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SUPPLEMENT
PROFESSIONAL PROGRAMME

(NEW SYLLABUS)

for

CORPORATE RESTRUCTURING, INSOLVENCY, LIQUIDATION & WINDING-UP

MODULE 2

PAPER 5

(Relevant for students appearing in June 2022, Examination)

(Students are advised to refer the latest study material for Corporate Restructuring, Insolvency, Liquidation and Winding-up) . The same is available at ICSI website weblink:
https://www.icsi.edu/media/webmodules/11112021Module_2_Paper_5_CRILW_PI_Book.pdf
https://www.icsi.edu/media/webmodules/12112021_Module_2_Paper_5_CRILW_PI_Book.pdf)

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PART-I

Lesson 2-Acquisition of Company/Business

1. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021

In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992, SEBI amended the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

The following amendments have been made to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011:

I. Through this amendment, regulation 5A which deals with delisting offer has been substituted.

The regulation 5A *inter alia* provides that in the event the acquirer makes a public announcement of an open offer for acquiring shares or voting rights or control of a target company in terms of sub-regulation (1) of regulation 3, regulation 4 or regulation 5, the acquirer may seek the delisting of the target company by making a delisting offer in accordance with this regulation (Regulation 5A).
Provided that the acquirer shall have declared his intention to so delist the target company at the time of making such public announcement of an open offer as well as at the time of making the detailed public statement. A subsequent declaration of delisting for the purpose of the delisting offer proposed to be made shall not suffice.

II. If the open offer has been made by an acquirer under sub-regulation (1) of regulation 3, regulation 4 or regulation 5 and the acquirer has stated upfront his intention to retain the listing of the target company in the public announcement and the detailed public statement issued pursuant to an open offer in accordance with these regulations, the acquirer may alternatively undertake a proportionate reduction of the shares or voting rights to be acquired pursuant to the underlying agreement for acquisition/ subscription of shares or voting rights and the purchase of shares so tendered, upon the completion of the open offer process such that the resulting shareholding of the acquirer in the target company does not exceed the maximum permissible non-public shareholding prescribed under the Securities Contract (Regulation) Rules, 1957.

Brief Analysis:

Under the earlier framework, if an open offer is triggered, compliance with Takeover Regulations could take the incoming acquirer's holding to above 75% or perhaps even 90%, however, to ensure compliance with Securities Contract (Regulation) Rules, 1957 (SCRR) the acquirer would be forced to first bring his stake down to 75% as the SEBI (Delisting of Equity Shares) Regulations, 2021 would not let the acquirer even to attempt at delisting unless the holding is first brought down to 75%. Such directionally contradictory transactions in a sequence pose complexity in the takeover of listed companies especially where the acquirer desires to get the company delisted pursuant to his take over.

For more details visit:
https://egazette.nic.in/WriteReadData/2021/231637.pdf

Lesson 3- Planning and Strategy

Case law on Merger and Amalgamation of companies

1. In the case of ***Sesa Industries Ltd. v. Krishna H. Baja****, Civil Appeal Nos. 1430-1431 of 2011, February 7, 2011, [2011] 9 taxmann.com 218 (SC)],* the Supreme Court opined that the Court before whom scheme of amalgamation is placed for sanction is not expected to put its seal of approval on scheme merely because majority of shareholders have voted in favour of scheme. Since the scheme which gets sanctioned by Court would be binding on dissenting minority shareholders or creditors, Court is obliged to examine scheme in its proper perspective together with its various manifestations and ramifications with a view to find out whether scheme is fair, just and reasonable to concerned members and is not contrary to any law or public policy.

2. In the case *of* ***Wiki Kids Ltd. v. Avantel Ltd****. (21.12.2017),* a non-listed company Wiki Kids Limited (Transferor Company), wished to amalgamate with Avantel Limited, a listed company (Transferee Company). The entities (collectively referred to as Appellants) had proposed a scheme of amalgamation and approached the Andhra Pradesh High Court. Pursuant to the directions of the High Court, the Scheme was approved by the shareholders of the Transferee Company. In the meantime, in view of constitution of NCLT vide a notification dated December 7, 2016, the case was transferred to the NCLT. The Appellants, accordingly, filed a second motion before the Hyderabad Bench of the NCLT.

The NCLT observed that the Appellants had common promoters such that the promoters of the Transferee Company held 99.90% of the shareholding of the Transferor Company. Thus, the NCLT, in light of its analysis, held that the entire scheme was designed in a manner to extend financial benefit of INR 12 crores (as per the exchange ratio the eligible number of shares to be issued by the Transferee Company to the shareholders of the Transferor Company was worked out to approximately 4 lakh shares, the market value of which is almost 12.4 Crores) only to the common promoters even though the Transferor Company had no business and little net worth/value. In view of such observations, the NCLT held the scheme to be against the public interest and refused to approve the same. The NCLAT upheld the order of the NCLT rejecting a scheme of amalgamation, as it resulted in undue advantage to the promoters of the amalgamating company.

3. In the case of ***Radhey Shyam Agarwal v. Bank of Rajasthan Ltd. Company*** Appeal No. 1 of 2012, September 20, 2013, [2014] 41 taxmann.com 138 (Rajasthan), the High Court of Rajasthan observed that the prayers which has been made before the Company Law Board has been incorporated in the appeal and as regards prayer of the petitioner appellant for investigating the affairs of the respondent company i.e. Bank of Rajasthan, after the Bank of Rajasthan stood finally merged under the Scheme of Amalgamation and approved by the RBI under sub-section (4) of sec.44A of the Banking Regulation Act, 1949 and finally confirmed by the Apex Court on writ petition preferred by the petitioner, the question of investigating the affairs of the transferor, Bank of Rajasthan does not survive any further and the Company Law Board in its impugned order dt.30.9.2011 has taken note of the approval being granted by the RBI and the order of the Apex Court dated 13-9-2011 rejecting the writ petition preferred by the petitioner assailing the merger on multifarious grounds. The CLB has further noticed that apart from what is being raised in the company petition, the petitioner has also filed civil suit pending before the District Court Bhilwara and when he failed to succeed in getting interim injunction and also from the High Court on appeal being preferred his company petition on the facts brought on record has rendered infructuous. [Para 6]

After the primary grievance of the appellant being finally crystallized, investigating the affairs of transferor Bank of Rajasthan does not survive any further and the Court is also of the view that the Company Law Board has not committed any error in disposing of the company petition preferred by the appellant vide its order dated 13-9- 2011 as having been rendered infructuous and apart from it there is no question of law which emerges from the order of the Company Law Board which may be open for the Court to examine under section 10F of the 1956 Act (Corresponding to section 465 of the 2013 Act). [Para 7].

Lesson 9- Competition Act

Case Law on Competition Act

1. Combinations as envisaged under section 5(a), 5(b) and 5(c) were explained by the Supreme Court in ***Competition Commission of India v. Thomas Cook (India) Ltd. & Anr.*** (Civil Appeal No.13578 of 2015) in the following manner:

Under section 5(a), a combination is formed if the acquisition by one person or enterprise of control, shares, voting rights or assets of another person or enterprise subject to certain threshold requirement that is minimum asset valuation or turn over within or outside India.

Under Section 5(b) of the Act the combination is formed if the acquisition of control by a person over enterprise when such person has already acquired direct or indirect control over another enterprise engaged in the production, distribution or payment of a similar or identical or substitutable good provided that the exigencies provided in section 5(b) in terms of asset or turnover are met.

Under section 5(c) merger and amalgamation are also within the ambit of combination. The enterprise remaining after merger or amalgamation subject to a minimum threshold requirement in terms of assets or turnover is covered within the purview of section 5(c).

