EFFECTIVENESS OF PRE-PACKAGED INSOLVENCY FOR MSMEs

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ABSTRACT

In this paper we studied and examined the efficacy of the Pre-Packaged Insolvency Resolution Process (PPIRP), brought into effect by the 2021 amendment to India's Insolvency and Bankruptcy Code (IBC), as fast, low-cost rescue option for Micro, Small, and Medium Enterprises (MSMEs). Against the background of COVID-19 pandemic and driven by global best practice in the UK and US, PPIRP was structured with innovations of note: debtor in possession stewardship, a disciplined 120-days timeline for resolution, and pre negotiated resolution strategies filed ahead of formal launch.

Using a mixed method technique, doctrinal analysis, primary empirical data, stakeholder interviews, and judicial remarks, this paper evaluates the legal infrastructure, institutional protections, and operational results of PPIRP. Preliminary findings highlight significant advantages: business continuity with current management, decreased advisory expenses, and faster turnaround on plan approvals. As of early 2025, however, only 13 MSME cases have commenced under PPIRP, with only five approvals and small recoveries, dissuading creditors and promoters alike.

The study names a number of structural barriers. The pre-registration requirement under the MSME Development Act disqualifies a huge majority of enterprises, more than 90% of them are not registered. Other hurdles are high default thresholds, the jammed-down time schedules which introduce valuation and credibility issues, the threat of promoter capture arising from the Swiss challenge framework, and limited involvement of operational creditors. Moreover, creditor hesitation, especially among bankers uncomfortable with extending control to the promoters and extensive due diligence, is also the cause of underutilization.

Referring to comparative regimes in the US and UK, this paper provides customized reforms that enhance PPIRP's usefulness: increasing eligibility to cover Udyam registered MSMEs; requiring mandatory disclosures, increased stakeholder participation, and valuation protection; encouraging

creditor participation; and strengthening supervision by NCLT and the IBBI. The proposal also considers a creditor led restructuring variant (CLRP) to supplement PPIRP.

With skilfully tuned legal innovations and proactive application, PPIRP can be a potent tool for MSME rejuvenation, lessening financial stress, and serving to consolidate fiscal stability. Its import derives from adding a new insolvency design specifically suited to the unique circumstances of MSMEs, encouraging speed, cost-effectiveness, transparency, and business continuity, and plugging a loophole in current insolvency theory and practice.

Introduction: Context and Rationale

The micro, small, and medium enterprises (MSMEs) economy is the fulcrum of Indian economic growth, with substantial contributions to GDP, exports, and the generation of jobs. Despite its importance, MSMEs are characterized by deep financial and structural weaknesses. Limited access to formal credit, poor collateral, and difficulties in dealing with financial mechanisms are some of the impediments to their sustainability and development. Studies suggests that Indian MSMEs are plagued by a huge credit gap. Only a fraction of their debt is covered by formal financial institutions whole the remaining rely on high-cost and unreliable informal sources. This has a ripple effect on their capacity to scale, navigate operational disruptions, and absorb external shocks like economic recessions or the COVID-19 pandemic, which heightened chronic stresses and triggered unprecedented levels of distress and closure in the sector.

Structural barriers broaden these fiscal limitations. Most MSMEs are informal, which hinders them from accessing government subsidies, technology assistance, and official market channels. Managerial capability gaps, technological lags, and insufficient market intelligence further expose them to market volatility. Under such conditions, disturbances, whether supply chain disruptions, demand downturns, or increased input prices, can threaten its survival and by implication, overall socio-economic stability.

The arrival of the Insolvency and Bankruptcy Code, 2016 (IBC) brought to India a contemporary regime for resolution of corporate distress. The Corporate Insolvency Resolution Process (CIRP), as initially conceptualized, was largely focused towards large corporates. Its procedural complications, marked by long timelines, high expenses, and a creditor-in-control approach, proved incongruent with the disparate scale and resource constraints of MSMEs.

Empirical and policy analyses suggests that MSMEs, often as operational creditors, are unable to recover dues under CIRP due to the high threshold for initiation and negligible liquidation value recoveries. As debtors, small-scale businesses risked value erosion and irreversible loss of enterprise, given the extended moratorium periods and prolonged uncertainty intrinsic to CIRP proceedings.

Identifying this sectoral peculiarity the legislature passed the Pre-Packaged Insolvency Resolution Process (PPIRP) under the *IBC (Amendment) Act, 2021*. In contrast to regular insolvency proceedings, PPIRP allows debtors to file proceedings at will and negotiate with creditors in advance a restructuring plan with minimal court intervention. It preserves the possession of the business by the debtor (debtor-in-possession), allows for speedy creditor participation, and is friendly to quick, low-cost, and stigma-alleviating solutions suited for MSMEs.

