceedings that can be used depending upon the financial situation of the Corporate Debtor. They are given below:
(1)	<u>Mandat ad-hoc</u> : Operational companies with financial stress but not insolvent, can take recourse to this procedure without the existing management losing control over the assets of the Corporate Debtor. The Court appoints a mediator upon the request of the Corporate Debtor. This procedure has no time limit.
(ii)	<u>Conciliation</u> : A Corporate Debtor which is insolvent for less than 45 days or on anticipation of legal, economic, or financial stress, may request the Tribunal for initiation of the Conciliation procedure. The Conciliation proceedings are confidential in nature as only the judgement approving the agreement is made public. Conciliation cannot last for more than five months.
(iii)	<u>Safeguard (sauvegarde)</u> : This process is available to Corporate Debtors approaching insolvency. The object of the proceedings is to reorganize the Corporate Debtor through a reorganization plan. It is a debtor-in possession model proceeding. The time available for safeguard proceedings is 6 months which may be extended once, by a reasoned ruling. The scope of the reorganization plan is like that of resolution plan under the Code. It allows for debt write-offs, debt rescheduling, debt-to-equity swaps, cash contributions to the Corporate Debtor, by existing stakeholders or newcomers, by way of debt or equity.

Prepacks Practices in Some of the Countries

(iv)	<u>Insolvency procedure (redressementJudicaire)</u> : It consists of two proceedings, namely, reorganization proceedings and liquidation. Recourse to these proceedings is available only where the Corporate Debtor has stopped making payments for longer than 45 days. Reorganization proceedings can be initiated by Corporate Debtor, its creditors or public prosecutor. The proceedings have the same objective as safeguard proceedings. The Court usually appoints an administrator to assist the promoters/directors in management of the Corporate Debtor and ensure the protection of the interest of the creditors. The process ends with (i) repayment of the debt, (ii) sale to third party buyer, or (iii) liquidation of assets.
Canada	
•	A management led Pre-packaged sale of a financially distressed company as a going concern is often resorted, the proceeds of which are then used to make a proposal to creditors.

(Source: Report of the Sub-committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process)

Chapter 4

Initiation of the PPIRP

A. Approval by Financial Creditors

To initiate the process of PPIRP, corporate applicant shall convene the meeting of the financial creditors, who are not related parties of the corporate debtor.

Notice mentioning date, time and venue of the meeting and list of creditors along with amount due shall be served in the **Form P2** to the financial creditors who are not related at least **five days** before the date of the meeting unless a **shorter** time agreed by **all of them**.

Financial Creditors who are not related and have not less than ten per cent of the value of the total financial debt of such creditors may propose names of insolvency professionals for the purpose of clause (e) of sub-section (2) of section 54A i.e. appointment of Resolution Professional.

The approval of the terms of appointment of Resolution Professional under clause (e) of sub-section (2) of section 54A shall be in Form P3. It shall include

- (a) fee payable to him for performing duties under sub-section (1) of section 54B;
- (b) fee payable to him and expenses to be incurred by him for conducting the process; and
- (c) fee payable to him and expenses to be incurred by him in case management of the corporate debtor is vested with him under section 54J.

Approval for filing of application sub-section (3) of section 54A shall be in Form P4.

In case where Corporate Debtor has no Financial Creditor or all the financial creditors are related parties, in such situation shall convene the meeting of Operational creditors, who are not related parties.

B. Choice of Authorised Representative

On the examination of Form P2, the Resolution Professional shall ascertain the class(es) of creditors if any. For representation of creditors in class

identify three Insolvency Professional who fulfil the condition as specified in the Regulation 15.

Resolution professional shall obtain the consent of the insolvency professionals identified to act as the authorised representative of creditors in the class in Form P5;

Resolution Professional will seek choice of the creditors in class for an Insolvency Professional who has consented. Provided that the creditors shall communicate their choice within three days.

Resolution Professional shall select the Insolvency professional who is the choice of the highest no. of creditors in the class to act as the Authorised Representative of the creditors of the respective class.

Resolution Professional shall inform the name of the Insolvency Professional along with his consent in form P5, to the Corporate Applicant.

C. Two types of declaration shall be provided

1. Majority of the directors or partners of the Corporate Debtor making the Declaration under Section 54A(2)(f) in the form P6 stating that –
 - Corporate debtor shall file an application for initiating PPIRP within a definite time period not exceeding ninety days;
 - PPIRP not initiated to defraud any person.
 - The name of the Insolvency Professional proposed and approved to be appointed as Resolution Professional.
2. 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 the form P7.

D. Report by Resolution Professional

Resolution Professional shall prepare the report as specified in the section 54B(1)(a) and in the form P8 confirming that,

- i. Eligibility of the PPIRP i.e Whether corporate debtor is a micro/ small/medium enterprise under sub-section(1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006
- ii. Majority of directors / partners of the corporate debtor have made a declaration in Form P6 pursuant to clause (e) of sub-section (2) of

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section 54A and Special resolution passed by members of the Corporate Debtor or $\frac{3}{4}$ of the partners of the corporate debtor have passed a resolution approving the Filing application of PPIRP.

- iii. Appointment of Resolution Professional have been approved by Creditors of the Corporate Debtors with 66% to initiate the PPIRP.
- iv. The Creditors of the Corporate Debtors representing 66% of the debt have approved the proposal of initiation of PPIRP.
- v. The amount of default incurred by Corporate Debtor is within the limit notified under Section 4 of the Code
- vi. Confirmation related to Base Resolution Plan provided to the Creditors that it complies various applicable provisions of the IBC & relevant rules & regulation.

E. Information to be furnished by the applicant.

For the purposes of clause (d) of sub-section (3) of section 54C, the applicant shall furnish -

- a. Audited financial statements of the Corporate Debtor for the last two financial Years.
- b. Provisional financial statements of the current financial year made up to the date of declaration under clause (f) of sub-clause (2) of Section 54A.
- c. Form P5 submitted by the authorised representatives selected under sub-regulation (5) of regulation 15.