Lesson 13-Cross Border Mergers

Case law on Cross-Border Demerger

1. In this case of ***Sun Pharmaceutical Industries Limited (19.12.2019),*** a scheme of arrangement under Section 230 - 234 of the Companies Act, 2013 in the nature of de-merger was filed before National Company Law Tribunal ("NCLT"), Ahmedabad Bench. The Scheme contemplated transfer of two specified investment undertakings of Sun Pharmaceutical Industries Limited to two overseas Resulting Companies, viz. Sun Pharma (Netherlands) B.V., and Sun Pharmaceutical Holdings USA Inc. Since, Petitioner Company is listed company having its shares listed on BSE Limited and National Stock Exchange of India Limited therefore the company sought the approval of the Stock Exchanges and SEBI which provided their no objection to the Scheme of Demerger. On presentation of Petition before NCLT meetings of equity shareholders and unsecured creditors were convened, whereby scheme was approved by majority of equity shareholders and unsecured creditors. However, Regional Director (North Western Region) took the following observation on scheme of demerger–

(i) Section 234 refers to cross border mergers and amalgamations and not to demergers.

(ii) Section 2 (19AA) of the Income Tax, 1961 is violated and same will not amount to tax neutral transaction.

(iii) Company to comply with provisions of FEMA and RBI.

Petitioner Company while replying to aforesaid observation held that, scheme of arrangement, either in the nature of merger or demerger and the petitioner demerged company has complied with the applicable frame work under FEMA and RBI guidelines. Hence, there was deemed approval of RBI to the Scheme.

While going through the provisions of Section 234 it is evident that same applies to cross border mergers ofIndian companies with foreign companies and vice versa and the provisions mention only about the words ''Merger'' and/ or ''Amalgamation'' so the Section 234 do not provide for or rather restrict the demerger of the Indian Companies with foreign company. In addition to the above, Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is silent on 'Demergers' and mentions only 'Mergers' and 'Amalgamations'. Moreover, Foreign Exchange Management (Cross Border Merger) Regulations, 2018 are applicable to the mergers and amalgamations of the Indian companies with the foreign companies only. Thus, the NCLT rejected the scheme.

PART-II

Lesson 14-Insolvency

1. Insolvency and Bankruptcy Board of India (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020 validity extended till 31st March, 2022

In exercise of powers under section 196(1)(aa) of the Code read with regulation 5(b) and clause (ba) of sub-regulation (2) of regulation 7 of the IBBI (Insolvency Professionals) Regulations, 2016 and clauses (a) and (e) of sub-rule (2) of rule 12 of the Companies (Registered Valuers and Valuation) Rules, 2017, the Insolvency and Bankruptcy Board of India extended the validity of the Insolvency and Bankruptcy Board of India (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020 till 31st March, 2022.

For more details visit:
https://ibbi.gov.in/uploads/legalframwork/58782cc53126e4e8cfc18103d7d5798d.pdf

2. Final Panel of IPs prepared in accordance with 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (second) Guidelines, 2021

Insolvency and Bankruptcy Board of India (IBBI) prepared panel of IPs for appointment as: Interim Resolution Professional (IRP) in a corporate insolvency resolution process under section 16(4); Liquidator in a liquidation process under section 34(6); Resolution Professional (RP) in an individual insolvency resolution process under section 97(4) or 98(3); and Bankruptcy Trustee (BT) in a bankruptcy process under section 125(4), 146(3) or 147(3), for the period of January 01, 2022 - June 30, 2022. The Panel has been prepared in accordance with the 'Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2021'.

At the time of reference/ directions received from the AA, the Board does not have information about the volume, nature and complexity of an insolvency or bankruptcy process and the resources available at the disposal of an IP. In such a situation, the Board is unlikely to add much value by recommending an IP for the process. Further, it takes some time for a reference or a direction from the AA to reach the Board. The Board may take up to ten days to identify an IP for the purpose. It also takes some time for the recommendation of the Board to reach the AA, after which the AA could appoint the recommended IP. The process of appointment may entail 2-3 weeks, which could be saved if the AA has a ready Panel of IPs recommended by the Board and it can pick up any name from the Panel for appointment while issuing the Order itself.

For more details visit:
https://www.ibbi.gov.in/uploads/legalframwork/f812a9b138081ae0760bc224a478fdc4.pdf

3. Case Laws on Insolvency and Bankruptcy Code

a) The provisions of the IBC override anything contained in any other law in force or any instrument having effect by virtue of such law: In the matter of ***Innoventive Industries Ltd. v. ICICI Bank***, the Supreme Court for the first time explained the paradigm shift in law by virtue of the newly enacted Insolvency and Bankruptcy Code, 2016 which consolidates and amends all the laws relating to the insolvency and bankruptcy process in India.

Facts of the case

ICICI Bank had taken Innoventive Industries Ltd. to NCLT for the recovery of its due as the company had defaulted on loan repayment. The NCLT had given a verdict in favour of the ICICI Bank, which Innoventive Industries challenged in the National Company Law Appellate Tribunal (NCLAT), where it received yet another setback. The company later filed an appeal in the Supreme Court seeking relief under the Maharashtra Relief Undertaking (Special Provisions) Act, 1958 (MRUA), which states that if a company is facing bankruptcy, protection needs to be provided for the employees.

Judgement

The Supreme Court held that the Act is repugnant to the IBC. Under the MRUA, the State Government may take over the management of the undertaking and impose a moratorium in much the same manner as that contained in the IBC. By giving effect to the MRUA, the plan/scheme that may be adopted under the IBC will directly be hindered. There would be a direct clash between moratoriums under the two statutes. The non-obstante clause of the IBC will prevail over the non-obstante clause in the MRUA. On account of the non-obstante clause in the IBC, any right of the CD under any other law cannot come in the way of the IBC.

Further, In the case of *Pr. Commissioner of Income Tax Vs. Monnet Ispat And Energy Ltd.* [SLP No. 6483-2018 & other petitions], the Supreme Court held that the IBC would override anything inconsistent contained in any other enactment, including the Income Tax Act, 1961.

b) Enactment of the IBC has marked a quantum change in corporate governance and the rule of law: In the case of ***Arun Kumar Jagatramka vs. Jindal Steel and Power Ltd [CA 9664 of 2019]*** judgement dated March 15, 2021,the Supreme Court observed that enactment of the IBC has marked a quantum change in corporate governance and the rule of law. First and foremost, the IBC perceives good corporate governance, respect for and adherence to the rule of law as central to the resolution of corporate insolvencies. Second, the IBC perceives corporate insolvency not as an isolated problem faced by an individual business entities but places it in the context of a framework which is founded on public interest in facilitating economic growth by balancing diverse stakeholder interests. Third, the IBC attributes a primacy to the business decisions taken by creditors acting as a collective body, on the premise that the timely resolution of corporate insolvency is necessary to ensure the growth of credit markets and encourage investment. Fourth, in its diverse provisions, the IBC ensures that the interests of corporate enterprises are not conflated with the interests of their promoters; the economic value of corporate structures is broader in content than the partisan interests of their managements. These salutary objectives of the IBC can be achieved if the integrity of the resolution process is placed at the forefront. Primarily, the IBC is a legislation aimed at re-organization and resolution of insolvencies. Liquidation is a matter of last resort. These objectives can be achieved only through a purposive interpretation which requires courts, while infusing meaning and content to its provisions, to ensure that the problems which beset the earlier regime do not enter through the backdoor through disingenuous stratagems.

c) The primary focus of the IBC is to ensure the revival and continuation of the corporate debtor: In the matter of ***Gujarat Urja Vikas Nigam Limited Vs. Mr. Amit Gupta & Ors. [Civil Appeal No. 9241 of 2019*** Judgment dated 8th March, 2021, the Hon'ble Supreme Court of India observed that the primary focus of the IBC is to ensure the revival and continuation of the corporate debtor. The interests of the corporate debtor have been bifurcated and separated from the interests of persons in management. The timelines which are prescribed in the IBC are intended to ensure the resuscitation of the corporate debtor. The enactment of the IBC is in significant senses a break from the past. While interpreting the provisions of the IBC, care must be taken to ensure that the regime which Parliament found deficient and which was the basic reason for the enactment of the new legislation is not brought in through the back door by a process of disingenuous legal interpretation. However, this is not to say that the interpretation given to the statutory provisions that existed prior to the enactment IBC is to be rejected in toto. The interpretation given to such statutory provisions that are textually similar to Section 60(5)(c) may be relevant, provided that such interpretation is in tandem with the objective of enacting the IBC, that is, inter alia, avoidance of multiplicity of fora and a timely resolution of the insolvency process.