We have adopted multidisciplinary methodology for this study. The doctrinal aspect involves examination of statute texts, regulations, and policy documents concerning MSME insolvency and the PPIRP framework. The empirical section uses recent surveys, government and industry statistics, and field research to ground the lived realities of MSMEs as they work within insolvency frameworks. We made a comparative analysis with both established pre-pack systems in the UK and US, examining areas of convergence and divergence in legislative purpose, process effectiveness, and impact. Jointly, these approaches underwrite a comprehensive, evidence-based assessment of the efficacy of pre-packaged insolvency for India's MSMEs, locating the PPIRP in domestic imperatives and changing worldwide norms.

Legal Framework of PPIRP in India

The statutory framework of the PPIRP is based on Chapter III-A of the IBC, which lists Sections 54A[1] to 54P[2]. This legislative structure put forward a hybrid insolvency resolution framework, including unorganized settlements and the formal strictness of the CIRP. The model is intended to provide faster, cheaper, and less dislocating insolvency options for businesses that typically do not have the resources to ride out the lengthy cost and timelines inherent in conventional insolvency processes.

[1] Insolvency Bankruptcy Code, § 54A, No. 31, Acts of Parliament. 2016 (India).
[2] Insolvency Bankruptcy Code, § 54P, No. 31, Acts of Parliament. 2016 (India).

One of the unique characteristics of the PPIRP is the *debtor-in-possession model*. Unlike CIRP that changes the management of the corporate debtor to a Resolution Professional, PPIRP enables the current management/promoters to have operational control of the enterprise during the process, though subject to oversight by a Resolution Professional (RP) and the Committee of Creditors (CoC). This model not only maintains firm value but also capitalizes on the industry and operating skills of the existing promoter to maximize recovery opportunities. The resolution professional oversees the process and ensures that operations are conducted in a fashion that does not undermine the interests of creditors and other stakeholders.

A central feature of Chapter III-A is the requirement that a base resolution plan (BRP) be formulated by the corporate debtor. The BRP, filed at the initiation of PPIRP, provides an initial road map for debt restructuring and resolution. If the BRP does not sufficiently safeguard the interests of operational creditors, especially if it does not ensure their full payment, an additional competitive process is initiated: *the Swiss challenge mechanism*.[3] The Swiss challenge enables other prospective resolution applicants to file counter-plans, ensuring transparency and maximization of value. The CoC can, at its discretion, open the BRP to Swiss challenge even if operational creditor interests are otherwise satisfied. The culmination of this is the choice of the best resolution plan by the CoC, weighing both the recoveries of creditors and the maintenance of enterprise value.

Section 54D[4] of the IBC prescribes a very tight 120-day outer limit for the resolution process, with 90 days' time period for approval of a resolution plan by CoC and an additional 30 days for adjudicating authority (generally the NCLT) approval.[5] The timeline is intentionally tight as compared to CIRP, to keep up with the goal of quick resolution that is supportive of the size and liquidity limitations common to MSMEs. Yet judicial interpretation has added a modicum of flexibility: although the timeframe is made out to be obligatory, in *Kethos Tiles Pvt. Ltd. vs. Kethos Tiles Pvt. Ltd. & Anr.*, the NCLAT have made it clear that the 120-day deadline can be considered directory in rare cases, allowing extensions if required to safeguard stakeholder interests and allow significant recovery, subject to such delay not being due to the parties

[3] Mallika Tiwary, '*Pre-Pack Insolvency Resolution Process (PPIRP) for Real Estate Developers: Challenges and Road Ahead,*' IBC LAWS (July 18, 2025), https://ibclaw.in/analysis-of-ppirp-process-and-its-benefits-as-compared-to-cirp-by-mallika-tiwary/

[4] Insolvency Bankruptcy Code, § 54D, No. 31, Acts of Parliament. 2016 (India).

[5] Indian Institute of Insolvency Professionals of ICAI (IIIPI) 'Frequently Asked Questions (Faq) On Pre-Packaged Insolvency Resolution Process (Ppirp) For MSMEs.' IIIPICAI (July 18, 2025), https://www.iiipicai.in/wp-content/uploads/2021/11/FAQ-ON-PPIRP-FOR-MSMEs.pdf.

themselves.[6]

Eligibility for initiation of PPIRP under Section 54A of the IBC is limited by various statutory tests. The corporate debtor must be a micro, small, or medium enterprise as defined by the MSMED Act, 2006[7] classification criteria and registered as such. In addition, a floor payment default of ₹10 lakh is mandated, with an upper and lower limit limiting frivolous or unduly large defaults. Promoter-led initiation of PPIRP is imperative: the current management (as a corporate applicant) alone can apply for PPIRP, and such application must be approved in advance by financial creditors who are not related to the corporate debtor, holding at least 66% value. Preconditions also include supporting documents like resolutions of the board and shareholders, statements on intent and good faith, and the appointment of the proposed RP.

