DEBTOR-IN-POSSESSION IN INDIA'S PPIRP: THE TREATMENT OF OPERATIONAL CREDITORS AND CREDITOR HAIRCUTS

Aman Kapoor, Christ University, Bangalore

ABSTRACT

The introduction of the Pre-Packaged Insolvency Resolution Process (PPIRP) under the Insolvency and Bankruptcy Code, 2016 marks India's first structured attempt to incorporate a debtor-in-possession (DIP) model within its otherwise creditor-centric insolvency regime. Designed primarily for Micro, Small and Medium Enterprises (MSMEs), the PPIRP seeks to combine the speed and flexibility of informal workouts with the binding force of a statutory process. This paper critically examines whether the Indian PPIRP framework meaningfully departs from creditor control, or whether it merely repackages the existing power asymmetry in compressed form. Focusing on two interlinked concerns, the paper analyses the treatment of operational creditors and the governance of creditor haircuts under the PPIRP. It argues that while the statutory scheme ostensibly protects operational creditors through non-impairment thresholds and liquidation value floors, these safeguards are largely illusory in practice due to their exclusion from decision-making and the structure of the Swiss challenge process. Through a comparative analysis of pre-pack regimes in the United States, the United Kingdom, and Singapore, the paper demonstrates that India's model neither fully embraces efficiency-driven exclusion nor adequately compensates for it through procedural or judicial safeguards. The paper concludes that the PPIRP reflects an unresolved tension between debtor control and creditor dominance, resulting in disproportionate distributive burdens on operational creditors. It proposes targeted reforms aimed at recalibrating participation, valuation transparency, and judicial review to restore legitimacy to India's pre-pack framework.

Keywords: Pre-Packaged Insolvency, Debtor-in-Possession, Operational Creditors, Haircuts, IBC, MSMEs, Comparative Insolvency.

Introduction:

In January 2021, the sub-committee of the Insolvency Law Committee, under the chairmanship of Dr. M.S. Sahoo, presented its recommendations for instituting a framework on the pre-packaged insolvency resolution process (PPIRP) in India. Pursuant to these recommendations, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 was promulgated on 4 April 2021, which was thereafter given legislative sanction by Parliament through the enactment of the Insolvency and Bankruptcy Code (Amendment) Act, 2021[1] . Pre-Packaged Insolvency Resolution Process (PPIRP) is a specialized framework for Micro, Small, and Medium Enterprises (MSMEs). PPIRP is a "hybrid mechanism" that blends the efficiency of informal out-of-court negotiations with the structure and legal discipline of a formal insolvency process. The landscape of India's insolvency law has undergone a significant transformation, from a comprehensive Creditor centric insolvency resolution under the corporate insolvency resolution process (CIRP) mechanism to a Debtor friendly insolvency resolution under the Pre-Packaged Insolvency Resolution Process (PPIRP) mechanism although such process is limited to MSME. The idea behind having the model for MSME is primarily due to the fact that these enterprises are mostly promoter driven and largely dependent on them, for operational and financial requirements. Therefore, vesting management to a resolution professional as per Section 35[2] of Code would entail the impossibility of revival of the company.

One of the most important aspects with regards to PPIRP is preparation of the base plan which seems to be reflection of a debtor in possession model, wherein the corporate debtor negotiates a resolution plan with the creditors prior to initiation of the resolution process, this informal negotiation between the debtor and creditor gives PPIRP an edge in speeding up the resolution process. Although the framework may prima facie reflect a Debtor-in-Possession (DIP) model, a closer examination of the statutory provisions reveals that effective control over the resolution process rests with the creditors. This is evident from Section 54J(xii), which empowers the creditors to displace the company's management and transfer control to the resolution professional. Such a measure can be initiated by the Committee of Creditors (CoC) through an application, provided they are satisfied that the company's affairs have been carried out in a fraudulent manner.[3] Another jarring aspect of PPIRP is exclusion of the Operational creditors,

[1] *How does PPIRP work in India?* (2023) *Shardul Amarchand Mangaldas & Co*. Available at: https://www.amsshardul.com/insight/how-does-ppirp-work-in-india/ (Accessed: 04 February 2026).
[2] Insolvency and Bankruptcy Code 2016, s 35
[3] Anwesh Patnaik, 'A Critique of the Pre-Packaged Insolvency: A Flawed Framework' Arbitration & Corporate

