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# **BEYOND THE BALANCE SHEET: A SOCIO-LEGAL EXCURSION OF THE PRE-SLATED CONVENTION OF TRESPASSING PROCESS AND ITS EFFECT ON WORKPLACE EMPLOYEES OF MSMES IN INDIA**

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## **ABSTRACT**

The article presents a strict analysis of socio-legal issue of the pre-packaged insolvency resolution process (PPIRP) of India in the Micro, Small, and Medium Enterprises (MSME) employees. The evidence on the PPIRP to date is almost exclusively on economic efficiency with a significant gap in research related to the welfare of employees in the so-called debtor-friendly model. Having adopted the doctrinal and comparative legal approaches, this paper examines the legal security granted to employees, as well as their vulnerabilities under the Insolvency and Bankruptcy Code, 2016. It has been shown that although the so-called debtor-in-possession model is supposed to result in greater employment through the offer of business continuity during the resolution process, serious gaps are still observed in the way employees are treated in relation to comparable statutory protection framework in the United Kingdom. The article concludes that to bring the PPIRP into reflection with the most equitable principles, the statutory employee protection should be increased to create a systemic balance that would equally focus on economic underpinning and employee interests.

**Keywords:** Pre-made Insolvency, MSME, Employee Rights, Insolvency and Bankruptcy Code, Socio-Legal Analysis, Debtor-in-Possession, Corporate Restructuring.

## 1. Introduction

Micro, Small and Medium Enterprises (MSMEs) is a core part of the Indian economy and it has a significant role to play in Gross Domestic Product and it has a high number of employment opportunities. An MSME failure is not just a failed corporate but a socio-economic event that has a far-reaching implication on the employees.<sup>1</sup> India has shifted its haphazard, diffusive, and ultimately inefficient legal regime include the Sick Industrial Companies Act, 1985 and the amended Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002, to a more congruent and efficient one with the introduction of the Insolvency and Bankruptcy Code (IBC), 2016.<sup>2</sup> Since the traditional Corporate Insolvency Resolution Process (CIRP) was identified to be too complex and expensive to MSMEs, in 2021 Parliament implemented the outbreak of the Pre-Packaged insolvency Resolution Process (PPIRP) as an insolvency modality tailored to the needs of debtors who form the largest share of small and medium enterprises.<sup>3</sup> Despite the fact that it is praised as having high efficiency in its procedures, there is a critical research gap on the immediate socio-legal effects of the PPIRP on employees. This paper aims to shed light on this gap and therefore highlight the possible impacts of the new structure on the rights, security, and well-being of MSME workers through a broad social-legal investigation of the PPIRP.

## 2. The PPIRP Framework and Legal status of the employee.

### 2.1. A Customized MSME Solution: CIRP to PPIRP.

Chapter III-A of IBC brought about the introduction of the PPIRP in order to overcome the limitations of the standard CIRP especially concerning MSMEs. Although the CIRP was a significant reform, it was seen as a crude tool that was inappropriate to the dynamics of small businesses in terms of its size and cost, as well as its impact on business operations; the value

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<sup>1</sup> Aaradhya Gangula, *Impact of Insolvency and Bankruptcy on MSMEs* (IBC Laws, 2025), <https://ibclaw.in/impact-of-insolvency-and-bankruptcy-on-msmes-by-aaradhya-gangula/> accessed Sept. 17, 2025.

<sup>2</sup> Oitihya Sen and others, *Designing a Framework for Pre-Packaged Insolvency Resolution in India: Some Ideas for Reform* (Vidhi Centre for Legal Policy 2020) <https://vidhilegalpolicy.in/wp-content/uploads/2020/07/Report-on-Pre-Packaged-Insolvency-Resolution.pdf> accessed 17 September 2025.