Lesson 15- Petition for Corporate Insolvency Resolution Process

1. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021

According to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021, the committee and members of the committee in discharge of its functions and exercise powers under the Code and regulations in respect of corporate insolvency resolution process, shall be in compliance with the guidelines as may be issued by the Board.

The amendment seeks to address delays in CIRP such as repeated issue of expression of interest, numerous modifications in request for resolution plans and iterations of modifications in the resolution plan and even consideration of unsolicited resolution plans.

1. Sub-regulation (1A) under regulation 17 is inserted:

"(1A) The committee and members of the committee shall discharge functions and exercise powers under the Code and these regulations in respect of corporate insolvency resolution process in compliance with the guidelines as may be issued by the Board."

2. Sub-regulation (4A) is inserted under regulation 36A(4):

"(4A) Any modification in the invitation for expression of interest may be made in the manner as the initial invitation for expression of interest was made:

Provided that such modification shall not be made more than once."

3. Proviso to regulation 36B(5) is inserted: *"Provided that such modifications shall not be made more than once."*

4. Substitution of sub regulation (1A) under regulation 39:

"(1A) The resolution professional may, if envisaged in the request for resolution plan-
(a) allow modification of the resolution plan received under sub-regulation (1), but not more than once; or
(b) use a challenge mechanism to enable resolution applicants to improve their plans.

(1B) The committee shall not consider any resolution plan-
(a) received after the time as specified by the committee under regulation 36B; or
(b) received from a person who does not appear in the final list of prospective resolution applicants; or
(c) does not comply with the provisions of sub-section (2) of section 30 and sub-regulation (1)."

One of the cardinal objectives of the Code is 'value maximisation'. To achieve such an objective and to arrive at resolution of a firm it is understood that sufficient freedom to choose an option must be provided to the stakeholders wherever required. The challenge mechanism can be an additional option available with the stakeholders under the CIRP and will improve transparency and drive maximization of value.

For more details visit:
https://ibbi.gov.in/uploads/legalframwork/57c7722e3ebb1364eac924f213111814.pdf

2. Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2021

Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2021, shall come into effect for appointments as IRP, Liquidator, RP and BT with effect from January 1, 2022. These guidelines are supersession of earlier guidelines issued on June 1, 2021.

The said guidelines inter-alia containing provisions pertaining to: recommendation of name of IP by IBBI in case of Corporate Insolvency, recommendation of name of IP or Bankruptcy Trustee in case of Individual Insolvency by Board, preparation of panel of IPs as per guidelines, eligibility of IP for inclusion in the panel, invitation of expression of interest by IPs in Form A (format specified) by Board, scoring on ongoing assignments of IPs, and obligations of IP in the panel etc.

For more details visit:
https://ibbi.gov.in/uploads/legalframwork/f812a9b138081ae0760bc224a478fdc4.pdf

3. Case law on Insolvency and Bankruptcy

a) In the case of ***Ramesh Kymal Vs. M/s Siemens Gamesa Renewable Power Pvt Ltd*** judgement dated February 9, 2021 Hon'ble Supreme Court observed that Section 10A does not contain any requirement that the Adjudicating Authority must launch into an enquiry into whether, and if so to what extent, the financial health of the corporate debtor was affected by the onset of the Covid-19 pandemic. Parliament has stepped in legislatively because of the wide spread distress caused by an unheralded public health crisis. It was cognizant of the fact that resolution applicants may not come forth to take up the process of the resolution of insolvencies (this as we have seen was referred to in the recitals to the Ordinance), which would lead to instances of the corporate debtors going under liquidation and no longer remaining a going concern. This would go against the very object of the IBC, as has been noted by a two-Judge bench of this Court in its judgment in *Swiss Ribbons (P) Ltd. v. Union of India* (2019) 4 SCC 17 Speaking through Justice Rohinton F Nariman, the Court held as follows: "27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme-workers are paid, the creditors in the long run will be repaid in full, and shareholders/ investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a

going concern. (*See ArcelorMittal [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta,* (2019) 2 SCC 1] at para 83, fn 3).” Hence, the embargo contained in Section 10A must receive a purposive construction which will advance the object which was sought to be achieved by enacting the provision. We are therefore unable to accept the contention of the appellant.

b) Section 14 Limitation Act Applies To Application under Section 7 IBC & Court/Tribunal Can Condone Delay under Section 5 Limitation Act Even In the Absence of A Formal Application.
Fact of the Case:

In this case, the National Company Law Appellate Tribunal rejected the contention raised by Corporate Debtor that since the account of the Corporate Debtor had been declared NPA on 31st March, 2013 and since the application under Section 7 of IBC had been filed on 27th August, 2018, after almost five years and five months from the date of accrual of the cause of action, the application filed by financial creditor is barred by limitation. The NCLAT held that, the applicant, the financial creditor, had bona fide, within the period of limitation , initiated proceedings against the Corporate Debtor under the SARFAESI Act and was thus entitled to exclusion of time under Section 14(2) of the Limitation Act. The NCLAT, after exclusion of the period of about three years and six months till the date of the interim order of the High Court, during which the Financial Creditor had been proceeding under SARFAESI Act, found that the application of the Financial Creditor, under Section 7 of IBC, was within limitation.

Judgement

In this case Hon’ble Supreme Court observed that in our considered view, keeping in mind the scope and ambit of proceedings under the IBC before the NCLT/NCLAT, the expression ‘Court’ in Section 14(2) would be deemed to be any forum for a civil proceeding including any Tribunal or any forum under the SARFAESI Act.

In any case, Section 5 and Section 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing ‘sufficient cause’. It is well settled that omission to refer to the correct section of a statute does not vitiate an order. At the cost of repetition it is reiterated that delay can be condoned irrespective of whether there is any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay.

c) RERA and the IBC must be held to co-exist:
Hon’ble Supreme Court of India in the matter of ***Pioneer Urban Land and Infrastructure Limited and Anr. Vs. Union of India & Ors. WP (C) No. 43/2019*** and other petitions, Judgement dated 9th August, 2019 observed that the fact that RERA is in addition to and not in derogation of the provisions of any other law for the time being in force, also makes it clear that the remedies under RERA to allottees were intended to be additional and not exclusive remedies.

It is clear, therefore, that even by a process of harmonious construction, RERA and the Code must be held to co-exist, and, in the event of a clash, RERA must give way to the Code. RERA, therefore, cannot be held to be a special statute which, in the case of a conflict, would override the general statute, viz. the Code.

d) Date of the Initiation of the CIRP & Insolvency Commencement Date:

Ramesh Kymal Vs. M/s Siemens Gamesa Renewable Power Pvt Ltd judgement dated February 9, 2021 Hon'ble Supreme Court observed that the date of the initiation of the CIRP is the date on which a financial creditor, operational creditor or corporate applicant makes an application to the adjudicating authority for initiating the process. On the other hand, the insolvency commencement date is the date of the admission of the application. This distinction is also evident from the provisions of sub-section (6) of Section 7, sub-section (6) of Section 9 and sub-section (5) of Section 10. Section 7 deals with the initiation of the CIRP by a financial creditor; Section 8 provides for the insolvency resolution by an operational creditor; Section 9 provides for the application for initiation of the CIRP by an operational creditor; and Section 10 provides for the initiation of the CIRP by a corporate applicant.

e) First proviso to section 7 of the Code:

Hon'ble Supreme Court of India in the matter of ***Manish Kumar Vs. Union of India and Another [WP(C) No. 26 of 2020*** with 40 other writ petitions] Judgment dated 19th January, 2021 observed that the legislative understanding is clear that such creditors bearing the hallmark of large numbers, they need to be treated differently. If not, it would spell chaos and the objects of the Code would not be fulfilled. Insisting on a threshold for these categories of creditors would lead tothe halt to indiscriminate litigation which would result in an uncontrollable docket explosion as far as the authorities. The debtor who is apparently stressed is relieved of the last straw on the camel's back, as it were, by halting individual creditors whose views are not shared even by a reasonable number of its peers rushing in with applications.