PPIRP does not apply to operational creditors. The Code, among other things, traditionally denied operational creditors the opportunity to participate in the CoC but gave them the ability to start a CIRP against the debtor. The modification doesn't apply to operational creditors' rights since only the debtor may start a PPIRP. The CoC established thus is like that established under CIRP and forbids involvement of operational creditors[4], additionally under PPIRP, the debtor submits a Base Resolution Plan that, by virtue of Section 54K(4), cannot impair operational creditors' claims[5]. Yet this safeguard is fragile: if the BRP goes to a Swiss challenge[6], the CoC may approve a competing plan that does impair such claims, so long as reasons are recorded. Since operational creditors lack voting rights, they cannot resist these outcomes and are left as passive recipients of whatever distribution financial creditors approve. On comparison of such framework with different jurisdiction like USA wherein a committee of unsecured creditor is created with the sole intention to protect the interest of other creditors who may not have been given the adequate attention, similarly in the United Kingdom, a company may be resolved only with the consent of creditors who together account for of the total value of each class of creditors. It is important for PPIRP to recognize the due importance of operational creditors because such exclusion is detrimental to MSME since they constitute the class of operational creditors and if in future the PPIRP is launched for larger corporations it would be very well become prejudicial to MSME.

Overview of the process

Eligibility for PPIRP

Section 54A prescribes the eligibility for PPIRP and states that a Corporate debtor, which is an MSME under sub-section (1) of the section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, is eligible to apply for initiation of PPIRP[7], owning to the conditions that To qualify, the corporate debtor must have committed a default of at least ₹10 lakh and be eligible to file a resolution plan under Section 29A of the Code. Further, it must not have undergone a PPIRP or completed a CIRP in the three years immediately preceding the initiation

Law Review (Manupatra, 2021).

[4] CBCL National Law University, 'A Critique of the Pre-Packaged Insolvency: A Flawed Framework' (Centre for Business and Commercial Law, NLIU Bhopal) https://cbcl.nliu.ac.in/insolvency-law/a-critique-of-the-pre-packaged-insolvency-a-flawed-framework/ accessed 4 February 2026.

[5] Insolvency and Bankruptcy Code 2016, s 54K(4)

[6] Swiss Ribbons Pvt Ltd v Union of India (2019) 4 SCC 17 (SC)

[7] Insolvency and Bankruptcy Board of India, *Pre-Packaged Insolvency Resolution Process: Information Brochure* (IBBI, June 2021).

date, must not be undergoing a CIRP at the time of initiation, and must not be subject to a liquidation order under Section 33 of the Code[8].

Pre initiation phase

For the purpose of seeking approval of creditors under section 54A(2)(e) the corporate debtor (CD) may convene a conglomerate of unrelated financial creditors (UFCs) i.e. financial creditors who are not related parties to CD[9], UFCs having at least 10% of debt is empowered to propose name for Insolvency professional who may further be appointed as the resolution professional by the UFCs with not less than 66% value of debt. further at least 3/4th of the total number of partners of the CD have passed a special resolution, approving the filing of an application initiating the PPIRP[10], the corporate debtor shall present the financial creditors with certain documents like declaration specified under section 54A(2)(f)[11], special resolution provided under Section 54A(2)(g)[12] and base resolution plan as provided under Section 54K[13].

Initiation Process

The CD only after the approval from the committee of creditors shall file and application for PPIRP[14]. Section 54C(1)[15] under IBC an application with Adjudicating Authority (AA) for initiating PPIRP can be filed by only the Corporate Applicant defined under Section 5(5) of IBC, 2016[16], within 14 days of the receipt of the application, the adjudicating authority shall admit the application, in case there is some rectification that is to be made with regards the application 7 day shall be provided to the applicant for rectifying the defects, if any in the application. PPIRP officially commences after the adjudicating authority admits the application and subsequently declares moratorium as specified under section 14 of the code, Hon'ble Supreme Court in *Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs*[17] held that Section 14 of the IBC prescribes a moratorium on the initiation

[8] Insolvency and Bankruptcy Code 2016, s 54A(2).
[9] Insolvency and Bankruptcy Code 2016, s 54A(2)(e).
[10] Insolvency and Bankruptcy Code (Amendment) Act 2021.
[11] Insolvency and Bankruptcy Code 2016, s 54A(2)(f).
[12] Insolvency and Bankruptcy Code 2016, s 54A(2)(g).
[13] Insolvency and Bankruptcy Code 2016, s 54K.
[14] Insolvency and Bankruptcy Code 2016, s 53A(3).
[15] Insolvency and Bankruptcy Code 2016, s 54C.
[16] Sujit Thakur, 'PPIRP – Pre-Packaged Insolvency Resolution Process Under IBC, 2016' TaxGuru (1 April 2023) https://taxguru.in/corporate-law/ppirp-pre-packaged-insolvency-resolution-process-ibc-2016.html accessed 4 February 2026.
[17] *Sundaresh Bhatt, Liquidator of ABG Shipyard v Central Board of Indirect Taxes and Customs* (NCLT, Mumbai Bench, 2024).