Chapter 5

Duties of Corporate Debtor during Pre-packaged Insolvency Resolution Process under IBC

Duties Pertaining to Authority:

1. According to the Section 54C where a Corporate Debtor meets the requirement of the Section 54A, a Corporate Applicant thereof may file an application in **Form-1** as specified in sub-rule (1) of rule 4 of Insolvency and Bankruptcy (Pre-packaged insolvency resolution process) Rules, 2021 with Adjudicating Authority for initiating PPIRP.

Form-1 is basically divided into four parts and the structure of the form is as follows. Detailed information to be provided along with relevant documents, declarations, Affidavits, etc. It is also required to submit **Sixteen** Annexures as specified in the form.

Sr. No.	Descriptions of the information to be provided	No of Points to be answered.
Part-I	Particulars of The Corporate Applicant and Corporate Debtor	9
Part-II	Particulars of Proposed Resolution Professional	2
Part-III	Particulars of financial/operational debt [creditor wise, as Applicable]	8
Part-IV	Particulars of Financial Creditors, Not Being Related Parties of The Corporate Debtor	3

Various forms as specified in **Regulations** need to be annexed to the Application in Form-1 are as follows :

Form No.	Descriptions of the Form
Form P1	Written consent
Form P3	Approval of terms of appointment of Resolution Professional

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Form No.	Descriptions of the Form
Form P4	Approval for initiating Pre-packaged Insolvency Resolution Process of Corporate Debtor
Form P5	Authorised Representatives
Form P6	Declaration by Director/Partners
Form P7	Declaration regarding existence of avoidance transaction(s)
Form P8	Report of the Insolvency Professional

Application should be annexed with information related to Books of Account of the Corporate Debtor as below.

- a) Audited Financial Statements for last 2 years.
 - b) Provisional Financial Statements for the current financial year made up to the date of declaration.
 - c) Form P5 submitted by the authorised representatives selected under sub-regulation (5) of regulation 15
2. Majority of the Directors or partners of the Corporate Debtor as the case may be have to make declaration containing that,
- I. Corporate Debtor shall file application for initiating the application for PPIRP with in the 90 days.
 - II. PPIRP not initiated with the intention to defraud any person.
 - III. The name of the Insolvency Professional to be appointed as Resolution Professional for PPIRP.

Members of the Corporate Debtor have to pass special resolution or in case of LLP resolution approved by $\frac{3}{4}$ of the total No. of the partner approving for initiating PPIRP.

Corporate Debtor shall obtain the approval from its Financial Creditors not being related parties to Corporate Debtor representing not less than 66% in value of the Financial Debt due to such creditors, for filing of an application for initiating PPIRP.

In case all the Financial Creditors are either related or there is no financial creditors then in that case Corporate debtors have to take approval from Operational Creditors in the specified manner.

Duties pertaining to Financial Creditors

Before seeking approval from Financial Creditors the Corporate Debtor shall provide such financial creditors with –

1. Form P2: List of Creditors who are not related to the Corporate Debtor,
2. Form P6: Declarations as specified in the regulation in the Form P6 i.e. in relation to application for the PPIRP within the 90 days, through the initiation of PPIRP not defrauding any person & proposed name of Insolvency Professional who will be the Resolution Professional for the PPIRP &
3. Form P7: 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 the form P7.
4. Corporate Debtor has to prepare the Base Resolution Plan.
5. Other relevant information as specified if any.

Duties pertaining to Resolution Professional

1. Where the Corporate Debtor fails to file an application or the application for initiation process is rejected in such cases fees payable to Resolution Professional has to be borne by Corporate Debtor.
2. Corporate Debtor shall maintain separate bank account to meet the expenses incurred by Resolution Professional to conduct the process.
3. Corporate Debtor shall allow to access all the books of account, records and other relevant documents.
4. Corporate Debtor shall submit the list of Claims. (Form P10)

Certain duties of the Corporate Debtor during the PPIRP are summarized as below.

1. Corporate Debtor shall not manage the affairs of the Corporate Debtor in a manner prejudicial to Creditors or in a fraudulent manner.
2. Without approval of the Committee Corporate Debtors shall not undertake any action as mentioned below
 - a. Transactions above the threshold limit as decided by the Committee; and

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- b. any other matter as decided by the Committee and not covered under Sec. 28
- 3. Corporate Debtor should prepare monthly report in consultation with Resolution Professional and forward to the members of Committee with following details.
 - a. Details of legal proceedings having a material impact on the business of Corporate Debtor.
 - b. Details of key contracts executed during the reporting period
 - c. Any other relevant matters having material impact on the business of the Corporate Debtor.

Chapter 6

Duties and Powers of Resolution Professional during Pre-packaged Insolvency Resolution Process under IBC

Under Pre-packaged insolvency resolution process, duties and powers of Insolvency professionals are described under the Code and Regulations made thereunder. We will first understand the requirements of Code and then the Regulations made thereunder with reference to provisions of respective sections of the Code. We will also bifurcate duties and powers in order to understand both the aspects independently.

Part A: Duties of resolution professional under Pre-packaged Insolvency Resolution Process

Duties of resolution professional under Pre-packaged Insolvency Resolution Process are three-fold:

1. Before initiation of Pre-packaged insolvency resolution process. (Section 54B)
2. During Pre-packaged insolvency resolution process (Section 54F (2)); and
3. Upon vesting of management of corporate debtor with resolution professional (Section 54J (3) (e));

Duties of resolution professional before initiation of Pre-packaged insolvency resolution process. (Section 54B)

The insolvency professional, proposed to be appointed as the resolution professional, shall perform following *duties **commencing from*** the date of the approval of his appointment by the financial creditors and his duties shall **come to an end** on the date of admission or rejection of the application for initiating Pre-packaged insolvency resolution process by the Adjudicating Authority or on the date mentioned in the declaration given by the Corporate Applicant by which he shall file an application for initiation of Pre-packaged

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insolvency resolution process and he failed to file such application by such date, as the case may be.