Judicial trends have now started marking the parameters of PPIRP interpretation. In *Krrish Realtech Pvt. Ltd. v. Brilliant Alloys Pvt. Ltd*.[8], the NCLAT set aside an NCLT dismissal of a PPIRP filing based on "base resolution plan merit" at the admission stage, with the clarification that the statutory scheme properly so requires only a determination of procedural compliance at this stage; merits of the BRP are to be examined later, by the CoC and the adjudicating authority. This sets the law that the first bar of eligibility is purely procedural, and the commercial soundness of the resolution plan proposed is squarely within the collective business acumen of creditors. The NCLAT and NCLT have also clarified the balance between judicial supervision and commercial discretion, highlighting the limited but significant role of the judiciary in ensuring process integrity and protection of creditor rights without intruding into the province of business judgment.[9]

The juridical scaffolding of PPIRP for MSMEs under Chapter III-A of the IBC is characterized by speeded-up procedure, promoter-led process, competitive plan design through the Swiss challenge mechanism, and a mechanism of ongoing debtor control, all supported by disciplined process timelines but subject, at the margins, to judicial discretion. Indian courts are aware of

[6] REEDLAW, *Pre-Package Insolvency Resolution Process (PPIRP): Extension of Time Beyond 120 Days—Statutory Provisions, Whether directory or Mandatory,* REEDLAW. (July 18, 2025), https://www.reedlaw.in/post/pre-package-insolvency-resolution-process-ppirp-extension-of-time-beyond-120-days-statutory-provi

[7] Samridhi, *Pre-Packaged Insolvency Resolution Process: Feasibility & Implementation in India*, NAMAN LAW (July 18, 2025), https://nmlaw.co.in/pre-packaged-insolvency-resolution-process-feasibility-implementation-in-india/

[8] Krrish Realtech Pvt. Ltd. v. Brilliant Alloys Pvt. Ltd [2023] NCLAT Del 576

[9] *supra* note 5

the necessity of a streamlined procedure, with creditor collectives' commercial primacy being ensured while maintaining procedural safeguards.

Empirical Assessment of PPIRP Implementation

A quantitative analysis reveals the gradual pace of adoption of PPIRP since its statutory inception in 2021. As of early 2025, the number of PPIRP applications filed remains modest in comparison to cases under the Corporate Insolvency Resolution Process (CIRP). Reports indicate that over 30,000 insolvency cases were disposed of prior to formal admission under all mechanisms, but PPIRP-specific filings number in the low dozens, with most applications concentrated in sectors severely affected by the pandemic and subsequent economic disruptions. Of the PPIRP cases admitted, very few have traversed the entire process to a final resolution plan; notably, only one case, Amrit India, achieved approval and implementation of a resolution plan through the NCLT by 2025.[10] Several applications have been either withdrawn or dismissed due to technical non-compliance, lack of creditor support, or competing insolvency petitions under Sections 7[11] and 9[12] of the IBC. This limited throughput underscores the cautious approach by MSMEs and creditors alike in leveraging the process and reflects persistent structural and procedural constraints.

Illustrative case studies of PPIRP demonstrate both its efficacy and limitations in facilitating enterprise turnaround. In the successful case of Amrit India, a single financial creditor refused to provide further credit, leading to the initiation of PPIRP with a base plan proposing a substantial haircut (around 90%) for the creditor and complete impairment for contingent creditors. The Committee of Creditors (CoC) exercised its discretion to reject the base plan and sought alternative resolution plans. Ultimately, the tribunal approved a plan, but the case exemplifies the high degree of creditor discretion, the challenge of achieving consensus, and the significant financial loss absorbed by creditors. Conversely, the case of *GCCL Infrastructure and Projects Ltd.*, as the first MSME admitted under PPIRP, highlighted the exemption for promoters from Section 29A(c)[13] in MSME cases—a legal accommodation expressly designed to facilitate turnarounds by incumbent management. However, most other

[10] M.P. Rammohan and Sriram Prasad, *Lessons From Pre-Packaged Insolvency Cases In India: A Long Road Ahead*, IB BOARD OF INDIA 176, 185 (2023), https://www.iima.ac.in/sites/default/files/2023-10/Pre-Packs_IBBI_Annual%20Publication_2023.pdf
[11] Insolvency Bankruptcy Code, § 7, No. 31, Acts of Parliament. 2016 (India).
[12] Insolvency Bankruptcy Code, § 9, No. 31, Acts of Parliament. 2016 (India).
[13] Insolvency Bankruptcy Code, § 29A(c), No. 31, Acts of Parliament. 2016 (India).

applications have floundered due to opposition from creditors, procedural delays, or inadequate preparation in the informal pre-application phase, indicating the complexity of stakeholder alignment necessary for successful PPIRP navigation.