of CIRP proceedings and its effects. One of the purposes of the moratorium is to keep the assets of the Corporate Debtor together during the insolvency resolution process and to facilitate orderly completion of the processes envisaged under the statute. Such measures ensure the curtailing of parallel proceedings and reduce the possibility of conflicting outcomes in the process. From the February 2020 Report of the Insolvency Law Committee (para 8.2), it can be seen that one of the motivations of imposing a moratorium is for Section 14(1)(a), (b), and (c) of the IBC to form a shield that protects pecuniary attacks against the Corporate Debtor[18]. Declaration of the moratorium is followed by appointment of the resolution professional which most cases is the IP mentioned in the application.

Timeline

The code provides that the PPIRP must be concluded under 120 days from the date of commencement although in the case of GCCL Infrastructure and Projects Limited the proceedings began on September 2021 but it is still pending before NCLT.

Approval process

The corporate debtor within 2 days of the commencement date shall submit to the resolution professional with the latest list of claims and all the relevant information about the respective creditor and their securities and guarantees[19], further 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 pre-packaged insolvency commencement date, and the resolution professional shall present it to the committee of creditors[20]. The resolution professional must within 90 days presents the base resolution plan to the Committee of creditors. The CoC may approve or reject the base resolution plan considering whether the plan impairs the claims of operational creditors, in case the CoC rejects the plan then it may call for prospective resolution plans by a way of Swiss challenge method which is essentially a bidding method for securing a significantly better plan than the existing one, the said method was recognized by the supreme court under the CIRP framework in the case *of R.K. Industries LLP*

[18] *All About the Moratorium under IBC Including Judicial Pronouncements*, IBCLaw (2022) https://ibclaw.in/all-about-the-moratorium-under-ibc-including-judicial-pronouncements/ accessed 4 February 2026.
[19] Insolvency and Bankruptcy Board of India, *Pre-Packaged Insolvency Resolution Process: Information Brochure* (IBBI, June 2021).
[20] Insolvency and Bankruptcy Code 2016, s 54K(1).

v. H.R. Commercials (P) Ltd, where in the court held that that solvency and Bankruptcy Code, 2016 (IBC) and Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (CIRP Regulations) specify that the corporate debtor's assets must be protected and preserved during liquidation[21]. In the PPIRP framework COC may invite other plans if they feel that the base plan does not give the best value and secondly when the base plan does not adequately resolve the debt of the operational creditors. In case the CoC approve the base plan or the any other plan presented with 66% voting of the financial value of debt, the restructuring or liquidation whatever the case maybe shall be implemented.

Closure of PPIRP application

If for whatsoever reason in compliance with the statutory provisions the CoC does not approve any plans[22] or the plan is rejected by the adjudicating authority[23] or on expiry of 90 days no plan is submitted before the adjudicating authority then the RP with the approval of the Coc with 66% of voting share shall fine an application for termination before the authority[24].

DIP Model

In India, prior to the enactment of the Insolvency and Bankruptcy Code, 2016, some resemblance to the debtor-in-control model could be found under the Sick Industrial Companies (Special Provisions) Act, 1985. Once a company was referred to the Board for Industrial and Financial Reconstruction (BIFR), day-to-day management formally remained with the debtor's board, though all significant restructuring decisions required BIFR's approval. The Pre-Packaged Insolvency Resolution Process (PPIRP), however, marks a more genuine paradigm shift towards a debtor-in-possession framework, while still subjecting the debtor's control to creditor oversight and statutory safeguards. The ILC's March 2021 Report on Pre-Packaged Insolvency Resolution Process explicitly states that it considered international practices such as those in the United States, United Kingdom, and Singapore when designing the Indian framework[25]. The committee essentially borrowed the efficacy from the U.S Pre Pack but modified it to include a deep and pervasive creditor oversight and the power of COC

[21] *R.K. Industries LLP v H.R. Commercials (P) Ltd* (NCLT, Principal Bench, New Delhi, 2020).
[22] Insolvency and Bankruptcy Code 2016, s 54K(12).
[23] Insolvency and Bankruptcy Code 2016, s 54L(4).
[24] Insolvency and Bankruptcy Code 2016, s 54D(3).
[25]Insolvency Law Committee, *Report on Pre-Packaged Insolvency Resolution Process* (Ministry of Law and Justice, Government of India, March 2021).