Resolution professional shall prepare report in Form P8 confirming whether the Corporate Debtor is eligible to file an application based on the following eligibility criteria: (Section 54B (1) (a) r.w. Regulation 17)

- a. Whether the status of corporate debtor is of micro/small/medium enterprise as laid down under section 7(1) of The Micro, Small and Medium Enterprises Development Act, 2006.
- b. the corporate debtor has not undergone Pre-packaged insolvency resolution process or completed corporate insolvency resolution process, during the period of three years preceding the date of making of the application
- c. the corporate debtor is not undergoing a corporate insolvency resolution process;
- d. no liquidation order has been made in respect of the corporate debtor;
- e. majority of directors / partners of the corporate debtor have made a declaration in Form P6 pursuant to clause (e) of sub-section (2) of section 54A;
- f. the members of the corporate debtor have passed a special resolution or three-fourth of the total number of partners of the corporate debtor have passed a resolution approving the filing of the application for initiating prepackaged insolvency resolution process;
- g. the creditors of the corporate debtor representing [percent] of debt (minimum 66%) have approved the proposal for appointment of resolution professional, as required under clause (e) of sub-section (2) of section 54A in Form P3;
- h. the creditors of the corporate debtor representing [percent] of debt (minimum 66%) have approved the proposal for initiation of Pre-packaged insolvency resolution process in respect of corporate debtor, as required under subsection (3) of section 54A in Form P4;
- i. the amount of default incurred by the corporate debtor is within the limit notified under sub-section (2) of section 4 of the Code; and
- j. Base resolution plan provided to creditor(s) under clause (c) of sub-section (4) of section 54A complies with sub-sections (1) and (2) of section 30, section 54K of Code and the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 and all other applicable provisions.

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Resolution professional shall file such reports, forms, along with enclosures thereto, on an electronic platform, as may be required by the Board in consultation with insolvency professional agencies.(Section 54B (1) (b) r.w. Regulation 13)

He shall perform such other duties as may be specified (Section 54B (1) (C)).

Duties of resolution professional during Pre-packaged insolvency resolution process (Section 54F (2))

Resolution professional shall,

- (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;

Regulation 20: List of claims

The resolution professional shall,

- Based on the records of the corporate debtor and other relevant material available on record, confirm the details received in Form P10.
 - Inform every creditor regarding its claims, as confirmed by him, and seek objections, if any.
 - Consider every objection received and modify the claim of the creditor, if required.
 - Call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.
 - Maintain a list of claims in Form P10 and update it as and when required.
- (d) monitor management of the affairs of the corporate debtor; (as compared to resolution professional's duty under CIRP, there is a shift in duty here from conducting management to monitoring the management)
 - (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,

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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;

Regulation 40 (2): The information memorandum shall contain the following details of the corporate debtor: -

- Assets and liabilities with such description, as are generally necessary for ascertaining their values.
 - The latest annual financial statements;
 - Audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year.
 - A list of claims containing the names of creditors, the amounts of their claims and the security interest, if any, in respect of such claims;
 - Particulars of a debt due from or to the corporate debtor with respect to related parties;
 - Details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;
 - The names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;
 - Details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
 - The number of workers and employees and liabilities of the corporate debtor towards them; and
 - Other information, which the corporate debtor or resolution professional deems relevant to the committee.
- (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.

Duties of resolution professional upon vesting of management of corporate debtor (Section 54J (3) (e))

Upon vesting of management of the corporate debtors, the resolution professional appointed under Pre-packaged insolvency resolution process is expected to perform same duties as envisaged under section 25 of the Code for resolution professional appointed under corporate insolvency resolution process, which is listed below:

- Take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
- Represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;
- Raise interim finances subject to the approval of the Committee of Creditors under section 28;
- Such other actions as may be specified by the Board.

Part B: Powers of resolution professional under Pre-packaged Insolvency Resolution Process (Section 54F (3))

The resolution professional under Pre-packaged Insolvency Resolution Process shall have power to;

- Access all books of accounts, records and information available with the corporate debtor;
- Access the electronic records of the corporate debtor from an information utility having financial information of the corporate debtor;
- 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;

Regulation 9

The resolution professional may access the books of account, records, and other documents to the extent relevant for discharging his duties under the Code, of the corporate debtor held with-

- (a) members, promoters, partners, directors and joint venture partners of the corporate debtor;

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- (b) professionals and advisors engaged by the corporate debtor;
 - (c) depositories of securities;
 - (d) registries that records the ownership of assets; and
 - (e) contractual counterparties of the corporate debtor.
- Attend meetings of members, Board of Directors and committee of directors, or partners, as the case may be, of the corporate debtor;
- Appoint accountants, legal or other professionals in such manner as may be specified;

Regulation 10

The resolution professional may appoint a professional under clause (e) of sub-section (3) of section 54F:

Provided that the following persons shall not be appointed as a professional, namely:-

- (a) a person who is not registered with the regulator of the profession concerned;
 - (b) a related party of the corporate debtor;
 - (c) an auditor of the corporate debtor at any time during the five years preceding the Pre-packaged insolvency commencement date;
 - (d) a partner or director of the insolvency professional entity of which the resolution professional is a partner or director; or
 - (e) a relative of the resolution professional or of a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.
- 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;

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- 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;
- Take such other actions in such manner as may be specified.

Chapter 7

Provisions with respect to public announcement and claims under Pre-packaged Insolvency Resolution Framework

Public announcement.

As per section 54E (1) (c) of the Code, the Adjudicating Authority shall, on the Pre-packaged insolvency commencement date, along with the order of admission, 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.

Regulation 19. Public announcement.

- The resolution professional shall make a public announcement within two days of the commencement of the process.
- The public announcement shall be in Form P9;
- Send to every creditor listed in Form P2;
- Send to information utilities; and
- Published on the website, if any, of the corporate debtor and the Board.