The analysis of turnaround time in PPIRP versus CIRP demonstrates mixed outcomes. In practices, cases frequently exceed completion time period of 120 days due to adjudicatory bottlenecks, repeated clarifications demanded by tribunal members, and objections from creditors, issues that mirror legacy implementation challenges of CIRP. Stakeholder interviews and legal practitioners report that the informal pre-initiation phase, meant to expedite resolution, often underestimates the time required for creditor consensus and the negotiation of viable base plans, leading to subsequent delays at the formal stage.

Recovery rates for creditors remain a point of contention and critical assessment. In the few cases that reached resolution, the rates have ranged from negligible to approximately 10% of admitted claims, with financial creditors often forced to accept steep haircuts to ensure business continuity and avoid liquidation. This is partly attributable to the distressed nature of most MSME applicants and the broad creditor powers to reject base plans in favor of alternative proposals or liquidation. While proponents of PPIRP argue that such recoveries, though modest, still exceed the likely outcome in liquidation scenarios, critics contend that the structure unduly favors promoters and existing management through exemptions and reduced scrutiny, as well as limited operational creditor engagement.

Regarding costs, empirical evidence underscores substantial savings for applicants relative to traditional CIRP. The fees for initiating PPIRP are fixed at ₹15,000, compared to ₹25,000 for CIRP, and overall costs are curbed through reduced litigation, shortened timelines, and negotiated plans in the pre-application phase.[14] However, costs for resolution professionals (RPs) and associated intermediaries remain significant, especially in contested cases requiring repeated submissions or extended tribunal involvement. Additionally, for MSMEs with limited liquidity, even these reduced costs can pose formidable barriers to entry.

Stakeholders provide divergent opinions on the efficacy of PPIRP. MSME promoters appreciate the debtor-in-possession model and moratorium, which facilitate the continuation of operations during resolution. Both promoters and Resolution Professionals usually find

[14] *supra* note 9.

NCLT benches to be unpredictable and overly interventionist and require assurances going beyond legal necessity. Financial creditors welcome early engagement and flexibility of the framework but are wary of over-promoter control and dilution of creditors in deficient plans. NCLT authorities and lawyers note the changing character of PPIRP law and urge more precise legislative direction regarding plan rejection and creditor behaviour.

Structural and Practical Barriers Hindering Effectiveness

Within India's pre-packaged insolvency resolution regime several daunting structural and practical impediments stand in the way of intended effectiveness and reach. Though the regime holds out the potential as a hybrid solution mixing the strengths of formal and informal restructuring, these impediments shortchange MSMEs in terms of both access and result.

A key limitation arises out of the ineligibility of unregistered MSMEs. As prescribed under the *Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021*[15], merely the registered MSMEs under the Micro, Small and Medium Enterprises Development Act, 2006, are eligible for the pre-packaged process. Statistics from the National Sample Survey (73rd Round, 2015-2016) put Indian MSMEs at an estimated 63 million; but, as of 2021, a mere 2.6 million had been registered under Udyam, leaving the vast majority, largely micro and informal operations, beyond the reach of corrective insolvency processes.[16] Refining the eligibility further, the regime leaves out sole proprietorships, partnerships, and Hindu Undivided Families, accepting only corporate forms, companies and LLPs, as eligible applicants. This regulatory design leads to the exclusion of a large majority of distressed MSMEs, diluting the remedial reach and impact of the pre-packaged process.

One of the major impediments to PPIRP's success is the excessive default threshold, formerly ₹1 crore, now set at ₹10 lakh, which is still too high for most micro and small businesses whose average defaults are much smaller. This restricts relief access to truly distressed MSMEs, defeating the purpose of the framework. Secondly, the stringent 120-day timeline, 90 days for filing the resolution plan and 30 days for approval, although intended to accelerate resolution, usually undermines detailed processes. The tight timeframe curtails adequate due diligence,

[15] Insolvency and Bankruptcy Code (Amendment) Ordinance, No. 3 of 2021, Acts of Parliament, 2021 (India).
[16] Sheerja Singh, *Why most MSMEs are not eligible for the pre-packed insolvency resolution process*, MONEY CONTROL (July 23, 2025), https://www.moneycontrol.com/news/trends/why-most-msmes-are-not-eligible-for-the-pre-packed-insolvency-resolution-process-6758611.html

forensic audits, asset valuations, and substantial negotiations. The stringent deadlines can minimize quality and fairness in resolutions.

Lying beneath much of the discontent among creditors is the structural use of the Swiss Challenge mechanism. Theoretically, the model is intended to induce competition by encouraging third-party resolution schemes to contest the promoter's base proposal and, if a better offer appears, to entitle the promoter to match it.[17] Practically, especially in MSME pre-packs, actual competitive pressure is feeble. Informational and temporal asymmetries are strong: the incumbent promoter knows much more about the business, and the tight timeline discourages interested third parties from making serious overtures. This creates scope for abuse, particularly if the promoters use their better knowledge and the ability to match alternative offers to stifle real competition, settle in, and impact plan outcomes tilting towards incumbency at the expense of creditors or other stakeholders. The Swiss Challenge, as organized today, has the tendency to promote "insider control" over impartial, value-maximizing competition. Another operational problem is exclusion and right dilution of operational creditors. Contrary to financial creditors who have determinative voting rights during plan crafting and approval, the regime de facto marginalizes operational creditors, assigning them a passive and frequently marginalized role. It is possible that operational creditors, vendors, employees, trade creditors, can be subjected to haircut conditions or settlement terms not open for direct negotiation or approval by them. This violates fundamental international insolvency standards that prioritize protection of all classes of stakeholders, and raises the prospect of plan unfairness and subsequent litigation.