to displace the management in case of misconduct by the corporate debtor, one of the reasons for such modification is due to the prevalence of creditor friendly regime under the insolvency and bankruptcy code, 2016 unlike the debtor in possession foundation in the U.S. The creditor oversight although seems to an integration into the predominant creditor centric insolvency laws in India while also retaining the efficiency of the debtor in possession model but in reality, the framework is a "double edged sword"; since the DIP model puts a significant risk for potential abuse of power by the existing management, majorly because the MSME is predominantly promoters driven and they would certainly push for Steep haircuts and unjustified haircuts for securing their interest.

Haircuts

A "haircut" refers to a reduction in the value of an asset. In the context of the Insolvency and Bankruptcy Code, it essentially means the gap between the loan amount a borrower owes and the value that lenders or creditors are ultimately able to recover, often through the collateral. It represents the lender's assessment of the risk that the asset's value may decline over time. From the standpoint of loan recovery, a haircut is simply the difference between what the borrower was originally supposed to repay and the amount finally settled with the bank.[26]

For example, - If a company owes ₹100 crore to a bank, under the Corporate Insolvency Resolution Process (CIRP), multiple bidders may compete for the distressed company's assets. Suppose the highest bidder offers ₹70 crore, the haircut would then be 30%. Here, competition in the market allows for some degree of price discovery, often improving recovery for creditors,

In contrast, under the Pre-Packaged Insolvency Resolution Process (PPIRP), the resolution plan is pre-negotiated directly between the debtor and Unrelated financial creditors without competitive bidding, there is no market-driven price discovery, which often results in lower liquidity and reduced payouts for creditors. Additionally, the scrutiny over haircuts by the management of the creditors, particularly lending institutions, adds complexity to the process[27]. If debtor and creditors agree on a settlement of ₹40 crore, the haircut is 60% and because there is no open bidding, the settlement amount may be lower, reducing liquidity and payout for

[26] *Haircut Under Insolvency Laws*, Mirza & Associates (14 January 2022) https://www.mirzaandassociates.com/haircut-under-insolvency-laws/ accessed 4 February 2026.
[27] Rohan Dua, 'PPIRP — A Pre-Packaged Solution for MSMEs with a Post-Dated Cheque' *Businessworld* (6 October 2023) https://www.businessworld.in/article/ppirp-a-pre-packaged-solution-for-msmes-with-a-post-dated-cheque-540152 accessed 4 February 2026.

creditors. Although some may argue that the creditors need not necessarily accept the Base resolution plan and may invite prospective resolution applicants to submit a resolution plan or plans, to compete with the base resolution plan[28], but the issue with this lies in the inherent opacity in the process may hinder price discovery and lead to less money to the creditors.[29], essentially the debtor has access to privileged information about the company with regards to management, books, and commercial covenants this coupled with the time constraint in PPIRP puts the potential applicant at a disadvantageous position thus creating a conundrum for the creditors, moreover the operational creditors interest are at extreme peril since they are not part of the COC hence aren't bestowed with any decision making power and even as per the waterfall mechanism under section 53 of IBC, 2016 [30] , the operational creditors would receive payment only after the financial creditors' claims have been settled. In many cases, especially when the company's assets are insufficient, there is little or nothing left for OCs, leading to a massive or even 100% haircut. In the case of Videocon Industries and it's 12 subsidiaries which had a collective outstanding claim of Rs 64,838.63 Crores, Wherein the resolution plan approved a nominal bid of Rs 2,962.02 crore essentially it was observed by the NCLT that operational creditors were receiving an extremely meager amount of 0.72 per cent out of the approved 2962.02 Crores. Additionally, a major issue with the DIP model is that banks and financial institutions are often reluctant to provide fresh credit in a PPIRP due to fear that inadequate professional guidance often leads to poorly designed resolution plans make the process more susceptible to failure[31].