Unlike, Corporate insolvency resolution process, there is no requirement of making public announcement in the newspaper under Pre-packaged insolvency resolution process.

Claims

As per section 54G (1) (a) of the Code, the corporate debtor shall, within two days of the Pre-packaged insolvency commencement date, submit to the resolution professional, a list of claims, along with details of the respective creditors, their security interests and guarantees, updated as on that date, in such form and manner as may be specified.

Provisions w.r.t. public announcement and claims under PPIRP Framework

Regulation 20 (1)

The corporate debtor shall submit a list of claims under sub-section (1) of section 54G in Form P10 to the resolution professional.

As per section 54F (2) (a) of the Code, the resolution professional shall confirm the list of claims submitted by the corporate debtor under section 54G, in such manner as may be specified.

Regulation 20 (2)

Based on the records of the corporate debtor and other relevant material available on record, the resolution professional shall confirm the details received in Form P10.

As per section 54F (2) (b) of the Code, the resolution professional shall inform creditors regarding their claims as confirmed under clause (a), in such manner as may be specified;

Regulation 20 (3)

The resolution professional shall inform every creditor regarding its claims, as confirmed by him, and seek objections, if any.

Regulation 20 (4)

A creditor may submit objection along with supporting documents to the resolution professional within seven days from the receipt of communication

Regulation 20 (5)

The resolution professional may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim

Regulation 20 (6)

The resolution professional shall consider every objection received and modify the claim of the creditor, if required.

Regulation 20 (7)

A creditor shall update its claim, as and when the claim is satisfied, partly or fully, from any source in any manner, after the Pre-packaged insolvency commencement date.

As per section 54F (2) (c) of the Code, the resolution professional shall maintain an updated list of claims, in such manner as may be specified;

Regulation 20 (8)

The resolution professional shall maintain a list of claims in Form P10 and update it as and when required

Regulation 20 (9)

Form P10 shall be –

- (a) available for inspection by the creditors, members, partners, directors and guarantors of the corporate debtor;
- (b) displayed on the website, if any, of the corporate debtor;
- (c) filed with the Board on electronic platform; and
- (d) presented at the meetings of the committee, as and when updated.

Regulation 21. Determination of amount of claim.

- (1) Where the amount of claim of a creditor is not precise due to any contingency or other reason, the resolution professional shall make the best estimate of the amount of the claim based on the information available with him.
- (2) The resolution professional shall revise the amount of claims confirmed, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

Regulation 22. Debt in foreign currency.

The claims denominated in foreign currency shall be valued in Indian currency at the official exchange rate as on the Pre-packaged insolvency commencement date.

Explanation- “official exchange rate” is the reference rate published by the Reserve Bank of India or derived from such reference rates.

Chapter 8

Provisions with respect to management of affairs of Corporate Debtor during the Pre-packaged Insolvency Resolution Process under IBC

Section 54H read with **Regulation 50** provides for management of affairs of the Corporate Debtor during the Pre-packaged Insolvency Resolution Process.

Unlike CIRP where the management of the Corporate Debtor shifts from the current management to the Insolvency Resolution Professional and then to the Resolution Professional and then finally to the successful Resolution Applicant, in Pre-packaged insolvency resolution process under IBC, the current management continues to run the business and has high possibility of retaining it through a resolution plan. This is necessary particularly when the business needs resolution and the market may not have many third parties interested in business of the Corporate Debtor.

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. They 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. 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

- (1) they shall not manage the affairs of the corporate debtor in a manner prejudicial to the creditors of the corporate debtor or in a fraudulent manner.
- (2) they shall not undertake any of the following actions without obtaining prior approval of the committee, namely:-
 - (a) transaction above a threshold as decided by the committee; and

- (b) any other matter as decided by the committee and not covered under section 28.

Monthly Reporting

The corporate debtor in consultation with the resolution professional shall prepare a monthly report and forward it to the members of the committee with the following details:-

- (a) details of legal proceedings having a material impact on the business of the corporate debtor;
- (b) details of key contracts executed during the reporting period; and
- (c) any other relevant matter(s) that may have a material impact on the business of the corporate debtor.

The resolution professional may-

- (a) call for information related to operations of the corporate debtor, including payments made;
- (b) visit premise(s) of the corporate debtor;
- (c) inspect the assets of the corporate debtor;
- (d) call for information related to compliances applicable to the corporate debtor and its status;
- (e) ask for details related to litigation initiated by or against corporate debtor; and
- (f) ask details for ascertaining the conduct of corporate debtor during the process.

Section 54J 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. On an application made, if the Adjudicating Authority is of the opinion that (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.

Chapter 9

Provisions with respect to roles and powers of the Committee of Creditors during the Pre-packaged Insolvency Resolution Process under IBC

Constitution of Committee of Creditors

Section 54I provides that 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.

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 (COC) shall comprise all financial creditors (FCs) of the corporate debtor.

Financial creditor or the authorised representative of the financial creditor, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the Committee of Creditors except otherwise a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date.

With regard to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the Committee of Creditors and their voting share shall be determined on the basis of the financial debts owed to them.

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If any person is a financial creditor as well as an operational creditor, such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor and shall be included in the Committee of Creditors, with voting share proportionate to the extent of financial debts owed to such creditor and such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

If an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.

If the terms of the financial debt extended as part of a consortium arrangement or syndicated facility provide for a single trustee or agent to act for all financial creditors, each financial creditor may-

- a. authorise the trustee or agent to act on his behalf in the Committee of Creditors to the extent of his voting share;
- b. represent himself in the Committee of Creditors to the extent of his voting share;
- c. appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the Committee of Creditors to the extent of his voting share; or
- d. exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A). Save as otherwise provided in this Code, all decisions of the Committee of Creditors shall be taken by a vote of not less than fifty-one per cent of voting share of the financial creditors.

Notice of the meeting

The Notice of the Meeting of Committee of Creditors shall be served to financial creditors, who are not related parties of Corporate Debtor (CD), at least 5 days before the date of the meeting, unless a shorter time is agreed to by all of them.