The legislative policy reflects an attempt at shielding the CD from what it considers would be either for frivolous or avoidable applications. The amendment is likely to ensure that the filing of an application is preceded by a consensus at least by a minuscule percentage of similarly placed creditors that the time has come for undertaking a legal odyssey which is beset with perils for the applicants themselves apart from others.

As regards the percentage of applicants contemplated under the proviso, it cannot be dubbed as an arbitrary or capricious figure. The legislature is not wanting in similar requirements under other laws. The object of speedin deciding CIRP proceedings would also be achieved by applying the threshold to debenture holders and security holders.

The Code and object of the Code and the unique features which set apart the creditors involved in this case from the generality of the creditors, the challenge being to an economic measure and the consequential latitude that is owed to the legislature renders the Principle of Absurdity wholly inapposite.

Third proviso to section 7 of the Code:

Hon'ble Supreme Court of India in the matter of ***Manish Kumar Vs. Union of India and Another [WP(C) No. 26 of 2020*** with 40 other writ petitions] Judgment dated 19th January, 2021 observed that the third proviso is a one-time affair. It is intended that the threshold requirement would apply to all those applications, which were filed prior to 28th December, 2019, but not admitted. When an application is filed under the unamended provisions of section 7, it transforms into a vested right. The vested right is to proceed with the action till its logical and legal conclusion.

Should a new law shorten the existing period of limitation, it would not operate in regard to the right of action which is vested. Legislature is clothed with competence to make retrospective laws. It is open to the legislature, while making retrospective law, to take away vested rights. If a vested right can be taken away by a retrospective law, there can be no reason why the legislature cannot modify the vested rights.

The imposition of a threshold requirement being a mandatory and irreducible minimum constitutes an intrusion into the substantive right of action vested in an individual creditor.

Imposing the threshold requirement under the 3rd proviso is not a mere matter of procedure. It impairs vested rights.

Prescribing a time limit of 30 days to modify the pending applications to comply with the threshold requirement, cannot be, per se, described as arbitrary, as otherwise, it would be an endless and uncertain procedure. The applications would remain part of the docket and become a Damocles Sword overhanging the CD and the other stakeholders with deleterious consequences.

f) Whether the timeline is mandatory?

Hon'ble Supreme Court of India in the matter of ***Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and Ors.*** *arising from Corporate Insolvency Resolution Process (CIRP) of* ***Essar Steel India Limited (Civil Appeal Nos. 9402 - 9405 of 2018)*** Judgement dated 4th October, 2018 observed that Section 33 provides that if no resolution plan is received before the end of the period or the resolution plan is rejected, the corporate debtor is required to be liquidated. Therefore, the period under section 12 is mandatory. In fact, even the literal language of Section 12(1) makes it clear that the provision must read as being mandatory. The expression "shall be completed" is used. Further, sub-section (3) makes it clear that the duration of 180 days may be extended further "but not exceeding 90 days", making it clear that a maximum of 270 days is laid down statutorily. Also, the proviso to Section 12 makes it clear that the extension "shall not be granted more than once".

g) Maximum period of 330 days:

Hon'ble Supreme Court of India in the matter of ***Manish Kumar Vs. Union of India and Another [WP(C) No. 26 of 2020 with 40 other writ petitions]*** Judgment dated 19th January, 2021 observed that Section 12 contemplates, in short, a maximum period of 330 days from the date of the insolvency commencement date, which we have already explained. Though, the word 'mandatorily' has been struck down by this Court in the decision in Committee of Creditors of Essar Steel India Limited (supra), this Court has only balanced the interest of all concerned, by permitting an enlargement of the time, only in those cases, where the delay occurs not on account of the fault of the players concerned and it is based on the principle actus curiae nemiem gravabit, which means that the act of Court shall prejudice no man. This Court has not undermined the timeline fixed by the Legislature and, in fact, it has underlined the importance of conforming to the time limit. Speed, indeed, continues to be of the essence of the Code.

Lesson 16-Role, Functions and Duties of IP, IRP and RP

1. Filing of list of creditors under clause (ca) of sub-regulation (2) of regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Insolvency and Bankruptcy Board of India issued circular no. : IBBI/LIQ/47/2021 dated November 24, 2021. In pursuance of clause (ca) of sub-regulation (2) of regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') requiring the insolvency professional (IP) to file list of creditors on the electronic platform of the Board for dissemination on its website, the Board directed the IP to file the list of creditors and modification thereof in the stipulated format on electronic platform. In the said format, the particular "Identification No." for seeking identification details of creditors is mentioned. Such information being sensitive personal information is prone to misuse and hence is not to be revealed on public platforms.

To address this concern, this circular in partial modification of the Circular under reference, removes the column "Identification No." from the particulars of the format stipulated therein. The insolvency professionals are directed to file the list of creditors of the respective corporate debtor and modification thereof, in the revised format placed in Annexure, within three days of the preparation of the list or modification thereof, as the case may be. The rest of the contents of the above said Circular shall remain same.

For more details visit:
https://ibbi.gov.in/uploads/legalframwork/3b47d76baab766da0d800edb4b2199e6.pdf

2. Case laws on Insolvency and Bankruptcy Code

a) Hon'ble Supreme Court of India in the matter ***of Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and Ors.*** arising from Corporate Insolvency Resolution Process (CIRP) of Essar Steel India Limited (Civil Appeal Nos. 9402 - 9405 of 2018) Judgment dated 4th October, 2018 observed that the importance of the Resolution Professional is to ensure that a resolution plan is complete in all respects, and to conduct a due diligence in order to report to the Committee of Creditors whether or not it is in order. Even though it is not necessary for the Resolution Professional to give reasons while submitting a resolution plan to the Committee of Creditors, it would be in the fitness of things if he appends the due diligence report carried out by him with respect to each of the resolution plans under consideration, and to state briefly as to why it does or does not conform to the law.

b) Lawyer can issue Demand Notice on behalf of Operational Creditor

In the matter of ***Macquarie Bank Limited v. Shilpi Cable Technologies Ltd.,*** the Supreme Court settled the legal proposition under the Insolvency and Bankruptcy Code, 2016 to hold that:

(i) Section 9(3)(c) of the Code is directory and not mandatory in nature

(ii) Demand notice under the Code can be issued by the Lawyer on behalf of the operational creditor.

The two issues that were raised in this case pertained to Insolvency and Bankruptcy Code, 2016. Firstly, whether, in relation to an operational debt, the provision contained in Section 9(3)(c) of the Code is mandatory and secondly, whether a demand notice of an unpaid operational debt can be issued by a lawyer on behalf of the operational creditor.

With reference to the aforesaid issues, two-Judge Bench of the Supreme Court made the following observations:

(i) Under section 9(3)(c) of the Code a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor is certainly not a condition precedent to triggering the insolvency process under the Code. The expression "confirming" makes it clear that this is only a piece of evidence, albeit a very important piece of evidence, which only "confirms" that there is no payment of an unpaid operational debt. Therefore, section 9(3)(c) of the Code would have to be construed as being directory in nature.

(ii) Supreme Court observed that Section 8 of the Code speaks of an operational creditor delivering a demand notice and if the legislature wished to restrict such demand notice being sent by the operational creditor himself, the expression used would perhaps have been "issued" and not "delivered". Delivery, therefore, would postulate that such notice could be made by an authorized agent.

c) Flat buyers can initiate insolvency proceedings against builders under the Code

In the matter of ***Nikhil Mehta & Sons (HUF) & Ors. v. AMR Infrastructures Ltd.***, the NCLAT has ruled that a purchaser of real estate, under an 'assured-return' plan, would be considered as a 'Financial Creditor' for the purposes of Code and is, therefore, entitled to initiate corporate insolvency process against the builder, in case of non-payment of such 'Assured/Committed return' and non-delivery of unit. NCLAT further went on to rule that the 'debt' in this case was disbursed against the consideration for the 'time value of money' which is the primary ingredient that is required to be satisfied in order for an arrangement to qualify as 'Financial Debt' and for the lender to qualify as a 'Financial Creditor', under the scheme of Code.