Statutory inconsistencies

Another concerning aspect of the DIP model pertains to a key inconsistency arises from Section 54A(2)(e)[32] , read in conjunction with Regulation 14 of the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021[33]. These provisions mandate that a CD must secure approval from unrelated financial creditors representing at least 66% of the debt owed before it can even file an application for initiating a PIRP. This requirement directly conflicts

[28] Insolvency and Bankruptcy Code 2016, s 54K(5)(b).
[29] *PPIRP Probed: Examining Progress and Challenges in MSME Insolvency*, Surana & Surana International Attorneys (12 March 2024) https://suranaandsurana.com/ppirp-probed-examining-progress-and-challenges-in-msme-insolvency/ accessed 4 February 2026.
[30] Insolvency and Bankruptcy Code 2016, s 53
[31] Rohan Dua, *'PPIRP — A Pre-Packaged Solution for MSMEs with a Post-Dated Cheque' Businessworld* (6 October 2023)https://www.businessworld.in/article/ppirp-a-pre-packaged-solution-for-msmes-with-a-post-dated-cheque-540152 accessed 4 February 2026.
[32] Insolvency and Bankruptcy Code 2016, s 54A(2)(e).
[33] Regulation 14 of the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021

with the foundational principle of the PIRP, which is to incentivize the CD to voluntarily initiate the process This is further exacerbated by Section 54A(3), which makes this approval a mandatory precondition for a CD to file an application[34]. This effectively transfers the gatekeeping power from the CD to its financial creditors, subverting the PPIRP's core objective of a CD-driven resolution. The shift from the traditional Corporate Insolvency Resolution Process, where a Resolution Professional manages the company, to the PPIRP's DIP model is intended to give the CD operational control. However, Section 54J(xii) of the Code introduces a significant threat to this control. This provision allows the Committee of Creditors (CoC), with a 66% voting share, to vote to transfer the management of the CD to the RP at any time[35]. This provision functions as a "hanging sword" over the CD, as the threat of losing control to the RP could deter the CD from fully engaging in the process or could be used as a coercive tool by creditors[36].

Exclusion of Operational creditors

Section 5(20) defines operational creditors as "any person to whom an operational debt is owed, including any person to whom such debt has been legally assigned or transferred."[37], for any person to qualify as a operational creditors they must satisfy the criterion under section 5(21) which defines operational debt as "a claim for the provision of goods or services, including employment, or a debt for the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government, or a local authority"[38]. The Insolvency and Bankruptcy Code, 2016, though designed to safeguard the interests of creditors creating a creditor friendly environment, but has been prejudicial to operational creditors. While they are empowered to initiate insolvency proceedings under CIRP framework, their exclusion from voting rights in the Committee of Creditors curtails their influence over the resolution process. In PPIRP the operational creditors don't even have the right to initiate proceedings thus their interest is solely dependents on the wisdom of the financial creditors. This creates a structural imbalance where, despite the Code's creditor-centric framework, the interests of financial creditors are prioritized at the expense of

[34] Insolvency and Bankruptcy Code 2016, s 53A(3).
[35] Insolvency and Bankruptcy Code 2016, s 54J.
[36] *Debtor-in-Possession Model Under Pre-Packs — A False Reality*, Solventia (29 August 2023) https://www.solventia.co.in/post/debtor-in-possession-model-under-pre-packs-a-false-reality accessed 4 February 2026
[37] Insolvency and Bankruptcy Code 2016, s 5(20).
[38] Insolvency and Bankruptcy Code 2016, s 5(21).

operational creditors. The Hon'ble Supreme court in *Essar Steel (India) Ltd. Committee of Creditors v. Satish Kumar Gupta*[39], said that the OCs need not be treated at par with FCs, muddling the situation of OCs as they don't have a strict financial relationship with the corporate debtor[40].The reasoning for exclusion given by the Apex Court in the *Swiss Ribbons* case is based on the flawed assumption that the financial creditors have better expertise and intellect to evaluate the viability of the resolution plan, while the operational creditors are merely concerned with the recovery of the value of goods and services, their rational sums up the argument that the approval of resolution plan must be based on viability of the plan not on maximisation of asset recovery [41] however the key objective of the code as stated in the preamble with regards to insolvency of corporate persons "in a time-bound manner for maximization of value of assets of such persons".[42]The irony of such observation lies in the fact that in PPIRP it's the promoter or director, whatever the case may be who prepares the base resolution plan, and they themselves comes under the category operational creditors.

Prima facie the code does protects the interest of the operational creditor, they can be a part of COC only in the event that the corporate debtor does not have any financial creditors[43]. The right to attend the meetings of the CoC is also limited to operational creditors having an aggregate debt of at least 10% of the total debt owned to the corporate debtor[44]. Section 54K(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[45]. If the COC does not approve a plan by reason of it being prejudicial to operational or for any other reason under the statutory scheme then the RP would invite prospective resolution applicant to submit resolution plans in order to compete with the initial base resolution plan, The above section unequivocally protects the interests of the operational creditors but the reality seems to be quite different, after the COC rejects the base resolution plan and call for other plans, the approval of such plans are based on which of them is