<sup>3</sup> Neeti Goyal, 'Critical Analysis of Pre-Packaged Insolvency for MSMEs in India' (2025) International Journal of Law and Research Analysis <https://www.ijlra.com/details/critical-analysis-of-pre-packaged-insolvency-for-msmes-in-india-by-neeti-goyal> accessed 17 September 2025.

of MSMEs was often destroyed through the initiative, sometimes ensuring its salvage value.<sup>4</sup>

At the heart of the two processes, there is a principle of governance that has great impacts on the stakeholders, among them employees. The CIRP works with a creditor-in-control model; at the start of it, the board of directors is disbanded, and a Resolution Professional (RP) who has been hired outside takes over the management of the corporate debtor. This sudden and dramatic shift in the governance swings the business into direct operational chaos, which may break the ties with suppliers and customers, and create a lot of uncertainty among employees.

In comparison, it is PPIRP process that takes a form of a debtor-in-possession where the day to day running of the business is maintained by the current management of the MSME, and the Resolution Professional (RP) leads the proceedings and oversees them.<sup>5</sup> The design assumes that MSME promoters have exceptional and vital knowledge of their business that is vital to its maintenance as a going concern. The PPIRP process will unify the flexibility and speed of an informal out-of-court workout with the legal clarity and protections of a formal statutory process, and thus comprise a hybrid model. The process is triggered by the corporate debtor when he/she receives the acceptance of at least 66% of the debt lent to him, but not directly linked. This process should be completed within a 120-day time frame, the length of which will be the strict adherence to a time limit of 330 days provided that the deadline of a CIRP is. This structure is aimed at ensuring that the business is not disrupted, engaging less is more expensive and that the enterprise value is not ruined, and at the end of it all, it will help in preserving employment.<sup>6</sup>

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<sup>4</sup> Priyanshu Kaurav, 'Role of Corporate Governance in Corporate Debt Restructuring in India: A Legal Study' (2024) 7 International Journal of Law Management & Humanities 943.

<sup>5</sup> Yasir D Pathan, 'Pre-Packaged Insolvency Resolution in India: A Comprehensive Analysis of PPIRP under the IBC' (*IBC Laws*, 2025) <https://ibclaw.in/pre-packaged-insolvency-resolution-in-india-a-comprehensive-analysis-of-ppirp-under-the-ibc-by-yasir-d-pathan/> accessed 17 September 2025.

<sup>6</sup> *Committee of Creditors of Essar Steel India Ltd v Satish Kumar Gupta* (2020) 8 SCC 531.

**Table 1 Comparative Analysis of Employee-Relevant Characteristics of CIRP vs. PPIRP.<sup>7</sup>**

Feature	Corporate Insolvency Resolution Process (CIRP)	Pre-programmed Insolvency Resolution Process (PPIRP)
Management Control	‘Creditor in Control’ model: above management yields to Resolution Professional mode of control over the practise and control of debtors	‘Debtor in Possession’ model: management remains in control of the enterprise with an oversight by the Resolution Professional
Business Disruption	High; suspension of the board tends to paralyse the operations and lead to lack of confidence by the stakeholders on the business continuity as a going concern.	Minimal designed to ensure business continuity as a 'going concern'.
Timeline	330 days (compulsory, exceptionally)	120 days (90 to submit plan, 30 to approve)
Cost	High, because of the long-term professional fees and litigation	Low, because of the briefer schedule and a pre-negotiated nature
Employee role in CoC	No direct representation or voting rights as Operational Creditors.	No direct representation or voting rights as Operational Creditors.
Job Security Outcome	Lower high disruption and lengthy process increase the likelihood of liquidation.	Higher focus on business continuity enhances the probability of enterprise survival and job preservation.

## 2.2. Legal Protection and Natural Weaknesses of the employees in the IBC.

The rights of the employees in the proceeding of an insolvency are established through the general framework of the IBC which is applicable to both CIRP and PPIRP. The framework

<sup>7</sup> Ritesh Kavdia and Shweta Vashishtha, ‘Employees of Distressed Companies’ (Insolvency and Bankruptcy Board of India) <https://ibbi.gov.in/uploads/resources/ab649d43a68cc4e97d64189a272da8d2.pdf> accessed 17 September 2025.

offers some important safeguards yet has structural weaknesses which restrain employee power or control over the resolution process.