The Notice of the Meeting of Committee of Creditors to indicate the date, time and venue of the meeting, and enclose a list of Creditors along with the amount due to them in Form P2.

Provisions w.r.t. roles and powers of the CoC during PPIRP under IBC

- (a) Financial Creditors with the approval of 66% voting (value of financial debt) appoints Insolvency Professional (IP) as Resolution Professional (RP).
- (b) Committee of Creditors has to pass resolution by not less than 66% votes (value of financial debt) in favour for vesting management of Corporate Debtor with Resolution Professional, then Resolution Professional shall make application to Adjudicating Authority in Form P14.
- (c) Corporate Debtor shall submit the Base Resolution Plan (BRP) to Resolution Professional within 2 days of the PPIRP Commencement Date and the Resolution Professional shall present it to the Committee of Creditors.
- (d) Committee of Creditors shall select a Resolution Plan out of the plans presented by Resolution Professional and approve the plan if Committee of Creditors feels that it is significantly better than BRP.

Only Committee of Creditors has the power to approve or reject the BRP (66% of voting share) or go for completion of process of improvement (Swiss Challenge).

Committee of Creditors may provide the Corporate Debtor an opportunity to revise BRP prior to submitting BRP to Adjudicating Authority or invitation for prospective RA. Corporate Debtor may submit BRP either individually or jointly with any other person.

Committee of Creditors may approve the BRP for submission to the Adjudicating Authority if it does not impair any claims owed by Corporate Debtor to Operational Creditor.

If Committee of Creditors does not approve BRP or BRP impairs claims of the Operational Creditors, Resolution Professional shall invite prospective resolution applicants (RA) to submit Resolution Plan(s) to compete with BRP.

- (e) If the Resolution Plan submitted by Corporate Debtor provides for impairment of claims, Committee of Creditors may require the promoters of Corporate Debtor to dilute their shareholding or voting or control rights in the Corporate Debtor. If Committee of Creditors approves the Resolution Plan without providing for dilution, it shall record reasons for its approval.

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- (f) The fees of the Resolution Professional and any expenses incurred by him for conducting PPIRP shall be determined in such manner as may be specified and Committee of Creditors may impose limits and conditions on such fees and expenses. Fees of Resolution Professional and the expenses for the period prior to the constitution of Committee of Creditors are subject to ratification by Committee of Creditors.
- (g) Resolution Professional has to inform the Committee of Creditors in the event of breach of Chapter - IIIA/ rules/ regulation or any of the obligations of the Board of Directors or Partners.
- (h) If no Resolution Plan is approved by Committee of Creditors, Resolution Professional shall file an application with Adjudicating Authority in Form P13 for the Termination of PPIRP.
- (i) Committee of Creditors has power with 66% of the voting share to approve Termination of PPIRP, after the PPIRP Commencement Date but before the approval of the Resolution Plan, Resolution Professional will make an application to Adjudicating Authority and Adjudicating Authority will terminate the PPIRP.
- (j) Committee of Creditors has power with the approval of 66% of voting share to approve after PPIRP Commencement Date but before the approval of Resolution Plan, to initiate CIRP, then Resolution Professional shall intimate Adjudicating Authority about Committee of Creditors decision and Adjudicating Authority shall within 30 days:
 - (a) terminate the PPIRP and initiate CIRP
 - (b) appoint Resolution Professional as Interim Resolution Professional (IRP) for CIRP, subject to written consent from Resolution Professional
 - (c) declare that PPIRP cost shall form part of CIRP cost.

Therefore, the Committee of Creditors plays very important role and has wide powers in success of Pre Pack Insolvency Resolution Process.

Chapter 10

Provisions with respect to consideration and approval of resolution plan under Pre-packaged Insolvency Resolution Framework

Section 54K provides for a three-phase process for consideration and approval of the resolution plan.

Phase I – Submission of base resolution plan and its consideration

- a) The corporate debtor, eligible under section 29A, is required to share a base resolution plan either individually or jointly with any other person 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.
- b) The base resolution plan, submitted under this section shall conform to the requirements referred in the provisions of sub-sections (1) and (2) of section 30.
- c) The Committee of Creditors may provide the corporate debtor an opportunity to revise the base resolution plan prior to its approval
- d) If this plan does not impair claims of the operational creditors, the Committee of Creditors may approve it for submission to the Adjudicating Authority for final approval. The 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.
- e) Otherwise, the resolution professional will initiate the process for inviting resolution plans for competition with the base resolution plan.

Phase II – Public invitation, evaluation and selection of resolution plan

- f) Where-
 - (i) the Committee of Creditors does not approve the base resolution plan or

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- (ii) the base resolution plan impairs any claims owed by the corporate debtor to the operational creditors,

Resolution Professional shall invite a prospective resolution applicant to submit the resolution plan and decide the criteria that the prospective resolution applicant must fulfil and the basis of the evaluation of prospective resolution applicant.

- g) The resolution professional invites prospective resolution applicants to submit resolution plans to compete with the base resolution plan as provided in Regulation 43 in Form P11 not later than twenty one days from the Pre-packaged insolvency commencement date.

The resolution professional shall publish Form P11 :

- (i) On the website, if any, of the corporate debtor;
- (ii) On the website, if any, designated by the Board for the purpose; and
- (iii) In any other manner as may be decided by the committee

- h) The Form P11 shall –

- (a) state where the invitation for resolution plans can be downloaded or obtained from, as the case may be; and
- (b) provide the last date for submission of resolution plan which shall not be less than fifteen days from the date of issue of invitation for resolution plan .

- i) The invitation for resolution plans shall-

- (a) detail each step in the process, and the manner and purposes of interaction between the resolution professional and the resolution applicant, along with corresponding timelines;
- (b) include-
 - (i) the basis for evaluation;
 - (ii) basis for considering a resolution plan significantly better than another resolution plan;
 - (iii) tick size; and
 - (iv) the manner of improving a resolution plan; and
- (c) not require any non-refundable deposit for submission of or along with resolution plan.