[39] *Committee of Creditors of Essar Steel (India) Ltd v Satish Kumar Gupta (2019) 16 SCC 479 (SC).*
[40] Ankit Chandra, *'The Alienation of Operational Creditors from Committee of Creditors — A Lacunae in IBC' IBCLaw* (11 June 2024) https://ibclaw.in/the-alienation-of-operational-creditors-from-committee-of-creditors-a-lacunae-in-ibc-adv-ankit-chandra/ accessed 4 February 2026.
[41] Anwesh Patnaik, 'A Critique of the Pre-Packaged Insolvency: A Flawed Framework' Arbitration & Corporate Law Review (Manupatra, 2021).
[42] Insolvency and Bankruptcy Code 2016, Preamble.
[43] Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations 2021, reg 25
[44]*Operational Creditors in Insolvency — A Tale of Disenfranchisement LiveLaw* (18 May 2021) https://www.livelaw.in/law-firms/articles/operational-creditors-in-insolvency-a-tale-of-disenfranchisement-160906#_ftnref2 accessed 4 February 2026.
[45] Insolvency and Bankruptcy Code 2016, s 54K(4).

significantly better than the base resolution plan. The parameter for evaluation of such plans is based on certain percentage or number as approved by the committee and disclosed in the invitation, but this does not necessarily insist for non-impairment of facts as a crucial factor[46].In a situation wherein the even the other prospective plan impairs the claim of the operational creditors by simply recording a commercial or legal reason COC can approve such plan so ultimately the provisions for all practical purposes only protects the interest of financial creditors.

Another important aspect under IBC which severely impacts the rights of operational creditor adjudication of disputed claims, Upon the commencement of the insolvency resolution process of a corporate debtor, a moratorium on the liabilities of the corporate debtor comes into effect as per section 14 of the code [47]. IBC defines "claims" broadly to cover disputed debts, resolution professionals may accept or reject such claims and the creditors have the right to challenge non admission of such claims but in reality, the RP have no authority to properly assess them and typically record such claims at a nominal value leaving the creditors with little to no recovery, the apex court in Essar steel held that all disputed claims are extinguished once the resolution plan is approved[48] this further exacerbate rights of the creditors to have their dispute adjudicated in court, ironically the liquidator offers better protection since liquidators are empowered to admit disputed or contingent claims as per Regulation 25 Of the Insolvency and Bankruptcy Board of India Regulations, 2016[49]. This creates a paradox where creditors might recover more in liquidation than in resolution, despite the code being intended to preserve the company. For operational creditors, who are largely trade creditors and already sidelined under the IBC, this extinguishment without recourse is especially unfair, making them highly susceptible to frivolous disputes raised by debtors to avoid payment. One of the primary objectives of the code is to balance the interests of all stakeholders[50], although such view remains a utopic idea under the bounds of the current laws pertaining to insolvency resolutions in India.

---

[46] *Pre-Packaged Insolvency Resolution Process — A Critical Analysis Bijoy Pulipra* (3 March 2024) https://www.bijoypulipra.com/single-post/pre-packaged-insolvency-resolution-process-a-critical-analysis accessed 4 February 2026.

[47] Insolvency and Bankruptcy Code 2016, s 14.

[48] *Operational Creditors in Insolvency — A Tale of Disenfranchisement*, *LiveLaw* (18 May 2021) https://www.livelaw.in/law-firms/articles/operational-creditors-in-insolvency-a-tale-of-disenfranchisement-160906#_ftnref41

[49] Insolvency and Bankruptcy Code 2016, reg 25 (IBBI (Pre-packaged Insolvency Resolution Process) Regulations 2021)

[50] Insolvency and Bankruptcy Code 2016, Preamble.

Comparative Analysis of India, the United States, the United Kingdom, and Singapore

Introduction

Contemporary insolvency systems increasingly deploy hybrid restructuring mechanisms to address the structural weaknesses of orthodox reorganisation proceedings[51]. Pre-packaged insolvency frameworks occupy a distinctive position within this evolution by combining privately negotiated, ex ante restructuring with the binding and coercive authority of formal insolvency law. Their functional appeal lies in the relocation of valuation, negotiation, and plan formulation to the pre-commencement phase, thereby reducing delay, minimizing distress costs, and preserving going-concern value. However, the distributional consequences of this compression, particularly in the form of creditor haircuts and the exclusion of certain creditor classes, raise deeper governance concerns that extend beyond efficiency metrics.[52].