The idea that workers are given the status of operation creditors in their claims against their wages and other payment related to their employment is one of the major characteristics of the Code. The principal implication of such a classification is that the employees are not part of the Committee of Creditors (CoC). A decision-making body when the insolvency resolution occurs is the CoC which comprises the financial creditors only. By 66 3/4 of its members, the CoC takes into account, and may or may not approve a resolution plan by a majority vote. In the absence of having a chair at this table, employees do not have such direct representation to challenge any terms of a resolution plan which may affect their future employment and payment of their past dues. This ability is not extensive, despite the fact that their potentiality to affect is indirect, via the RP taking into account whether a resolution plan is legal before submitting it to the CoC, and through the prudence the CoC is known to exercise.<sup>8</sup> In case every effort to get the approved resolution document ends in liquidation of the MSME, the IBC offers a controlled waterfall system in s. 53 of the allocation of assets. This chain of command produces a distinct classification between various categories of workers and therefore provides better security to one group than another.

- **Workmen's Dues:**

High precedence is given to costs such as dues of the 24 months of blue-collar labour before the liquidation begins. They rank secondly in the waterfall where they get paid *pari passu* with the dues of the secured creditors who have forfeited their security.<sup>9</sup>

- **Other Employees' Dues:**

The salaries and arrears of all the other persons (including white-collar and managerial employees) employed in the 12 months before liquidation are put third, but lower than workmen and first in priority to the claims of unsecured financial creditors and government dues.<sup>10</sup>

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<sup>8</sup> *ibid*

<sup>9</sup> The Insolvency and Bankruptcy Code, 2016

<sup>10</sup> *Jalan Fritsch Consortium v Regional Provident Fund Commissioner Civil Appeal No 175 of 2023.*

This is a legal division that provides an in-house division within the labour force which is a socio-legal arrangement where guarantees are distributed based on the type of labour. Although the employees have some level of protection, managerial and administrative staffs may lose out in the occasion of liquidation compared to those in the shop-floor. However, the best point of legal protection of all the employees is the IBC in Section 36 (4) (a) (iii). This subsection leaves of the corporate debtor subject to liquidation sums due to any workmen or employee by virtue of the provident fund, the pension fund and the gratuity fund. The legal implication of this exclusion is far reaching: these funds are not subject to being classified as the assets of the company and being distributed among creditors as per the waterfall. Rather, they are considered assets in trust to the employees of the firm by the company. As a result, these social security fares are insulated against liquidation and they cannot suffer reductions or haircuts; they are paid in full. This has been affirmed by the court of law through the Jet Airways case where the Supreme Court ruled in support of the decision by the NCLAT to pay the entirety of PF and gratuity as per the resolution plan.<sup>11</sup> Instead of resulting in liquidation, this provision sets a minimum threshold of protecting the long-term savings of social security among employees as the most sacred and the most robust right an Indian insolvency scheme grants the employees.

### **3. The Socio-legal Review of the PPIRP Effects on the employees of MSME.**

This section focuses on how a transition between abstract legal concepts and concrete outcomes in the society can be achieved hence the discussion of how the peculiar structure of the Pre-Payment Insolvency and Resolution Plan (PPIRP) would impact on not only the livelihoods of workers in the micro, small and medium enterprises (MSMEs). It undergoes a comparative study to determine that there is a substantive failure of the regime protective structure.