Another systemic impediment is reluctance in the banking section. Indian banks, already risk-averse in lending to MSMEs, are disincentivized from aggressive action under the pre-pack regime because of risk aversion based on reputational factors, risk of ex-post regulatory scrutiny, and uncertain recovery potential from asset-light or unorganized MSMEs. Incentives for banks to take the lead or actively engage in pre-packaged proceedings are still weak, particularly in the absence of strong mechanisms for information sharing, equitable distribution of recovery proceeds, and reducing reputational and legal risks. Bank reluctance generates limited financial creditor involvement at key phases, which undermines the effectiveness of the

[17] Yasir D. Pathan, *Pre-Packaged Insolvency Resolution in India: A Comprehensive Analysis of PPIRP under the IBC,* IBC LAWS 1, (2025), https://ibclaw.in/pre-packaged-insolvency-resolution-in-india-a-comprehensive-analysis-of-ppirp-under-the-ibc-by-yasir-d-pathan/?print=pdf

pre-packaged solution.

The regime is also greatly weakened by deficiencies in due diligence and disclosure standards. There are also no standardized norms of pre-commencement valuation, inadequate prescriptions about asset appraisals, and poorly defined standards of information disclosure by both the debtor and creditors. The speeded process timeframes also cut down on the degree of worthwhile creditor inquiry or independent checks upon promoter-provided schemes and valuations. In the lack of externally verified data, weak transparency and asymmetric information undermine creditor confidence and increase litigation risk upon plan sanction.

Together, these obstacles, grounded in market realities, operational practice, and regulatory design, hindering the efficiency and disproportionately harm the smallest and weakest firms, erode procedural justice, and endanger the regime's legitimacy.

Comparative analysis: US Chapter 11 Subchapter V and UK Pre-packaged Administration

The US Subchapter V of Chapter 11 of the Small Business Reorganization Act of 2019[18] was drafted to provide a fast and cost-effective restructuring pathway for SMEs facing financial stress. This legal tool is aimed at small business debtors whose non-contingent liquidated debts are below the statutory ceiling, which presently stands at about $7.5 million.[19] Subchapter V simplifies the old Chapter 11 procedures by reducing complexity and expense, an essential action for cash-strapped MSMEs.

Judicial oversight in Subchapter V is assertive but customized for quick resolution. At the initiation of the case, the bankruptcy court monitors specific milestones, such as mandating that the debtor must file a reorganization plan within 90 days, a much shorter period than in typical Chapter 11 cases.[20] Courts retain the power to approve plans and assure statutory conditions, including fairness and feasibility, are satisfied. To further reduce costs and speed up process, Subchapter V discards the absolute priority rule. The debtor, as opposed to

[18] Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079 (2019)
[19] Amanda Bull, *Small business restructuring: Lessons from the US, UK and India - Insolvency Law Academy*, INSOLVENCY LAW ACADEMY (July 24, 2025), https://insolvencylawacademy.com/small-business-restructuring-lessons-from-the-us-uk-and-india/
[20] Heidi Sorvino and Travis Powers, *Benefits of Subchapter V Under the Bankruptcy Code to Private Equity Funds in Managing Distressed Assets,* EISNERAMPER (July 24, 2025), https://www.eisneramper.com/insights/financial-services/subchater-v-managed-distress-ea-1222/.

creditors, has sole authority to submit a plan, essentially transforming plan proposal control and abbreviating the procedural delays that come with creditor-generated competing plans.

Creditor participation under Subchapter V is creditor-driven in some ways, such as by creditor vote on confirmation of the plan, but with significant limits. Creditors are not given the right to submit competing plans, a deviation from typical Chapter 11 practice. Instead, they play a role primarily by objecting to plan terms or voicing fairness and feasibility concerns about their class treatment.[21] The court continues to balance creditor interests in determinations of plan confirmations, imposing a fair and equitable standard on non-consenting classes, evaluated by the judge's discretion. Their protection is also preserved through mandatory disclosure requirements. The debtor must submit a comprehensive plan disclosure, such as a liquidation analysis and cash-flow projections demonstrating the ability to make payment commitments, thereby securing transparency and creditor evaluation of the offer.