The Insolvency and Bankruptcy Code (Second Amendment) Act of 2018 has however, added an Explanation to sub-clause (f) of Section 5(8) of IBC clarifying that for the purposes of sub-clause (f), any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing. In the matter of Pioneer Urban Land and infrastructure Ltd. & Ans vs. UOI, Hon'ble Supreme Court has held that amounts raised from allottees under a real estate project would be submsumed withing Section 5(8)(f) even without adverting to the Explanation introduced by the Amendment Act. As such, all the allottees under real estate projects, whether under assured return plan or not, shall fall under the definition of "Financial Creditor".

d) Time-limit for completion of insolvency resolution process

The Supreme Court, in the matter of 'Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors'. while interpreting Section 29A(c) of the Insolvency and Bankruptcy Code, 2016, has observed the stage of ineligibility attaches when the resolution plan is submitted by a resolution applicant and not at any anterior stage. The bench further held that the time limit for completion of the insolvency resolution process as laid down under Section 12 of the Code is mandatory and it cannot be extended beyond 270 days.

e) Role of Resolution Professional

Hon'ble Supreme Court of India in the matter of ***Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and Ors.*** arising from Corporate Insolvency Resolution Process (CIRP) of Essar Steel India Limited (Civil Appeal Nos. 9402 - 9405 of 2018) Judgement dated 4th October, 2018 observed that it must not be forgotten that a Resolution Professional is only to "examine" and "confirm" that each resolution plan conforms to what is provided by Section 30(2). Under Section 25(2)(i), the Resolution Professional shall undertake to present all resolution plans at the meetings of the Committee of Creditors. This is followed by Section 30(3), which states that the Resolution Professional shall present to the Committee of Creditors, for its approval, such resolution plans which confirm the conditions referred to in sub-section (2). This provision has to be read in conjunction with Section 25(2)(i), and with the second proviso to Section 30(4), which provides that where a resolution applicant is found to be ineligible under Section 29A(c), the resolution applicant shall be allowed by the Committee of Creditors such period, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to Section 29A(c). A conspectus of all these provisions would show that the Resolution Professional is required to examine that the resolution plan submitted by various applicants is complete in all respects, before submitting it to the Committee of Creditors. The Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors, who may or may not approve it. The fact that the Resolution Professional is also to confirm that a resolution plan does not contravene any of the provisions of law for the time-being in force, including Section 29A of the Code, only means that his prima facie opinion is to be given to the Committee of Creditors that a law has or has not been contravened. Section 30(2)(e) does not empower the Resolution Professional to "decide" whether the resolution plan does or does not contravene the provisions of law.

Lesson 18- Convening and Conduct of Meetings of Committee of Creditors

Case Laws on Insolvency and Bankruptcy

a) Does NCLAT have a right in law to interfere with the decision of the Committee of Creditors of accepting the resolution plan?

In the case ***of 'Kalparaj Dharamshi and another vs Kotak Investment Advisors Ltd and another'***, the Apex Court observed that the evaluation of proposals to keep the entity as a going concern, including decisions about the sale of business or units, restructuring of debt, etc., are required to be taken by the Committee of the Financial Creditors. The Apex Court further observed that it has been provided, that the choice of the solution to keep the entity as a going concern will be voted upon by the Committee and there are no constraints on the proposals that the resolution professional can present to the Committee. It was held that the NCLT or the NCLAT cannot interfere with the commercial wisdom of the Committee of Creditors, except within the limited scope under Sections 30 and 31 of the Code. It was further held that the commercial wisdom of the Committee has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the Code. The Court further held that there is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. It was further held that the opinion expressed by the Committee after due deliberations in the meetings through voting, as per voting shares, is a collective business decision.

Lesson 19- Preparation and Approval of Resolution Plan

Case Laws on Insolvency and Bankruptcy Code

a) Can insolvency proceedings be withdrawn even after invitation of Resolution Plan?

In the matter of '***Brilliant Alloys Pvt. Ltd. v. Mr. S. Rajagopal & Ors.',*** the Supreme Court held that Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has to be read subject to Section 12A of the Insolvency and Bankruptcy code, 2016 which does not impose the condition that withdrawal application has to be filed before the invitation of expression of interest. Thus, the Apex Court upheld withdrawal of CIRP even after the Resolution Professional issued invitation for expression of interest from resolution applicants to submit resolution plans under Regulation 36A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

b) Former directors of Corporate Debtor are entitled to receive Resolution Plan

In the matter of ***Vijay Kumar Jain v. Standard Chartered Bank and others***, an appeal was filed with Supreme Court against orders rejecting the prayer of an erstwhile director for getting copy of the resolution plans from the RP. Both the NCLT and NCLAT ruled that appellant had no right to receive the resolution plans.

The Resolution Professional (RP) has contended that only the members of CoC are entitled to have resolution plans, as per Section 30(3) IBC read with Regulation 39(2) CIRP Regulations. Relying on the Notes on Clauses to Section 24 of the Code, they argued that the members of suspended Board of Directors are permitted to participate in CoC meetings only for the purpose of giving information regarding the financial status of the debtor.

The Supreme Court expressly rejected the argument based on Notes on Clauses to Section 24 of the Code and noted that every participant is entitled to a notice of every meeting of the committee of creditors. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting vide Regulation 21(3)(iii). Court said the expression "documents" is a wide expression which would certainly include resolution plans.

The judgment also clarified that the RP can take an undertaking from the erstwhile director to maintain confidentiality of the information.

Lesson 23-Cross Border Insolvency

1. Report of the Cross Border Insolvency Rules and Regulations Committee

MCA vide Office Order dated 21st February, 2020, the included the study of the UNCITRAL Model Law for Enterprise Group Insolvency in the mandate to Cross Border Insolvency Rules/Regulations Committee (CBIRC), and requested it to make recommendations on cross-border resolution and insolvency of enterprises as well.

The CBIRC submitted report to Ministry of Corporate Affairs. The key issues considered by the CBIRC and the recommendations are: Applicability of cross border insolvency framework, Applicability of the IBC to foreign companies and foreign LLPs, Designated benches for the adjudication of cross border matters, Framework for access by Indian IPs to foreign proceedings, Reliefs in cross border insolvency matters, Protocols and court-to-court co-operation across jurisdictions, Format, content and fees for cross border insolvency applications in India etc.

For more details visit:
https://ibbi.gov.in/uploads/whatsnew/2021-11-23-215206-0clh9-6e353aefb83dd0138211640994127c27.pdf

Lesson 24- Liquidation on or after Failing of Resolution Plan

1. The Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2021

According to the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2021, the amendment expands the scope of consultation to cover all aspects related to sale of assets and appointment of professionals. The amendment regulations also provide for manner of selection of representatives of stakeholders in Stakeholders Consultation Committee, the amendment regulations provide that Liquidator shall not require payment of any non-refundable deposit or fee for participation in an auction. It also provides that the earnest money deposit shall not exceed ten percent of the reserve price in an auction, the Board has also made available an electronic platform at www.ibbi.gov.in for hosting public notices of auctions of liquidation assets of ongoing liquidation processes.
To enhance the transparency and accountability, the amendment regulations provide for the Liquidator to intimate the reasons for rejection of the highest bid to the highest bidder and report the same in the next progress report.

For more details visit:
https://ibbi.gov.in/uploads/legalframwork/dd230e9f5c38a981e646a3eba1354713.pdf

2. IBBI's Electronic Platform for hosting Public Notices of Auctions of Liquidation Assets under the IBBI (Liquidation Process) Regulations, 2016

Vide circular no. No. IBBI/LIQ/44/2021 dated September, 2021, A liquidator is required to issue public notice of auctions on the website designated by IBBI, in addition to other specified modes of publication, under sub-regulation (3) of regulation 12 of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Process Regulations) read with clause (5) of paragraph 1 of its Schedule I.