#### **3.1. Facilitating the Protection of Livelihoods by Creditor Intervention Business Continuity: The Debtor-in-Possession Advantage.**

The most obvious advantage of the PPIRP to the employees is not a legal right but the strong indirect implication of the structure. The debtor-in-possession clause sees to it that the MSME is run as a going concern during the course of the decision-making. The initiative reduces the disruptions that usually accompany a corporation insolvency process by leaving the operational

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<sup>11</sup> Mahender Pal Arora and Vikalp Shrivastava, 'A Critical Review of Corporate Insolvency Resolution Process under India's Insolvency and Bankruptcy Code, 2016' (2023) 11 Russian Law Journal.

control to the incumbent management that is knowledgeable in the institution. The continuity ensures that the enterprise value is maintained, key customer and supplier relationships are not lost, and corporate goodwill continues.

Stability in operations would directly convert to increased chances of retaining the jobs. The related social trauma of sudden business shutdown is eliminated and the threat of mass exodus of qualified labour minimised. As a result, human capital, which is sometimes the most valued possession of an MSME is maintained. The best level of job security is continuation of the business in a sustainable manner. The Insolvency and Bankruptcy Board of India (IBBI) cites empirical research conducted by the Indian Institute of Management, Ahmedabad which shows that the successful resolution is highly related to the wellbeing of the employees.<sup>12</sup> The research, which was done by a consultant with a leading Indian management institution, revealed that the successful firms that solved through the IBC enjoyed a huge increment in the total employment figure, and during the three years since the time of the resolution, job numbers have increased and the average total employee cost heightened more than fifty percent on average. The data that is mainly indicative of widespread IBC tendencies has specific implications to the PPIRP since the latter was specifically aimed at developing an effective resolution system regarding MSMEs and consequently improving the chances of a favourable outcome. Examples of successful early PPIRP resolutions e.g. Amrit India and Sudal Industries also serve to show the effectiveness of the model.<sup>13</sup> It is reported that operational creditors were paid in full; hence, employees were given the amount of money they were owed.

### **3.2. A Comparative Critique: TUPE Regulations in UK as a model.**

In spite of the protection mechanisms put in place by the PPIRP against the loss of employment, the legal regulatory system in the United Kingdom can be considered to be below satisfactory when compared to the administration system concerning its pre-pack regime in the United Kingdom. The theoretical basis of the PPIRP is inspired by the UK that offers clear and extensive statutory protection of employees when a business is sold by the owner through the

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<sup>12</sup> Insolvency and Bankruptcy Board of India, 'Insolvency and Bankruptcy News' (January–March 2025) <https://ibbi.gov.in/uploads/publication/912e97d4d9f96651386541fb7059203b.pdf> accessed 17 September 2025.

<sup>13</sup> 'Pre-Pack Insolvency a Success for Five Companies' *The Economic Times* (10 September 2025) <https://economictimes.indiatimes.com/news/india/pre-pack-insolvency-a-success-for-five-companies/articleshow/110373627.cms> accessed 17 September 2025.

Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).<sup>14</sup>

These are the main principles of TUPE clearly focused on the protection of employee rights:

- **Automatic Transfer Principle:** In case of sale of a business as a going concern, whether as a pre-pack sale, employment contract of employees who are transferred to the new employer translates to the new employer. The new owner is not able to pick and choose employees.
- **Terms and Conditions of Service:** Employees have the right to serve under the terms and conditions under which they serve and their service under the former employer is not lost by the new employer who has taken over the place of former employer.
- **Defence against Dismissals** Any dismissal, whether before or after the transfer, shall be found not to be unfair unless the major reason behind the dismissal is a real economic, technical or organisational (ETO) need to change members of staff.

These principles reveal a major socio-legal gap in the Indian PPIRP procedure. A PPIRP-implemented resolution plan will tend to culminate in sale of the MSME business to a new corporate body the successful resolution applicant, that can sustainability promote the business. Although PPIRP provides an excellent survival of the enterprise, Indian law provides no such automatic protection to the employment in that enterprise. By law the new acquirer is not obligated to maintain the current work force. Therefore, job security by the employees is by contractual deals that the Committee of Creditors (CoC) has surely not agreed upon and the goodwill of the new team managing the company. Employment has been a prerogative as opposed to a statutory right and employees are left in a situation of severe vulnerability even during preservation of the business. This is in contrast to the rights-based protection which is granted to workers in the UK.