Consideration and approval of resolution plan under PPIRP Framework

The resolution professional shall require the resolution applicant, in case its resolution plan is approved under subsection (13) of section 54K, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

Resolution Plan

Regulation 44 specifies about the Resolution Plan and Regulation 45 specifies mandatory contents of Resolution Plan.

- j) Resolution Professional then presents the Resolution Plan which confirms all the requirements to the Committee of Creditors for its evaluation as provided in Regulation 47.
- k) The Committee of Creditors evaluates resolution plans received pursuant to the public invitation and selects a resolution plan. Regulation 42(i) provides that “basis for evaluation”, includes the parameters to be applied and the manner of applying such parameters, as approved by the committee, for evaluating a resolution plan to assign a score to the plan, and disclosed in the invitation for resolution plans.
- l) If the selected resolution plan is significantly better than the base resolution plan, the Committee of Creditors shall select a resolution plan amongst them, approve the same and submit it to the Adjudicating Authority.
- m) If the selected resolution plan is not approved, it will compete with the base resolution plan in Phase III.

Phase III – Competition between base resolution plan and the selected resolution plan

- n) Where the resolution plan which was selected by the Committee of Creditors but is not considered for approval or does not fulfil the criteria laid down by the Committee of Creditors, it shall compete with the base resolution plan.
- o) The resolution applicant whose plan is selected and the corporate debtor who submitted the base plan will compete with each other by improving their plans (in comparison with each other).

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- p) Such improvement shall be a minimum improvement over the other resolution plan in terms of a score, as approved by the Committee of Creditors.
- q) The applicant who has the lower score will have the option to improve its resolution plan by at least a tick size. The other applicant will also have the option to improve their resolution plan. This process will continue till one of them outscores the other within the stipulated time frame (forty-eight hours).
- r) The winning plan will be considered for final approval by the Committee of Creditors for submission to the Adjudicating Authority.
- s) Where the resolution plan selected for approval is not approved by the Committee of Creditors, the resolution professional shall file an application for termination of the Pre-packaged insolvency resolution process.

Consideration of Resolution Plan

The Committee of Creditors approves the resolution plan either in Phase II or Phase III, as the case may be, by a vote of not less than sixty-six per cent (66%) of the voting shares.

The Committee of Creditors considers 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.

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 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,

Where the resolution plan does not provide for such dilution, the Committee of Creditors shall, prior to the approval of such resolution plan, record reasons for its approval.

The resolution professional shall submit the resolution plan as approved by the Committee of Creditors to the Adjudicating Authority.

Approval / Rejection of Resolution Plan

Section 54L and **Regulation 48** provides for approval or rejection of Resolution Plan by Adjudicating Authorities.

If the Adjudicating Authority is satisfied that the resolution plan submitted by a resolution professional is in conformity with the provisions of the law, then within 30 days of filing an application, may approve the Resolution Plan.

The Adjudicating Authority shall, before passing an order for approval of a resolution plan satisfy itself that the resolution plan has provisions for its effective implementation.

The order of approval shall have such effect as provided under sub-sections (1), (3) and (4) of section 31, which shall –

- a) Such approved resolution plan shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.
- b) After the order of approval the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.
- c) The resolution applicant shall, pursuant to the resolution plan approved obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority or within such period as provided for in such law, whichever is later.

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the Committee of Creditors.

Where the Adjudicating Authority has passed an order under sub-section (2) of section 54J i.e. on an application made under sub-section (1), if the

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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.

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 i.e. it shall—
 - i. pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;
 - ii. issue a public announcement stating that the corporate debtor is in liquidation; and
 - iii. require such order to be sent to the authority with which the corporate debtor is registered.
- (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.

If the Adjudicating Authority is satisfied that the resolution plan submitted by a resolution professional is in non-conformity with the provision of the law, within 30 days of filing an application may reject the Resolution Plan and pass an order under section 54N.

Chapter 11

Provisions with respect to Termination of Pre-packaged Insolvency Resolution Process

Section 54N provides about the Termination of Prepackaged Insolvency Resolution Process.

The Resolution professional files an application in Form P13 as per Regulation 49 of Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 with the Adjudicating Authority in the events –

- a) The Committee of Creditors passes a resolution seeking termination at anytime after the Pre-packaged insolvency commencement date but before the approval of the resolution plan, approved by a vote of sixty six percent of the voting shares;
- b) The Committee of Creditors does not approve a plan before the expiry of 90 days from Insolvency Commencement Date.
- c) The resolution plan which is successful in the competition between the base resolution plan and the selected resolution plan (best alternative plan) is not approved by the Committee of Creditors; and
- d) a resolution plan approved by the Committee of Creditors is rejected by the Adjudicating Authority.

Where the Adjudicating Authority passes an order for termination, the corporate debtor shall bear the Pre-packaged insolvency resolution process costs, if any.

Chapter 12

Timelines with respect to the Pre-packaged Insolvency Resolution Process under IBC

- 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.
- 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.
- The resolution professional is required to apply to the Adjudicating Authority seeking termination of the pre-pack process if no resolution plan is approved by the Committee of Creditors within 90 days.