Liquidators are directed to upload the public notice of every auction of any liquidation asset, with effect from 1st October, 2021, at www.ibbi.gov.in on the day of its publication in newspapers, through their designated login page.

For more details visit:
https://ibbi.gov.in/uploads/legalframwork/2021-09-30-233009-xotyz-7c4b58c1affd6a9e028a8348cc2f91be.pdf

Lesson 25-Voluntary Liquidation

1. IBBI Circular - Clarification regarding requirement of seeking No Objection Certificate (NOC) or No Dues Certificate (NDC) from the Income Tax Department during Voluntary Liquidation Process under the Insolvency and Bankruptcy Code, 2016 (Code)

The Insolvency and Bankruptcy Board of India pursuant to exercising the powers mentioned under section 196 of the Code, issued circular no. No. IBBI/LIQ/45/2021 dated November 15, 2021 *inter-alia* clarified that as per the provisions of the Code and the Regulations read with Section 178 of the Income-tax Act, 1961, an Insolvency Professional handling voluntary liquidation process is not required to seek any NOC/NDC from the Income Tax Department as part of compliance in the said process.

The process of applying and obtaining of such NOC/NDC from the Income Tax Department consumes substantial time and thus militates against the express provisions of the Code, and also defeats the objective of time-bound completion of process under the Code.

For more details visit:
https://www.ibbi.gov.in/uploads/legalframwork/cc881169aad7ee239aea7954505a76ab.pdf

2. Filing of list of stakeholders under clause (d) of sub-regulation (5) of regulation 31 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

Insolvency and Bankruptcy Board of India issued circular no. : IBBI/LIQ/46/2021 dated November 24, 2021. In pursuance of clause (d) of sub-regulation (5) of regulation 31 of the IBBI (Liquidation Process) Regulations, 2016 ('Liquidation Process Regulations') requiring the liquidator to file list of stakeholders on the electronic platform of the Board for dissemination on its website, the Board directed the liquidators to file the list of stakeholders and modification thereof, in the stipulated format, on the electronic platform. In the said format, the particular / column "Identification No." for seeking identification details of stakeholders is mentioned. Such information being sensitive personal information is prone to misuse and not to be revealed on public platforms.

To address this problem, this Circular in partial modification removes the column "Identification No." from the particulars of the format stipulated therein. The insolvency professionals are directed to file the list of stakeholders of the respective corporate debtor under liquidation and modification thereof, in the revised format placed in Annexure, within three days of the preparation of the list or modification thereof, as the case may be. The rest of the contents of the above said Circular shall remain same.

For more details visit:
https://ibbi.gov.in/uploads/legalframwork/3ab0d547d310b77cb5716f57f45f1e9d.pdf

Lesson 27- Pre-Packaged Insolvency Resolution Process

INTRODUCTION

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

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

Benefits of pre-pack insolvency resolution process

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

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

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

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

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

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

MSME Threshold

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

(a) it has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of three years preceding the initiation date;

(b) it is not undergoing a corporate insolvency resolution process;

(c) no order requiring it to be liquidated is passed under section 33;

(d) it is eligible to submit a resolution plan under section 29A;

(e) the financial creditors of the corporate debtor, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the pre-packaged insolvency resolution process of the corporate debtor, and the financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six per cent in value of the financial debt due to such creditors, have approved such proposal in such form as may be specified:

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

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

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

(f) the majority of the directors or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified, stating, inter alia -

(i) that the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days;

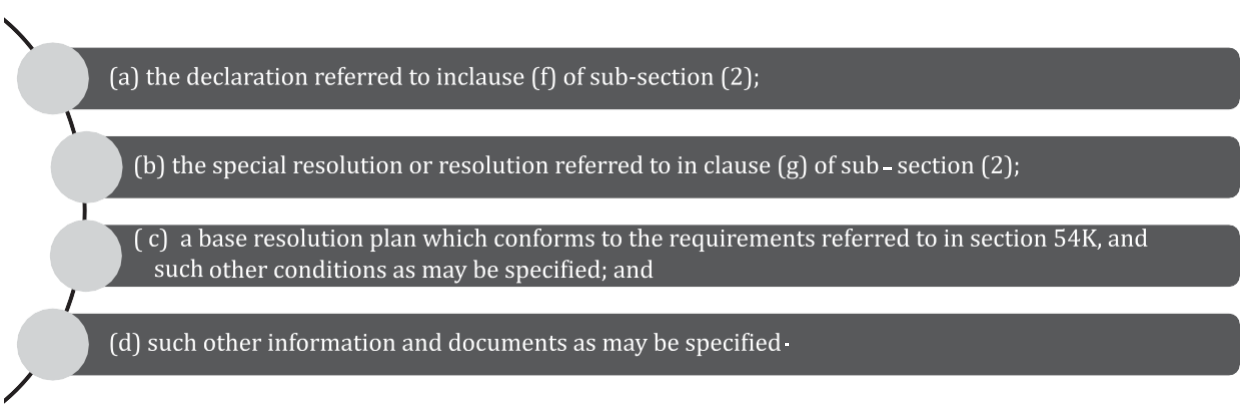
(ii) that the pre-packaged insolvency resolution process is not being initiated to defraud any person; and

(iii) the name of the insolvency professional proposed and approved to be appointed as resolution professional under clause (e);

(g) the members of the corporate debtor have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor have passed a resolution, approving the filing of an application for initiating prepackaged insolvency resolution process.

(3) The corporate debtor shall obtain an approval from its financial creditors, not being its related parties, representing not less than sixty-six per cent in value of the financial debt due to such creditors, for the filing of an application for initiating pre-packaged insolvency resolution process, in such form as may be specified: Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the approval under this sub-section shall be provided by such persons as may be specified.

(4) Prior to seeking approval from financial creditors under sub section (3), the corporate debtor shall provide such financial creditors with -



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

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

(a) prepare a report in such form as may be specified, confirming whether the corporate debtor meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in clause (c) of sub-section (4) of section 54A;

(b) file such reports and other documents, with the Board, as may be specified; and

(c) perform such other duties as may be specified.

Section 54B (3) provides that the fees payable to the insolvency professional in relation to the duties performed under sub- section (1) shall be determined and borne in such manner as may be specified and such fees shall form part of the pre-packaged insolvency resolution process costs, if the application for initiation of pre-packaged insolvency resolution process is admitted.

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

Section 54B(2) provides the following circumstances:

(a) If the corporate debtor fails to file an application for initiating pre-packaged insolvency resolution process within the time period as stated under the declaration referred to in clause (f) of sub- section (2) of section 54A; or

(b) the application for initiating pre-packaged insolvency resolution process is admitted or rejected by the Adjudicating Authority, as the case may be.

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

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

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

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

(3) The corporate applicant shall, along with the application, furnish-

a) the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating pre-packaged insolvency resolution process in terms of section 54A;

b) the name and written consent, in such form as may be specified, of the insolvency professional proposed to be appointed as resolution professional, as approved under clause (e) of sub-section (2) of section 54A, and his report as referred to in clause (a) of sub-section (1) of section 54B;

(c) a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, in such form as may be specified;

(d) information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.

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

(a) admit the application, if it is complete; or

(b) reject the application, if it is incomplete.