### **3.3. The Discrepancies in the Implementation and the Way to Reform.**

The slow practical uptake of the PPIRP has also impeded the potential socio-economic benefits of the PPIRP. The rate of uptake of the process has been dismal since its introduction in April

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<sup>14</sup> Himani Singh, 'Pre-Packaged Insolvency in India: Lessons from USA and UK' (2020) SSRN <http://dx.doi.org/10.2139/ssrn.3518287> accessed 17 September 2025.



2021. The recent IBBI statistics show that only 14 PPIRP applications were accepted throughout India as of March 2025.<sup>15</sup> The low rate of adoption can be explained by a variety of factors, both the lack of awareness regarding the process and its benefits to the promoters of MSMEs and the reluctance of financial creditors because their interests may be threatened by the debtor-in-possession structure.<sup>16</sup>

The slow pace at which the pre-packaged insolvency framework has been established means that the benefits that were postulated namely maintaining employment are not realised in a large-scale manner. There is a vast majority of distressed MSMEs who are still apparently subject to the more value-depreciating CIRP, or simply fail without any explicit resolution effort, and this leads to unnecessary job-losses.

In order to overcome all these shortcomings, a thorough reform agenda is justified:

- **Raising awareness and making it accessible:** The Institute of Banking and Finance, along with the Ministry of Micro, Small and Medium Enterprises (MSME) should carry out outreach and educational campaigns that will make MSME owners and creditors understand the strategic advantages of the PPIRP. There should be attempts to streamline the requirements of procedures to make it more accessible.
- **Restructuring statutory employee protection:** This should be done through the legislation to seal this gap in the law that occurred. The proposed Chapter III-A of the Insolvency and Bankruptcy Code (IBC) should have a similar provision as the TUPE, which is that the automatic transfer of employees to their current terms and conditional employment of the employees should occur whenever a resolution plan incorporates the sale of an MSME as a going concern. This kind of amendment would bring the Indian framework in line with the international best practises and change the aspect of job security as a possibility to that of a statutory right.

#### 4. Conclusion:

The Insolvency Resolution Process, which is pre-packed, constitutes a step forward and a

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<sup>15</sup> 'Pre-Packaged Insolvency Resolution Process (Why Slow Progress?)' (2024) 59 Management Accountant Journal 32.

<sup>16</sup> Priyam Sharma, 'An Analysis of Pre-Packaged Insolvency Resolution Process' (*IBC Laws*, 2025) <https://ibclaw.in/an-analysis-of-pre-packaged-insolvency-resolution-process-by-ms-priyam-sharma/> accessed 17 September 2025.

successionally altered version of the insolvency law in India, as an intentional and effective way to address the issues that the MSME industry is facing at the moment. Socio-legally, it is a subtle suggestion to the employees. The debtor-in-possession is an enormous step ahead as compared to the conventional CISRP since people live and work are continued indirectly by way of focusing on business continuity. Furthermore, the strong embody of employees safeguards in the form of Part 36 of the IBC that is generally applicable regardless of the insolvency insinuations, protection employees with their social security benefits in the long-term, hence, providing financial safety.

Nonetheless, this discussion indicates that these safeguards are inadequate. The lack of direct statutory protection against employment in the circumstance of a change of ownership, as is customary to mature insolvency regimes, including the United Kingdom, is a critical weakness to the MSME workers. Although PPIRP can effectively save the business, it bring out its human resource. To truly become what the PPIRP is purported to be, to actually peep outside the balance sheet and make the most of itself as a tool of holistic economic and social renewal, the Indian insolvency law needs to develop. It should expressly acknowledge and secure the not only the assets of a enterprise but also the individuals delivering value to it, thus it makes the effort at recovering the MSME distress to be economically effective and socially fair.<sup>17</sup>

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<sup>17</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17.