Model time line for pre-packed insolvency resolution process

Section/ Regulation	Description of Activity	Norm	Latest Timeline
Regulation 14(2)	<u>Approval by financial creditors:</u> The notice of the meeting to be served to the financial creditors, who are not related parties of the Corporate Debtor.	Not less than five days before the date of the meeting.	--
Section 54A(2)(f)(i)	The majority of the directors or partners of the Corporate Debtor, as the case may be, have made a declaration that the	Within 90 days from the date of such declaration.	--

Timelines w.r.t. the PPIRP under IBC

	Corporate Debtor shall file an application for initiating Pre-packaged insolvency resolution process.		
Section 54C(4)	The Adjudicating Authority may accept/reject the application for commencement of Pre-packaged insolvency resolution process.	Within 14 days of the receipt of the application.	--
Section 54E(1)(b)	Commencement of Pre-packaged Insolvency Resolution Process and appointment of Resolution Professional.	--	T
Regulation 19(1)	The Resolution Professional shall make a public announcement informing the Creditors of the Corporate Debtor.	Within two days of Pre-packaged insolvency commencement date.	T+2
Regulation 20(4)	A creditor may submit objection in its claims, along with supporting documents to the Resolution Professional.	Within seven days from the receipt of communication under Regulation 20 (3).	--
Regulation 26	Any change in the composition of Committee of Creditors has to be intimated to all the members of the Committee.	Within two days of such change.	--

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Regulation 28	The notice of the meeting of the Committee of Creditors has to be given to every member of the Committee.	Not less than 3 days' notice has to be given. (The committee may reduce the notice period from three days to such other period of not less than twenty-four hours)	--
Section 54G(1)	The Corporate Debtor shall submit to the Resolution Professional list of claims, along with details of the respective creditors, their security interests & guarantees, if any, and a Preliminary Information Memorandum containing information relevant for formulating a resolution plan.	Within two days of the Pre-packaged insolvency commencement date.	T+2
Section 54K(1)	The Corporate Debtor shall submit the base Resolution Plan, to the Resolution Professional and the Resolution Professional shall present it to the Committee of Creditors.	Within two days of the Pre-packaged insolvency commencement date.	T+2
Regulation 34(1)	The Resolution Professional shall provide the list of creditors in each class	Within three days of Pre-packaged insolvency commencement date.	T+3

Timelines w.r.t. the PPIRP under IBC

	to the respective authorized representative.		
Regulation 38	The Resolution Professional shall appoint two registered valuers.	Within three days of appointment of resolution professional.	T+3
Section 54I (1)	Constitution of Committee of Creditors by the Resolution Professional.	Within seven days of the Pre-packaged insolvency commencement date.	T+7
Section 54I (2)	The 1st meeting of the Committee of Creditors.	Within seven days of the constitution of the Committee of Creditors.	T+14
Regulation 40(3)	The Resolution Professional shall finalize the Information Memorandum and submit to the members of the Committee of Creditors.	Within fourteen days of the Pre-packaged Insolvency commencement date.	T+14
Regulation 43(1)	The Resolution Professional shall publish brief particulars of the invitation for resolution plans in Form P11.	Within twenty-one days from the Pre-packaged insolvency commencement date.	T+21
Regulation 43(3)(b)	The last date for submission of resolution plan (Receipt of Resolution Plan).	At least fifteen days from the date of issue of invitation for resolution plan.	T+36
Regulation 41(1)	The Resolution Professional shall form an opinion whether the	Within thirty days of the Pre-packaged insolvency	T+30

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	Corporate Debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66.	commencement date.	
Regulation 41(2)	Where the resolution professional is of opinion that the Corporate Debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66, he shall make a determination of the same and intimate it to the Board.	Within forty five days of the Pre-packaged insolvency commencement date.	T+45
Regulation 41(3)	Where the Resolution Professional makes a determination under Regulation 41(2), he shall apply to the Adjudicating Authority for appropriate relief.	Within sixty days of the Pre-packaged insolvency commencement date.	T+60
Section 54D(2)	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.	T+90
Section 54L (1)	<u>Approval of Resolution Plan by the Adjudicating Authority:</u> Where the Adjudicating Authority is satisfied that the	Within thirty days of the receipt of such Resolution Plan.	T+120

Timelines w.r.t. the PPIRP under IBC

	Resolution Plan conform to the prescribed requirements, it may pass an order of approval of Resolution Plan.		
Section 54L (3)	<u>Rejection of Resolution Plan by the Adjudicating Authority:</u> Where the Adjudicating Authority is satisfied that the Resolution Plan does not conform to the prescribed requirements, it shall pass an order of rejection of Resolution Plan.	Within thirty days of the receipt of such Resolution Plan.	T+120
Regulation 49(3)	Where a Resolution Plan has been approved by the Adjudicating Authority, the Resolution Professional shall intimate each claimant, the principle or formula, as the case may be, for payment of debts under the Resolution Plan so approved.	The intimation should be made within seven days of the order of the Adjudicating Authority approving a resolution plan.	--
Section 54N(1)(b)	Where the Resolution Professional files an application with the Adjudicating Authority for termination of the	Within 30 days of filing of such application.	--

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	Pre-packaged insolvency resolution process, the Adjudicating Authority shall pass an order for termination of the Pre-packaged insolvency resolution process.		
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Chapter 13

Forms under IBC, 2016 related to the Pre-packaged Insolvency Resolution Process under IBC

Sr. No.	Name of Form	Purpose	Regulation No. of the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021	Description
1	Form P1	Written Consent	Regulation 7(1)	An insolvency professional eligible to be appointed as an interim resolution professional or resolution professional has to provide his written consent in Form P1.
2	Form P2	List of Creditors of Corporate Debtor	Regulation 14	The notice of the meeting under Regulation 14, seeking approval of financial creditors, shall indicate the date, time and venue of the meeting, and enclose a list of creditors in Form P2 along with the amount due to them.