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

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

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

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

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

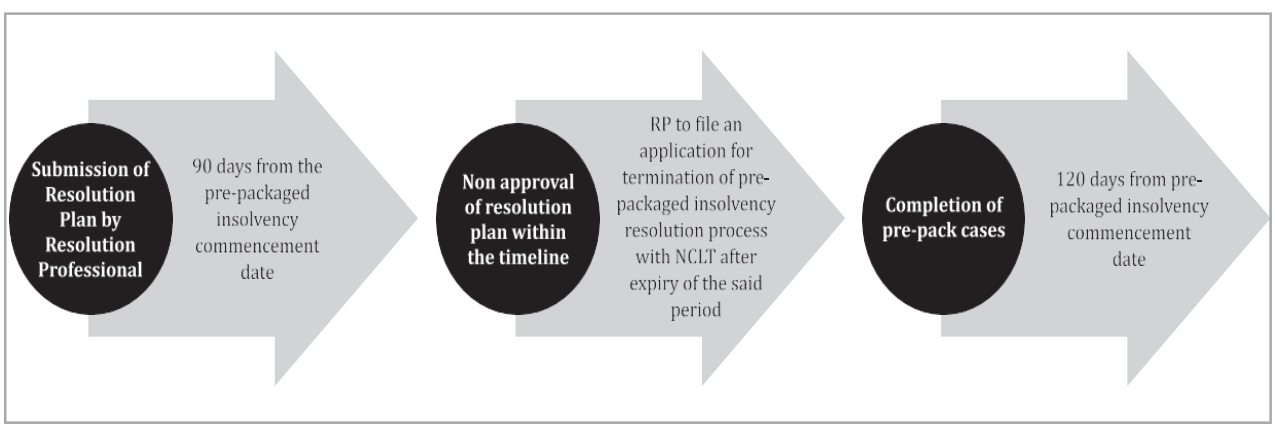


Fig. Timeline of pre-packaged insolvency resolution process

Declaration of moratorium and public announcement during pre-packaged insolvency resolution process (Section 54E)

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

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

(b) appoint a resolution professional -

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

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

Timeline for public announcement:

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

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

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

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

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

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

(a) confirm the list of claims submitted by the corporate debtor under section 54G, in such manner as may be specified;

(b) inform creditors regarding their claims as confirmed under clause (a), in such manner as may be specified;

(c) maintain an updated list of claims, in such manner as may be specified;

(d) monitor management of the affairs of the corporate debtor;

(e) inform the committee of creditors in the event of breach of any of the obligations of the Board of Directors or partners, as the case may be, of the corporate debtor, under the provisions of this chapter and the rules and regulations made thereunder;

(f) constitute the committee of creditors and convene and attend all its meetings;

(g) prepare the information memorandum on the basis of the preliminary information memorandum submitted under section 54G and any other relevant information, in such form and manner as may be specified;

(h) file applications for avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, if any; and

(i) such other duties as may be specified.

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

(a) access all books of accounts, records and information available with the corporate debtor;

(b) access the electronic records of the corporate debtor from an information utility having financial information of the corporate debtor;

(c) access the books of accounts, records and other relevant documents of the corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified;

(d) attend meetings of members, Board of Directors and committee of directors, or partners, as the case may be, of the corporate debtor;

(e) appoint accountants, legal or other professionals in such manner as may be specified;

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

(i) business operations for the previous two years from the date of pre-packaged insolvency commencement date;

(ii) financial and operational payments for the previous two years from the date of pre-packaged insolvency commencement date;

(iii) list of assets and liabilities as on the initiation date; and (iv) such other matters as may be specified;

(g) take such other actions in such manner as may be specified.

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

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

chapter.

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

Provided that the committee of creditors may impose limits and conditions on such fees and expenses: Provided further that the fees and expenses for the period prior to the constitution of the committee of creditors shall be subject to ratification by it.

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

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

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

List of claims and preliminary information memorandum (Section 54G)

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

(a) a list of claims, along with details of the respective creditors, their security interests and guarantees, if any; and

(b) a preliminary information memorandum containing information relevant for formulating a resolution plan.

Preliminary information memorandum

Section 5(23A) of the Code states that "preliminary information memorandum" means a memorandum submitted by the corporate debtor under clause

(b) of sub-section (1) of section 54G.

(2) Where any person has sustained any loss or damage as a consequence of the omission of any material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum submitted by the corporate debtor, every person who -

(a) is a promoter or director or partner of the corporate debtor, as the case may be, at the time of submission of the list of claims or the preliminary information memorandum by the corporate debtor; or

(b) has authorised the submission of the list of claims or the preliminary information memorandum by the corporate debtor, shall, without prejudice to section 77A, be liable to pay compensation to every person who has sustained such loss or damage.

(3) No person shall be liable under sub-section (2), if the list of claims or the preliminary information memorandum was submitted by the corporate debtor without his knowledge or consent.

(4) Subject to section 54E, any person, who sustained any loss or damage as a consequence of omission of material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum shall be entitled to move a court having jurisdiction for seeking compensation for such loss or damage.

Management of affairs of corporate debtor (Section 54H)

During the pre-packaged insolvency resolution process period,-

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

(b) the Board of Directors or the partners, as the case may be, of the corporate debtor, shall make every endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern; and

(c) the promoters, members, personnel and partners, as the case may be, of the corporate debtor, shall exercise and discharge their contractual or statutory rights and obligations in relation to the corporate debtor, subject to the provisions of this chapter and such other conditions and restrictions as may be prescribed.

Committee of Creditors (Section 54I)

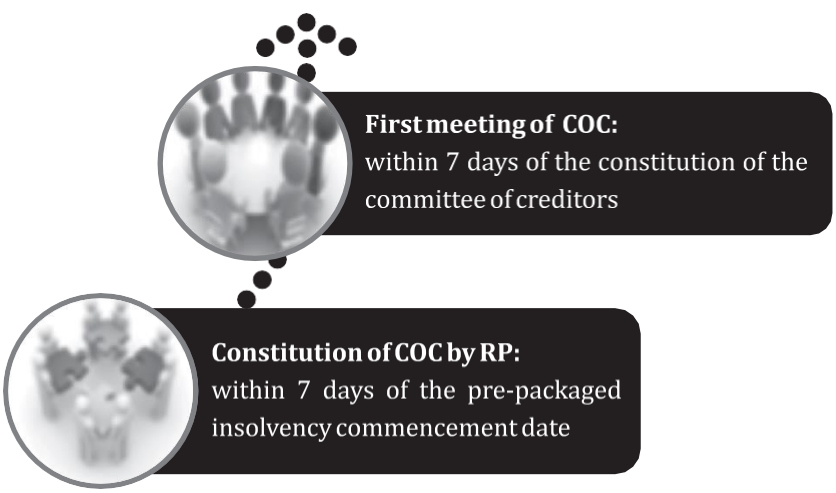
(1) The resolution professional shall, within seven days of the pre-packaged insolvency commencement date, constitute a committee of creditors, based on the list of claims confirmed under clause (a) of sub-section (2) of section 54F:

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

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

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

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



Vesting management of corporate debtor with resolution professional (Section 54J)

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

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

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

(b) section 17 (Management of affairs of corporate debtor by IRP)

(c) clauses (e) to (g) of section 18 (Duties of IRP)

(d) sections 19 and 20 (Personnel to extend co-operation to IRP and management of operations of corporate debtor as going concern)

(e) sub-section (1) of section 25 (Duty of RP to preserve and protect the assets of corporate debtor)

Section 54J(2) of the Code provides that on an application made undersub-section (1), if the Adjudicating Authority is of the opinion that during the pre-packaged insolvency resolution process —

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

(b) there has been gross mismanagement of the affairs of the corporate debtor, it shall pass an order vesting the management of the corporate debtor with the resolution professional.

(f) clauses (a) to (c) and clause (k) of sub-section (2) of section 25 (duties of RP) and

(g) section 28 (Approval of COC for certain actions)

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

Consideration and approval of resolution plan (Section 54K)

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

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

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

Explanation II – For the purposes of subsections

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

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

Requirements of resolution plan

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

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

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

  (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

  (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

(c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) confirms to such other requirements as may be specified by the Board.

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

(5) Where -

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

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

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

(7) The resolution professional shall provide to the resolution applicants -

(a) the basis for evaluation of resolution plans for the purposes of sub-section (9), as approved by the committee of creditors subject to such conditions as may be specified; and

(b) the relevant information referred to in section 29, which shall, mutatis mutandis apply, to the proceedings under this chapter, in such manner as may be specified.