Yet, pre-packs also generate acute governance concerns. The compression of timelines, reduced market exposure, and prominence of incumbent management or connected purchasers create risks of informational asymmetry, creditor exclusion, opportunistic asset transfers, and procedural unfairness. The legal challenge, therefore, lies not in recognising the efficiency potential of pre-packs, but in designing institutional safeguards that reconcile speed with legitimacy.

II. Conceptual Foundations of Pre-Packaged Insolvency

Pre-packs are best understood as hybrid restructuring procedures, located between informal workouts and formal insolvency proceedings. Unlike purely contractual restructurings, pre-packs culminate in a court-sanctioned or statutorily binding outcome that can override dissenting creditors. Unlike conventional insolvency, however, most substantive bargaining occurs outside the courtroom.

Comparative practice reveals two dominant models:

1. Pre-packaged reorganisations, where the corporate entity survives with a restructured

[51] Aurelio Gurrea-Martinez, 'The Rise of Pre-Packs as a Restructuring Tool: Theory, Evidence and Policy' (2023) 24 *European Business Organization Law Review* 93, 95–97.
[52] Elizabeth Tashjian, Ronald C Lease and John J McConnell, 'An Empirical Analysis of Pre-Packaged Bankruptcies' (1996) 40 *Journal of Financial Economics* 135, 137–40.

balance sheet (typical of the United States and Singapore); and

2. Pre-packaged sales, where the business is transferred as a going concern, often leading to the dissolution of the original debtor (typical of the United Kingdom).

The choice between these models has significant implications for creditor hierarchy, transparency, and the distribution of restructuring gains.

United States: Pre-Packaged and Pre-Negotiated Chapter 11

The United States represents the most developed example of pre-packaged reorganization. Under Chapter 11, pre-packs preserve a robust debtor-in-possession model while embedding creditor participation through class-based voting, disclosure obligations, and the discipline imposed by the absolute priority rule[53]. Operational creditors are not procedurally excluded from the process; rather, their marginalization is economic, arising from their position within the capital structure and the practical realities of valuation. Haircuts in US pre-packs therefore reflect negotiated outcomes constrained by statutory safeguards and judicial scrutiny, particularly through cramdown standards that require fairness and feasibility. Although operational creditors frequently bear substantial losses, their exclusion is not categorical, and the allocation of haircuts remains embedded within a rule-bound participatory framework.

V. United Kingdom: Pre-Packaged Administrations

The UK pre-pack regime evolved as a market practice within the administration framework under the Insolvency Act 1986. A typical pre-pack involves negotiation of a business or asset sale prior to administration, followed by execution immediately upon the administrator's appointment.

Historically, the absence of ex ante creditor voting particularly for unsecured creditors generated sustained criticism. Concerns centred on lack of transparency, undervaluation, and sales to connected parties[54]. Regulatory responses have since emerged in the form of enhanced disclosure obligations and mandatory independent evaluation or creditor approval for connected-party disposals within the early weeks of administration.

[53] 11 USC § 1126(b) (2018).
[54] Teresa Graham, *The Graham Review into Pre-Pack Administration* (2014) paras 3.4–3.9.

The UK model candidly priorities business rescue and employment preservation over creditor democracy, substituting post-hoc transparency and professional accountability for participatory rights. In this framework, the exclusion of operational creditors is an explicit design choice rather than a by-product of capital hierarchy, justified on efficiency grounds but persistently criticised for its distributive consequences and susceptibility to opportunism.

VI. Singapore: Pre-Packaged Schemes of Arrangement

Singapore introduced a pre-packaged scheme of arrangement by modifying its existing scheme framework. Under the Insolvency, Restructuring and Dissolution Act, a debtor may seek court sanction of a pre-negotiated scheme without convening creditor meetings, provided the court is satisfied that statutory approval thresholds would have been achieved.

Haircuts under the Singaporean model are therefore mediated through judicial standards rather than creditor voting alone, reflecting a governance choice that privileges institutional oversight as a counterbalance to accelerated procedure.

Comparative Evaluation

The statutory protection afforded to operational creditors under the PPIRP, limited to a minimum payment floor often tied to liquidation value, provides little substantive safeguard in practice. Given the low liquidation values typical of distressed firms, these thresholds are frequently nominal. The categorical exclusion of operational creditors from voting further deprives them of bargaining power in both the base plan and the challenge process. As a result, haircut allocation under the PPIRP reflects neither neutral market outcomes nor inclusive restructuring, but a governance choice that prioritises speed, promoter continuity, and financial creditor consensus over distributive equity.