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3	Form P3	Approval of terms of appointment of Resolution Professional	Regulation 14(5)	The approval of the terms of appointment of resolution professional under clause (e) of sub-section (2) of section 54A shall be in Form P3.
4	Form P4	Approval for initiating Pre-packaged Insolvency Resolution Process of Corporate Debtor	Regulation 14(7)	The approval for filing of application under sub-section (3) of section 54A shall be taken by the Corporate Debtor from the requisite financial creditors in Form P4.
5	Form P5	Written consent to act as an Authorized Representative	Regulation 15(iii)	The consent of the insolvency professionals to act as the authorized representative of creditors in the respective class.
6	Form P6	Declaration by Directors/ Partners of the Corporate Debtor filing an application for initiation of Pre-packaged insolvency resolution process	Regulation 16(1)	A declaration to be made by majority of the directors or partners of the Corporate Debtor, as the case may be, stating, inter alia, — (i) that the Corporate Debtor shall file an application for initiating pre-packed insolvency resolution process within a definite time period not exceeding ninety days; (ii) that the pre-packed insolvency resolution

Forms under IBC, 2016 related to PPIRP under IBC

				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.
7	Form P7	Declaration regarding existence of avoidance transaction(s), by the Corporate Debtor filing an application for initiation of Pre-packaged insolvency resolution process	Regulation 16(2)	A declaration by the directors of the Corporate Debtor 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.
8	Form P8	Report of the Insolvency Professional to be filed before the Insolvency and Bankruptcy Board of India	Regulation 17	The Insolvency Professional proposed to be appointed as Resolution Professional shall prepare a report under the provisions of Section 54B(1)(a), confirming whether the Corporate Debtor meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in section 54A(4)(c).

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9	Form P9	Public Announcement	Regulation 19(2)	The Resolution Professional shall make a public announcement in Form P9 within two days of the commencement of Pre-packaged insolvency resolution process for the information of all the creditors of the Corporate Debtor.
10	Form P10	List of Claims	Regulation 20	The Corporate Debtor shall submit a list of claims in Form P10 under section 54G(1) to the Resolution Professional within 2 days of the commencement of Pre-packaged insolvency resolution process.
11	Form P11	Invitation for Resolution Plans	Regulation 43	The Resolution Professional shall publish brief particulars of the invitation for resolution plans in Form P11 within twenty-one days of the commencement of Pre-packaged insolvency resolution process.
12	Form P12	Compliance Certificate	Regulation 49(1)	Where a Resolution Plan is approved by the Committee of Creditors, the Resolution Professional shall submit an application, along with Compliance

Forms under IBC, 2016 related to PPIRP under IBC

				Certificate in Form P12 to the Adjudicating Authority for approval.
13	Form P13	Application for Termination of Pre-packaged Insolvency Resolution Process	Regulation 49(4)	Where no resolution plans is approved by the Committee of Creditors or where the Committee of Creditors has approved the termination of process, the Resolution Professional shall file an application in Form P13 to the Adjudicating Authority for termination of the Pre-packaged Insolvency Resolution Process.
14	Form P14	Application for Vesting Management with Resolution Professional	Regulation 51	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 percent 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 in Form P14 to the Adjudicating Authority.

Chapter 14

Corporate Insolvency Resolution Process vis-a-vis Pre-packaged Insolvency Resolution Process

Sr. No	Particulars	Pre-packaged Insolvency Resolution Process (PPIRP)	Corporate Insolvency Resolution Process (CIRP)
1	Eligibility	Only Micro Small and Medium Enterprises (MSME) are eligible for PPIRP.	All Corporates & LLPs.
2	Default threshold	The minimum default threshold of Rs 10.00 lakhs is prescribed for initiating the PPIRP.	The minimum default threshold of Rs. 1.00 crore is prescribed for initiating the CIRP.
	Initiation	A PPIRP can be initiated only by the Corporate Debtor.	A CIRP can be initiated by: Corporate Debtor, or Financial Creditors, or Operational Creditors
4	Approval of Financial Creditors	The PPIRP involves a pre-pack i.e. the MSME Corporate Debtor Applicant has to approach its financial creditors along with a base resolution plan and obtain their approval before formally initiating PPIRP.	The initiation of CIRP does not require any such approval from the financial creditors.
5	Timeline	The PPIRP shall be completed within a	The CIRP shall be completed within a

CIRP vis-a-vis PPIRP

		maximum period of 120 days from the commencement of PPIRP. The Resolution Plan shall be submitted to the Adjudicating Authority within a period of 90 days from the commencement of PPIRP.	period of 180 days from the commencement of CIRP, further extendable upto another 90 days. The CIRP shall mandatorily be completed within a period of 330 days from the commencement of CIRP.
6	Management of the Corporate Debtor	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.	The management of the affairs of the Corporate Debtor vests in the Insolvency Professional appointed as Interim Resolution Professional/ Resolution Professional.
7	Resolution Plan	In PPIRP, the MSME Corporate Debtor has to submit a Base Resolution Plan to the Resolution Professional and the Resolution Professional shall present it to the Committee of Creditors (CoC). If the Committee of Creditors rejects the plan, or if the Operational Creditors are not paid in full, then competing bids can be invited from other prospective resolution applicants.	In CIRP, an Expression of Interest (EOI) is invited from all prospective resolution applicants to submit resolution plans. The Corporate Debtor does not necessarily get an opportunity to participate in the resolution process.
8	Consequence of failure of process	If PPIRP fails, then the result would be either termination of PPIRP, or Liquidation, or Commencement of CIRP.	If CIRP fails, then the result would be Liquidation.

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9	List of Claims	The Corporate Debtor has to prepare the List of Claims/ Creditors and submit the same to the Resolution Professional within 2 days from the commencement of PPIRP.	The Insolvency Professional appointed as Interim Resolution Professional/ Resolution Professional, has to prepare and finalize the List of Claims/ Creditors on the basis of the claims received from creditors pursuant to the public announcement, within 97 days from the commencement of CIRP.
10	Information Memorandum	The Corporate Debtor has to prepare a Preliminary Information Memorandum and submit the same to the Resolution Professional within 2 days of the commencement of PPIRP, and the Resolution Professional has to finalize the Information Memorandum and submit it to the Committee of Creditors within 14 days from the commencement of PPIRP	The Resolution Professional has to prepare and submit the Information Memorandum to the Committee of Creditors within 54 days from the commencement of CIRP.
11	Termination of Process	The process can be terminated on an application made by the Applicant with the approval of 66% voting share of the Committee of Creditors.	The process can be terminated on an application made by the Applicant with the approval of 90% voting share of the Committee of Creditors.