(8) The resolution professional shall present to the committee of creditors, for its evaluation, resolution plans which conform to the requirements referred to in sub-section (2) of section 30.

(9) The committee of creditors shall evaluate the resolution plans presented by the resolution professional and select a resolution plan from amongst them.

(10) Where, on the basis of such criteria as may be laid down by it, the committee of creditors decides that the resolution plan selected under sub-section (9) is significantly better than the base resolution plan, such resolution plan may be selected for approval under sub-section (12):

Provided that the criteria laid down by the committee of creditors under this sub-section shall be subject to such conditions as may be specified.

(11) Where the resolution plan selected under sub-section (9) is not considered for approval or does not fulfil the requirements of sub-section (10), it shall compete with the base resolution plan, in such manner and subject to such conditions as may be specified, and one of them shall be selected for approval under sub-section (12).

(12) The resolution plan selected for approval under sub-section (10) or sub-section (11), as the case may be, may be approved by the committee of creditors for submission to the Adjudicating Authority:

Provided that where the resolution plan selected for approval under sub-section (11) is not approved by the committee of creditors, the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.

(13) The approval of the resolution plan under sub-section (4) or sub-section (12), as the case may be, by the committee of creditors, shall be by a vote of not less than sixty-six per cent. of the voting shares, after considering its feasibility and viability, the manner of distribution proposed, taking into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified.

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

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

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

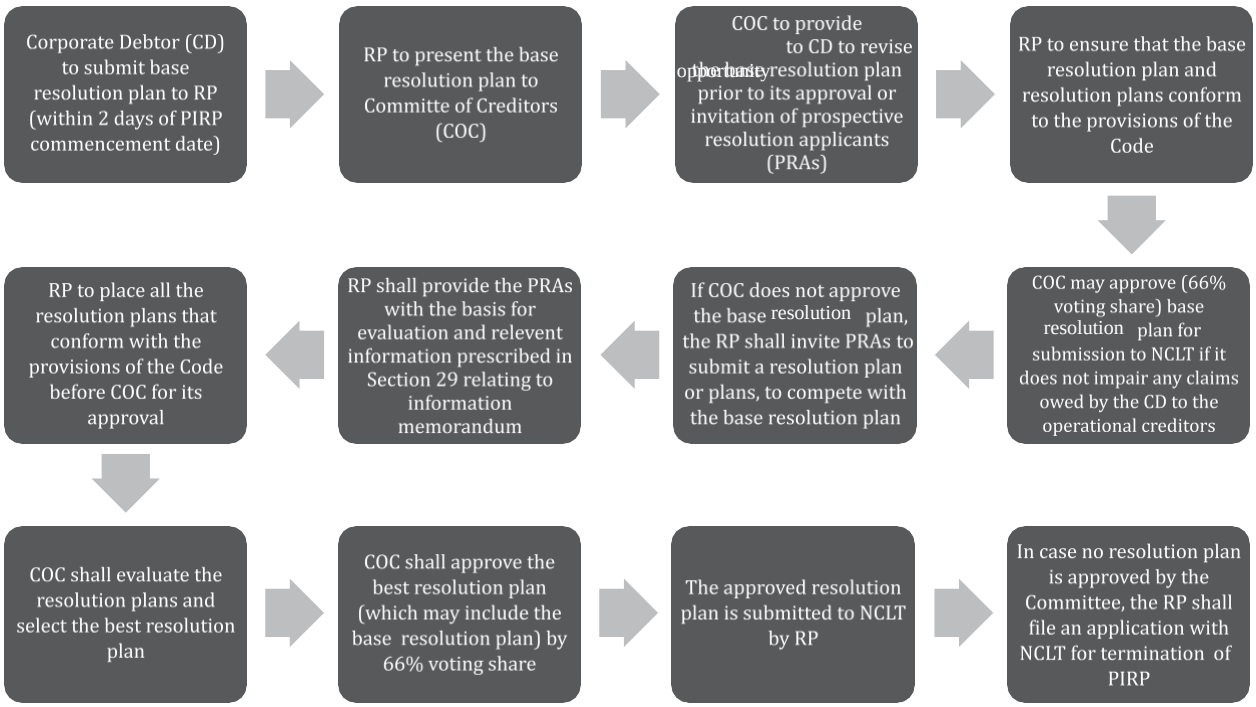


Fig: Consideration and approval of Resolution Plan

Approval of resolution plan (Section 54L)

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

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

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

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

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

(a) rejecting such resolution plan;

(b) terminating the pre-packaged insolvency resolution process and passing a liquidation order in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and

(c) declaring that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.

Termination of pre-packaged insolvency resolution process (Section 54N)

(1) Where the resolution professional files an application with the Adjudicating Authority, -

(a) under the proviso to sub-section (12) of section 54K; or

(b) under sub-section (3) of section 54D,

the Adjudicating Authority shall, within thirty days of the date of such application, by an order, -

(i) terminate the pre-packaged insolvency resolution process; and

(ii) provide for the manner of continuation of proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any.

What happens when the Adjudicating Authority has passed an order

for termination of pre-packaged insolvency resolution process pursuant to the decision of COC?

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

(a) of liquidation of corporate debtor

(b) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of

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

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

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

Initiation of corporate insolvency resolution process (Section 54 O)

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

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

(a) terminate the pre-packaged insolvency resolution process and initiate corporate insolvency resolution process under Chapter II in respect of the corporate debtor;

(b) appoint the resolution professional referred to in clause (b) of sub-section (1) of section 54E as the interim resolution professional, subject to submission of written consent by such resolution professional to the Adjudicatory Authority in such form as may be specified; and

(c) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of insolvency resolution process costs for the purposes of the corporate insolvency resolution process of the corporate debtor.

(3) Where the resolution professional fails to submit written consent under clause (b) of sub-section (2), the Adjudicating Authority shall appoint an interim resolution professional by making a reference to the Board for recommendation, in the manner as provided under section 16.

Section 54O(4) of the Code provides that where the Adjudicating Authority passes an order under sub- section (2):				
(a) such order shall be deemed to be an order of admission of an application under section 7 and shall have the same effect;	(b) the corporate insolvency resolution process shall commence from the date of such order;	(c) the proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any, shall continue during the corporate insolvency resolution process;	(d) for the purposes of sections 43, 46 and 50, references to "insolvency commencement date" shall mean "pre-packaged insolvency commencement date"; and	(e) in computing the relevant time or the period for avoidable transactions, the time period for the duration of the pre-packaged insolvency resolution process shall also be included, notwithstanding anything to the contrary contained in sections 43, 46 and 50.

Application of provisions of Chapters II, III, VI and VII to this Chapter (Section 54P)

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

(a) reference to "members of the suspended Board of Directors or the partners" under clause (b) of sub-section (3) of section 24 shall be construed as reference to "members of the Board of Directors or the partners, unless an order has been passed by the Adjudicating Authority under section 54J";

(b) reference to "clause (j) of sub-section (2) of section 25" under section 26 shall be construed as reference to "clause (h) of sub-section (2) of section 54F";

(c) reference to "section 16" under section 27 shall be construed as reference to "section 54E";

(d) reference to "resolution professional" in sub-sections (1) and (4) of section 28 shall be construed as "corporate debtor";

(e) reference to "section 31" under sub-section (3) of section 61 shall be construed as reference to "sub-section (1) of section 54L";

(f) reference to "section 14" in sub-sections (1) and (2) of section 74 shall be construed as reference to "clause (a) of sub-section (1) of section 54E";

(g) reference to "section 31" in sub-section (3) of section 74 shall be construed as" reference to "sub-section (1) of section 54L".

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

(a) "insolvency commencement date" shall be construed as references to "prepackaged insolvency commencement date";

(b) "resolution professional" or "interim resolution professional", as the case may be, shall be construed as references to the resolution professional appointed under this Chapter;

(c) "corporate insolvency resolution process" shall be construed as references to "pre-packaged insolvency resolution process"; and

(d) "insolvency resolution process period" shall be construed as references to "prepackaged insolvency resolution process period.