At the heart of Subchapter V is professional supervision under the watch of a specially appointed Subchapter V trustee. In contrast with a Chapter 11 trustee, who is empowered to run the company and act as an adversarial manager, the Subchapter V trustee takes on a mediator's function, guiding negotiations between debtors and creditors and building plan consensus, rather than replacing management. While the trustee oversees plan development and conformity, the debtor maintains daily operating control unless removed for cause, a circumstance that, if it occurs, would have the trustee become an active manager, a characteristic mirroring conventional reorganization control. The Subchapter V trustee's role is therefore largely to fill informational and bargaining gaps and foster quicker, consensual resolution, which is particularly valuable in MSME distress situations where intractable party positions and information asymmetries are commonplace.

Pre-pack administration is a method of business rescue in the UK whereby the sale of a company's assets or business that are in distress is arranged in advance before an administrator is appointed, and carried out straight away. The administrator, the one appointed by the court or creditors, is an impartial insolvency practitioner responsible for maximizing returns to creditors. One of the distinguishing aspects of the UK model is its immediacy and discretion, typically selling off in hours to maintain business worth and employment. But this has created

[21] Wendy Fu, *The Impact of Subchapter V, Chapter 11 of the United States Bankruptcy Code on Creditors' Rights*, NYUJLB (July 24, 2025), https://www.nyujlb.org/single-post/the-impact-of-subchapter-v-chapter-11-of-the-united-states-bankruptcy-code-on-creditors-rights.

issues of transparency and equal treatment, particularly where sales are to "connected parties" such as current directors. As a countermeasure, regulatory protection such as Statement of Insolvency Practice (SIP) has been imposed to strictly apply disclosure requirements on marketing, valuation, and the justification for pre-pack sales.

The administrator's authority is based on statutory and professional regulation. He has to act independently, make valuations, record each step for reporting to creditors, and, under new regulation, refer relevant party sales for clearance by the Pre-Pack Pool, an independent panel of experts, prior to implementation.[22] This referral procedure after sale adds an independent element of review absent in the previous, more "market-led" forms of pre-pack practice.

Comparative examination provides some revealing lessons to MSME insolvency reform. The US regime's creditor-initiated approach, reflected in their ability to vote on and object to the debtor's plan but not to submit one of their own, is starkly different from the UK approach under which the insolvency professional takes control to negotiate and implement a sale alone, frequently precluding creditors from effective participation prior to sale. This split highlights the US system's precedence of procedural creditor protection by judicial scrutiny and orderly negotiation, as opposed to the UK's favouring of accelerated value preservation, at times to the derogation of creditor participation.

The UK system has been designed specifically to be resilient with independent checks on base plans, such as administrator adherence to SIP and checking by the Pre-Pack Pool for insider sales to insiders as checks on insider transactions and loss of value. Conversely, US Subchapter V innovations emphasize transparency through massive debtor disclosures and mediatory oversight by a trustee, though, as learned criticism points out, pre-packaged plans in Subchapter V pose challenges to the practical efficacy of trustee mediation, as they are not included in pre-filing plan formulation.[23]

Fairness and valuation mechanisms differ across jurisdictions. In the UK, fair value is to be obtained by administrators through independent valuations and market testing, supervised by regulatory and professional authorities, with courts or the Insolvency Service having the power of reviewing sales ex-post. Under the U.S. Subchapter V model, by contrast, fairness is tested

[22] Lorraine Conway and Ali Shalchi, *Pre-Pack Administrations*, 5035, HOUSE OF COMMONS LIBRARY 5, 15 (2021), https://researchbriefings.files.parliament.uk/documents/SN05035/SN05035.pdf
[23] Richard Drew and Denise J. Penn, Prepacks and Subchapter V: An Uneasy Fit, JUSTICE GOV (July 25, 2025), https://www.justice.gov/archives/ust/blog/prepacks-and-subchapter-v-uneasy-fit

during the plan confirmation process, where courts and trustees can verify the equitable distribution of value, with objections over the handling of assets or class prejudice possible. Professional supervision also varies: the UK depends largely on the administrator's good faith, subject to ethical codes and supervision by the Insolvency Service. The trustee in the U.S. has a more facilitative but still indispensable role, subject to statutory guidance and co-operation of the parties. Despite these contrasts, both systems place strong reliance on value-maximizing, neutral professional control to achieve equitable, efficient, and value-maximizing solutions for troubled MSMEs.