Unlike the UK model, India's framework does not openly embrace exclusion as a trade-off for efficiency. Unlike the US and Singapore, it does not embed procedural or judicial mechanisms capable of compensating for that exclusion. The marginalisation of operational creditors under the PPIRP is therefore best understood not as an institutional necessity but as a distributional failure arising from the uneasy coexistence of debtor control and creditor-centric approval thresholds. This tension calls into question whether the PPIRP meaningfully departs from the creditor-in-control logic of the conventional insolvency process or merely reproduces it in

compressed form.

Comparative experience suggests that the allocation of haircuts is inseparable from broader governance choices about participation, oversight, and institutional trust. If the PPIRP is to evolve into a genuine alternative rather than a procedural shortcut, recalibration of haircut governance becomes unavoidable. Whether this recalibration should occur through enhanced operational creditor participation, strengthened judicial fairness review, or redesigned minimum payment standards remains unresolved. What is clear is that the current framework places a disproportionate share of restructuring costs on operational creditors without affording them commensurate voice or protection, raising fundamental questions about the distributive legitimacy of India's pre-pack regime.

Implications and way forward for India

Comparative experience yields several lessons for the evolution of India's PPIRP:

- Procedural Simplification: Excessive layering of approvals risks neutralising the speed advantage of pre-packs. Singapore's streamlined sanction model offers a useful benchmark.

- Independent Valuation Mechanisms: Mandatory evaluator reports for promoter-led or connected-party plans could strengthen creditor confidence without eliminating debtor initiative.

- Judicial Restraint: A calibrated, fairness-focused standard of review rather than merits-based intervention would align PPIRP with its efficiency objectives.

- Scope of Application: Limiting PPIRP exclusively to MSMEs may be normatively unjustified; phased expansion with safeguards may better serve value-maximisation goals.

Pre-packaged insolvency is neither a panacea nor a procedural shortcut. Its success depends on careful institutional design that internalises both efficiency gains and governance risks. Comparative analysis demonstrates that speed and creditor protection need not be mutually exclusive. For India, the challenge lies not in conceptual innovation but in implementation: simplifying procedure, trusting market mechanisms subject to targeted safeguards, and

recalibrating judicial involvement. If these adjustments are made, PPIRP has the potential to become a central pillar of India's restructuring landscape rather than a marginal experiment.

Conclusion and way forward

The Pre-Packaged Insolvency Resolution Process represents an important institutional experiment in Indian insolvency law. It acknowledges, perhaps for the first time under the IBC framework, that speed, continuity of management, and preservation of enterprise value are not merely procedural conveniences but substantive objectives, particularly in the context of MSMEs. However, the PPIRP's promise of a debtor-in-possession regime remains only partially realised. Beneath the veneer of debtor control lies a deeply creditor-driven structure in which initiation, approval, and even continuation of the process remain firmly within the control of financial creditors.

This structural imbalance is most visible in the treatment of operational creditors. Their categorical exclusion from initiation rights and voting power, combined with the fragility of statutory non-impairment protections, renders them passive recipients of outcomes negotiated without their participation. The Swiss challenge mechanism, while theoretically capable of correcting undervaluation, does not address the underlying informational asymmetry and does little to protect operational creditors from severe haircuts. In practice, the PPIRP risks reproducing the distributive inequities of the CIRP while stripping operational creditors of even the limited strategic leverage they previously possessed.

Comparative experience demonstrates that such exclusion is not inevitable. Jurisdictions that prioritise efficiency openly acknowledge the trade-off and compensate through transparency, independent valuation, or judicial scrutiny. India's PPIRP does neither with sufficient clarity nor consistency. The result is a framework that compresses timelines without correspondingly strengthening legitimacy, thereby placing disproportionate restructuring costs on operational creditors and undermining confidence in the process.

Going forward, reform of the PPIRP must focus on recalibration rather than expansion. First, limited participatory rights for operational creditors, such as consultative voting or mandatory representation in challenge processes, would mitigate exclusion without diluting efficiency. Second, independent valuation and fairness review mechanisms, particularly for promoter-led base plans, are essential to address concerns of opportunism and excessive haircuts. Third,

judicial review should evolve towards a restrained but meaningful assessment of distributive fairness rather than a purely procedural checklist. Finally, any future extension of the PPIRP beyond MSMEs must be preceded by these safeguards; otherwise, the regime risks entrenching inequities on a far larger scale.

Ultimately, the success of the PPIRP will depend not on its speed alone, but on whether it can command trust across creditor classes. Without addressing the governance of haircuts and the marginalisation of operational creditors, the PPIRP may remain a procedural shortcut rather than a credible alternative to conventional insolvency resolution.