Reform Proposals and the Case for a Creditor-Led Variant

A paradigm shift has taken place towards broadening and strengthening the pre-pack insolvency framework to be able to more effectively fulfil the twin goals of efficiency and creditor protection. At the heart of the proposed reforms is the opening up of eligibility for Udyam-registered MSMEs, to bring about alignment of insolvency frameworks with modern government data authentication and facilitate real-time mapping of enterprise status. Linkage with Udyam registration is expected to facilitate streamlined eligibility screening, encourage the inclusion of a wider, dynamically monitored MSME base, and align with central government policy and support schemes to facilitate credit access and access to markets.[24]

An important factor in building the transparency and strength of the pre-packaged insolvency process is the implementation of mandatory disclosures, adhering strictly to valuation timelines, and thorough examination of resolution plans. Requiring disclosure of Udyam registration status, asset-liability profiles, and related-party transactions upfront, at the stage of pre-admission, is likely to minimize information asymmetries between stakeholders and largely deter opportunistic behaviour. In addition, statutory timelines for independent valuation of assets, consistent with the best practices as seen in the United Kingdom and suggested in comparative regulatory jurisdictions, are required for maintaining the sanctity, credibility, and time-bound character of the process. Increased vigilance must also include regard for the equity of haircuts, treatment of dissenting creditors, and adequacy of disclosures so that the risk of prejudicial decisions or value loss to operational creditors and minority shareholders is kept at

[24] Sandeep Soni, Insolvency Resolution: IBBI proposes MSMEs to disclose whether Udyam registered or not, THE FINANCIAL EXPRESS (July 25, 2025), https://www.financialexpress.com/business/sme/insolvency-resolution-process-ibbi-proposes-msmes-to-disclose-whether-udyam-registered-or-not/3591737/

a minimum.

Since the current regime has been faulted for the marginalization of operational creditors who form an important constituency for MSMEs, suggestions have been made for implementing meaningful participation mechanisms. Inclusion of voting rights or advisory positions of a formal nature for operational creditors in CoC discussions would create a more inclusive and responsible decision-making atmosphere. Such participation could be implemented through threshold-based voting pools or advisory council that the CoC would be required to formally deliberate and document. Such reform would draw on precedents in the European and Dutch regimes, which hold particular significance as they stress cramdown safeguards and cross-class approval to secure balanced, fair outcomes in reorganization cases.

The power of regulatory control is a further sphere of reorientation, specifically relating to the status of the NCLT and the IBBI. The NCLT's pre-pack insolvency jurisdiction should be reinforcingly bolstered by clear mandates to examine both admission and plan approval stages, with special focus on strict compliance with statutory disclosure and real-time compliance audit. Concurrently, the IBBI, the industry regulator, needs investment in data infrastructure and analytical capacity for live tracking of case advancement, compliance alerts, and performance benchmarking across debt resolution timelines and outcomes.[25] Data-led supervision and harmonised reporting will act as critical feedback loops for successive policy and regulatory fine-tuning.

One of the most powerful reform ideas is the creation and operation of a Creditor-Led Resolution Process (CLRP): an optional, creditor-led variant of the pre-pack procedure, heretofore not available to Indian MSMEs. Under CLRP, financial creditors who have a specified super-majority (usually 51% or higher) may initiate pre-pack proceedings directly against a troubled MSME with a base resolution plan reviewed by the NCLT. This approach is based on the belief that creditors, particularly secured creditors, have superior ability and informational advantage to negotiate sustainable restructurings and apply early action and thereby pre-empt value destruction.[26]

[25] Bhattandjoshiassociates, *Pre-Pack Insolvency for MSMEs: Legal Loopholes in Speedy Resolution*, BHATT & JOSHI ASSOCIATES (July 26, 2025), https://bhattandjoshiassociates.com/pre-pack-insolvency-for-msmes-legal-loopholes-in-speedy-resolution/

[26] *Decoding The Proposed Creditor-Led Resolution Process,* GLOBAL BUSINESS LAW REVIEW BLOG - SCCLP (July 26, 2025), https://gblrscclp.in/2024/07/07/decoding-the-proposed-creditor-led-resolution-process/

Central to this variant is the inclusion of an NCLT pre-approval mechanism for the base plan. This judicial pre-clearance acts as a check on transactions aimed at benefiting only a particular class or the promoter to the detriment of the wider creditor body. To further incentivize market-tested solutions, a facultative Swiss challenge mechanism can be added, enabling alternative resolution applicants to submit competing plans in relation to the base plan introducing price discovery, competitive pressure, and additional checks on asset undervaluation or collusive settlements.[27] The CLRP, as currently conceived, therefore seeks to confer procedural primacy on financial creditors within structured guardrails, reconciling efficiency and creditor democracy while counteracting risks of debtor manipulation.

Cumulatively, these reform proposals represent a shift toward hybrid and adaptive models in response to the specific operational imperatives and weaknesses of Indian MSMEs. By broadening eligibility, insisting upon rigorous process transparency, ensuring inclusive participation by creditors, and bolstering institutional oversight, the proposed reforms aim to fill current gaps while providing stakeholders with not just legal but informational and procedural tools to attain speedy and fair resolutions. The creditor-initiated pre-pack alternative emerges as an innovative solution to the need for prompt interventions in the context of escalating distress, a combination of world best practices and specific Indian needs.

Future Outlook and Policy Recommendations

A revised PPIRP framework has the potential to substantially support MSME debt sustainability and have a material impact on the banking industry's NPAs. Its accelerated timelines and debtor-in-possession model improve the chances of business survival by financially stressed MSMEs while providing creditors with a formal framework for early intervention and resolution. By making formal insolvency procedures shorter and less complicated, the new PPIRP framework lessens erosion of enterprise value and restricts extended uncertainty. This has immediate implications for MSME debt sustainability, with early intervention allowing for revival of the enterprise instead of enforced liquidation, thereby saving jobs as well as preventing economic disruption.[28] The collaborative nature of the model, uniting creditors and debtors to agreement prior to formal filing, eliminates much of the

[27] *supra* note 26.

[28] Rahul Sundaram, *Understanding the Legal Provisions of PPIRP in Insolvency*, INDIALAW LLP (July 26, 2025), https://www.indialaw.in/blog/insolvency-bankruptcy/understanding-the-legal-provisions-of-ppirp-in-insolvency/

contentious litigation inherent in conventional insolvency proceedings, and guarantees higher recovery rates to lenders.

The efficiency is heavily contingent on institutional infrastructure, indeed much more so the NCLTs and the insolvency professionals. Efficiency is, though, held back by issues of case backlogs, delay, and pinched infrastructure. Capacity building through training in insolvency law, IT platforms, and courtroom management for NCLT members, and developing the skills of insolvency professionals in the fields of valuation, stakeholder management, and IT tools will be required to improve outcomes and create trust. Despite regulatory good intention, PPIRP's effectiveness is confined by low public awareness, especially of MSMEs in rural and semi-urban zones, and creditor hesitancy due to lack of information and concerns about loss of assets. For this to be addressed, focused public exposure by regulators, industry groups, and local economic networks must be conducted. This must be in the form of local language digital content, training, and association with the Digital India program to connect with MSMEs and enhance formal debt resolution access.

The success of integrating PPIRP with India's ambitious Digital India and ease of doing business schemes is crucial. Digital platforms have the potential to make each phase of the insolvency life cycle, from filing to adjudication, streamlined, eliminating scope for human errors, shortening timelines, and ensuring ease of compliance. A resolution ecosystem with a digital-first approach backed by single-window clearance and digital repositories of documents would not merely increase transparency but also increase procedural integrity. This is part of a larger government attempt to streamline compliance burdens, ensure business-friendly regulations, and make India globally competitive in ease of doing business rankings.[29]

One forward-looking policy suggestion is the development of a single MSME resolution dashboard that contains up-to-date, transparent information regarding the status and resolution of all current insolvency cases. Such a dashboard, connected with NCLT e-courts, regulators, banks, and intermediary professionals, would enable integral monitoring, improved policymaking, and intelligent decision-making by all concerned parties. Greater transparency will further support public faith and confirm that the PPIRP framework continues towards its

[29] Kumar, B., Chawla, N. and Patel, G., *Resolving insolvency and ease of doing business reforms in BRICS nations with particular reference to India*, ADVANCE SAGE PUBLICATION (July 27, 2025), https://advance.sagepub.com/users/719869/articles/704774-resolving-insolvency-and-ease-of-doing-business-reforms-in-brics-nations-with-particular-reference-to-india.

desired objectives of value maximization, expeditious resolution, and protection of stakeholders. Through ongoing streamlining, digitalization, capacity building, and stakeholder awareness, the PPIRP can actually fulfill the promise of sustainable and resilient MSME development.

Conclusion

This research has analysed PPIRP as a specialized regime used to resolve the financial weakness of India's MSME sector. The significant findings identify that although the legislative purpose and statutory structure, marked by debtor-in-possession, compressed timeframe (120-day limit), and involvement of the creditors, are a major improvement over the traditional CIRP, difficulties exist in achieving its full effectiveness for MSME distress resolution. Key concerns that have been identified are poor competitive pressure in the Swiss Challenge stage, exclusion of operation creditors, and possible entrenchment of existing promoters, all posing the risk of jeopardizing procedural equity and value maximization to stakeholders.

MSMEs are subject to specific structural obstacles, including restricted access to formal credit, informality, and gaps in managerial capacity. Subsequently, PPIRP's adaptable and low-cost model is vital in providing business continuation and preventing value loss at distress. However, empirical examination and comparative study with established models within the UK and US pre-pack regimes show that successful insolvency design for MSMEs should be both globally informed and locally sensitive, balancing transparency, creditor participation, and stringent regulatory oversight.

This imperative for reform is compounded by the imperative to bring the PPIRP closer to best world practices: enhancing eligibility, striking a balance among debtor and creditor constituencies, tightening norms of disclosure, and proposing creditor-initiated resolution options to enhance intervention effectiveness. This reshaping is crucial in light of the contribution MSMEs will make to Indian economic recovery and job creation. Finally, this study's normative argument is that an open, transparent, and dynamic PPIRP will be essential not only in protecting the interests of stakeholders but also as a central tool in India's overall policy for economic vulnerability and structural change in the post-pandemic world